Law and the Use of Force by States:
The Brezhnev Doctrine

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Introduction

The Brezhnev Doctrine states the official Soviet theory of the law governing the use of force by States. Most explicitly formulated in connection with the 1968 crisis over Czechoslovakia and addressed to relations between the Soviet Union and other communist States, the Doctrine has general significance because it interprets the law purporting to govern the international use of force. As the United Nations Charter makes clear, that branch of international law defines the most important structural features of the international system.

The Soviet position in world politics heightens the importance of the Brezhnev Doctrine. Though a co-author of the U.N. Charter and Permanent Member of the Security Council,1 the Soviet Union interprets traditional norms embedded in the language of the Charter so as to change the definition of security and the rights of States to protect themselves. Soviet theory affects the safety of all members of the international system, and world acceptance of the Brezhnev Doctrine as law in part will depend on the international balance of power. If non-communist States, or States rejecting the Soviet theory, treat the Brezhnev Doctrine as a challenge to the order they support and seek successfully to rebut it, then they must reply on the level of theory as well as of power.

Articles 2(4) and 51 of the Charter2 affirm that the international system consists of sovereign States and that these States exist by right. They may use force in their international relations only pursuant to a decision of the U.N. Security Council or in the exercise of what the Charter calls the "inherent right of individual or collective self-de-
fence.”³ In its version of Charter law, the Soviet government asserts a
different perspective, qualifying the universality of the Charter. Soviet
forces may intervene to preserve the “gains of socialism”⁴ when a com-
munist government finds itself in danger of collapse by reason of do-

cmunist government finds itself in danger of collapse by reason of do-

mestic unpopularity.⁵ Though Soviet jurists are skilled in quoting
orthodox, western versions of international law against what they re-
gard as the illegal use of force by bourgeois States, they invoke the
Brezhnev Doctrine as an exception to justify Soviet actions. The Char-

ter declares that all States are equal in sovereignty.⁶ The Brezhnev

bret Doctrine suggests that some States are more equal than others.

The Soviet view focuses on social and economic systems as the
source of international behavior. States are fictions used by dominant
social classes to legitimate their domination. Though in Marxist-Len-
inist theory the State will disappear when Communism is established,

Soviet doctrine acknowledges the right of communist parties to use
such a fiction in helping to achieve the goals of the international social-
ist movement, the task of communist parties. Nothing in Soviet doc-

trine requires that one see States as inviolable. At the same time,

whenever Soviet sovereignty or security is in question, doctrine yields
the requirements of the Soviet Union qua State. In Soviet eyes, in-
ternational tension inevitably exists between States with different social
structures and, therefore, the predominating interests of the U.S.S.R. as

a State may be invoked at any time.

Soviet arguments are products of Marxist-Leninist ideology and So-
viet history, a fact that shapes this Article. Parts I and II analyze the
fluence of past events and ideological positions on current Soviet the-

ory. The Hungarian crisis of 1956 stands out as signally important in
the evolution of the Brezhnev Doctrine and, in this perspective, re-

ceives detailed treatment. Part III takes up the 1968 Czech crisis and
Soviet intervention in Afghanistan in the light of the analysis in the
first two sections and evaluates the legal case for Soviet action. The
Article urges States that disagree with the Soviet perspective on inter-
national law to answer the Brezhnev Doctrine with a legal theory based

on Articles 2(4) and 51 of the Charter and the nature of the States sys-

4. Letter from Soviet Politburo to Central Committee of the Communist Party of Czech-

39; The Defence of Socialism is Our Supreme Internationalist Duty, Pravda, Aug. 22, 1968
5. See text accompanying notes 129–49 infra.
6. U.N. CHARTER art. 2, para. 1: “The Organization is based on the principle of the

sovereign equality of all its Members.”

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tem. To make that answer more than empty wind, States, and particularly the United States, must complement their legal theory with foreign and defense policies that reflect their perspective as well as protect their interests.

I. Theory and Practice, 1917-1956

Soviet writers and officials derive their interpretation of international law from the Marxist criticism of law in general. It is an axiom of Soviet legal scholarship that law is a superstructure of norms reflecting the class organization of society and serving the interests of the dominant class. In the view of G.I. Tunkin, one of the best known and most prolific Soviet scholars, particular economic structures at particular historical times determine the characteristics of all law, including international law. International law also responds to the pressure of other superstructural elements, for example, politics and morals. As he summarized his analysis:

Law in the judicial sense is a system of obligating norms, which express the will of the ruling class of a State, or as in the case of international law,—the coordinated wills of States, i.e. of the ruling classes of those States; these norms are always connected with enforcement measures undertaken by a State or, as in international law, also by several States jointly.

Soviet participation in the States system and status as a Permanent Member of the United Nations make the Soviet Union a significant contributor to the enforceable superstructure that is international law. At the same time, Soviet lawyers insist that the U.S.S.R. remains a distinctive kind of State. They articulate a theory of generally applicable international law that accommodates the reality of the existing States system to what they view as the distinctive character and role of socialist countries.

The Soviet Union has claimed to have had a particular impact on international law and politics since the 1917 Revolution. The Allies of the First World War, for example, declared that they represented liberty, justice, and democracy; their Versailles Treaty and Covenant of the League of Nations codified rules of international politics consistent, the Allies thought, with their self-image and the traditional view of the

8. Tunkin, Co-Existence and International Law, 95 Hague Recueil 1, 49 (1958).
overriding international role and value of States. Lenin and his followers lumped the belligerents together as imperialists merely contesting the right to oppress and exploit the world. Soviet doctrine during the twenties affirmed as truth Lenin's conclusion that developed Capitalism was inherently imperialistic and militaristic and therefore incompatible with a communist State representing the other side of the class struggle. While later jurists found evidence of Lenin's interest in peaceful coexistence with capitalist States, E. Pashukanis, a leading academician of the twenties, probably more accurately represented early views in arguing that Western ideas about international law amounted to the legal form of the class struggle: "[w]ith the emergence of Soviet states in the historical arena, international law . . . becomes the form of a temporary compromise between two antagonistic class systems." Pashukanis' emphasis on the temporary nature of the socialist-capitalist compromise reflected the behavior of the Soviet State. In the twenties, the Soviet Union emerged from diplomatic isolation by

9. See, e.g., LEAGUE OF NATIONS COVENANT art. 10: "The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League.”

10. See A. ULAM, EXPANSION AND COEXISTENCE 36 (2d ed. 1974). See also Decree on Peace, Nov. 8, 1917, 1 SOVIET DOCUMENTS ON FOREIGN POLICY 1-3 (J. Degas ed. 1951) (appeal to governments and peoples engaged in World War I to negotiate peace based on principle of no annexations and no indemnities) [hereinafter cited as SOVIET DOCUMENTS].

11. See generally A. ULAM, supra note 10, at 27; V. LENIN, IMPERIALISM (1916).

12. For example, Lenin said on March 18, 1919:

We live not only in a state, but in a system of states, and the existence of the Soviet Republic side by side with imperialist states for a prolonged period is inconceivable. Ultimately either one or the other shall be victorious. And when this end comes, a number of terrible conflicts between the Soviet Republic and bourgeois states are inevitable.

In G. TUNKIN, supra note 7, at 16 (emphasis in original).

To avoid unnecessary confusion, in this Article I use the term communist where a Soviet writer might use either socialist or communist depending on whether, for example, he meant social structures or political parties respectively.

13. Perhaps one should be skeptical of their research. See, e.g., R. HIGGINS, CONFLICT OF INTERESTS 115 (1965) (Soviet efforts to show Lenin originated idea of peaceful coexistence interpreted his favoring "certain minimal treaty relationships" with bourgeois States as consistent with view of Soviet government and jurists in 1950's).


In this Article, unless used geographically, western means the League or U.N. conception of world order based on the States system.

15. See E. PASHUKANIS, supra note 14, at 172; cf. RESTATEMENT (SECOND) FOREIGN RELATIONS LAW OF THE UNITED STATES § 1 (1965) (international law “means those rules of law applicable to a state or international organization that cannot be modified unilaterally by it”).

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closely collaborating with Germany in military, economic, and political affairs. Without relinquishing its analysis of international law and relations, the Soviet State secured *de jure* recognition by Britain, France, and later the United States. At the same time, the Soviet government retained as policy radical aspects of its theory. Though first applied to areas that formed part of the Russian Empire, the Soviet policy towards national self-determination provided an early and still valid example of the practical implication of Soviet thinking.

The Russian Empire was multi-national and threatened to explode into separate nation-States. From the beginning, this fact created a problem for the Soviet government. Though the new Russian government had ceded vast territories to Germany in 1918, it had no intention of prematurely dissolving the State. Before the Revolution, Lenin and the Bolsheviks argued that historically, and, inevitably, peoples achieved national status in three stages: raising their consciousness of nationhood; winning formal equality in bourgeois democracy; and, finally, self-determination. Before 1917, Lenin had recognized the right to self-determination for all peoples—even to the point of the political separation of certain national groups from Russia. Once in authority and confronted by separatist movements in, for example, the Ukraine, Georgia, and Turkestan, the Bolsheviks sought to prevent the break-up of Russia without giving up their doctrine.

