

COEXISTENCE AND COMMUNICATION: THEORY AND REALITY IN SOVIET APPROACHES TO INTERNATIONAL LAW*

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1. *Some Communication Barriers between Soviet and Western Legal Minds*

To obtain an adequate understanding of Communist attitudes and approaches to international law and relations is not easy, even though the attention of the inquirer is focused — as is our present attention — on one part of the Communist world: the Soviet Union.¹ On the deeper level, the attitudes and approaches in question are determined by the political and economic theory and philosophy embodied in tens of bulky volumes of the marxist-leninist classics, interpreted and reinterpreted continuously by the contemporary authorities on this thought in a manner which is not always helpful. Further, they are determined by the vicissitudes of the internal and external political life of the Soviet Union, whose motivating forces are not always open to scrutiny in the West but are rather matters of guesswork. Often, too, there are strong reasons to doubt whether Soviet authors, when they ostensibly attempt to communicate their views on world legal and political matters, genuinely want to convey something to the intellect; on many occasions their purpose seems to be to agitate feelings rather than to offer reasoning, to be expetive rather than explicative. This is not surprising, for the Soviet legal writings are not even meant to be divorced from politicising.² Thus the

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¹ Today the words "Soviet" and "communist" have ceased to be comfortable generic terms. The dissensions in the Communist camp make it very risky to generalise about Soviet attitudes and approaches to international law and relations. Hence what is said below on these matters may or may not be appropriate to other States having a Soviet political system and professing Communist ideology.

² See, e.g., the Editorial entitled "For High Party Spirit in Soviet Legal Science" in a recent issue of the leading Soviet legal periodical *The Soviet State and Law* (in Russian: "Za Vôsokuyu Partyinost' v Sovetskoi Yuridicheskoi Nauke" (1964) No. 1 *Sovetskoe Gosudarstvo i Pravo* 3-15. This article suggests that in the Soviet science there is a political principle overriding all those principles which in the West have come to be regarded as absolutely essential for scientific research and expression. Note especially at 10: "the scholar cannot stand aside from the battles of the conceptions of the world and cannot be neutral in the battle of marxism-leninism. . . . Science cannot be reduced only to facts; their generalisation and theoretical elaboration is unseverably connected with a conception of the world and with philosophy."

pattern of political behaviour characteristic of Soviet statesmen must find a reflection in Soviet legal writings.³

Some obstacles to communication between the Western and the Soviet legal minds seem to be of a purely linguistic nature. It has been pointed out that there are difficulties in translating into Russian various words which are most important in legal and political discussions. For example, "to propose", "union", and "reasonable" do not seem to have any adequate Russian correspondents. As to "reasonable", its nearest Russian correspondent is said to have "none of the overtones or undertones of its English meaning". A difficulty of the same kind is connected with the word "compromise". The Russian word "*kompromiss*" is "not of native origin and carries with it no favourable empathy. It is habitually used only in combination with the adjective 'putrid'".⁴ Difficulties like these must have some effect upon the attempt to conduct fruitful discussion with the Soviets, for example, on matters relating to peaceful coexistence.

A very considerable communication barrier between the Western and the Soviet legal and political thinkers arises from the sincerely held low opinions which they have of each other's fundamental thought in these areas and of the political realities based on this thought. The marxist-leninist tradition has made it very difficult for the Soviets to believe that in our system aggressive tendencies are not inherent. The same tradition connected with the Soviet political practice makes it impossible for us to believe that any *modus vivendi* with them except an armed truce of undetermined duration is possible.⁵ Moreover the Soviets seem sincerely to believe that their political system is superior to ours,⁶ so much superior that they feel that the collapse of our system should be hastened by all feasible means. We in our turn are reluctant to accord to marxism-leninism the status of a philosophy or a political theory which would deserve our scholarly attention as a body of potential insights. We look down upon it as a kind of alien cult which as such is indeed an important object of study, but a study of an aberration of the mind. On the basis of our impressions of the conditions of scholarly work in the Soviet Union in the area of political and legal thought, we have taken it for granted that their corresponding thinkers cannot be regarded as scholars with whom it would be possible to conduct any fruitful argument about their ideological principles, but must rather be regarded as votaries of an alien cult who, on favourable occasions, can give some useful information about its ideas and practices. This kind of communication situation engenders a lack of emotional *rapport* between the participants in communication, a defect of communication leading to communication breakdowns.

³ It is reported by A. Dallin, *The Soviet Union and the United Nations* (1962) 8-9, that after the Second World War, F. I. Kozhevnikov (who is still a leading Soviet international lawyer) said that the Soviet Union recognises those parts of international law "which can facilitate the execution of the stated tasks of the U.S.S.R.". On the selectiveness of the Soviet use of international law see also J. N. Hazard, *Law and Social Change in the U.S.S.R.* (1953) 275-295; H. Kelsen, *The Communist Theory of Law* (1955) 148-192.

⁴ See P. E. Mosley, "Some Soviet Techniques of Negotiation" in A. Dallin (ed.), *Soviet Conduct in World Affairs* (1960) 196 at 218 as to "reasonable" and at 219 as to "compromise".

⁵ Cf. Dallin, *op. cit. supra* n.3 at 4; W. Friedmann, "Meeting East and West?" (1959) 14 *International Journal* 235 at 235.

⁶ A corollary of this belief is that the Soviet Union is unwilling to submit its disputes or to have them submitted to international arbitration or adjudication. See Dallin, *op. cit. supra* n.3 at 12, observing that "the 'socialist camp' cannot be found wrong, and certainly not by a capitalist or even a mixed jury".

Western legal scholars have found many Soviet writings on international legal matters hard to digest because of the difficulties they present in the discovery of their real meaning. Thus an article ostensibly devoted to international legal problems may be not at all intended as a contribution to the discussion of these problems but rather as a means of inculcating the current Soviet international policies upon the minds of Soviet readers. Sometimes the real or principal addressee of Soviet writings on international law and relations may be a Soviet political dignitary whom the authors are trying to please or placate. Frequently these articles seem to have been written in full awareness that their effect on those who are intellectually awake will be very small, but it may be very considerable on the masses of unsuspecting, bemused, or sanguine men, or on those men whose minds have already been conditioned in the direction desired by the Soviet communicators.

Despite these communicative odds, Western legal and political scholarship cannot afford to overlook the intellectual content of the Soviet writings on international law and relations. Alongside what may prove intellectually meaningless or insignificant in their writings there is also what must be a genuine attempt to communicate and to reason. In the present political situation of the world, it is by no means the exclusive intent of the Soviet writers to cause intellectual confusion of which the authors, as marxist-leninist strategists and tacticians knowing what they want and unswervingly following their ulterior purposes, would reap the benefit. They appear also to be seeking genuine co-operation in a number of areas in international affairs. Under the threat of the nuclear holocaust and because of dissensions in their own camp, most probably they are also seeking genuinely peaceful coexistence for the time being.⁷ Insofar as the intention of the Soviet writers is to communicate thoughts to Western lawyers and statesmen, they may often fail to do this because they have lost their ability to communicate efficiently to these addressees, having become ensnared in their peculiar manners of expression and not knowing the ordinary communicative habits of Western communicatees. Even if they were able to break away completely from the communicative habits which cause estrangement in Western minds, they would still be handicapped by the suspicions which certain features of their previous literature in legal and political matters have created in the West. The communicatees here would be wary, being afraid of wiles of great subtlety, or at any rate they would be uncertain about the proper construction to be given to such a new line of Soviet communicative behaviour.

If Western legal and political scholars and statesmen want to understand what their Soviet colleagues are trying to communicate, they have to study, of course, their writings *sine ira et studio*. But this is hard, because there has been much in these writings which, though perhaps not designed to produce *ira*, yet does produce it as a normal human reaction. Soviet scholarly writings in the field of law have abounded in dyslogistic and eulogistic expressions, the former directed to those whom the authors consider their foes and the latter to those to whom their allegiance belongs. As an illustration of this kind of communication barrier between the Soviet and the Western legal minds, we add some examples of such expressions from the leading Soviet legal periodical, *Sovetskoe Gosudarstvo i Pravo*.

⁷ Cf. J. F. Triska and R. M. Slusser, *The Theory, Law, and Policy of Soviet Treaties* (1962) 404-05.

One of the most distinguished Soviet international lawyers branded a request of the General Assembly of the United Nations for an Advisory Opinion as a "dirty concoction" in an article published in this periodical. In the same article the author expressed his contempt for the majority of the Hague judges by saying that they have a "Marshallised conscience".⁸ The scholarly integrity of Hans Kelsen, one of the most outstanding Western legal scholars, was challenged in another article by referring to him as "the notorious theoretician of normativism" and by contending that the purpose which his book, *The Law of the United Nations* (1952), served was "shameless defiance of the rules of international law and in particular of the U.N. Charter" and that Kelsen had tried to prove that "violations of the Charter were actually admissible and legal".⁹ In the same article Western legal science was condemned *en bloc* by the insult that Kelsen's book "illustrates clearly this role of lackey which is assumed by the contemporary bourgeois science and in particular by the science of international law".¹⁰ In another article Western science of international law found the following non-complimentary characterisation:

Contemporary bourgeois "science" of international law comes to the rescue of imperialist diplomacy in the task of falsifying international law. Acting on the orders of the aggressive governments, it permeates all problems of international law with propaganda and corrupt ideology of cosmopolitanism. . . . It cynically falsifies the very notion and fundamental principles of international law as well as particular international law institutions.¹¹

The ideas of the rule of law and of *Rechtsstaat* cherished in the West are branded by Soviet authors as ideological weapons in the service of neocolonialism and the principles of the rule of law which Western lawyers have tried to apply to international relations are condemned by their Soviet colleagues as being in direct conflict with fundamental principles of international law.¹²

The vituperative expletives of the Soviet legal writers have been directed with the greatest vigour against juristic learning in the United States. Thus the integrity of the American Society of International Law was challenged in an article by saying that "the State Department sends, as a rule, its authoritative representatives to the meetings of the Society who, in fact, direct the debates by determining their political trends".¹³ The *American Journal of International Law* was condemned in another article as waging "a systematic and dirty

⁸ See W. W. Kulski, "Some Soviet Comments on International Law" (1951) 45 *American Journal of International Law* 347 at 350 referring to Y. Korovin, "The International Court in the Service of English-American Imperialism" (1950) No. 6 *Sovetskoe Gosudarstvo i Pravo*.

⁹ See W. W. Kulski, "Soviet Comments on International Law and Relations" (1952) 46 *American Journal of International Law* 333 at 335-36 referring to O. V. Bogdanov, "The Apologist of Violations of International Law — Kelsen's Book: 'The Law of the United Nations'" (1951) No. 7 *Sovetskoe Gosudarstvo i Pravo* 79.

¹⁰ See Bogdanov, article cited, at 81.

¹¹ See W. W. Kulski, "Soviet Comments on International Law and International Relations" (1952) 46 *American Journal of International Law* 719 at 726 referring to D. B. Levin, "The Falsification of the Notions of International Law by Bourgeois Pseudo-Science" (1952) No. 2 *Sovetskoe Gosudarstvo i Pravo* 55.

¹² See B. A. Tumanov, "Chto Skrövaetcyä za Lozungom 'Gospodstvo Prava'" (1963) No. 9 *Sovetskoe Gosudarstvo i Pravo* 50 at 56, 60-61. The title of this article in English translation is "What is Hidden behind the Slogan 'the Rule of Law'".

