defense under Article 51 of the Charter, and those that would not, even though the aggression should be condemned. Among the latter types it would place ideological aggression, and subversive activities, at least when conducted in limited form.

The Democratic Republic of the Congo also relates a definition to the rights of a state to self-defense under Article 51, as well as to Security Council action under Articles 41 and 42.[30] This approach leads it to conclude that there is no need to define atomic aggression, as the state which is attacked will have no chance of self-defense unless the first strike fails to achieve its objectives. Its major concerns are two: certain activities of armed bands as when arms, instructors, advisers or volunteers are sent to bands operating on the territory of another state; and economic aggression, as when one state dispossesses another of its natural resources, its assets or its products sold abroad.

Burundi indicated its concern with acts which should not be considered aggression.[31] Thus it would exclude non-compliance with an alleged international obligation, refusal to sign an armistice, rejection of jurisdictional competence, and failure to observe a war moratorium. To make certain that there would be no broad extension of the concept, it proposed that the definition be unambiguous and narrowly interpreted.

Clearly there are many views as to what should be included, what form the definition should take, and what consequences it should have. Conceived in educational terms the current return to attempts to define aggression can be meaningful in exploring these fundamental problems, if the participants restrict themselves to discussion and education of each other. The temptation is great to strike telling blows against opponents so as to win the minds of men. In itself such activity is itself a form of aggression, although not of such a type that any one would suppose that a right of self-defense under Article 51 had been created. All must realize that the peoples of the world want not only universal restraint in the use of force but also universal restraint in the use of words.

The attempt to define aggression will become truly fruitless if the Special Committee permits itself to become a forum for name-calling. It is general legal principles designed to fit dangerous situations that must be discussed and not carefully selected cases chosen to demonstrate the presence of a mote in an opponent's eye and no beam in one's own.

JOHN N. HAZARD

SOME ASPECTS OF SOVIET INFLUENCE ON INTERNATIONAL LAW

In the years following World War II increasing interest has been evidenced in the extent to which Soviet theory and practice may have influenced the development of the law of nations. This is to be expected in view of the prominence and power which the U.S.S.R. has come to enjoy

[30] See U.N. Doc. A/AC.91/4/Add.1, March 23, 1965, p. 2.

[31] See doc. cited, note 29 above, at p. 3.

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in the world community. The problem of evaluating this influence, which has been considerable, is not an easy one at best, and is complicated by several elements that are readily overlooked.

It goes without saying that in any such appraisal it would seem important to differentiate between the truly *Soviet* impact, that is, the effect of Soviet theory and practice as such on the development of rules of international law, as distinct from principles previously applied in Czarist Russia, and which the Soviet Union has found it convenient to retain. An example is the 12-mile measure of the territorial sea. One should be constantly mindful of the persistence of a set of rules characteristic of the prior regime, in contrast with the more dynamic, self-aggrandizing set of norms which the U.S.S.R. has been striving to engraft upon the world's legal system.

A further element complicating the problem is that what the Soviets may proclaim, what they say, is not always what they have in mind; nor is what they say always consistent with what they actually do. What is presented by Soviet writers as international law may not in fact reflect accurately the Soviet conception of law advanced at international conferences; and the published doctrinal writings may lag behind the specific legal positions which are taken by Soviet representatives.[1] Brooding over all this is an omnipresent Soviet propaganda seeking mightily to mold that very world public opinion which the U.S.S.R., in turn, is compelled to take into account in formulating its legal positions on peace and war.[2] A proffered legal proposition all too frequently may be an amalgam of politics, propaganda and jural dialectic which can be highly confusing to amateurs and experts alike. It is, in short, important to determine the actual effect of what has been said or done peeled away from the propaganda twist.

Any discussion of the effects of Soviet theory and practice on the law of nations today must take as its *point de départ* the basic philosophy of the U.S.S.R. concerning the substantive nature of international law. For Soviet publicists modern international law is the law of "peaceful coexistence."[3] They do not spell out the doctrine except in very general terms, nor is it presented as something susceptible of precise enunciation and applicability to specific legal issues. Instead it appears as the vehicle for a discussion of broad postulates embodying Soviet proposals for their conduct of international relations. The vehicle itself is an outline of current, major ideological and propaganda themes labeled as international law. They preach that the only alternative to peaceful coexistence is war; that this coexistence should be an economic and social competition—not a military one—and that the process must inevitably result in every nation choosing Socialism because the irresistible laws of history demonstrate that Socialism

[1] E. McWhinney, in 61 A.J.I.L. 237 (1967).