Stalin resolved the contradiction. As Commissar for Nationalities, Stalin emphasized as decisive Lenin’s distinction between *having* the right to self-determination and secession and *exercising* that right. Both Lenin and Stalin believed that because the communist party by definition is the party of the proletariat, it must occupy the leadership

17. See M. BELLOFF, 1 THE FOREIGN POLICY OF SOVIET RUSSIA 5-6, 122-23 (1947); A. ULAM, *supra* note 10, at 147, 213-14; T. TARACOUZIO, WAR AND PEACE IN SOVIET DIPLOMACY 113-17, 318 (1940); J. TRISKA & R. SLUSSER, THE THEORY, LAW, AND POLICY OF SOVIET TREATIES 183-91, 453-54 (1962).
positions in movements for national liberation. In practice, their position meant that the Communist Party of the Soviet Union would judge whether groups within the Union claiming to represent the people in fact did so. Under Stalin’s conception, only communist parties received recognition as capable of exercising the right of self-determination; self-determination and membership in the Union were synonymous.

Stalin’s successors have used his approach as a model. According to Soviet policy and theory, even an approved communist party may not exercise the right to self-determination and secede from the U.S.S.R., or, if the communist party of an independent State, implement policies viewed in Moscow as hostile to the U.S.S.R. If hostile policies are adopted, then the party in question is presumed to have succumbed to the deceptions and tricks of imperialists and bourgeois reactionaries. In other words, it has ceased to be an authentic communist party.

This argument formed an important element in the legal case for invading Hungary in 1956 and Czechoslovakia in 1968.

A. Soviet application of international law: 1934-1945

Soviet theories about the law governing the international use of force and Soviet foreign policy have had to reconcile similar contradictions between ideology and practice. The U.S.S.R. has viewed itself both as a State with national interests to protect and national rights to assert and as the vanguard of world socialist revolution. Implicitly, the Soviet government and Soviet commentators have denied that the international system consists of independent States, existing by right qua States without regard to their constitution. At the same time they insist on the inviolability of Soviet sovereignty.


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The first formal pitting of these roles against each other in legal terms came in 1934 when the Soviet Union joined the League of Nations and became a permanent member of its Council.25 League membership and the threat to Soviet security posed by National Socialist Germany and Imperial Japan shaped Soviet legal as well as political behavior. With regard to colonial empires, Soviet policy and doctrine consistently had supported the idea that anti-colonialist wars were lawful because they involved revolts by oppressed peoples.26 But, in the mid-thirties, the condition of world politics led Stalin to seek good relations with Britain and France. Anti-colonial wars of liberation would conflict with that goal. Stalin, therefore, told the British that their Empire was a great force for peace;27 two months later, in May, 1935, he signed a defensive alliance with France.28 After the Germans remilitarized the Rhineland,29 the Soviet Ambassador in London declared that peace was "indivisible."30

These acts and pronouncements emphasized the sanctity of States in order to strengthen Soviet security against the German threat. Others followed. Soviet Foreign Commissar Maxim Litvinov became one of the most visible advocates of collective action and solidarity by the League of Nations to deter aggression and promote stability.31 Moscow allowed communist parties in France and Spain to join with other parliamentary parties in governing coalitions.32 At the same time, the atmosphere of the last years of peace invited foreign policies based on the narrowest and most expedient visions of national interest. Violations of international law encouraged the breakdown of taboos against aggression.33

Nothing that happened in the nineteen-thirties counteracted Stalin's
suspicion of the western capitalist democracies or lessened his fear that they would passively accept and even perhaps encourage a German attack against the Soviet Union.44 Given widespread international mistrust and opportunism, the Nazi-Soviet Non-Aggression Pact and Protocol of August 23, 1939, which contemplated the partition of Poland,45 could be justified as postponing war with Germany;46 it also fit a policy of independence from a rigidly coherent doctrine about international order.

Once the war began on September 2, 1939, Germany and the Soviet Union annexed their shares of Poland under the agreement of August 23. Recognizing the importance of appearances, the Soviet government has never acknowledged that these arrangements led to a fourth partition of Poland.47 To justify its actions and defend itself against critics accusing the Soviet Union of imperialism, Moscow appealed to principles of traditional international law. The Soviet argument followed this sequence: the German advance after September 2 was so rapid and so successful that Poland appeared almost an empty shell. It was defenseless, abandoned by its government.48 This fact created a risk of German attack in eastern Europe. The Soviet invasion of Poland on September 17, 1939, therefore, amounted to self-defense. It also served as an instrument for the defense of human rights; without Soviet protection, the Poles would stand alone before the Germans.

To this plausible argument to public international law,49 Molotov, Foreign Commissar since the spring of 1939, added the justification of "progressive intervention"460 on behalf of revolution and Communism. Thus the Soviets claimed they were saving the Poles from both Nazis and capitalists. As a last item in their apologia, the Soviets argued that annexing the Western Ukraine and Western Byelorussia corrected an

(1963) (norm of use of force only for self-defense weak before 1939 but breaches of duty do not destroy duty).

34. See A. ULAM, supra note 10, at 219-21, 232, 238, 257-58.
37. The phrase is Potemkin's (Deputy Foreign Commissar). See A. ULAM, supra note 10, at 258; J. TRISKA & R. SLUSSER, supra note 17, at 253-56.
39. See generally id. at 69-84.
40. Id. at 78.
injustice in the 1921 Treaty of Riga and brought national self-determination to ethnic Russians by reuniting otherwise divided nationalities. A plebiscite confirmed the Soviet annexations. Though it did not take place under international supervision and consequently remains at least debatable as a valid act of legitimation, the vote helped Soviet image-makers and contributed to successful propaganda.

Soviet arguments on behalf of the attack on Finland in 1939 did not produce the same result. Squeezed by both Germany and the Soviet Union in October, 1939, the smaller Baltic States had agreed to Soviet demands for military bases. Stalin focused on Finland because its eastern border passed close to Leningrad. Exasperated by the Finnish refusal to accept territorial exchanges that would have moved the frontier west, the Soviet Union substituted military for diplomatic pressure. A "frontier incident" occurred on November 26; war began on November 29. On December 1 the Soviet Union recognized as legitimate a Finnish communist government set up on the Soviet border. The Finnish communists agreed to Soviet proposals for territorial exchanges on December 2.

The Soviet interpretation of these events insisted that Finland had committed aggression and that the Soviet Union had acted only in self-defense. Germany posed the only European threat to the Soviet Union, and this fact increased the strategic importance of the Baltic States. But any argument that strategic necessity justified expansion at Finland's expense would publicize Soviet skepticism about the 1939 Pact with Hitler, and, indeed, Hitler's intentions. Moscow's fear of provoking a German attack on the Soviet Union prevented Stalin from invoking such a defense of the attack on Finland. He therefore fell back on the claim of self-defense, which was difficult to believe, and, on December 14, 1939, the League Council expelled the Soviet Union.

41. *Id.* at 79 (Treaty of Riga ended Russo-Polish War and set boundary that survived until 1939). *See generally* P. WANDYCZ, SOVIET-POLISH RELATIONS 283-86 (1969).
43. *Id.* at 80.
46. The headline of the *Daily Worker*, Dec. 1, 1939, perhaps was unintentionally ironic: "Red Army Hurls Back Invading Finnish Troops, Crosses Frontier." The Soviets have insisted that their behavior in Finland was a legal exercise of their inherent right of self-defense. Having rejected Soviet exhortations to strengthen and defend the League Covenant, the western powers had conspired to drive Germany eastwards. Stalin thwarted their plan with the Non-Aggression Pact with Germany and bought time and strategic space by incursions into Poland and Finland. As a result the Soviet Union was able to resist the Nazis when they attacked in 1941. *See, e.g.*, J. TRISKA & R. SLUSSER, *supra* note 17, at 255.
for aggression.47

In the Soviet view, the thirties' experience confirmed that international law existed only as a temporary compromise between Capitalism and Communism. This theory left room for the existence of regions governed by different international laws should several communist States one day exist.48

B. The development of peaceful coexistence in theory and practice, 1945-1956

At the end of the Second World War, the Soviet Union occupied more territory and exerted greater influence than Russia had done at any time since 1815. Soviet foreign policy continued to include both national and revolutionary themes.49 The two came together in the establishment of communist governments in Poland, Rumania, and Hungary, and later in East Germany, Czechoslovakia, North Korea, and China. A communist "world" now existed.

Whereas the Soviets' principal concern before 1945 was to preserve and strengthen the State inherited from Lenin, after the war they confronted the triple problem of retaining authority, rebuilding the Soviet Union, and dominating the socialist world that had come into being.

47. M. BELOFF, supra note 44, at 308. The strategic argument, of course, would have contradicted Soviet doctrine regarding membership in the Union. See text accompanying notes 18-22 supra.

48. See id. at 395; Shapiro, The Soviet Concept of International Law, 1948 Y.B. WORLD AFF. 274-76; 309-10; Krylov, supra note 7, at 415, 452-35 (appearance of Soviet State meant traditional international law lost absolute character; idea of world law seeks capitalist supremacy and is reactionary); Tunkin, Peaceful Coexistence and International Law in CONTEMPORARY INTERNATIONAL LAW 1, 30-31 (G. Tunkin ed. 1969). G. TUNKIN, supra note 7, at 238-39; I. LAPENNA, CONCEPTIONS SOVIETIQUES DE DROIT INTERNATIONAL PUBLIC 64-79 (views of Lenin, Stalin, Korovin, Pashukanis, and others up to 1930), 80-103 (1930-38), 123-59 (1938-54) (1954).