¹³ See W. W. Kulski, "Soviet Comments on International Law and International Relations" (1953) 47 *American Journal of International Law* 125 at 128 referring to O. V. Bogdanov, "American International Law Doctrine in the Service of Imperialist Expansion" (1952) No. 5 *Sovetskoe Gosudarstvo i Pravo* 70.

campaign of slander against the Soviet peace-loving foreign policy". When the Soviet learned treatments of Western international law are read, it should be remembered that words such as "bourgeois", "capitalist", and "imperialist" are not used as emotively neutral descriptive terms but are intended to carry a condemnatory, even insulting connotation.¹⁴

Those not accustomed to the prose style in which many Soviet legal writings have been prepared will be equally disconcerted by the eulogistic and self-sanctifying utterances in which these writings abound. Marxist-leninist classics are monotonously complimented in them by quasi-ritualistic expressions; the mention of leading Soviet statesmen and the Communist Party is habitually accompanied by epithets of the kind which might be expected in writings addressed to the populace or intended for the formation of adolescent minds.¹⁵

Such manifestations of the Soviet art of learned writing, however much they may offend the scholarly tastes acquired in the West, are probably not a major communication hurdle between the learned minds of both camps.¹⁶ It is possible to get accustomed to them and dismiss them as items of some sort of scholarly ritualism, for some reason inevitable in the Soviet Union at present but which may be suppressed by the State and Party authorities in due course as harmful to Soviet external relations and internal interests. And, after all, "snarling" and "purring" expressions¹⁷ occur also in Western scholarly prose. In this context it may be mentioned that Hans Kelsen has called the Soviet legal theory by such names as "the shameful decline of social science that is not able to emancipate itself" and accused Vyshinsky of "nauseating servility".¹⁸ In the period after the Twenty-Second Congress of the Communist Party of the Soviet Union, there has been a very noticeable change in the language of Soviet writings criticising the Western legal and political thought and institutions. Their tone has become far less aggressive; it has mellowed considerably.

The most usual reaction in Western scholarly writings to the Soviet aggressiveness directed to the West in the content and expression of thought has been irony, often making fun of Soviet sayings and quoting them in contexts which make them appear silly, producing hilarity in Western readers and natural annoyance in Soviet readers.

One of the most serious communication barriers established on the Soviet side between the Soviet and the Western legal minds consists in the peculiar Soviet manipulation of words. It has been quite obvious that many key words in legal and political writings carry, when used by the Soviet writers, a meaning altogether different from that which they have obtained in non-Soviet general use. Thus "dictatorship" in the phrase "proletarian dictatorship" does not mean for the Soviet writers and readers what it means in the West, where the word is associated with the political realities of Italy under Mussolini and Germany under Hitler. It is supposed to mean, in the Soviet legal and political parlance at any rate, "any form of government which relies

¹⁴ See W. W. Kulski, "The Soviet Attitude towards International Law and International Relations" (1953) 47 *American Journal of International Law* 485 at 486-87 referring to G. Zadorozhnyi, "The American Journal of International Law — a Preacher of International Brigandage and Lawlessness" (1952) No. 12 *Sovetskoe Gosudarstvo i Pravo* 80.

¹⁵ In the post-Stalinist era the tone of the Soviet writings has become more sober — but not altogether sober.

¹⁶ At any rate there are signs that the Soviets are growing out of that sort of style.

¹⁷ See S. I. Hayakawa, *Language in Action* (1941) 76-79, on what he calls "snarl-words" and "purr-words".

¹⁸ See Kelsen, *op. cit. supra* n.3, at vii and 124.

on an enforcement apparatus", that is "the police, jails, prisons, army, and so on", because the Soviet thinkers seem to regard legal force, too, as "a form of physical dictation rather than moral or intellectual persuasion".¹⁹ "Objectivity" does not mean for the Soviet writers universal validity, but whatever happens to be the case in the light of the Soviet ideology.²⁰ "Contradiction" in the marxist philosophy, and correspondingly in the current Soviet learned writings, does not refer to a relation between propositions (as it does in Western logic) but primarily to something which we would like to call "conflict" or "antagonism".²¹ It has become quite obvious that words such as "justice", "fair trial", and "freedom", "theory", and "science" have acquired in the Soviet use meanings rather different from those which they have in the West.²² The terms "State" and "law" have themselves acquired specific Soviet meanings. The "withering-away" of State and law doctrine has baffled Western legal and political thinkers, who have considered it an absurdity springing from the Soviet political utopianism. This view is ill-founded if one bears in mind that neither the word "State" nor the word "law" mean, in the Soviet doctrine, the same thing as we are accustomed to understand by these terms. What remains after the definite advent of communism when the process of "withering-away" of these entities (as conceived of by the Soviet thinkers) has taken its course, is still something that Western political and legal thinkers would call "State" and "law". What the Soviets call "administration of things", for example, and which would be conducted not by the State but by the communist society itself, would (in the conception of many Western thinkers) still be some kind of administration, that is, a regulated activity, and the regulations would constitute law as we conceive it. The social state envisioned when communism has scored its final victory would still be a kind of State as we understand this:²³ a highly organised social unit governed by a body of *legal* rules.

It is a common semantic phenomenon that the same words have different meanings in different places and in different times. Perhaps the above indicated Soviet peculiarities could be viewed as an instance of this phenomenon,²⁴ and all that the Western scholars and statesmen have to do for successful

¹⁹ See J. Somerville, *The Communist Trials and the American Tradition* (1956) 67.

²⁰ Cf. M. Polanyi, "The Magic of Marxism" (November, 1956) *A Special Supplement to the Bulletin of the Committee on Science and Freedom* 7 at 15-16.

²¹ See *infra* section 4 for further discussion of the Soviet concept of "contradiction".

²² As to the word "freedom", A. S. Nakarenko, a Soviet educator, is reported to have said "Discipline is freedom". See W. W. Kulski, *Peaceful Co-existence* (1959) 86. This should not be felt as strange by those in the West who are familiar with Hegel's works. A telling example about the peculiar Soviet use of the word "peace" is provided in a speech of Molotov delivered to the Supreme Soviet of the U.S.S.R. on August 1, 1940, after the war with Finland, after the invasion of Poland, and after the occupation of the Baltic States by the Soviet troops. Molotov said that these successes of the Soviet foreign policy "are the more significant that we have achieved them all by peaceful means". See Kulski, *loc. cit.*

²³ On the "withering-away" doctrine see J. Stone, "L'Etat, c'Est Moi! L'Etat Est Mort! A Retrospect on Soviet Marxist Theorizing on State and Law" (1963) 10 *U.C.L.A. Law Review* 754-779; M. D. Kirby, "Dialectics and Law" in *Australian Studies in Legal Philosophy* (1963) (being Beiheft No. 39 *Archiv für Rechts- und Sozialphilosophie*) 91 at 111-13; S. M. Schwarz, "Is the State Withering away in the U.S.S.R.?" in L. Schapiro (ed.), *The U.S.S.R. and the Future* (1962) 161-178. For recent Soviet views on this matter see A. K. Belókh, "O Dialektike Otmiraniya Gosudarstva" (1963) No. 1 *Sovetskoe Gosudarstvo i Pravo* 13-21.

²⁴ Cf. I. V. Kuznetsov, "But Philosophy is a Science" (Summer 1962) *Studies in Soviet Philosophy* (I.A.S.P. Translations from Original Soviet Sources) 20 at 30 for the Soviet emphasis that words should be understood by taking into account the system to which they belong.

communication with the Soviets in the areas where such words occur is to equip themselves with the knowledge of their real meaning and learn to translate them into appropriate words in Western usage. However, the matter is not so simple. It appears that legal and political words do not have a fixed meaning in the Soviet writings but can suddenly acquire a different meaning depending on circumstances. Thus Molotov said, after the conclusion of the neutrality pact with Nazi Germany on August 23, 1939, that "such notions as 'aggression' and 'aggressor' have acquired in the last few months a new concrete content and a new meaning. It is not difficult to guess that we cannot now use these notions in the same sense, as say, three or four months ago".²⁵ The word "communism" must mean after the Twenty-Second Party Congress something rather different from what it meant to Marx, Engels, Lenin, or Stalin; for it seems that these never regarded its realisation as a matter of a calculable number of years.²⁶ A considerable semantic difficulty is created by Soviet writers also by the fact that not infrequently in one and the same writing they use the same words in a double meaning: one intended for a non-Soviet audience and the other for the Soviet audience. This must be the case with the words such as "freedom", "sovereignty", and "justice".

It has been pointed out that the Soviet attitude to expressions used in internal legal and political discussions has its theoretical foundation in Pavlov's view that "the word is for men just as true a conditioned stimulus as all other stimuli which are common for men and animals".²⁷ Hence men can also be reconditioned with regard to the use of words. Linked with this is an idea of Lenin, which explains a great deal of the Soviet manipulation of legal, political, and ethical words: "The most certain way of discrediting a new political (and not only political) idea and to harm it, consists in reducing it to the absurd in the name of defending it."²⁸

Such Soviet semantic attitudes and practices create a situation in which all communication with the Soviet statesmen and scholars on the international level becomes extremely complicated and hazardous. Since the ordinary meanings of words cannot be relied upon when used by the Soviets, it is necessary, in every communicative relation with them, to watch out for special meanings. Further, the content of almost every Soviet doctrine or theory meant by its authors or advocates to have some significance outside the Soviet sphere is likely to be alien to the direct or ordinary meaning of the terms in which it is expressed. Hence every such doctrine or theory must be examined not only in respect of its formulation but also in respect of the Soviet practice connected with it. This is required even more since Lenin—whose thought has not lost, but rather gained, influence in the post-Stalin era—recommended all kinds of stratagem to promote the Soviet political aims. In an outburst of a revolutionist's eloquence, he said that temporary domestic or international allies should be supported as "the rope supports the hanged man",²⁹ and that it is necessary "to combine the strictest devotion

²⁵ See Kulski, *op. cit. supra* n.22 at 86.

²⁶ It is to be noted, however, that there have been particularisations and qualifications by Khrushchev of his corresponding statement which may mean its withdrawal. See Stone, article cited *supra* n.23 at 773.

²⁷ Quoted in Kulski, *op. cit. supra* n.22 at 87 referring to I. P. Pavlov, *Lektsii o Rabote Bol'shikh Polusharii Golovnovo Mozga* 273 (date of publication not provided in the citation).

²⁸ Quoted *ibid.* 88, referring to Lenin, *Detskaia Bolezn' "Levizny" v Kommuniste*, in *Sochineniya*, XXXI, 44 (date of publication not provided in the citation).

²⁹ Quoted *loc. cit.*, referring to Lenin, *op. cit.* 69.

to the ideas of Communism with the ability of making the necessary compromises, manoeuvres, agreements, zigzags, retreats and similar moves".³⁰ In view of such an authoritative pronouncement, it is hard to know what is the real meaning of the calls in recent Soviet legal and philosophical writings for abandonment of dogmatism, for free and creative thinking, and for more profound thinking.³¹ The Western communicatees would be churlish not to welcome these calls, provided that they really mean what such words would ordinarily and naturally convey in the West. But their Soviet colleagues must not suspect them of ideological hostility because they take their time over this welcome, reserving their response to the words until they can be sure about the meaning.

