CHANGING SOVIET ATTITUDES TOWARD INTERNATIONAL LAW: AN INCORPORATIVE APPROACH

R. Judson Mitchell*  
Alan T. Leonhard**

I. INTRODUCTION***

The history of the development of Soviet thought on international law has been marked by numerous controversies in which the names of Korovin, Pashukanis, Vyshinsky, and Tunkin figure prominently.¹ A continuing problem has been the difficulty involved in the reconciliation of the Marxist theory on the relationship between the state and social substructure with the reality of the Soviet position in the existing state system of international politics.² Despite the apparent wide divergence of basic viewpoints among Soviet legal theorists, one can distinguish a certain continuity and consistency, as reflected by the three major themes of Soviet thought on international law:

a. A duality of social systems. - Behind the facade of international law lie two irreconcilable social systems: the capitalist and the socialist. These differing social systems produce superstructures of divergent legal norms. The development of general international law poses a problem in this general Marxist approach; sometimes general international law has been treated as a separate and virtually autonomous superstructural element.³

b. Extreme emphasis upon state sovereignty. - Strangely enough, the Soviet Union has usually placed greater emphasis upon sovereignty than have Western states, although the concept of sovereignty in international law was developed by bourgeois legal theor-

---

* Associate Professor, University of New Orleans. B.A., Wake Forest College, 1953; M.A., Yale University, 1955; Ph.D., University of Notre Dame, 1968.
** Associate Professor, University of New Orleans. B.A., Tulane University, 1960; M.A., Tulane University, 1961; Ph.D., Duke University, 1966.
*** The editors wish to express their appreciation to Helen S. Hundley for her assistance in the preparation of this article.
¹ E. Korovin, Das Völkerrecht in der Übergangszeit (1929); Soviet Legal Philosophy (J. Hazard ed. 1951); A. Vyshinsky, Voprosy mezunarodnovo prava i mezunarodnoi politiki (1949); Tunkin, Co-existence and International Law, 95 Recueil des cours 1 (1958) [hereinafter cited as Tunkin].
³ Id. at 169, 191-92.
ists and is incompatible, at least superficially, with basic Marxist
theory on state and society.4

c. The primacy of the treaty as a source of international law. -
The emphasis upon the treaty as a source of international law
follows from the concentration upon state sovereignty: interna-
tional law can be created only by the action of independent state
systems.5

These themes have governed elaboration of the fundamental So-
viet approach to international law. Given the divergence between
social systems, there must be a corresponding divergence between
legal systems. This was expressed most clearly by Maxim Litvinoff
to the League of Nations in response to a British delegate’s question
as to whether it would be possible to find a single impartial judge
in the whole world. Litvinov replied: “It [is] necessary to face the
fact that there [is] not one world but two—a Soviet world and a
non-Soviet world.”6

However one explained the mode of development of international
law (and Soviet theorists differed on this), it was necessary to take
into account the reality of antithetical social systems. Marxist-
Leninist theory of social development was crucial to theorizing
about international law, just as it was with regard to domestic legal
structures. Whether or not general international law was regarded
as a separate superstructural element, the milieu for the develop-
ment of international law was a fundamental legal dualism. Ulti-
mately, Marxist-Leninists foresaw a world existing under a single
legal framework that would reflect the substructural unity of the
victorious proletariat; international law could only be regarded as
provisional and transitional. Soviet legal theory thus posited a di-
chotomy between an existential legal dualism and a teleological
legal monism.

Soviet legal theorists have recently moved away from this frame-
work toward what might be called an incorporative view of interna-
tional law. There can no longer be a rigid compartmentalization
between international and domestic law, since the objective inter-
est of the socialist system require that, in some respects, domestic
and international legal norms be identical. This view reflects in part
the strategic necessities dictating “peaceful coexistence” and it con-

4 W. Friedmann, The Changing Structure of International Law 327-30 (1964)
[hereinafter cited as Friedmann].
[hereinafter cited as Triska & Slusser].
tinues trends initiated under Khrushchev. It also reflects the developmental crisis of the socialist system and the resulting major revision of Soviet development theory. Here the practical problem has concerned the incorporation of the “new type of international relations” existing within the socialist commonwealth into a broader framework of international law.