49. At the Yalta Conference in 1945, for example, Stalin insisted on regaining the Kurile Islands and Southern Sakhalin in return for entering the war against Japan. His position reflected a desire to defend strategic interests by territorial acquisitions and was presented in terms of redressing the losses of territory that had occurred in the nineteenth century and as a result of the Russo-Japanese War. Stalin also argued that the acquisitions were necessary to make the Russian people understand why the Soviet Union was attacking Japan. See DEP'T OF STATE, FOREIGN RELATIONS OF THE UNITED STATES: THE CONFERENCES OF MALTA AND YALTA 769 (1955) (minutes of meeting between Roosevelt and Stalin, Feb. 8, 1945); id. at 381-83 (memorandum on territorial problems in regard to Japan, Dec. 28, 1944); id. at 896 (draft memorandum by Stalin on political conditions for Soviet entry into war against Japan); id. at 984 (agreement in regard to Soviet entry into Pacific war, Feb. 11, 1945). See also H. FEIS, CHURCHILL, ROOSEVELT, STALIN 254-56, 511 n.17 (1957); D. CLEMENS, YALTA 249-52 (1970). Stalin's position and argument were inconsistent with his own insistence on self-determination by communist parties as prerequisites for territorial accessions to the Soviet Union, see text accompanying note 22 supra, and, for example, with Khrushchev's later advocacy of a treaty forbidding border changes through the use of force. See note 59 infra.
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Tito's resistance to Soviet commands in 1948 revealed the problem of governing a group of communist countries in a world system that explicitly claimed it was based on the principle of the sovereignty and equality of States. Additional political and doctrinal tests came in 1956, three years after Stalin's death. These incidents sharply and publicly illuminated the difficulty of reconciling political-strategic interests with the universal international law of the U.N. Charter.

Articulating a Soviet theory of international law that performed this reconciliation became part of the "de-Stalinization" program put forward at the Twentieth Congress of the Communist Party of the Soviet Union (C.P.S.U.) in 1956. At that Congress, Khrushchev proposed, and the Party agreed, that the five vague principles of peaceful coexistence listed in the Sino-Indian Treaty on Tibet of April 29, 1954 should be the foundation for peaceful relations among all States. The doctrine of inevitable war between Communism and Capitalism had died when confronted by atomic weapons.

Though Soviet theorists prefer treaties to custom as a source of international law, they have argued that peaceful coexistence represents a principle of law simply because it describes the reality of Soviet relations with the bourgeois world since 1917. This description suggests the existence of agreement, even tacit agreement, between States about rules of conduct and agreements acquire the force of international law.
despite differences in ideology and economic organization. This analysis makes peaceful coexistence consistent with the Soviet emphasis on treaties as the principal source of international law and forms the structure of the Soviet argument for the legal character of peaceful coexistence. Like the emphasis on treaties, it leaves the Soviet government in control of the substance and definition of the law thus created.

In 1961, Khrushchev defined peaceful coexistence as a "form of intensive, economic, political, and ideological struggle of the proletariat against the aggressive forces of imperialism in the international arena." These words are central to the Marxist lexicon and have become part of the language in which argument about the nature of international politics and law is couched. By using them to express an important element in Soviet doctrine on the law governing the use of force, Khrushchev tried to change the terms in which that law is understood. He implicitly claimed for the Soviet government the role of ultimate judge of what is and is not a legal use of force.

II. The Evolution of the Brezhnev Doctrine

From Moscow's perspective, events in 1956 appeared to threaten the political and strategic status quo in eastern Europe. Soviet leaders felt compelled to respond to what happened in Poland and, particularly, Hungary, and to justify their response.

Turbulence in Poland and Hungary formed part of a process of "self-criticism" that spread throughout the communist world in 1956. The C.P.S.U. itself gave the lead in February, 1956 when the Central Com-

56. See, e.g., G. Tunkin, supra note 8, at 59.
57. See G. Tunkin, supra note 7, at 91-113; B. Ramundo, supra note 54, at 50-60.
58. Speech by N. Khrushchev, supra note 23, at 265.
59. Consistently with his emphasis on non-military competition, at the end of 1963 Khrushchev proposed a multilateral treaty renouncing the use of force to alter existing boundaries. He recommended that the signatories make "a firm declaration that neither difference in social and political system, nor non-recognition, nor absence of diplomatic relations, nor any other pretext shall justify violation by one state of the territorial integrity of another." N.S. Khrushchev's Message to all Heads of State, INTERNATIONAL AFFAIRS (Moscow) Feb., 1964, at 7 (message dated Dec. 31, 1963). He explicitly referred to the U.N. Charter as providing the principles and mechanism for resolving territorial disputes. Nothing came of his proposal.
60. See speech by N. Khrushchev, supra note 23, at 262-63, 267-68 (wars result from class divisions and are caused by imperialists; communists stand for peace); Brezhnev, Speech to the 26th C.P.S.U. Congress, Feb. 23, 1981, N.Y. Times, Feb. 24, 1981, at A6, col. 1 (city ed.) (excerpts; communist governments seek to bridge arms race, strengthen peace and détente, and defend sovereign rights and freedom of nations. Capitalists oppose these goals, interfere in other countries' internal affairs, and suppress liberation struggle).
mittee denounced Stalin's leadership as a "cult of the individual" and Khrushchev, the Party Chairman, condemned certain of Stalin's crimes. Apparently accepting some pluralism within the communist movement, the Central Committee approvingly quoted Lenin's observation that "[a]ll nations will arrive at socialism—this is inevitable, but not all will do so in exactly the same way, each will contribute something of its own in one or another form of democracy, one or another variety of the dictatorship of the proletariat, one or another rate at which socialist transformations will be effected in the various aspects of social life." Tolerant reference to the different Yugoslav and Chinese roads to Socialism followed.

A. Poland, 1956

Viewing Soviet anti-Stalinism, moderate though it were, as tolerant of change played a role in Poland, where rioting over economic conditions broke out in June, 1956. The June riots precipitated the replacement of the government's leading figures. Gomulka became First Secretary of the Polish Communist Party on October 21. He had been expelled from the Party and jailed for Titoism and, as a result, had become a popular national figure. Once in power, he announced economic and agricultural reforms while stressing Poland's fidelity to its alliance with Moscow and the principle of communist party supremacy.

The Soviet Union worried that its ally would cease to be a communist State under Soviet influence. Soviet-Polish discussions on October 17 were acrimonious and Soviet intervention appeared possible. But the Poles—anti-communists and communists alike—rallied to the new administration. They helped confront Moscow with a stable situation where everybody in a leadership position proclaimed his loyalty to the communist government and ideology. Reinforcing the impression of national solidarity behind Gomulka, Marshal Rokossovsky, the Polish Minister of Defense, reported to Moscow that his army was unreliable from the Soviet point of view. After much debate and several menacing exchanges with Gomulka's government, Khrushchev and his col-

62. Id. at 363.
63. See introduction to the 20th C.P.S.U. Report, supra note 61, at 356 (editor's commentary).
64. 20th C.P.S.U. Report, supra note 61, at 360. Brezhnev made much the same point on Feb. 23, 1981. See note 60 supra.
65. 20th C.P.S.U. Report, supra note 61, at 361.
66. See A. Ulam, supra note 10, at 582.
leagues accepted the new situation in Poland.68

Perhaps because of their long history of Russian domination, the Poles appeared almost instinctively to know how to oppose their Soviet-backed government without directly challenging the framework in which that government operated. Blessed with groups within the party and government struggling for power while maintaining Poland's relationship with the Warsaw Pact, the Poles found a middle path between indifference and revolution. The Soviet Union did not invade the country or overturn the government.69 By contrast, the Soviets found the changes in Hungary to be intolerably radical.70

B. Hungary, 1956

Developments in Poland had an explosive rather than pedagogical impact on Hungary. Hungarian students meeting on October 22 voted a sixteen point program, calling for the withdrawal of Soviet forces from Hungary,71 free elections, and a multiparty political system.72 Though they frankly acknowledged the example offered by Warsaw's change of government, the Hungarian demands went beyond the Polish model.73 The student demands led to anti-government demonstrations throughout Budapest. Violence broke out after Erno Gero, First Secretary of the Hungarian Workers' (Communist) Party, gave an uncompromising speech during the evening of October 23. Shots were

68. The Chinese later claimed that they had advocated accommodating Gomulka and destroying Imre Nagy, the Prime Minister of Hungary, and that their advice carried the day. Invading Poland, Beijing had said, would pit communist governments against each other. Invading Hungary, on the other hand, was necessary to suppress a counter-revolutionary government. See E. CRANKSHAW, KHRUSHCHEV 242 (1966); N. KHRUSHCHEV, KHRUSHCHEV REMEMBERS 419 n. 2 (1971) [hereinafter cited as KHRUSHCHEV REMEMBERS].

69. See generally, Barraclough, supra note 67, at 72, 74-76, 96-97 (1962). The present crisis in Poland shows that, for the time being (Jan., 1982), the Poles have lost their ability to reform their system without provoking repression while the Soviet Union retained its ability to act indirectly.


71. Units of the Soviet Army were in Hungary pursuant to the Warsaw Pact. See speech by (Foreign Minister) Shepilov in the General Assembly (Nov. 19, 1956), 11 U.N. GAOR (582d plen. mtg.) at 110, U.N. Doc. A/PV 582 (1956).