[2] B. A. Ramundo, Peaceful Coexistence: International Law in the Building of Communism 139 (1967).

[3] Y. A. Korovin in International Law (Academy of Sciences of the U.S.S.R.) 16; G. Tunkin, Droit International Public 19–21 (1965).

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is the highest and final stage of human and social development.[4] To this end every nation, they say, must be allowed to develop its own social system. What is not articulated is that peaceful coexistence will provide the mechanism whereby the Soviet group may destroy the independence of other nations with a minimum of apprehension from the threat of forceful resistance. For it becomes quickly apparent from Soviet writings and pronouncements that such resistance would be an international illegality under the concept of peaceful coexistence.

In essence, this concept is political dogma dressed in treacherous legal trappings. It is a masking technique, a tool, to infuse international law with Marxist political objectives while denigrating accepted imperatives of the world community. Official Soviet utterances make it quite clear that peaceful coexistence is a cardinal premise of Soviet foreign policy. Thus a resolution of the Twentieth Congress of the Communist Party of the Soviet Union stated that "the general lines of the foreign policy of the Soviet Union have always been the Leninist principle of peaceful coexistence of countries with different social systems."[5] Professor Korovin emphasized the ambivalence of the concept in observing that "peaceful coexistence and cooperation is possible only if the generally accepted principles of international law are consistently observed."[6] Those principles, as defined by him and other Soviet writers are, in turn, the principle of peaceful coexistence(!), mutual respect for territorial integrity and sovereignty, non-aggression, non-intervention, equality and mutual advantage, and so on. The definition tends to re-enforce the impression that peaceful coexistence has a dichotomy of meaning even in the Soviet Union: political as well as juridical. But, again, it is the political objectives which dominate the legal formulation, explaining why Soviet representatives at international conferences have worked overtime to obtain a sanctification of their doctrine from the rest of the world. In this manner the imprimatur of world respectability would be attached to concepts having a special connotation for Soviet dogma. They had achieved a modicum of initial success in having it placed on the agenda of the General Assembly, after considerable opposition from the United States and several other delegations; but only after the question-begging phrase was omitted in the creation of the United Nations Special Committee on Principles of International Law concerning Friendly Relations and Cooperation among States.[7]

Each of the individual so-called principles of peaceful coexistence mentioned above, is susceptible of such open-ended interpretation in justifying Moscow policies that one astute analyst, Professor Harold Lasswell, flailed it as "a doctrine of unilateral withdrawal, as expediency dictates, from the obligation to respect the territorial integrity and independence of other

[4] N. S. Khrushchev, Speech at the Plenary Meeting of the CCCP, June 21, 1963, quoted in the American Bar Association's Peaceful Coexistence: A Communist Blueprint for Victory 20 (1964).

[5] Korovin, *loc. cit.*

[6] *Loc. cit.*

[7] U. N. General Assembly, Res. 1966 (XVIII). See also G. W. Haight in 1 The International Lawyer 96 ff. (1966), for a useful discussion of the work of this Committee.

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States.''[8] Khrushchev himself, in an important address delivered on January 6, 1961, described the peaceful coexistence policy as nothing other than the continuation of the "struggle of the proletariat against the aggressive forces of imperialism."[9]

Historically, "peaceful coexistence" was formulated during the post-revolutionary period as a shield for a weak nation to defend itself against a hostile front, and when the Soviet regime was concentrating its control over the development of Socialism in one country. Very little was heard of it in the post-World-War II period of Soviet expansion when this expansion was being consolidated. Khrushchev brought it out of the closet as a doctrine of active strength, rather than as a safeguard for Soviet security. Today it is pushed as a subtle offensive tactic in a more palatable casing for world opinion than the idea of forceful world revolution with the risks of a conflict which neither the United States nor the U.S.S.R. desires.