In terms of the three major themes mentioned above, the new approach involves a continuing insistence upon the primacy of the treaty, a reinterpretation of sovereignty doctrines, and a reassessment of the relationship between the major social systems.

II. SYSTEM LAW AND INTERNATIONAL LAW

The 1957 Declaration of the Twelve Communist Parties in Power included the following statement:

The Socialist countries base their relations on principles of complete equality, respect for territorial integrity, state independence and sovereignty and noninterference in one another’s affairs. These are vital principles. However, they do not exhaust the essence of relations between them. Fraternal mutual aid is part and parcel of these relations. This aid is a striking expression of Socialist internationalism.

Although the concept of “socialist internationalism” was to become the basis for the later Soviet reinterpretation of sovereignty doctrines, this statement clearly affirmed the Soviet adherence to the legal recognition of state sovereignty, a position formally indistinguishable from that of “bourgeois international law.” Moreover, Soviet practice during the 1950’s exhibited a marked emphasis upon recognition of state sovereignty, as reflected in the networks of bilateral treaties set up during that decade and, more significantly, in the unanimity rule adopted for the Council for Mutual Economic Assistance (COMECON).

A major departure was signaled by the Soviet proposal in 1962 that the Executive Committee of COMECON be accorded suprana-

---

2 Id. at 13; cf. Khrushchev, For New Victories in the World Communist Movement, KOMMUNIST, Jan. 1961, at 34.
4 See generally Finley, A Political Perspective of Economic Relations in the Communist Camp, 17 W. Pol. Q. 294 (1964).
tional authority over the economic relations of the member states. This proposal was defeated and the Soviet Union had to accept a lesser goal, the granting of supranational status to Intermetall, a subordinate body of COMECON. For a time thereafter the Soviets reverted to their emphasis upon bilateral agreements among system members and in 1965 fully yielded to the Romanian position concerning state sovereignty within the system, a position that was consistent with Soviet sovereignty doctrine, but was not in accord with Soviet political objectives.

The invasion of Czechoslovakia in 1968, after some initial confusion and hesitation, inspired a Soviet reinterpretation of sovereignty within the system, an aim already adumbrated in the 1962 proposals on COMECON. The invasion was a clear violation of international law under both the socialist and bourgeois versions. The Soviets had been able to claim in 1956 that the intervention in Hungary was a response to the invitation of elements within the Hungarian Government and thus preserve intact their formal adherence to state sovereignty; no such explanation was available in 1968. In these circumstances it was impossible to maintain the theretofore orthodox doctrine of state sovereignty. Not surprisingly, the Soviets put forward the position that the duality of social systems takes precedence over formal sovereignty.

S. Kovalev, a Soviet jurist, advanced this argument in his September 1968 Pravda article that initiated the so-called "Brezhnev Doctrine": "Under the Marxist concept of legal norms, including those governing relations among socialist countries, they cannot be interpreted in a narrow formalistic sense, outside the general context of the class struggle in the contemporary world."

Kovalev maintained further that in a class society there is no such thing as nonclass law and legal norms must be subordinated to the laws of class struggle and social development. To emphasize "legalistic considerations" at the expense of the socialist viewpoint is to use bourgeois law as a "measuring stick."

According to Kovalev, achievement of "the imperialist goal of detachment of Czechoslovakia from the socialist commonwealth" would have contradicted the right of the Czechoslovak people to

---

14 Id. at col. 7.
"socialist self-determination"; the destruction of socialism would be followed by the loss of national independence. The intervention by the five socialist states was, said Kovalev, a fight for Czechoslovakia's sovereignty against those "who would like to take away this sovereignty by handing over the country to the imperialists."

Leonid Brezhnev, in his November 12, 1968, Warsaw speech, completed the outline of what was to become known as the Brezhnev Doctrine and affirmed the position taken by Kovalev concerning sovereignty:

Socialist states stand for strict respect for the sovereignty of all countries. We resolutely oppose interference in the affairs of any states and the violation of their sovereignty.

At the same time, affirmation and defense of the sovereignty of states that have taken the path of socialist construction are of special significance to us Communists. The forces of imperialism and reaction are seeking to deprive the people first in one, then another socialist country of the sovereign right they have earned to ensure prosperity for their country and well-being and happiness for the broad working masses by building a society free from all oppression and exploitation.