73. See Barraclough, supra note 67, at 98.
fired at demonstrators and people were killed. Gero's speech, in which he characterized the situation as involving a choice between "a socialist democracy and a bourgeois democracy," had made him the target of popular wrath; he rejected all policy changes.

The shooting into crowds ignited an armed uprising. Both communists and their opponents wanted change. Indecision and weakness governed; civil war appeared likely. At that moment, Soviet army units already in Hungary helped to restore order. This action constituted the first Soviet military intervention. Forces that had been on alert and preparing to act since at least October 20 entered Budapest early in the morning of October 24. Tito afterwards criticized the first intervention as inexcusable; it inflamed public feeling and sapped whatever legitimacy the government possessed. On the other hand, if it resulted from an appeal by Gero the intervention was legal. International law always has recognized one State's right to appeal to another for military assistance against revolution.

These events, which so quickly escaped government control, drove Gero and his colleagues from power. On October 24, the Hungarian Communist Party leaders made Imre Nagy Prime Minister. By the

76. Resistance to the Soviets was fierce. U.N. Report, supra note 72, at 7. The U.N. Committee investigating events in Hungary noted that no evidence of an invitation had turned up. Id. at 39. On Nov. 11, Tito blamed Gero for asking for Soviet help. Speech by Tito (Nov. 11, 1956), in D.I.A. 1956, supra note 61, at 506. Barraclough also believed that the Gero government invited Russian intervention. See Barraclough, supra note 67, at 101. See also P. Zinner, REVOLUTION IN HUNGARY 255-56 (1962) (Gero called for help sometime during the evening of Oct. 31.)
79. Barraclough, supra note 67, at 101; Speech by Tito, supra note 76, at 505-06; P. Zinner, supra note 76, at 255.
81. More Titoist than Gomulka, Nagy owed his popularity to his opposition to forced collectivization of agriculture in the forties and to his absence from power while Stalinists governed Hungary. Appointing Nagy associated him with Soviet intervention and encouraged members of the incumbent government to hope that they could retain power. Their calculations were wrong. See Barraclough, supra note 67, at 102; NATIONAL COMMUNISM, supra note 74, at 464; A. Fontaine, 2 HISTORY OF THE COLD WAR 186 (1969).
end of October, rioting had become revolution. In the streets of Budapest, mobs hunted and lynched communists because of their position, party affiliation, or both. Revolution spread to most of the provinces, which then threw off government control. The Soviet government became convinced that Gero and his colleagues, backed by Red Army units already in Hungary, were incapable of restoring order. Afraid of letting events take their course, the Soviets forced Gero to resign as Party chief; Janos Kadar became the new First Secretary of the Hungarian Communist Party and Deputy Prime Minister under Nagy. Six well-known non-communists also joined the new Cabinet announced on October 27.

These changes proved wholly insufficient to stop the revolution. Probably no liberal government could have reestablished order fast enough to prevent a Soviet invasion, and Nagy was unable to exhibit as much strength as Gomulka had shown in Poland. Nagy lacked both the character and the cohesive following necessary to copy the Polish pattern.

Probably as an effort to reassert control over events, on October 30 the Soviet government announced its views on relations with socialist governments. On the one hand, the Soviet Union offered to re-examine the status of Soviet forces stationed in Poland, Hungary, and Rumania under the Warsaw Pact. De-Stalinization required new Warsaw Pact military arrangements and adjustments in relations between communist parties as well. On the other hand, the Soviet statement concluded that any changes had to strengthen Socialism.

The defence of the Socialist gains of People's Democratic Hungary is today the chief and sacred obligation of the workers, peasants and intellectuals, of all Hungarian working people. The Soviet Government expresses confidence that the peoples of the socialist countries will not allow external and internal reactionary forces to shake the foundations of the people's democratic system, won and reinforced by the selfless struggle and labour of the workers, peasants and intellectuals of each

82. See U.N. Report, supra note 72, at 137 (revolution spontaneous); Barraclough, supra note 67, at 113, 133 (grudging agreement with U.N. Report); Speech by (Foreign Minister) Shepilov in the General Assembly, supra note 71, at 109-12 (blamed United States, imperialists, and counter-revolutionary émigrés).
83. Secret radios broadcast anti-government exhortations; the border with Austria was open; by the end of the month local revolutionary groups had formed a Transdanubian National Council. Radio Free Europe, which enjoyed American government funding, incautiously gave Hungarians hope of foreign assistance. See Barraclough, supra note 67, at 102-05, 113; U.N. Report, supra note 72, at 14, 17-18.
84. See Barraclough, supra note 67, at 104.
85. See id. at 104, 106.
86. See id. at 106.
Conciliatory though its tone certainly was, the Soviet statement held to the attitude articulated in a letter to other communist parties. The Communist Party of the U.S.S.R. considers that it remains the 'directing party' among all the Communist organizations of the world. Each Communist party is judged in the light of the more or less intimate relations which it has with the Soviet Communist Party, for the interests of the Communist Party of the U.S.S.R. are closely tied in with those of the other sister parties and similarly the evolution of the Soviet Communist Party could not be considered as an individual and distinct phenomenon.

Nationalism, if it meant building Socialism "without liaison with the socialist countries," was as unacceptable as the notion that an ideology other than Marxism-Leninism could provide a basis for communist parties. The Soviet letter stressed the need to reexamine Marxist-Leninist principles "in the light of historical developments," but left the reader to decide what the Kremlin really had in mind.

In addition to creating an argument like the justification for Lenin's nationalities policy, these messages appear designed to articulate principles broad enough to accommodate to Soviet acceptance of events in Poland and rejection of the Hungarian upheaval. They left the Soviet government to judge not only the wisdom, but also the Marxist-Leninist "rightness" of decisions or events.

The Hungarians ignored the warnings implicit in the Soviet statement. Events at the end of October produced hammer-blows to Moscow's political psyche, and transformed the October 30 communiqué into a program for action. On the 30th, Nagy's government abolished the political monopoly of the Communist Party, withdrew Hungary from the Warsaw Pact, and declared Hungary's neutrality. Soviet troops sent to restore the communist order fraternized with Hungarian revolutionaries; some soldiers were unwilling to suppress anti-communist demonstrations, and, in some cases, fought and died on the Hungarian side. Unlike Poland, Hungary seemed poised to set an

89. Roberts, supra note 88.
90. Id.
91. See text accompanying notes 18-22 supra.
example all the people's Democracies could follow.93

Before intervening, the Soviet government articulated limits it would enforce as to political changes in "socialist countries." Yet, the October 30 statement was more than a political manifesto; it sketched the argument the Soviet Union would use to defend the legality of the policy adopted. The statement resembled a brief on the lawful use of force by States.

The Soviet legal case for military action to destroy the Nagy government and suppress the Hungarian revolution included more than the points made on October 30. Once determined to overthrow Nagy, the Soviets wanted an invitation with which to justify their intervention. Just as in 1939-1940 Stalin had created an alternative communist Finnish regime with which to squeeze the established government and had nurtured the Lublin Poles during the Second World War as a replacement for the Polish government-in-exile,94 so in 1956 Khrushchev exploited divisions in Nagy's government and helped establish a new Hungarian government to compete with, and replace the existing cabinet. On November 1, Janos Kadar announced the dissolution of the old and formation of a new Hungarian Communist Party.95 Kadar then disappeared from view and on November 4 broadcast that he had formed a new communist government. According to Kadar, counter-revolutionary exploitation of Nagy's weakness justified this otherwise extraordinary action against his colleague.96

Kadar claimed legitimacy for his government. On November 1, Nagy had appealed for discussion of the Hungarian situation by the U.N. General Assembly.97 On the 4th, Kadar asked that Nagy's appeal

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93. If the Soviet Union tolerated or accepted change in the structure of government in Budapest, then Moscow would lose all ideological reason to maintain the communist dictatorship. This fact probably brought the Soviet leadership to decide on the invasion of Hungary. In comparison, any anxieties about changes in the balance of power or the Soviet image probably were insignificant. But see Barraclough, supra note 67, at 115, 116-17, 131 (emphasizes change in balance of power).

94. See A. ULAM, supra note 10, at 361-62; 376.

95. Kadar probably was too committed a communist to accept the pluralism explicit in Nagy's program. See U.N. Report, supra note 72, at 43-44 (views expressed by Kadar during first week of Nov., 1956); Janos Kadar—A Profile, PROB. OF COMMUNISM, Sept.-Oct., 1956, at 15-18.

96. Radio appeal by Ferenc Munnich, Janos Kadar, et al. (Nov. 4, 1956), in NATIONAL COMMUNISM, supra note 74, at 473 (announcing formation of Hungarian Revolutionary Worker-Peasant Government); Program and composition of the Revolutionary Worker-Peasant Government in id. at 474-78 (announcement by Kadar, Nov. 4, 1956) [hereinafter cited as Kadar Program] at 473-78; Barraclough, supra note 67, at 120-22 (Kadar's disappearance from view Nov. 1-7, 1956 and broadcast on the wavelength used by headquarters of Soviet army in Hungary).

97. Cablegram dated Nov. 1, 1956 from Imre Nagy addressed to the Secretary-General,
be ignored as lacking “legal force.” He apparently requested Soviet assistance in overthrowing Nagy and the revolution although Soviet forces had already been in action for five days. Resolutions of the U.N. General Assembly condemning Soviet actions as violations of both the Charter and “accepted standards and principles of international law, justice and morality” had no effect. On November 2 the Soviet Union vetoed Security Council consideration of the Hungarian question.