2. *Some Basic Contemporary Soviet Conceptions of International Law*

For Western legal scholars the task of forming an idea of contemporary basic Soviet conceptions of international law is considerably facilitated by the recent publication, by the Academy of Sciences of the U.S.S.R. Institute of State and Law, of a treatise entitled *International Law*.³² The authors of the individual chapters of the book include Soviet international lawyers of high distinction. It seems safe to regard a book like this as a close approximation to the current Soviet official views on international law and relations.³³

International law is defined in this Soviet treatise as "the aggregate of rules governing relations between States in the process of their conflict and cooperation, designed to safeguard their peaceful coexistence, expressing the will of the ruling classes of these States and defended in case of need by coercion applied by States individually or collectively".³⁴ Among the principles of international law whose importance is particularly emphasised by the Soviet authors are "sovereign equality of States, the self-determination of nations, non-interference in the internal affairs of other countries, territorial integrity, peaceful coexistence and cooperation between States regardless of their social systems and the conscientious observance of obligations assumed".³⁵ The Soviet international lawyers, following Lenin's saying that "right is nothing without an apparatus capable of enforcing the observance of the standards of right",³⁶ consider coercion as an essential characteristic of international law. They point out that in international law "there is no . . . centralised apparatus of coercion" but "coercion does exist in International Law" being "organised differently, and implemented in other forms" than is the form of centralised coercion.³⁷ Hence the Soviet writers take the view that international law is law.

³⁰ Quoted *ibid.* 88-89, referring to Lenin, *op. cit.* 52.

³¹ See G. I. Tunkin, "The 22nd Congress of the C.P.S.U. and the Tasks of the Soviet Science of International Law" (Winter 1962/63) *Soviet Law and Government* (I.A.S.P. Translations from Original Soviet Sources) 18 at 19.

³² Edited by F. I. Kozhevnikov, translated by D. Ogden. The year of the publication is not indicated, but it appears to be either 1960 or 1961 (the last book cited is published in 1960).

³³ The current Soviet official views on international law and relations are determined by the Programme of the Communist Party of the Soviet Union Adopted by the Twenty-Second Congress of the Communist Party of the Soviet Union, October 31, 1961. The documents of this Congress have been published in English in the book *The Road to Communism* (date of the publication not indicated) Foreign Languages Publishing House, Moscow. For a notable evaluation of the significance of the Congress from a Soviet international lawyer's point of view see Tunkin, article cited *supra* n.31, *passim*.

³⁴ See Kozhevnikov (ed.), *op. cit.* *supra* n.32 at 7.

³⁵ See *ibid.* 9.

³⁶ See *ib.* 11 (citing Lenin, 2(1) *Selected Works* (Moscow 1952) 302).

³⁷ See *ib.* 10-11.

As to the sources of international law, the Soviet view is that the main sources of this law are international treaties and international custom. "Of these, the first is most important." In addition to these sources, the International Court of Justice "can apply 'the general principles of law recognised by civilised nations'"; however, these "are realised either through the appropriate international treaties or . . . custom and are in fact their generalisation. Principles reflected neither in international treaties nor in international custom cannot be considered 'general principles'".³⁸ Provided that decisions of international organs and organisations have received international recognition, these decisions "can to a certain extent be considered as sources of International Law". Accordingly, "decisions taken by a qualified majority of the Security Council (given the concurring votes of its five permanent members . . .) on matters within its competence can be sources of International Law. The same applies to decisions of international administrative organs . . . adopted in accordance with their Charters".³⁹

As regards treaties in particular, in the Soviet conception only "States are the subjects of treaties. Treaties concluded between international organisations express in the ultimate analysis the delegation of the rights of States themselves as subjects of International Law". The object of treaties "can be only that which is legitimate and capable of fulfilment".⁴⁰ The principle *pacta sunt servanda* is the "most important principle of International Law"; it "expresses the attitude of law of all progressive mankind and is sanctified by many centuries of tradition". However, this principle "does not extend to treaties which are unequal in character". Repudiation of such treaties "cannot be considered a violation of the principle that treaties must be observed".⁴¹ The Soviet conception of interpretation of treaties is that its "purpose . . . is to clarify the desires of its signatories". This appears not to mean that the intention of those who actually made the treaty should be ascertained. It means that the desires "of those who apply it" should be clarified. Hence it follows that "diplomatic negotiations are the most common channel for . . . interpretation" of treaties. "There is no body in International Law which can give a binding interpretation of international treaties. The interpretation in legal disputes given by the International Court of Justice is binding only upon the parties to a particular case who have consented to its examination by the Court." An advisory opinion of the Court on matters of treaty interpretation "does not constitute an interpretation, since if it did, the International Court would constitute a body superior to the United Nations Organisation, which would be contrary to the latter's Charter. An advisory opinion of the International Court of Justice constitutes a qualified opinion of the judges on a question of interpretation which is in principle optional in character".⁴²

Concerning the relations between international law and national law, the Soviet view is that "both the rules of International Law and those of domestic

³⁸ See *ib.* 12.

³⁹ See *ib.* 13.

⁴⁰ See *ib.* 247.

⁴¹ See *ib.* 248, presenting also the following clarifying remark about the concept of equal and unequal treaties: "Equal treaties are treaties concluded on the basis of the equality of the parties; unequal are those which do not fulfil this elementary requirement." This clarification does not seem to be very helpful.

⁴² See *ib.* 277-78.

origin have the same binding force for all organs and nationals of the countries concerned". This must be so because both proceed from one and the same supreme authority, the State. Hence "International Law and National Law must not in their very nature either contradict each other or have primacy one over the other". This raises the question as to what happens if these contradictions (though they should not occur) nevertheless do occur. The Soviet answer to this question is that "by concluding an international agreement a governing authority undertakes, if necessary, to bring its domestic legislation into line with the international commitments it has assumed". However, if it promulgates "a law clearly contrary to International Law, the government concerned commits a violation of International Law, for which the State concerned is responsible under International Law".⁴³

With regard to the subjects of international law, the Soviet view is that "as a rule, only a State can be such a subject under present-day International Law". "No international organisations, still less physical persons, can be subjects of International Law." Physical persons, "while not subjects of International Law . . . may however be subjects of an infringement of International Law and order and as a result bear certain responsibility". The only exception allowed in the Soviet view to the rule that only a State can be a subject of international law is that "a nation fighting for its independence and at the stage of establishing its own State, is as a rule a subject of International Law".⁴⁴

In Soviet international legal argument, the concept of sovereignty plays a conspicuous role. It is, therefore, of major interest to examine the leading Soviet international legal scholars' current definition and analysis of this concept. In the treatise from which we are trying to understand the current Soviet basic conceptions of international law, State sovereignty is defined as "the independence of a State expressed in its right freely and at its own discretion to decide its internal and external affairs without violating the rights of other States or the principles and rules of International Law".⁴⁵ Sovereignty thus understood does not import "absolute" sovereignty.

A sovereign State must not in its international relations behave in an arbitrary fashion, without taking account of the generally recognised principles of International Law and the international undertakings which it has voluntarily assumed. To do so would mean to violate the principle of the sovereign equality of all the members of the international community.

Voluntary and reciprocal restriction of sovereignty of States can take place in the interests of international co-operation. "The violation or arbitrary unilateral repudiation of freely assumed undertakings cannot be justified by reference to sovereignty."⁴⁶ Apart from State sovereignty there is also another kind of sovereignty, namely National sovereignty. By this the Soviet authors understand "the right of each nation to self-determination and independent development".⁴⁷

To examine these basic conceptions of Soviet international law, let us first construct as an "ideal type" (somewhat like the "rational man" in the common law) the "candid Western communicatee", a "man" competent in

⁴³ See *ib.* 15.
⁴⁴ See *ib.* 89-90.

⁴⁵ See *ib.* 93.
⁴⁶ See *ib.* 96-97.
⁴⁷ See *ib.* 98.

international law and one who relies mainly on the "natural and ordinary" meaning of words as a canon of interpretation of the above presented statements—a communicatee who might be able to detach himself from what he himself knows or feels (or thinks he knows or feels) about the circumstances surrounding the conceptions in question. Most of these conceptions,⁴⁸ however strong the Soviet aura may have become around them, appear to such a "man" to be still quite Western in their form and substance. Thus the conception of sovereignty made central to the Soviet theory of international law has no specifically Soviet character about it;⁴⁹ and the view that, as a rule, only States are the subjects of international law is still a viable, even though not a generally held, view in the West.⁵⁰ Emphasis of the need to honour treaty obligations and to hold in high esteem the principle of good faith⁵¹ in international relations, likewise to rally around the call of the Preamble of the United Nations Charter "to practice tolerance and live together in peace with one another as good neighbours"⁵² represents also the declared Western attitude to international law and relations.

The candid Western communicatee may, of course, find a number of points in the Soviet statements of basic conceptions about which he would like to voice disagreement, dissatisfaction, or disquietude. He may find, for example, the Soviet definition of international law not corresponding to strict standards of definition, because its definiens contains terms which are redundant or unnecessary for the purpose of *definition*. Thus the words "expressing the will of the ruling classes of these States" are really not required for *defining* international law, even though they may prove apt for *describing* it.⁵³ Further, it appears that in the definition in question, "designed to safeguard the peaceful coexistence of States", is challengeable as an appropriate defining characteristic of international law; for States do not always coexist peacefully. Sometimes conflict exists between States (which contingency is admitted by the Soviet definition); therefore international law is not only designed to safeguard their peaceful coexistence but has, as one of its important purposes, to humanise or otherwise regulate the peaceless coexistence of States (when this occurs).

The candid Western communicatee might also cavil at the Soviet view that physical persons, while not subjects of international law, may nevertheless be subjects of an infringement of international law and as such bear certain responsibilities. This view seems to amount to an admission that individuals *are* subjects of international law; for the statements that persons have responsibility under a legal system and that certain obligations are imposed

⁴⁸ The only conspicuously Soviet conception in the statements considered in the text appears to be "ruling classes".

⁴⁹ See, for example, M. St. Korowicz, *Introduction to International Law* (1959) 51-85, regarding "sovereignty" as an important and workable concept of international law.

⁵⁰ See, for example, A. Ross, *Lehrbuch des Völkerrechts* (2951) 25.

⁵¹ See Kozhevnikov (ed.), *op. cit. supra* n.32 at 399.

⁵² Subscribed to *ibid.* 17.

⁵³ Cf. Tunkin, article cited *supra* n.31 at 25 for the statement that the current Soviet definition of international law must be revised in the light of the 22nd Congress of the C.P.S.U. He thinks that "expresses the will of the ruling classes of these states" as a defining characteristic of international law must be replaced by reference to the will of States "in such fashion as to indicate that the will of the Soviet state is the will of the entire Soviet people, while the will of the capitalist state is the will of its ruling class". See E. McWhinney, "Peaceful Co-existence and Soviet-Western International Law" (1962) 56 *American Journal of International Law* 951 at 963 for a comment on the curiosity and sloppiness of the Soviet definition.

on them by this system mean, in ordinary Western understanding, precisely that they are subjects of that law. What the authors of the Soviet treatise really want to say is that individuals are not subjects of international *rights* but they are subjects of certain international *duties*.

The above two matters, one relating to the wording of the definition of international law and the other relating to the forming of the concept "subjects of international law", are not specific defects of *ratio Sovietica*. In the West, too, "fuzzy" definitions abound in juristic writings and legal concepts are often badly formed. There are, however, some more disquieting features in the contemporary Soviet basic conceptions of international law, features which cannot be so easily dismissed as being instances of loose thinking or of careless formulation of thought, which have a fairly equal distribution all over the civilised world. Viewing the Soviet conceptions of international law presented above, the candid Western communicatee may find it striking that the Soviet international lawyers, whilst subscribing to the principle "*pacta sunt servanda*", contend that this principle "does not extend to treaties which are imposed by force, and which are unequal in character". This would obviously exclude all peace treaties from the operation of the principle in question (including the peace treaties which the Soviet Union has concluded) and would make the validity of many treaties concluded between a strong State (like the Soviet Union) and a weak State (like its neighbours in Europe) at least challengeable. However high the idealism behind the pronouncement of these exceptions to *pacta sunt servanda* may be, it is quite clear that in the present world organisation, the recognition and practice of these exceptions without elaborating them very considerably would amount to reducing a great many of the existing treaty obligations to absurdity, among them obligations which the Soviet Union would certainly wish fulfilled.