The pronouncements of Kovalev and Brezhnev were widely viewed in the West as the initiation of a Soviet doctrine of "limited sovereignty," with the Soviet Union allegedly reserving the right to intervene in other socialist countries, if necessary, to preserve socialism. However, the Soviets made no claim to a right of unilateral intervention; any threat to a socialist regime was seen as a problem for the system as a whole, which required a systemic response. Further, it would appear that the Brezhnev Doctrine can be viewed best not in terms of a limitation of sovereignty, but rather in terms of a redefinition of sovereignty.

Kovalev and Brezhnev did not deny the continuing viability of the previous Soviet position regarding state sovereignty. However, that position now appeared restricted to "bourgeois international law"; a different definition of sovereignty applied in the countries

---

15 Id.
16 Id.
18 References cited note 17 supra.
that had taken the "socialist path of development." Here the exercise of sovereignty was a prerogative reserved exclusively for the proletariat, which means, of course, for the vanguard, the Communist Party. The substructural class development takes precedence over the superstructural formal legal development. However, the traditional conception of sovereignty continued to apply in relations among the bourgeois countries and in relations between the bourgeois countries and the socialist system. If the socialist conception of sovereignty negated the recognition of state autonomy within the socialist system, then essentially the socialist system was being removed from the structural framework of international law, for the Soviets had consistently refused to credit nontreaty sources of international law. Yet, in practice, the Soviets continued to operate within the framework of formal state relations previously existing among the countries of the socialist commonwealth. The result was a large measure of unresolved ambiguity.

This ambiguity was relieved somewhat by the Treaty of Friendship, Cooperation and Mutual Aid between the Soviet Union and Czechoslovakia signed in Prague on May 6, 1970, and the subsequent Soviet interpretation of its significance for international law. The preamble of the Treaty contains this statement: "[T]he support, strengthening and defence of the socialist gains achieved at the cost of the heroic efforts and selfless labour of each people are the common internationalist duty of the socialist countries." Article 1 of the Treaty points to "the principles of socialist internationalism" as the basis for the relations between the Soviet Union and Czechoslovakia. Article 5 spells this out in greater detail:

The High Contracting Parties, expressing their unswerving determination to proceed along the path of the construction of socialism and communism, will take the necessary steps to defend the socialist gains of the peoples and the security and independence of the two countries, will strive to develop all-round relations among the States of the socialist commonwealth, and will act in a spirit of the consolidation of the unity, friendship and fraternity of these States.

O. Khlestov, a Soviet spokesman, assessed the significance of the Treaty for international law as follows: "The main principle determining the relations between socialist countries is the principle of

---

21 Id. preamble.
22 Id. art. 5.
socialist internationalism. This is now not only a political principle, but also a principle of international law."

After pointing out that general international law contains imperative principles and rules which states cannot evade, regardless of their social systems, Khlestov discussed the relationship between socialist international law and general international law:

The principles and rules of international law which regulate relations between socialist states go beyond general international law and contain new principles besides general-democratic ones. They have this special feature determined by the similar-type state system of the socialist countries, their common ideology, common interests in safeguarding their revolutionary gains and national independence against encroachments by the imperialist camp, and unity of purpose—the building of communism. These common socio-economic and political features create an objective basis for sound and friendly interstate relations in the socialist community. This gives rise to the creation of a new—socialist—international law whose task is to define relations between socialist countries. Like general international law, the relations between socialist countries develop their own imperative principles and rules, according to which in their relations with each other socialist countries must not act otherwise than as these imperative principles and rules prescribe.