C. The Hungarian Crisis and the Development of Soviet Doctrine

From the Soviet perspective, events in 1956 contained themes characteristic of European and world history since 1917: the uniqueness of the socialist system; the unending, omnipresent struggle between capitalists and socialists; the special place in socialist affairs enjoyed by the Communist Party of the Soviet Union; and the correctness of Soviet decisions. Tunkin summarized, as self-evidently correct, the Soviet view in his general work on international law.

The Soviet state, as the ‘oldest’ socialist state whose historic fate has been the most difficult task of paving the way for a new socio-economic formation, always precisely fulfills its duties arising from the principle of socialist internationalism. A vivid manifestation of this policy is the assistance of the Soviet Union to the Hungarian people in 1956 and the assistance, together with other socialist countries, to the people of Czechoslovakia in 1968 in protecting socialist gains and, ultimately in defending their sover-

101. See Barraclough, supra note 67, at 119.
eighty and independence from sudden swoops of imperialism, as well as the assistance to the Vietnamese people in their struggle against United States's [sic] aggression.102

At far greater length in 1957, the Soviet government defended its actions as having been provoked by counter-revolutionaries who, supported by the United States, tried to undermine East-West détente and the Hungarian proletarian dictatorship. The effort to argue that Soviet political decisions conformed to international law showed how important it had become for a State to claim that its uses of force were legal. Rather than simply declare, as Dean Acheson later suggested, that "[t]he survival of states is not a matter of law"103 and that the Hungarian revolution threatened the Soviet State, Moscow refused to rely on unilateral security decisions and felt obliged to invoke law as justifying its position.

Such behavior showed the impact on State conduct of world wars, revolutions, political events, and advances in military technology in this century. It also revealed the importance of Soviet coauthorship of the rules limiting the right to use force in an international context.104 Soviet words indicated understanding that the long tradition by which sovereign States legally could make war for any reason, even no reason, had come to an end.105 For a society in which law played a relatively insignificant role "as an organizing principle"106 this development was of major importance.107

The Soviet Union emerged from the Hungarian crisis with a mature

102. G. Tunkin, supra note 7, at 435-36. Though this brief account is, given what we know, implausible (see the description of Hungarian resistance to Soviet forces in U.N. Report, supra note 72, at 29-33), versions of it appear in some of the western literature. See Barraclough, supra note 67, at 122-24 (sympathy for Soviet anxieties as communicated in official apologies); I. Brownlie, supra note 33, at 317-18 (simultaneous condemnation of invasion as illegal and apparent toleration of it).
104. A story, perhaps apocryphal, has Soviet Foreign Minister Gromyko remarking that if the San Francisco Conference of 1945 had been held in 1946 agreement would have been impossible to achieve.
105. F. Hinsley, supra note 53.
107. Some observers regard it as no more than the homage paid by vice to virtue (LA ROCHEFOUCAULD, Réflexions morales No. 218, in MAXIMES 87 (F. Green ed. 1946)). For example, in his first press conference as President of the United States, Ronald Reagan said: I know of no leader of the Soviet Union since the revolution and including the present leadership, that has not more than once repeated in the various Communist Congresses they hold, their determination that their goal must be the promotion of world revolution and a one world Socialist or Communist state—whichever word you choose. Now, as long as they do that and as long as they, at the same time, have openly and publicly declared that the only morality they recognize is what will further their cause: meaning they reserve unto themselves the right to commit any crime; to lie; to cheat, in order to
theory of the law governing the international use of force. A Soviet sphere of influence in eastern Europe had existed since 1945. Now Moscow had proclaimed and applied the rules by which that sphere was defined and governed. The Soviet Communist Party was *primus inter pares* and the Soviet Union could use force to regulate its relations with other communist States and to keep communist governments in power.

In its style of exposition, this interpretation of international law suggested general applicability. But by emphasizing social systems, revolution, and gains for Socialism, the Soviet Union used language lacking authority in the U.N. Charter or traditional analyses of international relations and international law. The Charter, for example, insists that States comprise the international system and determine the character of the law governing the international use of force.

Soviet acknowledgement of this reality is uneven. In the context of relations between the Soviet Union and communist States in eastern Europe, the Soviets apply their theory of the lawful use of force to justify their positions with regard to “national liberation movements” and “wars of national liberation” whenever they occur. The Soviet view thus transcends geographical limits to compete with traditional concepts of international law as a theory of world order.108

III. The Brezhnev Doctrine and Peaceful Coexistence

After Hungary, Soviet analysts argued first that peaceful coexistence governing relations between Capitalism and Communism represented “an objective necessity”109 and, second, that its principles were principles of law. In 1961, for example, the Twenty-second Soviet Communist Party Congress posited “disastrous war” and peaceful coexistence as “the alternative offered by history.”110

According to the C.P.S.U. program, peaceful coexistence includes theoretical and operational dimensions. It implies renunciation of war as a means of settling international disputes, and their solution by negotiation; equality, mutual understanding and trust between countries; consideration for each other’s interests; non-interference in internal affairs; recognition of the right of every people to obtain that and that is moral, not immoral, and we operate on a different set of standards.


110. *Id.* (footnote omitted).
solve all the problems of their country by themselves; strict respect for the sovereignty and territorial integrity of all countries; promotion of economic and cultural cooperation on the basis of complete equality and mutual benefit.\textsuperscript{111}

As an operational guide, peaceful coexistence both acts "as a basis for the peaceful competition between socialism and capitalism on an international scale and constitutes a specific form of class struggle between them."\textsuperscript{112} In the Soviet view, peaceful coexistence is consistent with supporting "the sacred struggle of the oppressed peoples and their just anti-imperialist wars of liberation."\textsuperscript{113}

Soviet writers such as Tunkin subsequently elevated this presentation of world politics to the level of law. Tunkin argued that these "principles" form the basis for the U.N. Charter and contemporary international law as confirmed by State practice. In his view, peaceful coexistence means that neither social system will use force to increase its area of control.\textsuperscript{114} He thus would grant legal status to the world political division into eastern and western blocs.\textsuperscript{115}

A. \textit{Czechoslovakia, 1968}

The Czech crisis of 1968 produced a new and clear articulation of Soviet policy regarding the legal use of force in international relations. Apart from the political dimensions of the affair—the impact on East-West relations, on relations among communist parties, and on the Third World’s view of the Soviet Union\textsuperscript{116}—the invasion of August 20

\footnotesize{\textsuperscript{111} \textit{Id.}}
\footnotesize{\textsuperscript{112} \textit{Id.} at 105.}
\footnotesize{\textsuperscript{113} \textit{Id.} at 107. Where this formulation applies only to anti-colonialist wars, it has been defended as a principle of law, although it is freighted with difficulty. \textit{See generally}, Tyner, \textit{Wars of National Liberation in Africa and Palestine}, 5 \textit{Yale Stud. World Pub. Ord.} 234 (1979); Vance, Jr., \textit{Recognition as an Affirmative Step in the De-colonization Process: The Case of Western Sahara}, 7 \textit{Yale J. World Pub. Ord.} 45 (1980). Soviet support of North Korea, North Vietnam after 1954, and various "liberation movements" in Latin America has been justified as furthering anti-imperialism although colonial empires no longer existed in those regions. \textit{See The New Soviet Society, supra note 109, at 100-07; P. Bergmann, Self-Determination 74-75 (1972) (pseud. for political reasons; scholarly credentials certified by Prof. John N. Hazard, Columbia University, at 12).}}
\footnotesize{\textsuperscript{114} \textit{Tunkin has argued that international law is non-ideological. It is the law of peaceful coexistence between the "irreconcilable" socialist and capitalist ideologies. Tunkin, supra note 48, at 24.}}
\footnotesize{\textsuperscript{115} \textit{See G. Tunkin, supra note 7, at 69-75. For a similar argument, see Karpov, The Soviet Concept of Peaceful Coexistence and its Implications for International Law, in The Soviet Impact on International Law, supra note 26, at 14-15.}}
\footnotesize{\textsuperscript{116} \textit{Cf.} McDougal, Perspectives for an International Law of Human Dignity, in \textit{Studies in World Public Order} 987 (1960) (contemporary world consists of "a variety of international laws and anarchy of diverse, contending orders").}}
\footnotesize{\textsuperscript{116} \textit{See J. Valenta, Soviet Intervention in Czechoslovakia, 1968 160-64 (1979); A. Ulam, supra note 10, at 744-46 ("a barely qualified success").}}

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Brezhnev Doctrine

generated a more formal statement of the Soviet view than the Hungarian affair had done. It built on the positions constructed after the Hungarian revolution and, since 1968, has been commonly referred to in the West as the Brezhnev Doctrine.

Like the statement made in response to the Hungarian revolution of 1956, the Brezhnev Doctrine represented an answer to upheaval. But events in 1968 did not follow the Hungarian pattern sufficiently to allow the Soviet government to copy Khrushchev's scenario.