Upon an examination of this doctrine, one is struck by the resemblance which it bears in a number of respects to the essential quality of certain natural law conceptions characteristic of an earlier period in history. While it is jealously positivist in articulation (manifested in the special and overriding rôle accorded to treaties), it radiates a kind of natural law outlook; not the natural law of the great theologians, of Suarez and Victoria, of Gentili, Grotius and finally Vattel; but a unique kind of natural law. Nor does it spring from the same source as the classical prototype with its divine origin, ascertainable from certain supervening principles of right reason. Soviet natural law involves the application of a different kind of "right reason," drawn from the overriding precepts of Marx and Lenin. The dialectical approach combines an admixture of this new naturalism with the most extreme form of positivism. For, to the Western world the positivist approach to international law was basically a synthesis of the rules accepted in bilateral and multipartite conventions, along with customary international law as reflected in the actual practice of states in their relations *inter se*. The Soviet brand of positivism is much more restricted, much narrower, and is, in sum, a rejection of a great portion of international legal principles which were accepted largely without question by the rest of the world as it was prior to World War II.

Soviet positivism has been distinguished by the exclusion of customary practice as a source of international obligations. It views international law as embracing only those principles to which states have expressly consented through an international agreement or have otherwise manifested their acquiescence. But a *caveat* is perhaps indicated here, as there is some scintilla of evidence in recent writings of a more sympathetic espousal of custom as a source of law. Thus, in Minasian's new work on the law of peaceful coexistence, the development of new customary law (viz., the law of outer space[10]) is acknowledged, although he still finds (along with other

[8] 1963 Proceedings, American Society of International Law 72.

[9] Peaceful Coexistence: A Communist Blueprint for Victory 14.

[10] *Cf.* Robert D. Crane "Soviet Attitude toward International Space Law," 56 A.J.I.L. 685 at 698–699 (1962).

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Soviet writers) Article 38 of the Statute of the International Court of Justice to be unacceptable: custom can never be a norm in itself, only a source of norms.[11]

As could have been expected, the newly emerging nations of Asia and Africa quickly found it convenient to adopt a parallel line in their rejection of certain basic principles of international law on the ground that they had not participated in their formulation. But from the Soviet standpoint, the positivist concept, with its enshrining of treaties as the prime if not sole basis of international law, is a double-edged approach, being both defensive and offensive in character. The positivist element provides protection for Soviet interests against anti-Socialist principles of international law which might inhibit actions proscribed by existing legal norms; the natural law edge opens the path to the pursuit of hostile, aggressive and neo-imperialist designs with the aid of a rationalized circumvolution whose theoretical roots are found in Marxist-Soviet dogma. As previously suggested in this paper, we are consequently in the presence of an intensely political doctrine under which international law, as the servant of the Marxist State,[12] is to be a mechanism for advancing Soviet world hegemony, and not at all a brake upon state conduct which may adversely affect other members of the community unless they happen to be Socialist members. The methodology contains all the pitfalls, all the dangers and all the evils which Hans Kelsen spent much of his life seeking to expose in his development of the pure theory of law. And it is virtually beyond peradventure that the great master of the Vienna School would consider this Soviet natural law as on the same level as the ideological motivation of German National Socialism: as a technique to warrant any and all departures from previously accepted normative restrictions, justifying the legal means by the end pursued.

But this political thrust of peaceful coexistence is a variable one. One would suppose that the principles it embodies must represent an enlightened code applicable to all nation-states. Such, however, is not the case. The principles of peaceful coexistence serve to articulate only the duties of states outside the Soviet bloc and the rights of states within the bloc. Professor Lipson has accurately pointed out that peaceful coexistence has been developed by the Soviets to guide the class struggle; where such struggle does not exist it is no longer needed. Put somewhat differently, peaceful

[11] See Hazard in 61 A.J.I.L. 232 (1967). Tunkin (Droit Int. Public 119 ff. (1965)), takes the position that the general principles of law referred to in Art. 38 of the Statute of the International Court of Justice are general principles as laid down in treaty and custom; to construe the principles of Art. 38 as those applied by nation states in *foro domestico* would, in his view, impose Western values on non-Western states. Such a concept (whose thrust some of the newly independent nations of Africa have found appealing) not only ignores the intent of the learned draftsmen of the Statute, but its consequence is to deprive par. (c) of Art. 38 of any meaning in view of the weight of its first two paragraphs. It also raises an interesting question as to whether the Soviet Union is free to repeal part of a Statute to which it became a party when it accepted the Charter of the United Nations.