Our candid Western communicatee need by no means abandon his *candeur* towards the Soviet conceptions of international law to feel that there is considerable absurdity connected also with the Soviet views on treaty interpretation. If the desires of those who apply a treaty are decisive in a treaty interpretation, rights and duties following from the treaty must be extremely shaky, especially where the party desirous of shaking off its treaty obligations has not subjected itself or is not prepared to subject itself to international arbitration or adjudication.⁵⁴ In many essential areas of international legal relations, States are far removed from a position in which they could keep active, in the direction favourable to them, the desires of recalcitrant contracting parties—even after prolonged negotiations. Perhaps in a brave new world of the future it will always be possible to evoke the right desires; but not today, if only because we have not yet found appropriate technological means or argumentative techniques for such manipulation of the mind.

From this consideration of some contemporary basic Soviet conceptions of international law it appears that what the Soviet international lawyers and politicians wish to have is an international law which would leave to the Soviet Union a very wide freedom of action, and which would considerably reduce the likelihood that its actions could be challenged in the name of this law. This attitude is a natural corollary from the fact that Soviet political

⁵⁴ See Kozhevnikov (ed.), *op. cit. supra* n.32 at 138 for the Soviet unwillingness to recognise international judicial protection of human rights. For the Soviet emphasis of the voluntary character of international arbitration and adjudication see *ibid.* 389.

thought regards all non-Soviet political systems as having only a very inferior status: they are systems now completely outdated, unjust, unreasonable, and in a process of decay, and as such deserving of no real respect. The Soviet Union still needs the authority of international law, but it would like this law to be such that its authority could never turn effectively against the political actions of the U.S.S.R. which, in the Soviet view, stand always in the service of progress, justice, and proper order of the world. Under the cover of apparent rigidity of the Soviet conceptions of international law, the Soviet international lawyers actually advocate its extreme flexibility,⁵⁵ a flexibility which—when skilfully handled—would give the Soviet international policy a free hand but at the same time would also leave the Soviet politicians sufficient ground for condemning the actions of any other State which are contrary to the Soviet policy. All this is to be expected in view of the fact that marxist-leninist legal and political theory has always regarded law and legal conceptions as instruments of conducting policy⁵⁶—a view which, incidentally, is by no means alien to Western power politics either (which, too, has often been conducted to realise an idea of a historical mission). If the Soviet basic conceptions of international law do not prejudice the relations of the Soviet Union to its satellite States, this is apparently so because here means of social control other than international law have been in operation. They must, however, prove rather unworkable even within the Communist camp as soon as ideological tensions of considerable dimensions arise and possibilities develop for some Communist States to assert independent courses of action against the Soviet Union.

In the above appraisal of some basic contemporary Soviet conceptions of international law, attention has been paid only to the *prima facie* import and implications of these conceptions, without considering whether what the candid Western communicatee would make out of the statements of these conceptions represents the real meanings of the statements, "real" in the sense of their being taken in their full context including the ideas actually connected with them by their Soviet communicators. To do this, we have to see also how the conceptions in question have been applied by the Soviet lawyers and politicians in practice. Their asseverations, like "the Soviet Union has always fulfilled and will in the future loyally fulfil its international undertakings"⁵⁷ or "the Soviet Union, like other Socialist countries, stands for the strict observance of obligations assumed under international agreements, as has been demonstrated by the entire history of Soviet foreign relations",⁵⁸ do not make consideration of the *real* import of the contemporary basic Soviet conceptions of international law superfluous. For these asseverations, too, must be considered in their full context.

⁵⁵ In this context it may be remarked that Suslov, a leading marxist theorist, said at the 20th Congress of the C.P.S.U. that Soviet foreign policy was faithful to principles but elastic to the utmost. See Kulski, *op. cit. supra* n.22.

⁵⁶ For a startlingly frank declaration by Stalin on the nature of the Soviet foreign policy see Korowicz, *op. cit. supra* n.49 at 152-53 who quotes Stalin as saying: "Words must have no relations to actions — otherwise what kind of diplomacy is it? Words are one thing, actions another. Good words are a mask for concealment of bad deeds. Sincere diplomacy is not more possible than dry water or wooden iron."

⁵⁷ See Kozhevnikov (ed.), *op. cit. supra* n.32 at 20. The quotation runs on: "We are profoundly aware that without the observance of the rules of International Law, without fulfilment of obligations which have been assumed there can be no peaceful coexistence. Consequently championing the principles of peaceful coexistence, we shall continue to defend the rules of International Law in relations between States."

⁵⁸ See *ibid.* 248-49.

Before we turn to the consideration of some "realities" which may give a better understanding of the real meaning of the Soviet theories of international law, we shall seek a wider basis for this endeavour by procuring an exposition of recent Soviet statements of the contents of one of their peculiar current conceptions of international law and relations. This is the concept labelled by the Soviets as "peaceful coexistence".

3. *Peaceful Coexistence as the Declared Primary Soviet Aim of Contemporary International Law and Relations*

Whatever the objections to the term, something that may passably be called "peaceful coexistence" may now be regarded as an important matter of high order all over the world.⁵⁹ Although the phrase appears mainly as a Soviet political and legal slogan,⁶⁰ it is by no means of Soviet coinage. An historical antecedent of its legal use may be seen in the *Lotus Case Judgment*, in which the Permanent Court of International Justice referred to rules of international law as being established in view of regulating "*la coexistence de . . . communautés independantes*".⁶¹ Today, besides the Soviet lawyers, many Western lawyers use this phrase, sometimes with no sign of reluctance.⁶²

"Coexistence" as a concept relevant to international law has found noteworthy treatment by the distinguished Soviet international lawyer Grigory I. Tunkin.⁶³ He addressed himself to the problem in lectures delivered at the Hague Academy of International Law,⁶⁴ and more recently in an article published in *Sovetskoe Gosudarstvo i Pravo*.⁶⁵ Tunkin's treatment of his subject shows wide awareness of Western juristic learning. There is no invective in it, nor are there any Soviet ritualistic utterances of the kind that have produced qualms and feeling of estrangement in Western readers; in no

⁵⁹ For some discomforts which the phrase produces in Western international lawyers see McWhinney, article cited *supra* n.53 at 953 mentioning that John Hazard has pointed out that "the connotation of 'peaceful co-existence', in English anyway, is a somewhat negative one suggesting a 'condition' in which essentially hostile forces are required by circumstances to refrain from fighting". (Citing International Law Association, *Report of the Forty-Eighth Conference, 1958 (1959) 427ff.*)

⁶⁰ The Soviet lawyers regard the concept as originating from a resolution of the Eighth All-Russian Conference of the Russian Communist Party (Bolsheviks) which stated that the Soviet State "wants to live in peace with all peoples". See Kozhevnikov (ed.), *op. cit. supra* n.32 at 16. Recently this idea of peaceful coexistence was announced to be an essential aim of the Soviet foreign policy by the 22nd Congress of the C.P.S.U. On the emotional value which the phrase has for Soviet international lawyers see J. N. Hazard, "Co-existence Codification Reconsidered" (1963) 57 *American Journal of International Law* 88 at 88.

⁶¹ See Permanent Court of International Justice, Series A, No. 10 (1927) 18. What the Soviet authors style as principles of peaceful coexistence have been designated by the United Nations General Assembly as principles of "Friendly Relations and Cooperation among States". See E. McWhinney, "*Peaceful Coexistence and Soviet-Western International Law*" (1964) 116, who himself prefers to call them "principles of inter-Bloc relations" (*loc. cit.*). On the history of the Soviet concept of peaceful coexistence see *ibid.* 31ff.

⁶² For example, H. Rolin has said that international law is "intimately linked with the problem of peaceful coexistence". See *Compte Rendu de la XLIV Conférence de l'Union Interparlementaire* (1956) 719. Note also that the Forty-Ninth Conference of the International Law Association accepted the decision to codify the principles of peaceful coexistence as a means of clarifying issues. See Resolution on the Legal Aspects of Coexistence, International Law Association, *Reports of the Forty-Ninth Conference, Hamburg* (1961) xxii-xxiii. In the Fiftieth Conference of the Association drafts of this codification were presented.

⁶³ Grigory I. Tunkin is Professor of International Law at Moscow University, Member of the International Law Commission, and President of the Soviet Association of International Law.

⁶⁴ See G. I. Tunkin, "Co-existence and International Law" (1958) 95 *Recueil des Cours* 5-78.

⁶⁵ See Tunkin, article cited *supra* n.31, *passim*.

instance is he fulsome but he always supports his positions by plausible argument.⁶⁶

By coexistence, Tunkin means coexistence of States. This "has always been present since States appeared. States not only existed parallelly, they coexisted in the sense that there have been always relations between States". "The history of coexistence in this sense coincided in fact with the history of international relations." In our epoch coexistence of States has specific features: "it is a coexistence of States belonging to two *diametrically* different economic systems. One system is based on private property in the means of production, the other on common property."⁶⁷ Tunkin proposes to consider "not coexistence of States in general", but rather coexistence of States belonging to diametrically different *economic* systems. For it is economic differences that he regards as being of primary importance and not ideological differences. "Profound differences of ideologies reflect differences between economic systems, not *vice versa*."⁶⁸

Tunkin submits that "peaceful coexistence is not merely the absence of war, although peace and abstention from the solution of controversial issues by means of war remain fundamental to the concept of peaceful coexistence". After having said this in the article in which he discusses the significance of the 22nd Congress of the Communist Party of the Soviet Union for international law and relations, he points out that "peaceful coexistence necessarily includes cooperation between states. Without cooperation, peaceful coexistence is unthinkable". This coexistence presupposes "observance of the norms of international law"; "without fulfilment of obligations undertaken in relations among . . . states, there can be no peaceful coexistence."⁶⁹ However, "peaceful coexistence does not mean abandonment of ideological struggle. A fierce struggle between communist and bourgeois ideologies is proceeding in the contemporary world". "This struggle also exists in the science of international law."⁷⁰

In his Hague lectures, before proceeding to discuss the problem of the coexistence of States in the present epoch more specifically, Tunkin devotes a chapter to the foundations of contemporary international law.⁷¹ His main thesis in this chapter is that peaceful coexistence is founded on general international law and that general international law does exist. The norms of general international law express the "coordinated and inter-conditioned wills" of the States belonging to two existing economic systems.⁷² In explaining the meaning of "inter-conditioned wills" he says that "the norms of general international law are . . . expressing not a 'single will', but 'co-ordinated wills' of States, i.e. wills equally directed towards a definite aim—recognition of the given rule as a norm of international law". Agreement between the States presupposes that their wills "are not only 'co-ordinated' in relation to recognition of the given norm as a norm of international law, but are also

⁶⁶ Note in this connection Tunkin's words expressed *ibid.* 20, calling for removal of circumstances which have affected the development of the Soviet science of international law: "We must . . . free ourselves from dogmatism, from the use of citations instead of creative thought, from crying hallelujah and from isolation from actual reality . . .".

⁶⁷ See Tunkin, lectures cited *supra* n.64 at 5-6.

⁶⁸ See *ibid.* 6.

⁶⁹ See Tunkin, article cited *supra* n.31 at 20.