The Czech Communist Party itself undertook the reforms eventually rejected by Moscow and tolerated demonstrators demanding change. Antonin Novotny, the Party leader since 1953, had remained faithful to Stalinism despite the Twentieth Party Congress and the reforms it sanctioned. By 1968, he had overstayed his mandate. His long tenure and unwavering conservatism made him a target for reformers seeking solutions for economic stagnation and desiring at least as much de-Stalinization as the Soviet Union itself enjoyed. The transnational, almost millenial spirit of the sixties may also have acted as an impetus to change. On January 5, 1968 the Czech Communist Party replaced Novotny with Alexander Dubček, who, at forty-six, was young, popular in the Party, and, as far as one could judge from previous behavior, loyal to the U.S.S.R.

On March 22, Novotny resigned as President of the country. Meanwhile, the Party Central Committee had authorized an Action Program for the government and Party. After much public exhortation for reform, some of which appeared in the Party newspaper, on April 5 the Committee adopted a document entitled "The Czechoslovak Road to Socialism." The reform enterprise received the sobriquet "Socialism with a Human Face."

To eastern and western observers alike, this program signaled that Czechoslovakia was deviating from the Soviet model of Communism. Czechoslovakia adopted legal and constitutional guaranties of freedom of assembly, of expression, and of movement. Censorship ceased.

117. See Kiralyi, supra note 99, at 54-58.
118. See A. Ulam, supra note 10, at 739; J. Valeta, supra note 116, at 11-12.
119. See Kiralyi, supra note 99, at 53-54.
120. See generally, Labedz, Students and Revolution, 68 Survey 3 (1968); Grass, The Lessons of Prague, 69 Survey 3 (1968); Labedz, Czechoslovakia and After, 69 Survey 7 (1968).
121. See A. Ulam, supra note 10, at 739.
123. See generally Winter in Prague (R. Remington ed. 1969) (documents on Czechoslovak liberalization and response by other communist parties); Labedz, Czechoslovakia and After, 69 Survey 7 (1968); J. Valeta, supra note 116, at 40-70. See also Are They Coming or Going? The Economist, July 20, 1968, at 15-16 (dilemma confronting U.S.S.R.).
124. See P. Bergmann, supra note 113, at 22-23. Excerpts from the Action Program
At all times during what became known as the Prague Spring, the Central Committee and other organs of the Party and State supported the Action Program. A minority in the Party and country opposed these changes. Though the Czechoslovak Communist Party tried to make clear its fidelity to the Soviet Union and respect for Soviet security, the Prague Spring aroused fear and hostility in the Warsaw Pact. No longer reformers themselves, Gomulka and the Polish government saw in Czech events a disease threatening their own system. For similar reasons, the East Germans outspokenly opposed the Dubček regime. Kadar tried to mediate; the Rumanians and Yugoslavs (the latter outside the Pact), as if feeling a renaissance of the ties of the Little Entente, were openly sympathetic to Czechoslovakia.

The Soviet reaction to the Dubček government was decidedly negative. Moscow perceived in Prague's policies a threat to its leadership in eastern Europe, and to the principle of proletarian dictatorship. It proved impossible to reconcile the Action Program with Warsaw Pact insistence that pluralism is per se counter-revolutionary. Faced by a choice between permitting the antithesis of Communism and using force to restore Communism, the Soviets invaded Czechoslovakia supported by token contingents from East Germany, Hungary, Poland, and Bulgaria.

The invasion is a paradigm of applied Soviet political and legal doctrine regarding relations with other communist states and the lawful use of force in an international context. Fearing that a Czechoslovakia pushed “off the road of socialism” would jeopardize “the interests of

128. Id.; J. VALENTA, supra note 116, at 135-36 (fear of “Communist Little Entente” within Warsaw Pact). After World War I, the Little Entente grouped Yugoslavia, Czechoslovakia, and Rumania in a series of defensive alliances designed as a bulwark against Hungary, which was believed to covet the former parts of the Austro-Hungarian Empire.
130. See text accompanying notes 135-39 infra.
131. See A. UŁAM, supra note 10, at 743.

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the whole socialist system," the Soviet Union and its allies argued that international law allowed them to use force. Warsaw Pact officials claimed that their States were unalterably communist in political structure and equally fixed as members of the Pact. Any attempt to leave the Warsaw Pact, as in the case of Hungary in 1956, or to soften the communist structure, as in Czechoslovakia in 1968, could only reflect the work of capitalists and counter-revolutionaries. Whether intentionally or not, the analysis almost tracked Stalin's argument for solving the nationalities question after the 1917 Revolution. Thus, as part of the public warning to the Czech Party in July, 1968, the eventual invaders declared that events in Czechoslovakia constituted "something more than your own concern." At the cost of tremendous losses the peoples of our countries achieved victory over Hitler fascism and won freedom and independence and the opportunity to follow the path of progress and socialism. The frontiers of the socialist world have moved to the centre of Europe, to the Elbe and the Bohemian Forest. And we shall never agree to these historic gains of socialism and the independence and security of our peoples being placed in jeopardy. We shall never agree to imperialism, using peaceful or non-peaceful methods, making a breach, from the inside or from the outside, in the socialist system and changing the correlation of forces in Europe in favour of imperialism.

History had given the east European communist parties responsibility to ensure "that the revolutionary gains are not lost." Moscow invoked treaties based on "the common aspiration to defend socialism and ensure the collective security of the socialist countries" as a legal foundation for the invasion and ultimately defended Soviet action as obedience to this treaty-law. Critics denounced the theory as a doctrine of "limited sovereignty" and accused the U.S.S.R. itself of imperialism. The Soviet position seemed to deny States their

133. Id.
135. Id.
136. Id. In an admission of the precariousness of the position of communist parties in communist countries, Pravda wrote on July 22, 1968 that undermining the leading role of the Communist Party inevitably leads to the liquidation of socialist democracy and of the socialist system. Any attempt to question the leading role of the Communist Party—whatever references to special features of the situation may be made in order to justify this—inevitably creates a danger to the socialist system and threatens the vital common interests of the socialist community. Reprinted in Soviet News, July 23, 1968, at 41.
137. Id.
138. Id.
139. See, e.g., People's Daily (Beijing) Mar. 17, 1969:
sovereignty.

At the moment of invasion, the Soviet government had tried to strengthen its arguments. Moscow had scrambled to find a “group” within the Czech Central Committee to ask for Soviet help against counter-revolution and had appealed to such non-Marxist and non-legal grounds for action as “Slavic affinity” and the prior expenditure of Soviet blood. Unable to find sufficient anti-reformist strength within the Czech Central Committee, the Soviet government dropped its original approach and resumed dealings with Dubček and his colleagues. Discussions in Moscow against the background of the Soviet occupation of Czechoslovakia ended in agreement and the repudiation of reform.\(^{142}\) Justifying its diplomacy and use of force, the Soviet Union blurred the distinction between the “law” of peaceful coexistence governing relations between States of differing social systems and socialist internationalism dictating relations among communist countries. The Brezhnev Doctrine thus contains elements of a universal theory. Its extension beyond the communist world has already occurred.\(^{143}\)

Publication of a full exposition of the Soviet view took place five weeks after the invasion of Czechoslovakia. This formulation remains the basic text for later positions. The author, Sergei Kovalev, repeated and expanded on the theme “that every Communist Party is responsible not only to its own people but also to all socialist countries and to the entire Communist movement. Whoever forgets this,” he added in a pointed message to the Czechoslovak comrades, “stressing only the independence of the Communist Parties, takes a one-sided attitude; he


\(^{141}\) The Defence of Socialism is Our Supreme Internationalist Duty, supra note 4, at 87.

\(^{142}\) J. VALENTA, supra note 116, at 150-52.

It would be just as absurd for a party to renounce Marxism-Leninism and remain a communist party as for communists to ignore the rivalry between Capitalism and Socialism.

Communist states, Kovalev argued, constitute a "commonwealth" whose principal member and protector is the Soviet Union. Each member has a vital interest in the other's affairs. When one of them threatened to leave the commonwealth, as he claimed the Czech Party did under the guise of self-determination and reform, then the commonwealth had the right, indeed, the duty to react. Implementing their version of self-determination, the Czechs might allow NATO troops to approach the borders of the Soviet Union. Such self-determination could only be a sham and "in fundamental conflict with the right of these peoples [in the communist countries] to socialist self-determination." When Andrei Gromyko, the Foreign Minister, told the U.N. General Assembly on October 3 that defending the communist commonwealth by invading Czechoslovakia was compatible with peace and international security, his only justification was the claim that "the national question has really and truly been solved by socialism." As restated by Kovalev, bourgeois thinking takes an "abstract" view of sovereignty that ignores the character of the government. If communists accepted bourgeois doctrine, they would be unable legally to fight established governments headed by Franco, Salazar, or the Greek colonels, and support "progressive forces" in places like Vietnam. Under bourgeois law, this action would constitute interference in the internal affairs of a sovereign State. Such a result was inconsistent with the revolution and could not be law. Kovalev ascribed to Lenin the proposition: "[e]ach man must choose between joining our side or the other side. Any attempt to avoid taking sides in this issue must end in fiasco."