[12] E. Kamenka, "The Soviet View of Law," in Problems of Communism, March–April, 1965, p. 8.

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coexistence is used only to describe the interactions of non-Socialist countries with Socialist countries. As such, it is simply a new slogan for the outmoded phrase "cold war."[13] But some Socialist writers have grumbled at this esoteric application of the doctrine. Yugoslav jurists, for example, complained the Soviet Union was forever pushing peaceful coexistence with the West, but "showed little concern in maintaining principles of coexistence in its relations with its own bloc"[14]—which appears too incredible as an admission of ignorance concerning the significance of the doctrine.

Although the formula may be obscure, its goals are not. These are: to influence non-Soviet disarmament; to encourage East-West trade and to subject the rest of the world to principles asserted by Communist countries. The latter can subject themselves to pseudo-legal norms of this nature because legal principles are no impediment to one who says his conduct never violates such principles. The strategy is simple enough. First, the Soviets must obtain acceptance of the basic concept—as yet undefined. Once that is achieved, the next phase calls for its definition in a manner acceptable to the Soviet Union. By controlling the definition, Professor Lipson concludes, they hope to control the future development of international law. A more insidious prescription for Western suicide could hardly be devised.

When one seeks to ascertain with greater precision what effect the Soviet campaign of peaceful coexistence and its ancillary concepts has had on the law, the record appears to be somewhat spotty: impressive in some areas, less so in others. As already indicated, they were able to achieve a minor degree of tactical success in having the item placed on the agenda of the General Assembly, thereby winning another forum for the dissemination of propaganda in the Special Committee to consider Principles of International Law concerning Friendly Relations among States. Nevertheless, the proceedings of this Committee disclose that other delegations managed to keep the discussions from getting out of hand by a judicious dissection of the proposals advanced by the U.S.S.R. and its supporters. These debates were of an exceptionally high character, and in this sphere, in contrast with what has regularly occurred in the Sixth Committee of the General Assembly, the Committee elevated the work of the United Nations and made a substantial contribution to an understanding of the basic principles of the Charter which had been referred to it[15] (abstention from the threat or use of force, peaceful settlement of disputes, non-intervention in matters within the domestic jurisdiction and the sovereign equality of states).

Turning to other areas, in contrast to what might be regarded as the radical approach of peaceful coexistence, it is interesting to observe that in their conception of the structure of international law, *i.e.*, of what are the

[13] Lipson in 29 Law and Contemporary Problems 877 (1964); also in U. S. Dept. of State External Research Paper 156 (May, 1964), p. 2, a report on the symposium concerning Soviet Impact on International Law at Duke University, Feb. 28–29, 1964.

[14] E. McWhinney, The Legal Principles Governing Friendly Relations and Cooperation among States 80 (1966).

[15] Report of the U. S. Delegation to the U. N. Special Committee on Principles of International Law concerning Friendly Relations and Cooperation among States, Mexico City, Aug. 27–Oct. 2, 1964, p. 28.

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subjects of that law, Soviet conservatism is almost archaic; but here again, this is no mere accident. For example, the trend throughout most of the world today is in the direction of recognizing that international law no longer applies to states alone, but takes in other international personalities such as various international organizations, even including, under some circumstances, individuals. No less an authority than the International Court of Justice has confirmed the international status of the United Nations as a subject of rights and obligations, capable of maintaining actions to vindicate injuries sustained by it.[16]