⁷⁰ See *ibid.* 27.

⁷¹ See Tunkin, lectures cited *supra* n.64 at 8-49.

⁷² See *ibid.* 36.

mutually conditioned"; it "includes a mutual conditioning of wills, the substance of which is that the assent of one State to recognise a particular rule as a norm of international law is conditioned on an analogous assent by the other State". Hence "this 'interconditionality' is the thread which links the wills of different States in the process of shaping (developing or annulling) or extending the sphere of operation of norms of international law" and is, therefore, "characteristic of an agreement as the mode of creating norms of international law".⁷³ The zeal of Tunkin (and the Soviet doctrine of international law in general) in asserting that all international law, including custom and the general principles of international law, has a consensual basis as above indicated, originates in the following fear: if this view is not accepted, "a definite group of States" may be encouraged "to try to impose upon new States, for instance upon socialist States or newly born States of Asia and Africa, some norms of general international law" which such States have never accepted "and which may prove, partly or wholly, unacceptable to these new States".⁷⁴

In addressing himself specifically to the problem of coexistence and international law, Tunkin contends in his Hague lectures that there is a close and incontestable relationship between general international law and peaceful coexistence. "The possibility of the existence of general international law in our times is determined eventually by the possibility of the peaceful coexistence of States of two systems." "Social forces which act in the direction of peaceful coexistence are . . . also forces which contribute to developing and strengthening general international law."⁷⁵ He points out that the competition and struggle that have always existed between States have not made impossible agreement between them and their peaceful coexistence. In socialist States, "common property in the means of production and the liquidation of classes which concentrated this property in their hands . . . have created a solid basis of peaceful policy of socialist States". Therefore, for these States "peaceful foreign policy is . . . not a temporary policy, but is a general line of policy". Although "the economic causes of wars continue to exist in the capitalist society . . . the development of capitalist society has brought into being powerful forces which are strongly opposed to aggressive wars".⁷⁶

In believing, together with other Soviet international lawyers, that "general international law, regulating relations between all the States irrespective of their social systems, not only can exist, but has good prospects of progressive development", Tunkin rejects the opinion "often expressed in the Western international law literature of recent years that in the present day division of the world into two diametrically different systems, general international law is going to disintegrate into separate regional systems or at least that the ground on which it may exist has become narrower". He finds that "this conclusion usually proceeds from a completely erroneous assumption that every law, and therefore international law as well, is based on a community ideology. From this it follows that since there is no such common ideology between States of the socialist and capitalist systems, general international law has no basis for its development and even for its existence".⁷⁷

⁷³ See *ib.* 35-36.

⁷⁴ See *ib.* 21.

⁷⁵ See *ib.* 52-53.

⁷⁶ See *ib.* 53-54.

⁷⁷ See *ib.* 54-55.

In arguing against the tenability of this view, Tunkin points out that "difference of ideologies has always existed". At present, "this . . . difference is profound". "But when States agree on recognition of this or that norm as a norm of international law they do not agree on problems of ideology. They do not try to agree on such problems, for instance, as what is international law, what is its social foundation, its sources, what are the main characteristics of a norm of this law, etc." Subscribing to the view of Kurt Wilk that "even in one and the same State there is often much disagreement on ideological questions", he observes that "for thousands of years jurists have not been able to agree on what is law. And still throughout all this time law existed. So States may profoundly disagree as to the nature of norms of international law, but this disagreement does not create an insurmountable obstacle to reaching an agreement relating to accepting specific rules as norms of international law".⁷⁸

Tunkin, championing the continued existence and development of general international law, emphatically rejects the concept of a "world state" as "Utopian in the present day conditions of coexistence" and also as "detrimental".⁷⁹ From the acceptance of this idea "there is but a step to affirming the hopelessness of any attempt to consolidate and develop general international law as it is today, and the recognition of the rule of force in international relations". He finds that "enhancing the role of international law in ensuring peaceful coexistence should be sought, not by establishing a world state and abolishing State sovereignty, . . . but primarily by encouraging the activities of all the forces of peace in their struggle for peace, international cooperation in all fields of life, for consolidating, developing and consistently observing the generally recognized principles and norms of international law in force".⁸⁰

A comprehensive and concise statement of the Soviet principles of peaceful coexistence is to be found in the Soviet draft submitted to the 50th Conference of the International Law Association in Brussels.⁸¹ This draft reaffirms the Soviet view that "the principle of peaceful coexistence is a fundamental principle of modern international law". It also reiterates the Soviet pronouncements that "all states shall practice tolerance and live together in peace with one another as good neighbours", that "relations between all states shall be developed on the basis of respect for the sovereignty and territorial integrity of states", that "no state has the right to interfere in the internal affairs of any other state", and that "all states shall fulfil in good faith their international obligations arising from treaties and other sources of international law". Further, the draft calls for developing and strengthening "international cooperation in the economic, social and political fields, as well as in the field of science and culture", for settling all ". . . national disputes by peaceful means", and for taking "individual or collective measures to prevent or suppress acts of aggression, and to maintain international peace and security" "in accordance with the United Nations Charter". Something that may be regarded as giving some credit to non-Soviet economic and political systems can be read out of the words of the draft that "every nation has the right

⁷⁸ See *ib.* 59.

⁷⁹ Note that Tunkin's words imply that at some time in the future the hope for a World State may no longer be utopian.

⁸⁰ See *ib.* 77.

⁸¹ The draft is reproduced in Hazard, article cited *supra* n.60 at 92-93.

to establish such a social system, and to choose such a form of government as it considers expedient and necessary for the purposes of ensuring the economic and cultural prosperity of its country".

In appraising the above presented statements of the Soviet concept of peaceful coexistence, let us again assume the attitude of the "candid" Western communicatee competent in matters of international law and who relies mainly on the "ordinary or natural meaning" of the words as a canon of interpretation. In approaching these statements in this manner, one is likely to find them *prima facie* acceptable to a very considerable extent. What Tunkin has said, and what the above quoted Soviet draft declares, represents, to a large measure, a common ground between many, if not most, Western international lawyers. Thus it is widely accepted in the West that good faith must be operative as a most fundamental principle of international legal relations. It is generally agreed that we must have general international law as the basis of international relations in the present state of the world organisation. The principle of non-interference in internal affairs is also widely accepted in the West, though many international lawyers would not put this principle in such absolute terms that it would exclude effective international action in the face of such "counter-human" situations as the treatment of Jews in Nazi Germany, the treatment of deportees from countries taken over by the Soviets in the Stalinist cattle-trains, prisons, and forced labour camps, and the treatment of coloured people in South Africa. Nobody in the West who has fair competence in international legal matters denies that international law requires overhaul: some of its norms must now be considered obsolete, others obsolescent. That customary law cannot take us very far is also admitted, likewise that more and more international matters of world-wide scope must be regulated, as soon as practicable, by possibly universal conventions and that these conventions should take into account international conditions prevailing today, paying special attention to particular needs and justified claims of newly emerged States.

The idea of a World State has found enthusiastic campaigners in the West, but on the whole it has not gained great popularity. As a goal to be attained in the foreseeable future, it is generally considered illusory by lawyers and politicians of sound experience and good standing as thinkers.⁸²

Nevertheless, the candid Western communicatee must also feel some uneasiness about the Soviet exposition of the idea of "peaceful coexistence". In particular, he must feel uneasiness about Tunkin's optimism as to the relative insignificance of the ideological differences of the States in the realisation of this idea. It is true, of course, that in the countries which have known such differences internally, workable social and legal orders have proved possible. However, this has been so only because in these States there also exists an additional item of ideology—a principle of supreme importance—namely, that ideological differences are tolerated and acts of unbearable intolerance shown towards any ideology which is not outright subversive are effectively prohibited by legal measures. It is questionable whether a kind of principle of tolerance, though now professed by Soviet politicians and lawyers even in their internal affairs,⁸³ is or can be made an effective principle

⁸² See W. Friedmann, *Introduction to World Politics* (4 ed. 1960) 43; K. W. Deutsch, *Nationalism and Social Communication* (1953) 51, as examples.

⁸³ Its exact meaning and scope is still to be seen. At any rate, as is observed by

of international law as distinguished from mere professed principle. Before it could become an effective principle, adequate legal procedures would be required in order to deal with clashes of incompatible ideologies begetting international conflicts. And what tolerance should be shown to unbearable intolerance on the international level is not clear, even in principle.

This leads us to the finding that the Soviet statements of their concept of peaceful coexistence are objectionable above all by *modus deficiens*, that is, on the grounds of what they have omitted, not so much (if at all) on the grounds of what they have included. Thus in the Soviet draft declaration of the principles of peaceful coexistence, most of the key terms are of such generality and uncertainty of meaning on the international plane that each of them would call for an elaboration of meaning requiring a number of pages. In comparing the Soviet draft of the principles in question presented to the Brussels Conference of the International Law Association with the United States' draft presented to the same Conference, it appears that the most conspicuous difference between them is that the former does not mention, whereas the latter emphasises, the third party settlement as an essential procedure required for settling international disputes.⁸⁴ The same draft also brings out that it is not enough simply to be ready to do things, or even to do things which are essential for international peace and security; it is also essential to ensure that what is proposed or declared to be done by States is actually done.⁸⁵ Moreover, in recent Soviet writings there are statements which must cause apprehension about the peacefulness of the Soviet drive for peaceful coexistence. The principle of peaceful coexistence is considered by Soviet writers to import "a specific form of class struggle",⁸⁶ and what the Soviets hope to achieve by what they have in mind when they refer to peaceful coexistence is favourable conditions to bring Western economic and political systems expeditiously to an end. "Peaceful coexistence of States with different social orders", is said to presuppose "relentless ideological, political, and economic struggle between two social systems". This position is regarded as an "unalterable marxist-leninist standpoint".⁸⁷

These principles run counter to the concept of State sovereignty as built up by the Soviet lawyers and politicians. From this concept it follows that negotiations are the supreme, if not exclusive, procedure of settling international disputes, and that singular trust must be placed in the good will and ability of governments to fulfil the international obligations of their States. As to the latter, international legal and political experience has not provided reasons why this trust is warranted. Regarding the adequacy of negotiations leading

A. F. Okulov in his article "Some Developments in Soviet Philosophy since the 20th Party Congress" (Summer 1962) *Soviet Studies in Philosophy* (I.A.S.P. Translations from Original Soviet Sources) 3 at 3: "20th Congress of the Party indicated that the chief problems before the sciences" included "the struggle against dogmatism".

⁸⁴ The American Draft, however embryonic it may be, says at any rate: "Disputes between states shall, if not settled by negotiation, be referred to third parties for mediation, conciliation or arbitration, or to the International Court of Justice or other international tribunals for decision in accordance with international law." See Hazard, article cited *supra* n.60 at 93.

⁸⁵ The Draft says: "There shall be complete disarmament of every state, but only after agreement has been reached on effective control and a permanent international police force has been established by the United Nations." See *ibid.* 94.

⁸⁶ See V. M. Shurshalov, "Osnovnoe Printsip Otnosheni Obshchenarodnogo Sotsialisticheskogo Gosudarstva s Drugimi Stranami" (1963) No. 3 *Sovetskoe Gosudarstvo i Pravo* 27 at 28.

⁸⁷ See P. I. Grishaev, "Protiv Antikommunisma v Voprosakh Teorii Prava" (1963) No. 6 *Sovetskoe Gosudarstvo i Pravo* 3 at 3.

to agreements in any case of serious disagreement between States, especially in matters of vital interest to them or of great emotional significance to their rulers, a minimum requirement for good prospects of such negotiations is that the negotiators should accept and practice principles of reasoning which would lead to reasonable settlement of the disputes they have to end.