Thus socialist international law is seen as not being inconsistent with general international law and is considered to some extent an extension of general international law. However, the basic Soviet position on the principles and rules of general international law (at least where such principles and rules are recognized both by bourgeois states and by the socialist countries) is that such principles and rules derive from treaty formulation among states. Khlestov’s analysis implies that the principles and rules of socialist international law are something akin to the Western conception of sociological jurisprudence—they are derived from the “living law” norms of the new socialist societies. Nevertheless, the recognized norms of socialist international law are reducible to the concept of “socialist internationalism,” and “socialist internationalism” was not claimed to be a “principle of international law” until the signing of the Soviet-Czechoslovak Treaty. Moreover, Khlestov explicitly rec-

---

24 Id.
25 Id. at 13.
26 TRISKA & SLUSser, supra note 5, at 26.
ognizes the state system of the socialist countries as the structural framework for relations under this new socialist international law. It thus appears that the Treaty is a milestone in the progressive development of socialist international law. That development, like the development of general international law, is dependent upon agreements between states. The new definition of sovereignty becomes legally valid upon acceptance by state systems; that new definition is inherent in the concept of "socialist internationalism." Formal acceptance of "socialist internationalism" by state systems means incorporation of the concept into a broader framework of international law.

III. PROLETARIAN INTERNATIONALISM AND SOCIALIST INTERNATIONALISM

The 1961 Soviet textbook on international law contained this statement: "[I]n the course of the co-operation between the socialist States the foundations of a new International Law are being laid, of which proletarian internationalism is the guiding principle." 27

Proletarian internationalism has been defined by A. Cunhal in World Marxist Review as follows:

Proletarian internationalism comprises three basic principles: (1) unity and solidarity of the workers of all countries, including—as a key element—the unity and solidarity of the socialist countries; (2) recognition of the right of nations to self-determination and independence, envisaging their increasing closeness based on the identity of the interests of working people; and (3) priority in relation to particular and short-range interests of the common and international interests of the socialist revolution. 28

Socialist internationalism, now claimed to be a part of international law, is supposedly a subcategory of proletarian internationalism. It pertains to the "international relations of a new type" that have arisen because of the existence of the socialist system and defines the norms of relations among socialist states. 29 Socialist internationalism has usually been defined in such ambiguous terms

29 See Tasks at the present stage of the struggle against imperialism and united action of the Communist and Workers' Parties and all anti-imperialist forces, 12 World Marxist Rev., July 1969, at 5, 14; cf. Selyaninov, Proletarian Internationalism and the Socialist State, Int'l Aff. (Moscow), Nov. 1969, at 10, 12.
an "fraternal mutual aid"; however, in the usage of Kovalev and Brezhnev, it specifically means, among other things, that each socialist state owes obligations to the socialist commonwealth which transcend the formal independence of the individual states.

The formulation of Kovalev and Brezhnev is thus contradictory to the norm of self-determination and independence set out by Cunhal in his definition of proletarian internationalism, insofar as the latter is a restatement of the previous Soviet position on state sovereignty. The leaders of several nonruling Communist parties, who subscribed to proletarian internationalism and whose political position domestically required them to make the strongest defense of national sovereignty, were quick to point out the contradiction in 1968, following the invasion of Czechoslovakia. A more significant contradiction concerns the types of behavior to which the concepts refer: socialist internationalism pertains to the behavior of states in a regional state system; proletarian internationalism pertains to the behavior of the world proletariat and proletarian parties, presumably in opposition to the existing state system, notwithstanding the stated defense of national independence.

Both the initial pronouncements on the Brezhnev Doctrine and subsequent Soviet statements indicate a narrowing of the concept of socialist internationalism, a preference for that concept over proletarian internationalism, and a down-grading and de-emphasis of the latter. Since November 1968, it appears that the concept of proletarian internationalism has been employed by Soviet spokesmen mainly as a limited instrumental device, providing a useful counterpoise to bourgeois challenges concerning sovereignty doctrines. However, socialist internationalism has become more and more the crucial keystone of socialist international law.

Given the basic incompatibility between these two allegedly complementary concepts, the fact that the earlier emphasis upon proletarian internationalism as the "guiding principle" of Socialist international law has been displaced by exclusive concentration upon socialist internationalism assumes special significance. The claim that socialist internationalism, as reinterpreted by Kovalev and Brezhnev, is now part of the broader framework of international law involves a posited incorporation of political relations existing within a regional state system into a legal system transcending the underlying social bases. Thus compatibility of this approach with the heretofore orthodox viewpoint on the duality of social systems is obviously most tenuous. However, from the technical viewpoint,

the new approach involves legal dualism on two levels: (1) a functional division and distribution of sovereignty among states of the socialist system; and (2) a recognition of two different definitions of sovereignty, one for general and bourgeois international law, the other for socialist international law.