Soviet jurists refuse to accept this extension of the law of nations. They retain the classical, strict conception of states alone as the subjects of international law, with a rigid insistence on sovereignty in its most extreme form, a form which must deny the paramount nature of international law over national law. They do, however, recognize an exception in favor of peoples fighting for "national liberation." Here Soviet doctrine acknowledges that if a nation acquires the traits of a state by having formed some organ—such as a National Committee—which acts in the name of the state in its early stages, then a nation fighting for its "independence" acts as a subject of international law. Some Soviet writers go further and dispense with even these token requirements. They attribute to every nation *quâ* distinctive and cohesive social unit, the quality of national sovereignty. This, of course, is making sovereignty mean what you want it to mean, states what you want them to be, the whole fitting in beautifully with Soviet doctrine on wars of national liberation. From it, it is easy to concoct the principle that armed uprisings in colonial and dependent territories constitute international wars—contrary to all verifiable legal authority in the premises. Or, conversely, if it fits their purpose, that attacks at the interior of a state, abetted, fomented and supplied from abroad, are only civil strife, with the attendant legal consequences. It demonstrates again the Soviet technique of making international law fit foreign policy.

It is discouraging, in the middle of the 20th century, that any state should seriously deny that its sovereignty is limited by the supremacy of international law. Yet such was the position flatly taken by representatives of the Soviet Union, Algeria and Rumania at the New York meeting (1966) of the reconstituted Special Committee on Principles of Friendly Relations and Co-operation among States. To a proposal by the United Kingdom that a limitation of this kind should be recognized, the Algerian spokesman is reported to have said that

> [He] did not think international law was sufficiently coherent, precise or complete for national sovereignty to be subordinated to its rules. States agreed, at the very most, to abide by the obligations which they had freely assumed—*e.g.* those assumed by a State on acceding to the Charter of the United Nations—but in the present state of development of international law States could not be asked to subordinate themselves to it in all respects. Moreover, the principle that each State had the duty to comply fully and in good faith with its international obliga-

[16] Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, [1949] I.C.J. Rep. 174; 43 A.J.I.L. 589 (1949).

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> tions *already covered the notion of the supremacy of a* part of international law over State sovereignty . . . . A distinction should be drawn between an obligation voluntarily accepted and the *general imposition of a law made in other times by a small international community.*
>
> The second reason why his delegation could not recognize the supremacy of international law was that such *supremacy could be considered only in the context of each national constitution. Some constitutions made international law the supreme rule of their internal and external conduct, whereas others expressly recognized that only certain rules of international law stood at the apex of the legal hierarchy.* It was therefore desirable, in the present state of international law, to lay greater stress on the need for strict compliance by States with their international obligations *under bilateral or multilateral agreements,* rather than to impose a supremacy of international law over State sovereignty.[17]

There is nothing valid or original in any of these propositions. They have not been taken seriously since the latter part of the 19th century, when it was weakly contended that states were responsible only to themselves. That road leads to international anarchy, chaos and injustice.

Of all the principles of the older international order opposed by the Soviet Government, the requirement of compensation for property seized from foreigners—or anyone else—is one they can show most progress in undermining. Of course, they have not been alone in this, for many of our Latin American neighbors and other underdeveloped nations have been disputing this alleged requirement of international law in *general* measures of expropriation for over thirty years. Soviet motivation is not, however, quite the same as the rationale of the Americas. And the difference is not to be viewed as merely attributable to Communist concepts of private ownership. It goes much deeper. In the first place, it is to the selfish interest of the Soviet Union, the perpetrator of more property spoliations than any other regime in world history, to deny liability for confiscations and to fight for this principle as a canon of international law for the very understandable reason that the contrary principle could subject the Socialist camp to a potentially enormous monetary liability. But that isn't all. Since virtually all of the private investment—running into the billions of dollars in underdeveloped and other countries—is that of citizens of the Western capitalist countries, it is to the interest of the U.S.S.R. to encourage confiscations and seizures without compensation, because to the extent that the financial resources of the enemy abroad are destroyed, to that extent the general economic patrimony of their systems is eroded. It remains to be seen whether this implacable attack on the protection of property will eventually erase the requirement of just compensation. Though shaken in the myopic view of some writers, practice shows the tree still stands.[18]

[17] U.N. Doc. A/AC.125/SR.6 at 11, italics supplied; see also Haight, *loc. cit.* 106. For a refutation of this doctrine see Giraud in 110 Hague Academy, Recueil des Cours 699 (1963).