If the recent Soviet call for higher standards of scholarly behaviour in the ideological struggle with the West⁸⁸ is to have any substance, the time has arrived when Soviet scholars must start making substantial contributions to the theory of reasoned argumentation which, even though energetically tackled in the West recently, is presenting constant insufficiently answered challenges to thinkers.⁸⁹ That the Soviet contributions to this area of thought are less than insignificant becomes apparent even to the candid Western communicatee when he has a close look at the Soviet principles of treaty interpretation. Startled into an apprehensive wondering about the emptiness, evasiveness and looseness of thought he might become inclined to abandon his *candeur* and resort, at least as a counsel of despair, to principles other than the "ordinary or natural" meaning of the words used by the Soviets in legal and political works, in order to form an idea what the Soviet statements of their international legal and political conceptions really mean.

4. *Realities beneath the Soviet Conceptions of International Law and Relations*

Viewing the Soviet conceptions of international law and relations as a candid Western communicatee constitutes only a particular phase of a more comprehensive effort to understand and appraise them. Retaining this attitude would not take us very far; it would be ill-adapted to meet problems of actual life; it would mean behaving in the face of harsh realities of life like Voltaire's hero, Candide. For a more enlightening interpretation of the Soviet statements of these conceptions, it is necessary to resort to the "full context" principle as a canon of interpretation.⁹⁰ The perplexities of interpretation of Soviet statements in this area arise from the abundant use in these statements of words which have no settled or generally accepted meaning, words whose emotional connotations are patent but whose *significata* and *designata* are very much at large. Words like "democracy", "freedom", "self-determination", "equality", and "good faith" are indeterminate references, and this not only in their Soviet use but also in their use in the West. It may also be mentioned that the Soviet emphasis that "international treaties must be interpreted in strict consonance with the basic principles of international law"⁹¹ is hardly anything else than a posing of the problem of interpretation; for none of the Soviet statements of the basic principles of international law is such that it would not itself require interpretation.⁹² Moreover, the repeated Soviet

⁸⁸ See Tunkin, article cited *supra* n.31 at 27 emphasising the need to make the Soviet criticisms of the bourgeois conceptions of international law "more profound, not restricting ourselves to a political evaluation of bourgeois conceptions, but demonstrating their theoretical lack of validity".

⁸⁹ The need for such contributions seems to be recognised now by Soviet philosophical writers. Articles in the recent issues of *Voprosô Filosofii* give this impression.

⁹⁰ This, by the way, is a principle that seems to be shunned in the Soviet doctrine of legal interpretation. Among the guides to this interpretation it does not occur. See Triska and Slusser, *op. cit. supra* n.7 at 2-3.

⁹¹ See *ibid.* 3.

⁹² For a recent Soviet statement of the principles of international law see G. I. Tunkin, *Voprosô Teorii Mezhdunarodnogo Prava* (1962) listing six new basic principles of international law: non-aggression, peaceful settlement of disputes, the nations' right of self-

declarations that the U.S.S.R. has faithfully fulfilled its treaty obligations, badly need interpretation in view of the fact that in the eyes of Western lawyers and statesmen the Soviet record of observing political treaties is alarmingly bad; and that breaches of treaties have been held against the Soviet Union by some Communist States as well.⁹³

The natural immediate reaction to the realities of the Soviet conduct of international relations tends to take the form of pronouncements that the Soviet statesmen and lawyers are confirmed liars who should be approached and handled in full awareness of their mendacity: all dealings with them should be conducted in accordance with what prudence would command in any situation where deception has been practised or is to be expected. However, before we can decide whether this reaction is warranted, further reflection is required; for undoubtedly the attitude of the Soviets possesses subtleties, and, therefore, it would be imprudent not to make an attempt to trace and understand them. Above all, we must remember that to judge a statement true or false is possible only if we are certain that the meanings of the terms in which it is made are clear. If they are not, we really do not know what the statement says and, consequently, what is its "truth-value". We have already remarked that specific Soviet meanings or double meanings can be discovered in the Soviet use of political terms. Here it may be added that the same seems to be the case with Soviet philosophical terms, including words such as "dogmatism", "validity", and "profound", which have recently become conspicuous in the Soviet calls for higher standards in scholarly conduct.⁹⁴

For Soviet statements of Soviet international political and legal conceptions to be considered in their full context, it is requisite to survey and assess the Soviet economic, psychological, sociological, etc. realities. However, even though such an examination and assessment is important, we must, nevertheless, abstain from it because of the awesome complexity which such realities possess and which call for extensive collaborative scholarly efforts on a specialist level to describe and evaluate them in any proper manner. All we can do in the present context is to make an attempt to understand these statements against the background of some basic ideas of Soviet official philosophy—called "marxism-leninism" or "dialectical materialism".

Marx, the founder of this school of thought, took over the basic concepts of dialectics from Hegel. Although he reproached the latter with having misconceived dialectical processes as primarily a process of thought, and with not conceiving it (as Marx did) as a process of things,⁹⁵ Marx appears to have

determination, peaceful coexistence, disarmament, and prohibition of war-propaganda. The author emphasises as an important component of the principle of peaceful coexistence the duty of the States not to force upon other States their political system (at 52). It may be remarked that the principle of peaceful coexistence is not meant to exclude bitter ideological war for the Soviets. Thus, Khrushchev is reported to have said that "He who preaches the idea of peaceful coexistence in ideology crawls down objectively to the anti-communist positions". See Grishaev, article cited *supra* n.87 at 3.

⁹³ In the Soviet justifications of their corresponding acts the peculiar Soviet use of the words "voluntary", "peaceful", and "aggression" has played an important part. Of the Communist countries, Yugoslavia, and recently Red China, have accused the Soviet Union of violations of treaties.

⁹⁴ See, for example, Tunkin, article cited *supra* n.31 at 19, saying *inter alia* that "the Soviet science of international law can and must move forward more boldly and decisively on the firm foundation of the decisions of the 22nd Party Congress, it must re-examine what has been done previously, discard all that is incorrect and outdated, develop scientific researches and render them more profound".

⁹⁵ Marx said that Hegel had conceived the dialectical process upside down, thinking that things reflected thought and not *vice versa*. See Marx, *Das Kapital* (2 ed. 1892).

taken over Hegel's misconceptions and mismanagement of logic.⁹⁶ It may be remarked that, though Hegel criticised logic, he never provided an adequate theory of stringent reasoning or of truth and that, though he is admired by many in the West as a metaphysician, as Marx is admired by many in the West as a political economist and historian, neither has been able to gain any reputation as a logician among Western *logicians*.⁹⁷ The central role in the Hegelian and Marxian dialectics belongs to the concept of contradiction.⁹⁸ If contradiction for Hegel and Marx really meant contradiction in the sense of logic, resort to this idea would mean making use of an extremely productive concept. From p and non- p , that is from a simultaneous assertion of two contradictory propositions, any proposition can be validly inferred. Why we actually shun contradictory statements is precisely because they are logically too productive for any practical handling, since what follows from a contradiction leaves matters to be controlled by logical thinking completely at large. Hence operating with logical contradictions—and this is what Western observers suspect the Soviet legal and political spokesmen frequently do—brings about situations in which they cannot be properly reproached with violating the laws of formal reasoning. What they are doing is misapplying accepted principles of formal logic whilst creating illusions by their aid.

However, it is quite certain that the core of the Hegelian and Marxian concept of "contradiction" does not lie in contradiction in the sense of traditional or modern logic; it means essentially what may be more appropriately called "antagonism", "opposition", or "conflict".⁹⁹ Hence marxism-leninism conceives of "contradictions" primarily as a state of facts governed by the principle of causality. These are significant also as determinants of thought and human action,¹⁰⁰ including making *logically* contradictory statements and, as their corollaries, any assertion one chooses to make as expedient in the given situation. Since dialectic processes in the marxist-leninist sense are merely processes of reality and not procedures of reason establishing value standards for thought and action, Marx was right, of course, when he said that the dialectic "in its rational form is a scandal and abomination to the bourgeoisie . . . because it includes in a positive understanding of the present state of things their negation and inevitable decline and regards every historically developed social form as being in a flux of movement and as

Preface. On continued importance of Hegel in the Soviet doctrine see M. Merleau-Ponty, *Les Aventures de la Dialectique* (13 ed. 1955) 83.

⁹⁶ For a recent appreciation by Soviet philosophers of the role of formal logic in the processes of thinking see P. V. Kopnin, "Dialekticheskaya Logika i Nauchnoe Issledovanie" (1962) No. 10 *Voprosy Filosofii* 3 at 4, 6.

⁹⁷ As to Hegel, his loose usage of technical expression led William James to exclaim: "Great injustice is done to Hegel by treating him as primarily a reasoner. He is in reality a naïvely observant man, only beset with a perverse preference for the use of technical and logical jargon." See W. James, *A Pluralistic Universe* (1909) 86-87. Cf. W. Friedmann, *Legal Theory* (4 ed. 1960) 123, referring to B. Croce, *What is Living and What is Dead in Hegel's Philosophy?* (1912).

⁹⁸ See G. Wetter, *Dialectical Materialism: An Historical and Systematic Survey of Philosophy in the Soviet Union* (1958) 312-13.

⁹⁹ Cf. A. J. Ayer, "Philosophy and Science" (Summer 1962) *Soviet Studies in Philosophy* (I.A.S.P. Translations from Original Soviet Sources) 14 at 16.

¹⁰⁰ In this context an extraordinary statement of Stalin made in 1930 may be quoted. Stalin calls for the highest possible development of governmental powers with the avowed object of preparing conditions for the withering away of governmental power and says: "This is the Marxian formula. Isn't it 'contradictory'? Yes, it is, but this contradiction is a living thing, and completely reflects the Marxian dialectic." Quoted by V. Gsovski and M. Gzybowski, *Government and Courts in the Soviet Union and Eastern Europe* (1959) 50.

transient, and lets nothing overawe it".¹⁰¹ Marxism-leninism has thus aptly been characterised as an "algebra of revolution";¹⁰² and through superimposition of the theory of revolution on its ontology, it also constitutes a philosophy of political action.

Since the intellectual reality of dialectical materialism is constituted in this manner, it must be expected to provide mainly action-directing principles, not principles for discriminating between what is true and what is false. Insofar as it does resort to these, they are adopted by the doctrine and incorporated in it from outside. Since action-directing principles are of an imperative nature,¹⁰³ and since imperatives have no truth-value, we see once again how we do not quite come to grips with the real point of the Soviet legal and political statements if we hastily want to brand them *en bloc* as falsehood or lies. However, we are also oversimplifying if we dismiss altogether the role of proper theory and practice of logic and of principles of discrimination of truth in marxism-leninism. Logic as traditionally understood, and as refined in our time, has found recognition and application in Soviet theory and practice,¹⁰⁴ as it must in any theory of non-erratic action. For without this recognition and application, all enunciations of action-directing principles must remain only isolated utterances incapable of producing any conclusions when insisted upon; no legal policy could be carried out and no law could be operated even with a minimum of consistency and stability. A practised contempt for logic would also make it impossible, of course, to conduct mathematical reasoning and to develop and apply physical science.