IV. INTERNATIONAL LAW AND IDEOLOGY

The current Soviet attitude toward international law reflects in large measure the thought of Professor G. I. Tunkin, the leading Soviet writer on international law, relative to the law of peaceful coexistence. However, in the 1950's, Tunkin rejected the idea of the division of international law into different regional systems. The subsequent development of legal relations among states of the socialist commonwealth did constitute formation of a different regional system. Beginning in 1968, Soviet spokesmen based socialist international law primarily upon the revised formulation of socialist internationalism. Since basic principles of general international law include national sovereignty, the equality of all states, territorial integrity, and noninterference with the internal system of other states, the new interpretation of socialist international law clearly is violative of accepted principles of general international law. Yet the claim was made that socialist internationalism is not only compatible with general international law, but is in effect an extension of it. This could only mean that socialist international law is being incorporated into general international law, that general international law is changing, and that Soviet influence is decisive in its reformulation. This approach shifts the emphasis from Tunkin's previous position on "diametrically opposed systems" and his treatment of general international law as a separate category. Professor Tunkin's new theoretical orientation involves a reevaluation of the relationship between international law and ideology. Tunkin wrote in November 1971:

International law does not rest on any community of ideologies and is not an expression of any such community. There is evidence that the antithesis between . . . them [is] no insuperable barrier

---

31 See Tunkin, supra note 1.
32 FRIEDMANN, supra note 4, at 330.
33 Id. at 331.
35 See generally G. TUNKIN, OSNOVY SOVREMENNOGO MEZHDUNARODNOGO PRAVA (1956); G. TUNKIN, PROBLEMY MEZHDUNARODNOGO PRAVA (1961).
to the development of international law. What is more, it is in the postwar period—one of especially acute struggle between socialist and bourgeois ideologies—that there has been a much faster development of international law than at any time in the past.\footnote{36}

Further, Tunkin maintained: "[i]deological issues are not subject to agreement and are merely incidental to the formulation of international law rules."\footnote{37}

Tunkin's analysis up to this point is entirely consistent with his previous position on general international law as a separate category, and is also consistent with the formulation advanced by both Khrushchev and Brezhnev that peaceful coexistence does not extend to ideology.\footnote{38} However, the thrust of Tunkin's argument shifts somewhat when he discusses the penetration of domestic and regional legal systems by progressively developing general international law.

According to Tunkin, concepts such as "justice," "social advancement," and "democratic development" are accepted in general international law, and inclusion of these concepts results from adherence to such documents as the United Nations Charter.\footnote{39} Agreements upon application of these concepts lack the specificity of agreements related to peaceful coexistence. Among the more significant treaties in this area, Tunkin lists the 1958 Geneva Conventions on marine law,\footnote{40} the 1961 Vienna Convention on Diplomatic Relations,\footnote{41} the 1969 Vienna Convention on the Law of Treaties,\footnote{42} the

\footnote{34} Tunkin, International Law and Ideological Struggle, Int'l Aff. (Moscow), Nov. 1971, at 25, 26 [hereinafter cited as Tunkin, International Law]; see Kulski, Soviet Comments on International Law, 45 Am. J. Int'l L. 762 (1951). Kulski offers a possible explanation for renewed emphasis on international law: "The postwar cultural isolationism towards the West and a specifically Soviet complex of inferiority inherited from the early years of the regime have produced since the last war an attitude of self-assertion." Id. at 762.

\footnote{37} Tunkin, International Law, supra note 36, at 26.


\footnote{39} Tunkin, International Law, supra note 36, at 27.