[18] "It is one thing to argue that there is no agreement on the principle of just compensation on the basis of the well-known Mexican and Russian denials of the requirement of compensation made before World War II. It is quite another to argue that the principle does not exist in the face of the . . . 90 agreements, concluded since World

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The subject of compensation for confiscation of foreign-owned private property is, of course, part of the larger topic of state responsibility and the diplomatic protection of citizens abroad. Here the gulf between Western nations and the Soviet group is so huge as to defy any compromise. It is true that the earlier Soviet texts manifested a degree of labial deference to the basic principle that a state is responsible for injuries to citizens of another state on its territory.[19] Soviet writers have defined an international delinquency creating responsibility as the commission by a state or its officials, and also by its citizens with the connivance of its government, of acts violating the rules of international law and the rights and interests of other states and their citizens. But it seems clear from Soviet practice, and their posture at international conferences that their major, if not exclusive, concern is in the area of wrongs committed directly on the state-to-state level.[20] Among other things, their concept of responsibility subsumes the criminal responsibility of a state for preparing and waging a war of aggression and the criminal responsibility of leaders guilty of committing criminal acts. The legal prohibitions against aggressive, unjust and nuclear war are bolstered, a recent careful observer has noted, by a new Socialist-inspired concept of state responsibility under which

> Responsibility does not result from harm to the property of foreign capitalists but rather from aggression and military crimes, the colonial enslavement of peoples, racial and national persecution—generally from crimes against mankind in the broadest sense of the term.[21]

In the International Law Commission the Soviets and certain like-orientated delegations vigorously opposed the preparation of a draft dealing with the responsibility of states for injuries to aliens, ultimately nullifying most of the painstaking work done on the subject by the Commission's able *rapporteur,* Dr. F. V. García Amador. In effect, the Commission, after considerable wrangling as to the precise significance of its terms of reference, seems to have dropped the original topic in favor of the broader and more unmanageable subject of state responsibility in general.[22] But the historical background and practical importance of the field selected by García Amador would seem to vindicate his more restricted approach. By far the bulk of the literature of international law relating to state respon-

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War II which . . . do not repudiate the principle of compensation even if they do not always expressly recognize it. If practice means anything in international law, the evidence in this case seems to be conclusive.'' J. M. Sweeney, ''Restatement of the Foreign Relations Law of the United States and the Responsibility of States for Injuries to Aliens,'' 16 Syracuse Law Review 762 at 769 (1965).

[19] Academy of Sciences of the U.S.S.R., International Law 130–131.

[20] Tunkin, *op. cit.* 202–222, *passim.*

[21] Ramundo, *op. cit.* 127, quoting D. B. Levin, Ob Otvetstvennosti Gosudarstv v Sovremennom Mezhdunarodnom Prave (The Responsibility of States under Contemporary International Law), Sovetskoe Gosudarstvo i Pravo No. 5 (1966), pp. 75 ff.

[22] R. R. Baxter, ''Codification in Light of the International Law of State Responsibility for Injuries to Aliens,'' 16 Syracuse Law Review 745–746 (1965).

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sibility is concerned with injuries to foreigners; and all of the prior efforts of private institutions and intergovernmental agencies to codify the law of responsibility have dealt with that specific subject.[23] It has long cried for multipartite conference action; whereas what the U.S.S.R. prefers—for its obvious political thrust—has never merited the same degree of attention. Of course, the Soviets are not averse to resorting to diplomatic protection when their own national interest is affected; but the problem of international claims is hardly an acute one for them, because, for one thing, Soviet citizens are not exactly distinguished by the amount of capital they invest abroad; and, secondly, as a rule Soviet citizens do not go abroad except in some government-approved capacity. While the U.S.S.R. would doubtless prefer a claim for the unjust imprisonment of one of its citizens, it is somewhat uncertain as to what their position would be *vis-à-vis* Western capitalist states on property damage, even though they would probably find it simple enough to rationalize the extending of diplomatic protection where items of personalty were in question.[24]