The Soviet scorn for logic in the field of law and politics can mean only that the application of its principles is restricted by considerations of political expediency. These principles are properly and ably applied when there is a need for their application; when political considerations dictate their non-application, they are flouted either by rejecting logic for the purposes of the particular situation altogether or by resorting to logical possibilities which make the application of logic in that situation preposterous. This attitude to logic is by no means foreign to Western political and legal thinking; in the West, too, lawyers, especially politicians, likewise harness logic to the service of their practical ends and, when practising or proposing to practise it, have no great inhibitions about misapplying it or taking advantage of any illusions it can produce.¹⁰⁵

Marxian dialectics is a philosophy of unrest, movement, antagonism, struggle, and flux of all things. This raises the question as to what permanence, what constants, or even relative constants, can it assert or have about itself? Is this dialectics itself something constant? Can it claim that there are *constant* objective laws? Can stable and permanent states of affairs be

¹⁰¹ See Marx, *Das Kapital* (2 ed. 1892) Preface.

¹⁰² See R. Slesinger, *Soviet Legal Theory* (1945) 13. Cf. J. N. Hazard, *Soviet Legal Philosophy* (1951) Introduction, on the social implications of the emphasis of dialectics on dynamism and continual change.

¹⁰³ See R. M. Hare, *The Language of Morals* (1952) 166, 172.

¹⁰⁴ See, for example, Tunkin, lectures cited *supra* n.64 at 43 explicitly recognising the role of logic by objecting to certain current conceptions of international law as containing "logical inconsistency". See also A. F. Okulov, "Some Developments in Soviet Philosophy Since the 20th Party Congress" (Summer 1962) *Soviet Studies in Philosophy* (I.A.S.P. Translations from Original Soviet Sources) 3 at 8 providing a list of recent important Soviet publications on modern logic.

¹⁰⁵ See J. Stone, *The Province and Function of Law* (1946) Ch. 7; *id.*, *Legal System and Lawyers' Reasonings* (1964) Ch. 7.

attained in accordance with its principles? If it is the case that as a body of thought it admits or contains self-contradictions (in the sense of logic) and impredicative propositions (in the sense that it does not embody qualifications which would exclude it from its own scope), anything at all can take place in strict conformity with it, including its own negation. It has been dogmatically asserted, but this very assertion—according to the Marxian tenet of the impermanence of all things—can be regarded only as valid for the time being, not for all future time. Hence Lenin's insistence, much stressed in recent Soviet philosophical writings, on the importance of the concrete situations in which principles of dialectics are to be applied.¹⁰⁶ That dialectical materialism is itself dynamic can be seen from its recent history. Even its key terms have changed their meaning according to the time and the place. For example, "communism" hardly means now the same thing as it meant for Marx and Engels; and it appears to mean different things in the Soviet Union and in Communist China.¹⁰⁷ It is quite plausible that concepts such as "struggle", "objective", "class", and "man" acquire contents different from their previous content in the Soviet world. If in the Marxian concepts and statements there is anything constant at all, this can be only the constancy warranted by their abstractness, which removes them from the flux and change of things because these statements do not assert anything about things but provide a formal matrix into which an open range of variables can be placed.¹⁰⁸

To men concerned about international situations of today it is important to know whether in marxism there are any material principles, especially principles of morals, which would be permanent enough to offer a sufficient common ground for international legal and political action towards peaceful coexistence of all nations. Unfortunately, every such principle which has come to Western attention has proved useless because of the uncertainty of its meaning in view of Soviet political realities. Therefore, many Western thinkers must still feel great uneasiness about Vyshinsky's words: "We reject every attempt grounded on the idea that the moral has its place standing above history, to press on us any moral dogma in the form of eternal, fundamental, immutable law. . . . Morals have always had a class character . . . the content depending on the class dominant in society."¹⁰⁹ Disquieting in this context are also Lenin's words: "We cannot admit any fundamental principles without straying to objective truth and the lies of bourgeoisie."¹¹⁰ It is not much comfort to know that Stalin thought "true human morality

¹⁰⁶ See B. M. Modrov, "Philosophy as a General Science" (Fall 1962) *Soviet Studies in Philosophy* (I.A.S.P. Translations from Original Soviet Sources) 3 at 24.

¹⁰⁷ The Communist society which Khrushchev declared to be an achievable aim within the next 20 years most certainly cannot mean the same thing as Lenin and Stalin had in view. Note, however, an intriguing saying of Khrushchev which seems to imply that communism is only a regulative idea in the Kantian sense: "In our conditions it is necessary to approach people more considerably, to believe in man, and to see our final aim — the fight for communism." See N. S. Khrushchev, *Sluzhenie Narodu — Vósokoe Prizvanie Sovetskikh Pisateli* (1959), 15-16 cited and quoted in P. S. Romashkin, "O Rolii Ubezhdeniya i Prinuzdeniya v Sovetskom Gosudarstvo" (1960) No. 2 *Sovetskoe Gosudarstvo i Pravo* 17 at 26.

¹⁰⁸ Cf. Merleau-Ponty, *op. cit. supra* n.95 at 98.

¹⁰⁹ Quoted in G. Guins, *Soviet Law and Soviet Society* (1954) 26-27.

¹¹⁰ Quoted in Kirby, article cited *supra* n.24 at 101 from Lenin, *Materialism and Empiro-Criticism*. Cf. Merleau-Ponty, *op. cit. supra* n.91 at 73 on the marxist conception of truth: "La vérité est donc elle-même conçue comme un processus de vérification indéfinie, et le marxisme est à la fois une philosophie de la violence et une philosophie sans dogmatisme: la violence n'est nécessaire justement que parce qu'il n'y a pas de vérité dernière du monde contemplé, elle ne peut donc se prévaloir d'un absolu du vrai."

superior to mere synthesis from class antagonisms" to be possible. For he considered it "only possible in a society where the class struggle is forgotten",¹¹¹ that is, in communist society as he envisioned it.

In considering some disquieting features of marxist-leninist philosophy we have pointed out that in Western fundamental thought there are analogous features. However, we can hardly get very far in relieving our uneasiness by resort to a *tu quoque* ("you-too", or shorter, "U-2"¹¹²) argument. This resort may even aggravate our uneasiness by showing that we here in the West have also our share in objectionable practices of thought and action and should not play on "pharisaic self-virtuousness". We may try to lighten the burden of our blame, of course, by saying that we do not go to such extremes as do our Soviet counterparts. But whatever we propose to do with ourselves, it is sure that the *tu quoque* argument does not excuse the Soviets. It is one of the so-called informal fallacies, and so there is still point in voicing the questions: Were the marxist-leninist classics rogues and are their disciples rogues? Is what they think and do absolutely evil in the sense that they are practising evil for evil's own sake?

An affirmative answer to these questions may result from the giddiness we are inclined to feel in the face of Soviet handling of its fundamental thought, but such an answer does not seem to be warranted. What has been going on in the marxist-leninist theory and practice is a rather resolute acting upon certain action-directing principles, meant to lead to something which is good. Dialectic materialism is a philosophy of justifying means for the sake of an alluring end. The pitiless remedies which have been employed under its spell have, paradoxically, originated in a sentiment of pity.¹¹³ It reflects the restlessness of modern man about slow progress in achieving satisfactory states of human affairs just by muddling along, "stumbling into decency" through overcautious, random, and groping action. It reflects his zeal for resolute, consciously designed, and planned action, a zeal accompanied by a distrust that political states of affairs will turn out to be all right if left alone or handled only from case to case, administering symptom therapy here and there to what is wrong in a State or in the world. Communists believe that it is "quite useless tinkering with the old structure" and have found it necessary to dig deep down to the foundations to bring about the collapse of the whole building as a result.¹¹⁴ The Soviet philosophy regards man as preeminently *homo faber*, a Promethean being whose essential calling is to make the world such as it ought to be, and as fast as practicable.¹¹⁵ Hence it looks askance upon moral and religious inhibitions,¹¹⁶ regarding them

¹¹¹ Quoted in Wetter, *op. cit. supra* n.98 at 313. Cf. Marx, *Kritik Hegelscher Rechtsphilosophie* s. 1, in which Marx thinks that in the "truly human" society the union of what is and what ought to be takes place and man becomes a truly self-determined being. In this society his inner social essence welds him into a spontaneous harmony with other men.

¹¹² In the field of international law, this argument gained prominence in connection with the United States U-2 airplane incident of May 1, 1960. See Q. Wright, "Legal Aspects of the U-2 Incident" (1960) 54 *American Journal of International Law* 837 at 849.

¹¹³ See B. Pasternak, *Doctor Zhivago* (transl. M. Hayward and M. Harari, 1959) 413.

¹¹⁴ See *ibid.* 164.

¹¹⁵ Cf. S. Mampel, "Dialektik und Recht" (1960) 1 *Jahrbuch für Ostrecht* 91 at 95 quoting K. Polak, *Dialektik und Rechtspositivismus in der Staats- und Rechtswissenschaft* (1959) 258.

¹¹⁶ See, for example, Marx in "Contribution to the Critique of Hegel's Philosophy of Right; Introduction", published in *K. Marx and F. Engels on Religion* (Foreign Languages Publishing House, Moscow 1957) 42; L. Il'ichev, "Formirovanie Nauchnogo Mirovovzreniya i Ateisticheskoe Vospitanie" (1964) No. 1 *Kommunist* 23-46.

as an unwarranted interference with the proficient attainment of what it conceives to be the ideal state of society. The Soviet philosophy, although professedly materialistic, is by no means devoid of what we in the West may call "idealism"; it is an impassioned philosophy of great emotional appeal.¹¹⁷

Because marxism-leninism has subtleties, inscrutable obscurities, and perhaps unfathomed profundities, it is capable of dazzling Western minds by no means feeble, especially those minds which are keenly aware and resentful of confusion, half-heartedness, lack of resoluteness, and haphazardness of progress in this part of the world.¹¹⁸ However inhumane the states of affairs emerging and seeking justification from marxism have been, there are good reasons for looking upon Marx as a kind of humanist. His "categorical imperative" worded as "to overthrow all relations in which man is a debased, enslaved, abandoned, despicable" being,¹¹⁹ has a ring of sublimity not inferior to Kant's categorical imperative. Marx's words: "The realm of freedom begins in fact only where work determined by want and outer expediency ceases; in the nature of things it lies hence beyond the sphere of real material production"¹²⁰ have an understandable lure. No wonder that such utterances have produced flaming comments also on the part of Western thinkers. Thus Ernst Bloch has said that "marxism, rightly conducted, . . . is humanity in action, the countenance of man in realisation. It seeks, takes, and follows the only objectively genuine way to humanity; thus only its future is unavoidable and homely at the same time".¹²¹ Karl Popper, in spite of his vigorous criticism of marxism, regards Marx as one of the greatest humanitarians in the history of our civilisation. He points out that the active Christian concern which we find today in mastering our social problems is "in no small degree due to the moral reformation brought about by Marx", whose influence on Christianity he compares with Luther's influence on the Roman Church. "Both were a challenge, both led to a counter-reformation in the camps of their enemies, to a revision and re-evaluation of their ethical standards." The tremendous moral influence which early marxism has had, is largely to be explained by "its ethical rigour, its emphasis on deeds instead of mere words".¹²²

One may feel inclined to scoff at the idealism contained in and conveyed by this kind of expression. This attitude is, however, not quite warranted. It overlooks the fact that man, though in many respects an abject materialist, is basically still an idealist, a creature capable of being kindled by hopes, dreams, and will-o'-the-wisp, especially when his mind has become arid in the spiritual drought of the world. It is also of no use to crusade against Marxian

¹¹⁷ On marxism as an impassioned philosophy see Polanyi, article cited *supra* n.20 at 8-9 remarking, *inter alia*, that "by a scientific disguise" marxism "protects moral sentiments against being deprecated as mere emotionalism, and gives them a sense of scientific certainty; while at the same time it impregnates material ends with the fervour of moral passions. Any criticism of its scientific part is rebutted by moral passions behind it, while any moral objections to it are coldly brushed aside by invoking the inexorable verdict of its scientific findings." See also *ibid.* 10: "Marxism is falsely accused of materialism: its materialism is a disguise for its moral purpose."