1963 Moscow treaty against nuclear tests in three environments,\(^4\) the non-proliferation treaty,\(^4\) and the 1967 treaty on outer space.\(^4\)

Here there is a direct impact upon domestic systems although, according to Tunkin, this is still unrelated to ideology:

> When international law rules are formulated, specifically during the conclusion of international treaties, it is not a matter of agreement on ideological questions but of coordination of rules governing the behavior of states. Thus, the conclusion of the non-proliferation treaty entailed the formulation of rules governing the behavior of states in possession of nuclear weapons, and of states not in possession of such weapons.\(^4\)

In all of this Tunkin sees an increasingly progressive reorientation of international law, a reorientation in which the Soviet Union has played a major role. Against Western charges that the Soviet Union did not in the past accept general international law, Tunkin maintains that “the Soviet state did not reject international law but merely opposed its reactionary institutions.”\(^4\)

This progressive reorientation of international law within the milieu of hostile social systems leads Tunkin to the conclusion that general international law is related to ideology only in a negative way, and that the ideological struggle is a subject of regulation in international law. According to Tunkin, international legal rules bind the states “to use in the ideological struggle in international affairs only those means allowed by international law . . . .”\(^4\)

Tunkin has thus moved from a view of the mutual exclusiveness of ideology and international law to a position acknowledging the subordination of ideology to general international law. Ideology reflects the underlying social reality and is thus the basis for the fundamental duality of social systems. Tunkin seems to be saying that the world legal superstructure is no longer a separate element but is in some respects at least dominant over the social substructure. This idea had been adumbrated earlier by the Soviet jurist, A. Bramson:


\(^4\) Id. at 29.

\(^4\) Id. at 27.
In considering relations between states, the Soviet Union must keep in mind the interests of the working-class, and this first fact must be borne in mind in connection with the possibility of cooperation between the Soviet Union and the capitalistic states. The political and social systems of bourgeois states, though severely criticized by the Soviet Union, remains their internal affair. The basic principle of the Soviet conception of international law is that of state sovereignty which may only be limited by obligations freely accepted.\[19]

According to Tunkin, the subordination of the social substructure becomes more explicit and presumably reflects official Soviet attitudes. This is surprising indeed and cannot be explained by reference to the strategic necessities of peaceful coexistence, since the Soviets have consistently maintained that peaceful coexistence does not preclude the ideological struggle. This conclusion does not appear surprising, however, when account is taken of the developmental crisis of the socialist system and the resulting reinterpretation of the Marxist-Leninist theory of social development. Indeed, what is called here the Soviet incorporative approach to international law appears to be a direct outgrowth of this revision of Soviet practice and theory.

V. THE DEVELOPMENTAL CRISIS OF THE SOCIALIST SYSTEM AND CHANGING SOVIET ATTITUDES TOWARD INTERNATIONAL LAW

The formulations of Kovalev, Khlestov, and Tunkin all relate to the developmental crisis of the socialist system. Movement from the traditional duality of systems employed by Kovalev to the incorporative approaches of Khlestov and Tunkin reflects an attempt to utilize international law as a structural support for the measures required by this developmental crisis. The resulting theoretical reformulation represents a de-emphasis of functional development and a tendency toward a view of superstructural autonomy. In other words, law is regarded in Marxism-Leninism as part of the social superstructure; if the superstructure is no longer a variable functionally dependent upon the social substructure, then a new relationship between system superstructural elements and nonsystem superstructural elements is possible and indeed may be necessary. This is the theoretical basis for the current Soviet incorporative approach to international law.

The original Soviet emphasis upon sovereignty was directly related to the problem of "capitalist encirclement." State sovereignty

\[19\] Bramson, Soviet Conception of International Law, 1 PANSTWO I PRAWO, Jan. 1950, at 34.
was strongly emphasized because of the perilous position of the first socialist state in a world dominated by capitalism; general observance of sovereignty was a guarantee against outside interference vis-à-vis the Soviet Union. However, in 1959 Khrushchev declared that "capitalist encirclement" had ended for the Soviet Union; a year later the Declaration of the 81 Parties declared that the "other socialist countries as well" had been secured against this threat and that restoration of capitalism had become "socially and economically impossible." Thereafter, the contours of the systemic crisis became apparent. Already, in 1962, the Soviet supernational proposals for COMECON were a response to problems of cohesion related to uneven development. The Czechoslovak episode of 1968 led to formulation of the Brezhnev Doctrine and the reassessment of the relationship between social systems under circumstances of the intensifying systemic crisis of development.