While this brief note hardly pretends to offer an exhaustive survey, it cannot close without consideration of a major area: the law of war, which can only be treated in a very limited manner. Here the most significant innovation of Soviet doctrine is in the *Bellum Justum,* the just war. Those wars were just, according to the Thomist-Grotian view, in which the legitimate objective of violence was the redressing of a wrong, conformably with certain prescriptions of authority.[25] The Soviets have twisted this natural law concept all out of shape in its application to wars of national liberation. Colonialism, they say, is such an unmitigated evil that any measures, forceful or other, are acting in self-defense.[26] It follows from this that, since a national liberation movement is presumed to act in self-defense, no measures opposing it, no steps by the Power in control to suppress the insurrection, can be justified in international law. The colonial Power is an outlaw nation, entitled to no legal prerogatives; the national liberation movement has all corresponding rights. But the scope of the *Bellum Justum* doctrine as developed by the Soviets goes much further.

By definition, no war resorted to by a Socialist state can ever constitute an aggression by it. *Per contra,* no war engaged in by a capitalist country

[23] *E.g.,* the efforts of the League of Nations Preparatory Committee for the Codification of International Law, the Harvard Research in International Law Draft Convention on Responsibility of States (1929) and the later Harvard Draft Convention and Report on Responsibility of States for Injuries to Aliens, March 1, 1959; as well as the Report of the Inter-American Juridical Committee on the Contribution of the American Continent to the Principles of International Law that Govern the Responsibility of the State, OEA/Ser.i/VI.2, CIJ-61 (English), 1962.

[24] Compare K. S. Carlston in 54 Northwestern University Law Review 405 at 427 (1959).

[25] *Cf.* McDougal and Feliciano, Law and Minimum World Public Order 131–135 (1961).

[26] This spurious doctrine has been invoked by spokesmen for some of the newly independent countries of Africa. *Cf.* 1967 Proceedings, American Society of International Law 20–22.

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can ever be anything else but an imperialistic war of aggression for that nation. The Socialist war is always a just war. In the words of Ramundo,

> . . . peaceful coexistence . . . means only that nuclear wars and unjust wars, so-called wars of aggression, or wars serving the interests of the forces of Western imperialism, are barred. . . . just wars are those which are waged in the Soviet interest.[27]

Concrete application of this dogma was made in 1950–1954 in Korea (as it is made today in Viet-Nam) with the Soviet group claiming that an aggressive, unjust war was waged against the Korean people by the United States and its allies, and this in the teeth of covering resolutions by the United Nations Security Council. In consequence, even if a capitalist state defends itself against an attack by a non-capitalist state—be it a direct or indirect attack—and which a Socialist state would surely declaim was a response to aggression by the capitalist nation, such self-defense is not really self-defense, but aggression.[28] The combination of this grotesque philosophy with the doctrine of wars of national liberation surely spells more trouble for the future. For if it is actively pursued, a succession of clashes, with the alternative of ultimate Western capitalist capitulation, is inevitable.

The same caliber of rationalization likewise permeates Soviet concepts of the legality of belligerent action during hostilities. The U.S.S.R. considers the rules of land warfare to be operative as part of the law of peaceful coexistence, because war is still possible between capitalist and Socialist states and the rules of war can be conveniently invoked to support their claim that nuclear warfare violates international law. What they are after here is insurance that nuclear weapons will not be used against the forces of national liberation.[29] In a similar way weapons and techniques which are the most effective for the United States in Viet-Nam are branded as illegal by Communist spokesmen. Bombing, napalm (which their propaganda has characterized as a crime against peace and mankind), non-toxic defoliants and tear gas (none of which violates the customary and conventional laws of war [30]) are ready targets for official and unofficial Soviet condemnation. So effective was this world-wide barrage that for a time it actually inhibited the United States from using tear gas where such use was in the interest of humane treatment of the civilian population.

As aggressors we are *eo ipso,* by Soviet definition, war criminals. And, as could have been anticipated, from this base it was a simple next step for North Viet-Nam to assert the right to deny to captured American airmen treatment as prisoners of war, consistently with a Socialist-bloc reservation

[27] *Op. cit.* 128, adding, "In this area as in others, the Soviets rely upon their own characterization of a situation to determine the legalities involved."