The Brezhnev Doctrine brings Soviet theory regarding the lawful in-

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145. Id In 1969, Mikhail Suslov, a Party Secretary and leading ideologist, noted that "one could no longer speak of 'a leading centre for the communist movement'." C. JACOBSEN, SOVIET STRATEGY-SOVIET FOREIGN POLICY 223 (1972).
146. Kovalev, supra note 144, at 5.
149. Id at 5. Kovalev also wrote that "[t]he sovereignty of each socialist country cannot be set up in opposition to the interests of the socialist world and the interests of the world.
ternational use of force back to the pre-Revolution premise of a divided, antagonistic world where Capitalism and Communism engage in explosively dangerous rivalry.\textsuperscript{150} Locked in a world view reminiscent of Hobbes,\textsuperscript{151} Soviet officials focus on the "correlation of forces"\textsuperscript{152} in determining the law and its purposes. Soviet analyses demand that a context different from the rules of the U.N. Charter and universal respect for States define legitimate applications of force. The Soviet view means that Article 2(4) of the Charter loses its commanding force.\textsuperscript{153}

B. 	extit{Afghanistan, 1979}

Today, Soviet theory expands Kovalev's exposition of the Brezhnev Doctrine. It applies the justifications for using force in 1956 and 1968 outside the area of relations among communist countries. Afghanistan provided the setting for this extension of doctrine.

In Soviet eyes, the political and strategic context required action. In April, 1978, two groups in uneasy alliance had engineered a \textit{coup d'état

\begin{quote}
Id. But see G. Tunkin, supra note 7, at 439-40 (strict respect for sovereignty in socialist international relations).
\end{quote}

Brezhnev denied that Czech sovereignty had been violated by noting that "the socialist states stand for strict respect of the sovereignty of all countries. We emphatically oppose interference in the affairs of any states and violations of their sovereignty." Speech to the Fifth Congress of the Polish United Workers' Party, in Soviet News, Nov. 19, 1968, at 66.

On the legality of "wars of national liberation," see Tyner, supra note 113 (U.N. Charter prohibits supporting wars of national liberation).

\begin{quote}
See Binder, supra note 143, quoting an unsigned article in \textit{Novoye Vremya}, Jan. 18, 1980 (the "main point" is "the fundamental differences between the nature and goals of the foreign policy of socialism and imperialism").
\end{quote}

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See F. Kohler, \textit{Understanding the Russians} 244-45 (1970) (Soviet government, more than most western governments, attuned to factors of political, social, economic, and military power in taking decisions); D. Zagoria, \textit{The Sino-Soviet Conflict} 158, 425 n.22 (1962) (Soviet views on changing balance of force; feasibility of action reflects power); G. Tunkin, supra note 7, at 250 ("co-relation" of forces important but powerful states may not dictate norms of law); Krylov, supra note 7, at 453-54 (power heightens responsibility of States, and, implicitly, law-making ability).
\end{quote}

\begin{quote}
Cf. C. Jenks, \textit{A New World of Law}? 294 (1969):
\end{quote}

The second principle of world political morality is the immorality of arbitrary force. The principle finds expression in the provision of the Charter of the United Nations that armed force shall not be used save in the common interest. The principle is not based on any idle belief that force settles nothing. Napoleon, who is sometimes quoted as an authority for this comfortable tenet, espoused it only in St. Helena. Force has throughout history shaped the future of mankind, for good as well as for ill. It was force which preserved the future of Greek culture at Marathon. It was by force that the Roman legions laid the foundations of western civilisation. It was force, not principle, which drove Hitler to his bunker beneath Berlin. It was force which contained Stalinism. And so throughout the intervening years. Force could have made, but was never invoked to make, a reality of the Covenant of the League of Nations. Without collective reliance on force to repel force the United Nations cannot become a reality: this is indeed the heart of the Charter.
and presented Moscow with a Marxist government in Kabul. The allies, *Khalq* led by Nur Mohammed Taraki and Hafizullah Amin and *Parcham* with Babrak Karmal as leader, competed for power. They fell out over domestic policies and Taraki and Amin excluded Karmal and his supporters from the government. Amin became Prime Minister and Taraki President. Karmal went to eastern Europe as Ambassador; in September he was dismissed.

In foreign affairs, *Khalq* was openly pro-Soviet; in domestic matters, the new regime tried to implement reforms. It was inept and encountered opposition from Islamic fundamentalists that took the form of armed rebellion. Taraki attempted to overthrow Amin by force. The plan failed and Taraki was killed. The Soviet government gave refuge to Taraki’s supporters and brought Karmal to Moscow, while increasing its military presence in Afghanistan in the guise of helping to deal with anti-government guerillas. On December 27, 1979, some 5,000 Soviet combat troops entered Afghanistan. Soviet airborne units overthrew and killed Amin and placed Karmal in power. The Soviets claimed that they acted in response to pleas for help from Karmal. Those pleas were broadcast on December 28. As evidence that a government had asked for assistance against rebellion, Karmal’s request was hardly persuasive.

The Soviet government defended its intervention with geopolitical and socialist-internationalist arguments. Brezhnev combined them in his speech to the Twenty-sixth Party Congress on February 23, 1981. “Imperialism launched a real undeclared war against the Afghan revolution,” he said. “This also created a direct threat to the security of our southern frontier. In the circumstances, we were compelled to render the military aid asked for by that friendly country.” Three weeks after Soviet troops intervened in Afghanistan, Moscow claimed

157. *See id.* at 24-26; Pravda, Dec. 28, 1979, reprinted in Current Digest of the Soviet Press, Jan. 23, 1980, at 1, 2. The Soviet Union now has about 85,000 troops in Afghanistan and, in effect, governs the country. The Soviets did not fear American interference. Just as in 1956, the United States was too preoccupied to act. On November 4, 1979, Iran had seized the American Embassy in Teheran, riveting Washington’s attention. Anyway, the United States had done nothing when its Ambassador to Afghanistan was murdered in February, 1979.
158. See note 60 supra.
that the use of force was morally and politically justified by "the international solidarity of revolutionaries." Assistance might take a military form in "justified, extraordinary conditions" and the Afghan situation passed the test.

Soviet jurists claim legal status for the constituent elements of the Brezhnev Doctrine as applied in Czechoslovakia and Afghanistan. Western and Chinese officials and lawyers disagree. In situations arguably analogous to Soviet behavior in eastern Europe, western commentators denounce American actions as equally illegal. Thus American writers have lumped the 1968 Czech and 1965 Dominican Republic crises together as unlawful uses of force, while Tunkin, for

159. Binder, supra note 143.
160. Id. See also SOVIET WORLD OUTLOOK, June 15, 1980, at 4, 6 (intervention in Afghanistan legal according to socialist internationalism); New Times No. 17 (Apr., 1980) read Lenin to say that "the socialist state would if need be help the oppressed classes of other countries 'using even armed force against the exploiting classes and their states'." Id. at 4-5.
161. Soviet doctrine thus comes close to asserting a right of preemptive intervention. Such a claim would not be original. The British, for example (and they were not alone), in effect claimed a right to prevent a Great Power from establishing itself in the Low Countries for reasons of national security and geopolitics. American application of the Monroe Doctrine reflected similar concerns.


163. The view of one American professor of international law is characteristic of this school.

Although, regrettably, lawyers of repute have been found to justify, not in terms of policy but of international law, unilateral interventions of which they approve politically, there cannot be any serious doubt that such unilateral military actions designed to change the political regime of another country—whether they came to power by democratic means or a coup d'etat—are patently incompatible with the very foundations of international law, which is built on the legal sovereignty of states and their right to determine the form of their regime. Neither the assertion of 'socialist solidarity' nor the Johnson Doctrine which—going far beyond the actual policies of the United States—would claim a unilateral right to displace any 'Communist' regime, as determined by the United States—has any place in contemporary international law.

164. In 1965 the United States sent troops to the Dominican Republic at what Washington claimed was the request of the local government to help protect American citizens. In the course of the crisis, President Johnson argued that the United States could use force to prevent communist gains in the hemisphere. The facts are in dispute. See T. FRANCK & E. WEISBAND, supra note 134, at 72-78 (suggestion that had American behavior in the Caribbean been different Soviet behavior in central Europe would have been different); R. FALK, supra note 162, at 341-42 (criticism of U.S. and U.S.S.R. for similar behavior).
example, carefully ignores any similarity between the situations themselves or the way the Soviet and American governments respectively represented them to the world. According to Tunkin, American intervention reflected a policy of acting "from a position of strength."

Conclusion

Nowadays, States always say they act within the law. Bethmann Hollweg, Germany’s Chancellor in 1914, was perhaps the last leader of a belligerent power who admitted that his country had resorted to force illegally, and he justified German actions by reference to a greater good that would result. Even governments whose representatives belittle the role and importance of law in international affairs argue that their forces enter battle on behalf of, and according to law. Soviet behavior over Hungary in 1956, and Soviet actions since then, fit this pattern. Moscow has shown itself to be as concerned as any other capital about the appearance of international legality. Soviet spokesmen often claim that Soviet acts must be lawful because communist States may only act lawfully.