¹¹⁸ Cf. Friedmann, *op. cit. supra* n.82 at 67: "Communism in Western Europe is not so much religion for the dispossessed as an outlet for economic and social grievance."

¹¹⁹ See Marx, "Contribution to the Critique of Hegel's Philosophy of Right: Introduction" cited *supra* n.116 at 50.

¹²⁰ See E. Bloch, *Das Prinzip Hoffnung* (1959) 1608, quoting Marx, 3 *Das Kapital* (Dietz) 873.

¹²¹ See Bloch, *loc. cit.* and also *ibid.* 728-29. For a discussion of Marx's early views on ethics see E. Kamenka, *The Ethical Foundation of Marxism* (1962) 17-47.

¹²² See K. R. Popper, 2 *The Open Society and Its Enemies* (2 ed. 1952) 201.

idealism by slogans worn threadbare and showing hollowness and insincerity. Neither senile reserve and sageness nor puerile flamboyance and lust for doing is an answer to marxism. Moreover Marxian idealism is nothing "unWestern"; it represents a social, political, and economic theory peculiarly assembled of elements of Western science, philosophy, and metaphysics.¹²³ If we condemn it indiscriminately and as a whole, we are largely condemning ourselves. If we want to conduct a worthwhile and reasonable campaign against Marxian legal and political ideology, we have to deal with it piece by piece, item by item, in the spirit of genuine scholarship, capable not only of debunking and analysing but also of reassembling. This is an enormous task feasible and practicable only after prolonged efforts of study, and above all, efforts of creating conditions for a right spirit of work—a spirit which in our self-complacency or arrogance we think we do already possess but which, because of our failings in scholarly communication, is still but an object of aspiration.

Soviet scholars as well as statesmen are now showing signs of coming to terms of genuine talk with us. What should we think of these attempts of *rapprochement*, especially in view of the fact that they have declared as an essential task the revision and overhauling of their previous thought and are condemning all kind of dogmatism? We should not be credulous, of course, because neither in the philosophy nor in the practice of marxism-leninism does there appear to be anything that offers us decisive reassurance. We cannot expect that our Soviet colleagues should abandon their classics, as they cannot expect that we abandon ours. What seems to be possible, however, wherever sanity of thought has a fair chance, is to take the view (even though it cannot always be expressed) that classics can be wrong and thus there should not only be no personality cult of living men but also no cult of the great dead, no fawning over great men of the past. We all should seriously consider whether there have ever been *total* geniuses, or rather merely geniuses with human infirmities of body and mind, some of them bordering on insanity. Perhaps, precisely from this latter aspect of their personality, emotive forces have emerged powerful enough to give impulses to human evolution. We may have all respect and the profoundest affection for great thinkers, men of god, and god-men of the past, but it is a command of reason not to worship them beyond the worth they prove to have after sober reconsideration of their thought and example in every new situation of the world in which these have relevance. Even if we find it hard to concede the possibility of the debilities of the mind of these men, we can surely manage to admit the possibility of our own limited understanding of the totality of their thought: the totality composed of what they were actually saying and what they were trying to say. Scholars everywhere in the world have commitments to their traditions of thought. But it follows from standards of genuine scholarship that they should also be capable of transcending these traditions. Not every scholar is fit to be a Paracelsus, a Giordano Bruno, a Thomas More, a Spinoza, or a Marx,¹²⁴ but the standards these men have set by their example are valid as ideas regulating scholarly behaviour universally. In some parts of the world, living up to these standards may be relatively easy, in others very difficult; in some parts of the world, even so

¹²³ Cf. J. Somerville, "The UNESCO Approach to 'East-West' Ideological Differences" (1962) 2 *Darashna* 53 at 56. Cf. also *id.*, *op. cit. supra* n.19 at 228.

¹²⁴ Marx is reputed to have said that he was not a marxist.

difficult that it requires heroism which humanly and humanely cannot be expected. Perhaps now, after the 22nd Congress of the Communist Party of the Soviet Union (and let us hope after the fall of Khrushchev) conditions are coming to prevail in the Soviet Union in which legal scholars, too, can work towards establishing conditions for a spirit of genuine scholarship, which would lead first of all to a situation in which the Soviet scholars can speak with the Western scholars without having to shout through communication barriers.

The tearing down of these barriers requires co-operative efforts. We in the West need help from our Soviet colleagues to find out the precise meaning and application of every legal or political term they are using which has become suspect of specific Soviet meaning or double meaning. Without this specialist help we are left to our own resources, and it is then no wonder that we get all sorts of ideas about the most essential items of the Soviet ideology, which may deplorably refract or distort the truth about the matter.

As an example of our understanding or misunderstanding of Soviet political ideas, let us take the supreme principle of communism: "from everyone according to his abilities, to everyone according to his needs". One way for us to interpret the key words "ability" and "need" in this phrase is to attribute a meaning to them which would reduce the principle to the Western principle of justice: "to everyone his due". This seems to be a rather strained interpretation because it requires projecting into the concept "need" the concept "justified"; however, interpreters have always taken certain liberties, and the present one does not seem to be egregious. Another way to interpret the phrase in question is to take its key words in their more ordinary and natural meaning, in which case the phrase would import the principle of brotherly love, an important and sublime principle, but acceptable and real only in small social groups, especially in families. This would lead us to wonder, how such a principle can ever be applied in social units of considerable size such as States, let alone the international legal and political community. We may still know too little about human nature, but what we do know leads us to be most sceptical about the fitness of man as he actually is to live in any community of a considerable size governed by the principle of brotherly love. We also cannot believe that material goods can ever become so abundant that everyone's experienced needs can be satisfied, unless, of course, we take resolute steps to reduce the number of men on the earth or to overhaul men in such a way that they would feel need only for what their community can make available to them. Through further development of brainwashing techniques this latter solution might conceivably be achieved; and, perhaps even more efficiently, through further development of brain surgery or through discovery of appropriate drugs. No such possibility appears to have been suggested or even conceived of by the official Soviet doctrine, which still assumes that man's social behaviour is essentially determined by social and not by biological factors.

Thus, the presuppositions on which Soviet planners act point them in totally other directions, and whilst we in the West (not being intellectually tied down to the economic conceptions of sociology or social engineering) might conceive of such techniques as one way, and perhaps the only way, of attaining the communist goal, it would outrage our deepest moral convictions to contemplate such manipulation of men's minds. We, too, are anxious to wipe out economic misery around us as soon as possible; as a matter of fact

we have committed ourselves to do it without undue delay. But we are not certain that we should be zealous to make men entirely content. We do not know whether it agrees with human nature to be delivered from want altogether. It may even be that some suffering from injustice is an authentic need both for men to maintain their homeostasis and as a precondition of their evolution, such injustice prodding them (as it were) to aspire to higher stages of human evolution. Further we have fears that the "administration of things" instead of "administration of men", which the Soviet ideologists think would take place in the Communist state of society, can be realised only when men, too, are treated as things. And we are afraid that when jails are closed in the process of the "withering away of the State", a corresponding number of asylums must be opened. Thus we suspect Communists of evil intentions or of vagaries and utopianism¹²⁵ which must court some kind of disaster.

This sample of our understanding or misunderstanding of Soviet political ideas shows that there is much to be explained to us by the Soviet experts of their ideology in order to remove our suspicions about it. If we are wrong about their ideas, the blame is not only ours. For what they have tendered us so far while addressing us decently¹²⁶ has been largely glittering generalities and emotionally charged obscurities strikingly devoid of intellectual content. They have not offered reliable principles of reasoning, nor have they been paragons in practising such principles themselves. For the time being we are still living in a state of communication breakdown with the Soviet politicians and lawyers in many essential international contacts. In this situation we have to plod along as well as we can using our common sense and our good sense, restraining our urge to condemn and to ridicule, and still trying to understand.¹²⁷

Efforts to break the present communication blockage with the Soviets through intensive, free, and comprehensive study, through competent strong but inoffensive challenge, and through disciplined discussion would not only be appropriate but should also form an essential part of responsible action in the present state of world affairs. As things stand, we have no sufficient reason to believe either that nothing can be done except continuing in our old ways, or that a decisive break-out from the enchanted circle of our present communication situation is an unattainable dream.

This break-out may well come also from the Soviet side. For in the Soviet Union not only economy and government are efficiently directed and directable but also intellectual activities. If it is true that *homo sovieticus* is close to becoming—as Marx, the humanist, wanted man to be—emancipated and no

¹²⁵ Cf. Stone, article cited *supra* n.23 at 779.

¹²⁶ In recent Soviet philosophical literature there appears to be a notable zeal for attaining rigour in scholarly thought and for refining instruments of thinking. See, for example, Kopin, article cited *supra* n.96, at 3-9; P. V. Tavanets, V. S. Shorev, "Nekatoroe Problemô Logiki Nauchnogo Poznaniya" (1962) No. 10 *Voprosô Filosofii* 10-21.

The poverty of the Soviet scholars' fundamental thought in the legal, political, and philosophical fields, which is deplored by Western scholars (see, e.g., Kamenka, *op. cit. supra* n.121 at 185) and Soviet politicians (see, e.g., (1955) No. 5 *Kommunist* 22) alike, may perhaps be an instance of the wider tragedy in the handling of human affairs, that we are prepared to let our standards of intellectual integrity go in order to achieve short-range political and personal aims.

¹²⁷ Since we, too, want to coexist — and above all exist — in the present world, we have to discover practicable ways of dealing with people whose characteristic political principle has emphatically been that of expediency. On the implications of this principle in the treaty relations between the Soviet and the Western countries see Triska and Slusser, *op. cit. supra* n.7 at 399, 405.

more a humiliated, subjugated, abandoned, and contemptible being, there is reason to expect that Soviet legal and political thinkers will find it practicable and expedient to present their case not by propaganda and emotionalism, but with intellectual integrity, maturity, and virility. One may wonder whether the recent changes in Soviet leadership and policies may have as one of their effects that the Soviet statesmen and those who go along with them will be content, in their efforts to impress the rest of the world, to rely simply on the sincerity, lucidity, plausibility, and general human appeal of their political vision, and above all by the example of their actual state of political affairs which need not produce qualms in any reasonable man.

Whatever the vicissitudes in the realisation of the Communist ideas have been, it remains true that Communism is the most resolute attempt of all human history to improve the human lot. As such it is no wonder that it has exercised an attraction making those under its spell incredulous or oblivious of the perversions which have manifested themselves in the course of the strivings to convert its ideals into reality. What counts in human wayfaring is not only the end of the way but also the way. We in the West may hope that the Communist way to the horizons of worthwhile social existence may become such that it need not alarm us. And we may wish that what lies beyond these horizons, the future state of human affairs unknown to us all, may be such that their way and our way or ways may ultimately converge. Consequently, it is most unfortunate that Soviet scholars as well as those in the West are still impelled to speak in terms of "anti-communism" and "pro-communism". For the attitudes expressed in the corresponding prefixes invariably betoken lack of intellectual detachment. So long as such attitudes persist in learned minds, they cannot sufficiently emancipate themselves to play the eminent role that belongs to them: to enhance enlightenment, to increase the sense of responsibility, and to awaken and refine the conscience or to seek remedies for the "delirious conscience" of men who wield political power.