[28] This flexible approach has been described as an ambivalent effort to limit use of the right by capitalist states, while expanding it to accommodate the needs of the Soviet Union. "Nonsocialist" use of self-defense is restricted by subordinating it to the law of peaceful coexistence under the United Nations Charter. *Op. cit.* 131.

[29] Ramundo, *op. cit.* 138–139.

[30] *Cf.* United States Department of the Army, The Law of Land Warfare, Basic Field Manual 27-10 (1956), pars. 35–38.

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to Article 85 of the Geneva Convention of 1949. That reservation, though rejected by the United States, opened the door to just such an anti-humanitarian contention.[31]

To the Soviet international lawyer there is nothing inconsistent between peaceful coexistence and wars of national liberation, or between such wars and the United Nations Charter, or its principle of non-intervention in domestic affairs. This is illustrated by their participation in the Tri-Continental Conference in Havana in January of 1966. That Conference, which took place shortly after adoption by the 20th U.N. General Assembly of a declaration on non-intervention,[32] called on the people of all countries to give moral and material support to liberation movements and for subversive action to overturn the governments of several Members of the Organization of American States.

National liberation, of course, is an attractive euphemism, cloaked as anti-colonialism, for any Communist uprising against an established non-Socialist regime. As such it grossly violates the basic right of every state to be free of outside interference. So fundamental is this right that the rule of international law here involved may almost be said to constitute a *jus cogens,* overriding other conflicting principles. Yet at the 21st General Assembly of the United Nations, Mr. Fedorenko for the Soviet Union strongly opposed an amendment to his proposed declaration against intervention in a state's domestic affairs, which would have broadened his draft to bar armed intervention or the promotion or organization of subversion, terrorism or other indirect forms of intervention to change the existing system in another state. His real objective was patently to obtain the *imprimatur* of the international community for the distorted principle which is designed to facilitate assistance to Communist movements throughout the world.

It would be idle to deny that this particular facet of the Soviet campaign has had any impact upon the law of nations. It has come perilously close to overturning a principle that was regarded as virtually a cornerstone of the law in the famous *Alabama Arbitration* of 1872.[33] In that arbitration, Great Britain was condemned to pay to the United States $15.5 million for having violated the fundamental prohibition against the fitting out and equipment of armament to a rebellious party in a civil war. It is curious that one does not hear more reference to the *Alabama Arbitration* today; for the principle it enshrined is vital to a genuinely peaceful relationship among states.

There will undoubtedly continue to be, as in the past, a number of areas in which the objectives of the Soviet Union and the United States are sufficiently parallel and impelling to permit an accommodation of mutually acceptable principles. Thus a consensus was possible in such cases as the

[31] See the Hearing before the Senate Committee on Foreign Relations (84th Cong., 1st Sess.) on Exec. D, E, F and G (82nd Cong., 1st Sess.), p. 22, and Supp. to Exec. D, E, F and G. Text of reservation in 47 A.J.I.L. Supp. 177 (1953).

[32] U.N. Doc. A/Res/2131 (XX), Dec. 21, 1965; 60 A.J.I.L. 662 (1966).

[33] *Cf.* Bishop, International Law, Cases and Materials 864 (1962).

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Antarctica Treaty, the Nuclear Test Ban Treaty, the Vienna Convention on Diplomatic Relations of 1961, the Geneva Conventions on the Law of the Sea, the pending Non-Proliferation of Nuclear Weapons agreement, as well as the recent bilateral agreement between the U.S.S.R. and the United States relative to the protection of Western Atlantic Fisheries.[34] Despite these peripheral accomplishments, the hard center-core problem remains. And unless and until the Soviet Union is prepared to abjure its messianic and compulsive espousal of the doctrine of world revolution, the prospects for an evolving set of international norms serving the generalized interests of all nation-states of the world must remain as elusive as they have been since World War II. Only then may some of the tensions of the current collision course yield in the quest for a durable, peaceful community.

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[34] Agreement of Nov. 25, 1967, 7 Int. Legal Materials 144 (1968).

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