Crucial to the Soviet theoretical response to the developmental crisis are the identification of "difficulties," i.e., the contradictions of socialism, and the concept of the "weakest link of socialism." According to Brezhnev and other Soviet spokesmen, the balance of forces in the world has changed decisively to favor the socialist system; it is no longer possible for the capitalists to seek to alleviate the contradictions of imperialism by resort to force against the socialist system. As the contradictions of the capitalist system increase in the era of imperialism, the capitalists become more and more desperate and must adopt more subtle tactics of ideological subversion, variously described by Soviet spokesmen as "peaceful infiltration," "peaceful counterrevolution," and "creeping counterrevolution." Such tactics are feasible because socialist development is uneven, producing "weak links." These tactics are employed against the "weakest link of socialism" and are aimed toward bourgeois restoration. If successful, this would result in "reversing the course of history." Such a capitalist offensive is feasible (though the outcome is presumably in doubt) even "after creation of the foundations of socialist society."

Brezhnev's prescription for the crisis produced by the weakening

---

50 Kelsen, supra note 2, at 149-50.
54 Oleinik, supra note 53, at 30.
of links is four-fold: (1) increasing coordination of the activities of the socialist countries in all fields;\footnote{Brezhnev Address, supra note 38, at 2, col. 1.} (2) strengthening of the role of the Communist Party throughout the system; (3) an intensification of ideological warfare against bourgeois ideology; and (4) application of coercion to meet immediate crises caused by "weakening of links." This coercion, sanctioned by "socialist internationalism," is to be coordinated on an international or interparty basis within the socialist commonwealth; strengthening of the commonwealth's primary coercive arm, the Warsaw Treaty Organization.\footnote{Editorial, In Defense of Socialism and Peace, Int'l Aff. (Moscow), Sept. 1968, at 3, 5.}

The current Soviet position on the "weakening of links" recalls Stalin's claim that contradictions increase during the building of socialism. However, Stalin's view on increasing contradictions was directly related both to "capitalist encirclement" and to the primitive level of socialist development. Neither of these considerations applies today. The 1959 and 1960 proclamations concerning the end of "capitalist encirclement" have never been disavowed; the contemporary problems identified by Brezhnev and other Soviet spokesmen appear at an advanced stage of socialist development. Identification of Czechoslovakia in 1968 as the "weakest link of socialism" means that contradictions are no longer correlated with levels of socioeconomic development; Czechoslovakia had been consistently recognized as the most advanced country of the socialist system other than the Soviet Union.\footnote{Sik, The Economic Impact of Stalinism, 20 Problems of Communism, May-June 1971, at 1, 2.} Contradictions reappear at an advanced stage of socialist development and, in a practical sense, level of development now becomes primarily a matter of degree of integration into the socialist system for the Soviet leadership.

The Soviet theoretical response to the developmental crisis has been an admission of the separation of superstructure and substructure at advanced levels of socialist development; the practical response has been the strengthening of the superstructure. Given the fundamental weakness of the socialist system implicit in the developmental analysis of the Brezhnev Doctrine, incorporation of socialist international law into a broader international law framework becomes a matter of necessity not from the standpoint of physical survival in the nuclear age but rather from the standpoint of survival of the Soviet social system in a period when functional development no longer determines the outcome of history. Thus a "convergence" between the legal superstructures of the two conflicting
social systems can be regarded as an aid to the survival of the embattled socialist superstructure.

Kovalev's redefinition of sovereignty for the states of the socialist commonwealth, Khlestov's view on the incorporation of socialist internationalism into international law, and Tunkin's assertions concerning the prohibition in international law of certain forms of ideological struggle are all in accord with the above analysis. When account is taken of the fact that Soviet legal theorists contend that the Warsaw Treaty Organization is sanctioned by general international law58 (specifically, by the UN Charter),59 while at the same time they maintain that agreements between bourgeois and socialist states reflect the "diplomatic struggle of the two worlds,"60 the pattern becomes clearer still. Development of international law on communications is a specific example of this diplomatic struggle between the two worlds: the Soviets advocate an extension of international law in this area and explicitly admit that this is motivated by concern for the ideological dangers inherent in unrestricted telecasting across national frontiers.61

The new Soviet incorporative attitude toward international law thus involves a breakdown of boundaries among general international law, bourgeois international law, and socialist international law; ironically, however, the new approach is designed to strengthen boundary maintenance of the Soviet social system. This is, of course, essentially the same motivation that caused the Soviets during the Stalinist era to emphasize sovereignty more strongly than did the bourgeois states. However, the "new type of international relations" within the socialist commonwealth and the developmental problems of the system make the former approach to sovereignty inadequate. The conflict between the two major social systems continues but the dualism of legal superstructures is now incompatible with the dualism of social systems.