The U.N. Charter represents the world consensus about the nature of world politics and the law governing the international use of force. If it does nothing else, the Charter reaffirms that the world legal structure is based on the existence of sovereign States. International lawyers agree that this fact means that international law concerns itself principally with inter-State relations and that the State is the traditional and char-

165. See G. Tunkin, supra note 7, at 276 & n.8 and accompanying text.
166. Id. at 283. No Soviet author writing in the Soviet Union has criticized Soviet actions on similar grounds; to do so would itself violate Soviet law. Under Soviet law [a]gitation or propaganda carried on for the purpose of subverting or weakening Soviet authority or of committing particular, especially dangerous crimes against the state, or circulating for the same purpose slanderous fabrications which defame the Soviet state and social system, or circulating or preparing or keeping, for the same purpose, literature of such content, shall be punished by deprivation of freedom for a term of six months to seven years, with or without additional exile for a term of two to five years, or by exile for a term of two to five years. Criminal Code of the Russian Soviet Federated Socialist Republic art. 70, reprinted in H. Berman, Soviet Criminal Law and Procedure 180 (1966). Art. 190(1) makes a crime of preparing, and distributing, orally or in writing, “of deliberately false fabrications harming the Soviet state.” J. Hazard, W. Butler, & P. Maggs, The Soviet Legal System 97 (1977).
168. See, e.g., remarks of Hao Teh-ching (former Ambassador of the People’s Republic of China to Iran) to E. Rostow (June 19, 1978) at 1, 6 (notes by N. Rostow) (copy on file with The Yale Journal of World Public Order).
169. See, e.g., note 60 supra.
acteristic party to disputes at international law.\textsuperscript{170} Under the Charter, the Security Council is responsible for maintaining peace. Where breaches occur that defy pacific settlement, the Council may use force to "maintain or restore international peace and security."\textsuperscript{171} Any Permanent Member of the Security Council may, of course, veto action by that body, as the Soviet Union did in 1956 and 1980 to prevent a U.N. response to the Hungarian and Afghan crises.\textsuperscript{172}

Though nominally accepting Charter law, Soviet policy and doctrine, as a Chinese Ambassador to the U.N. noted, in fact is incompatible with the rule of Article 2(4).\textsuperscript{173} The Soviet position justifies the use of force to preserve communist gains and add to the territory governed by communist parties as both legal and progressive. Asymmetrically, the use of force to protect Capitalism and bourgeois liberties is illegal as well as oppressive from the Soviet perspective. It may also be imperialistic.\textsuperscript{174}

Given this situation, appeals to the Security Council to deal with crises like those involving Hungary, Czechoslovakia, and Afghanistan will prove as useless in the future as they have in the past. Those States that prefer to shape their destinies independently of the Soviet Union must respond on their own; and their response must fit ideas of self-defense consistent with Article 51.\textsuperscript{175} The need for self-defense and the


\textsuperscript{171} U.N. Charter art. 39. See also arts. 41 and 42 (measures, including use of force, available to Security Council); B. Ramundo, supra note 54, at 125-28 (just wars are "non-predatory" and liberating).

\textsuperscript{172} See text accompanying note 101 supra; N.Y. Times, Jan. 8, 1980, at A1, col.2; id. at A6, col. 5 (text of resolution vetoed).


\textsuperscript{174} See, e.g., Lipson, supra note 51, at 33 (Soviet journal Kommunist edited speech by Suslov, leading Soviet theoretician, to read "[p]eaceful coexistence means . . . the inadmissibility of the export of counterrevolution" where earlier Pravda version quoted definition as "the refusal to export revolution and to export counterrevolution.")

\textsuperscript{175} The position taken by the United States in 1841 in connection with the Caroline case remains the clearest statement of the law of self-defense.

The President sees with pleasure that your Lordship fully admits those great principles of public law, applicable to cases of this kind, which this government has expressed; and that on your part, as on ours, respect for the inviolable character of the territory of independent states is the most essential foundation of civilization. And while it is admitted on both sides that there are exceptions to this rule, he is gratified to find that your Lordship admits that such exceptions must come within the limitations stated and the terms used in a former communication from this department to the British plenipo-
Brezhnev Doctrine

preservation of the States system implies the existence of a military threat and nobody has captured the essence of such a threat and the policy it dictates better than Thucydides: “the strong do what they have the power to do and the weak accept what they have to accept.”176 But military readiness alone will not deal with the challenge of the Brezhnev Doctrine. States disputing the Soviet view of the law governing the international use of force must reply with a coherent legal position of their own. The alternative consistent with their interests and values respects the insight of Thucydides and the values embodied in the Charter.

Because of its international position, the United States must take the lead in this enterprise. Its role in two world wars brought responsibility for the world structure established in 1919 and re-established in 1945. Article 2(4) represented both American national interests and the consensus of the victorious coalition about what international behavior would be deemed lawful by the community of States. It was based on the experience of the thirties and forties and the vivid examples of international coercion and subversion produced by Hitler, Mussolini, and the Japanese.

Soviet behavior suggests that Moscow has withdrawn from the consensus. Soviet actions and words interpret Article 2(4) and that interpretation dictates the response needed from the United States. By proclaiming as scientifically demonstrable truth that western society is inherently oppressive and imperialistic, the Soviet Union can justify the international use of force to change political and social conditions in other countries. And those political and social conditions make the promise of change appealing, however implemented and of whatever form, so long as it is described as “progressive.” As a result, the United States needs policies that shore up the stability of the States system and encourage the economic development of States within that system. The necessary goal is the stimulation of development and social justice

tentiary here. Undoubtedly it is just, that, while it is admitted that exceptions growing out of the great law of self-defence do exist, those exceptions should be confined to cases in which the necessity of that self-defence is instant, overwhelming, and leaving no choice of means, and no moment of deliberation.’


It may be thought that Soviet contravention of the Charter or Soviet vetoes of U.N. action to enforce the Charter merit expulsion from the United Nations under Article 6. Apart from the practical difficulty of mustering the votes in the Security Council and General Assembly necessary to expel one of the Permanent Members of the organization, expulsion would not remove the challenge to the Charter order posed by a Great Power advocating a premise for the use of force different from that articulated in Articles 2(4) and 51.

while preserving the integrity of the international legal system codified in the Charter.\textsuperscript{177}

The United States may cooperate with other governments to promote development without necessarily dictating the form or composition of a government, its policies, or social structure. It has done so in the past, most notably with the Marshall Plan for European reconstruction after the war and with its relationship with the countries of ASEAN, South Korea, and Taiwan. Such policies strengthen the States system by strengthening the States themselves. They aim, not to impose hegemony, but to encourage pluralism. One may expect skeptics to criticize such policies as devoted to a \textit{status quo} that ignores the value of self-determination, which the Charter recognized,\textsuperscript{178} and merely protects American economic and political interests. For people of this school, Soviet and American policies and doctrines resemble each other.\textsuperscript{179}

This criticism reflects a yearning for a better world, but does not provide a new premise, legal or other, for a coherent foreign policy. Favoring self-determination, for example, hardly applies outside colonial areas of which few now exist. To espouse self-determination for eastern Europe is sound law but raises the kind of political questions and anxieties that prompted Helmut Sonnenfeldt, when Counselor to the State Department in 1976, to recommend that the United States favor an "organic" relationship between the Soviet Union and the rest of the Warsaw Pact in the interests of stability.\textsuperscript{180} The United States can avoid the retreat from law Sonnenfeldt suggested by pursuing policies designed to secure States against attack. Such policies would possess firm legal foundation; they would encourage conditions of

\textsuperscript{177} Such is the goal of efforts to resolve the Namibia affair consistently with the Advisory Opinion of the International Court of Justice. Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), [1971] I.C.J. 16. See the discussion in E. Rostow, "Palestinian Self-Determination": Possible Futures for the Unallocated Territories of the Palestine Mandate, 5 \textit{YALE STUD. WORLD PUB. ORD.} 147, 156-58 (1979).

\textsuperscript{178} See \textit{U. N. CHARTER} art. 1, para. 2 (the Purposes of the United Nations are: "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.")

\textsuperscript{179} \textit{See generally} T. FRANCK \& G. WEISBAND, \textit{supra} note 134.

\textsuperscript{180} D. MOYNIHAN \& S. WEAVER, \textit{A DANGEROUS PLACE} 269-70 (1978).

Western policies based on Article 2(4) may produce responses to events such as the invasion of Afghanistan or the recent political changes in Poland other than military action or economic sanctions. The extent of Polish indebtedness to the West, for example, creates opportunities for pressure on the new government in Warsaw. One can imagine western institutions, or multilateral institutions such as the International Monetary Fund, using the leverage of Polish indebtedness to require changes in economic policy in the interests of restoring Polish economic health. In Poland, such policies would involve restoring the position of the unions if only to encourage Poles to work productively. Passive acceptance of, or the use of force to change the new \textit{status quo} are not the sole available choices.
independence and security in which human rights of political freedom and economic development can survive and grow.

The States system characterizes the world as it is and shapes the law of the U.N. Charter. Soviet participation in the U.N. and relations with States outside the reach of the Red Army amounts to acceptance of that system. While seeking to benefit from the world order of the Charter, Moscow has inconsistently obeyed its commands and respected the premises on which the Charter rests. Justifications for Soviet behavior couched in Marxist-Leninist theory, however valid some people may believe the theory to be, do not change the fact that Soviet actions violate the code of the system. Unless the West, and particularly the United States, maintains foreign and defense policies designed to preserve and strengthen the States system—policies rooted in the Charter and especially Article 2(4)—the Soviet view of the law governing the use of force shall prevail. In such an event, the structure of world public order will reflect Soviet preferences.¹⁸¹

¹⁸¹. It may be that the western view will triumph because it reflects the nature of things: a States system exists; it is global; whenever threats to an uncontroversial state arise (not Israel, not South Africa), the rest of the world has at least verbalized its insistence on the rule of the Charter. The crises over Biafra, Bangladesh, Uganda, and Afghanistan, for example, reflexively generated anxiety or even a disparate coalition in defense of Article 2(4). The world system responded, perhaps ineffectively, but following the pattern of the eighteenth century "classical" European balance of power.