VI. DÉTENTE AND THE CONFERENCE ON SECURITY AND COOPERATION IN EUROPE

Soviet policy toward the West during the 1970's has been consis-

59 See U.N. CHARTER art. 52, para. 1.
60 Sanakoyev, Socialist Foreign Policy: Coordination and Effectiveness, INT'L AFF. (Moscow), June 1971, at 8, 10. See also Kapchenko, Socialist Foreign Policy and the Restructuring of International Relations, INT'L AFF. (Moscow), April 1975, at 1, 8.
tently directed toward implementation of the incorporative approach to international law discussed above. Between 1968 and 1973, the "socialist camp," particularly the Soviet Union itself, faced crises of both legitimacy and effectiveness. Brezhnev's diplomacy has reflected an almost obsessive desire for agreements with the West that would serve to legitimize and stabilize existing socio-political relationships within the "socialist camp."

The agreements on Berlin and the status of Germany at the outset of the decade that "normalized" the situation in central Europe fit this pattern. So too, do the various "détente" agreements with the United States since 1972, significantly ascribed by Soviet spokesmen to their camp's success in the "diplomatic struggle of the two worlds." Here the Soviets have resisted even minimal breaches in their uncompromising position on sovereignty in such matters as on-site inspection of missile bases. They have also adamantly refused to modify their internal social system as a quid pro quo for American concessions on trade and technology; e.g., the Soviet Union has explicitly rejected the Western position on the general legal principle of free emigration of persons. As Soviet dissidents such as Andrei Sakharov have pointed out, one profound effect of "détente" has been the implicit sanctioning of those repressive features of the Soviet system that underlie the politico-legal conception of "socialist internationalism." 3

The clearest example of Soviet success in the incorporation of their politico-legal conceptions into general international law has been the Soviet adherence to the Universal Copyright Convention. 4

The Soviet Union is party to the Convention only and is not party to the three protocols annexed thereto.


45 Id. The Soviet Union is party to the Convention only and is not party to the three protocols annexed thereto.
Soviet policy-makers have clearly regarded the Conference on Security and Cooperation in Europe (CSCE) as the capstone of the diplomatic drive for incorporation of Soviet legal conceptions into general international law. While the Final Act of CSCE is not a treaty with the force of law, it undoubtedly has important ramifications in both theory and practice for international relations and law. And although the Soviets were obliged to make some terminological concessions to both their Eastern allies and Western states, they apparently in the main obtained what they had wanted, especially in "Basket One" of the Final Act. The provision concerning inviolability of frontiers except in cases of peaceful change means that the 35 states represented at the July-August 1975 Helsinki "summit" have agreed upon both de facto and de jure recognition of communist domination of Eastern Europe and Soviet hegemony over the area. Notably, "Basket One" has the effect of validating the 1940 absorption of the Baltic States by the Soviet Union, an action which, if carried out today, would be violative of the CSCE accord and which in 1940 was incompatible with both Western and Soviet conceptions of sovereignty. In a practical sense, of course, Western negotiators have simply recognized a fait accompli that cannot be undone; implicitly, however, the Western states have yielded to the Soviet projection of "socialist internationalism" as a legal concept. Furthermore, most Western observers have viewed "Basket Three" of the Final Act, which deals with travel, information, and culture, as heavily weighted in favor of the Soviets.

It thus appears that the new Soviet incorporative approach to international law has assumed a position of great practical importance in contemporary international relations. Doubtlessly due to favorable changes in the "world correlation of forces," the Soviet Union has moved far toward achievement of the aim outlined above: legitimation of the social substructure of the "socialist camp" by the legal superstructure of general international law.

---

67 73 Dep't State Bull. 323 (1975).
68 Id. at 324.
69 Id. at 339.