Socialist Internationalism: *Theoria* and *Praxis* in Soviet International Law

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Throughout this century, international law has focused on eliminating the use of force from interstate relations. In 1928, the signatories of the Kellogg-Briand Pact renounced war "as an instrument of national policy in their relations with one another,"1 and seventeen years later, hoping "to save succeeding generations from the scourge of war,"2 states pledged to abide by article 2(4) of the United Nations Charter, which prohibits the threat or use of force. The Charter's prohibition, however, is not absolute: it expressly permits state uses of force for self-defense3 and for U.N. purposes.4 These exceptions to the rule have provided and continue to provide legal cover (with varying persuasive power) for state recourse to violence. Instead of relying on these explicit exceptions, however, the Soviet Union has looked outside the U.N. Charter to justify its apparent violations of article 2(4). Soviet international law theorists argue that the October Revolution and the emergence of other socialist states have irrevocably altered the system of international relations5 and,

† M.A., Yale University, 1988.
2. U.N. CHARTER preamble.
3. Id. art. 51. The diplomatic exchanges leading up to ratification of the Kellogg-Briand Pact imply that self-defense is protected by customary law and not limitable by conventional law: "There is nothing in the American draft of an antiwar treaty which restricts or impairs in any way the right of self-defense. That right is inherent in every sovereign state and is implicit in every treaty." U.S. Note, June 23, 1928, reprinted in 243 INTERNATIONAL CONCILIATION 60, 61 (1928).
4. "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." U.N. CHARTER art. 2, para. 4.
since World War II, introduced into international law a socialist sub-
system based on the principles of socialist internationalism.

Following an overview of the historical antecedents and substance of
socialist internationalism, this Comment attempts to place the norms of
socialist internationalism within the broad context of the Soviet-Marxist
political and ethical doctrines that underlie Soviet notions of domestic
and international law. I demonstrate that socialist internationalism's de-
parture from Western international law mirrors the Soviet domestic law
rejection of Western conceptions of a priori natural law rights. The final
section examines recent developments under General Secretary Mikhail
Gorbachev and their impact on the norms of socialist internationalism.

I. Background of Socialist Internationalism

The bold promises of world revolution and the destruction of the state
system that accompanied the 1917 October Revolution faded within
weeks as the Bolsheviks adapted themselves to the realities of European
great-power politics. Calls for open diplomacy and peace without
annexations or reparations went unfulfilled as the Soviets began participat-
ing in the international arena on terms largely set by the Western
European powers in agreements such as the Brest-Litovsk Treaty. Sub-
sequently, Soviet diplomatic activity intensified as the nation signed the
Kellogg-Briand Pact, joined the League of Nations (which the Soviets
had originally denounced), and even agreed to honor certain pre-revolut-
ionary Russian debts.

As the Soviets expanded their participation in established forms of in-
ternational relations, they recognized a need to reconcile this activity
with traditional Marxist doctrine. Korovin, the first to define in detail
the young state's position on international law, posited a transitional
phase during which Soviet participation in international law would infect
the bourgeois system with socialist norms which would eventually

6. See, e.g., Statement by Trotsky on the Publication of the Secret Treaties (Nov. 22,
1917), in SOVIET DOCUMENTS ON FOREIGN POLICY 8-9 (J. Degras ed. 1951).
7. See, e.g., The Decree on Peace (Nov. 8, 1917), in SOVIET DOCUMENTS ON FOREIGN
POLICY, supra note 6, at 1.
8. In the words of George Vernadsky, "The peace conditions [under the Brest-Litovsk
Treaty] were disastrous to Russia . . . Russia lost 26 per cent of her total population; 27 per
cent of her arable land; 32 per cent of her average crops . . . . Besides that Russia had to pay a
large war indemnity." Quoted in N. Riasanovsky, A HISTORY OF RUSSIA 529 (1977).
9. See Extract from Appeal for the Formation of the Communist International (Jan. 24,
1919), in SOVIET DOCUMENTS ON FOREIGN POLICY, supra note 6, at 136.
10. V. Kublkova & A. Cruikshank, MARXISM AND INTERNATIONAL RELATIONS 164
(1985).
prevail over the established law.\textsuperscript{11} Korovin considered intersystem interaction—and even cooperation—possible during the transitional period because, although socialist legal norms rested on a different socio-economic basis than capitalist norms, common ground existed for mutually beneficial activities such as trade.\textsuperscript{12}

Korovin’s theories were soon eclipsed by those of E. B. Pashukanis, the leading authority in all fields of Soviet legal theory from the mid-1920s until his arrest in 1937. While Korovin maintained that international law would change both its form and content under socialist pressure, Pashukanis held that until socialism forced the elimination of law completely, law’s form was immutable. Abstracting from Marx’s fundamental conception that the material, economic bases of a society determine its superstructure, Pashukanis developed a theory in which law’s form had an economic basis.\textsuperscript{13} Legal systems, in his view, were a collection of exchanges designed to formalize and regulate society; even criminal law was viewed on the model of a contract governing exchanges between juridically equal participants.\textsuperscript{14} Pashukanis contended that as socialist society liberated itself from notions of individualism and as economic relations developed beyond the stage of commodity exchange to “from each according to his abilities, to each according to his needs,”\textsuperscript{15} law—like the state—would wither away.

Pashukanis applied his commodity-exchange theory to international law much as he had to domestic law. For Pashukanis, the initial rise of the Soviet state did not alter the form of international law, which still operated on the basis of “normal diplomatic relations and contractual exchange.”\textsuperscript{16} As socialism transcended the phase of commodity exchange and its contradictions, both domestically and worldwide, however, the need for institutions to resolve conflicts would die with the conflicts themselves. Law would then wither away, replaced by administrative plans necessary merely to rationalize production.\textsuperscript{17}

\begin{enumerate}
\item E. Korovin, Mezhdunarodnoe Pravo Perekhodnogo Vremeni 135 (1924).
\item V. Kublkova & A. Cruikshank, supra note 10, at 166.
\item W. Butler, Soviet Law 32 (1983).
\item The notion of equivalence, this first purely juridic idea, always has its source in the form of a commodity. A crime may be considered as a particular aspect of exchange, in which the exchange (contractual relationship) is established post factum, that is, after the intentional act of one of the parties. The ratio between the crime and the punishment is reduced to an exchange ratio.
\item R. Sharlet & P. Beirne, Pashukanis: Selected Writings 111 (P. Maggs trans. 1980).
\item R. Sharlet & P. Beirne, supra note 14, at 173.
\item V. Kublkova & A. Cruikshank, supra note 10, at 167.
\end{enumerate}
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Pashukanis' theory of international law essentially presaged the pluralist conception of international law adopted by the Soviets in the late 1950s. The Soviets, Pashukanis argued, should participate in the essentially bourgeois construct of international law only to the extent their interests dictated. He maintained throughout that, like domestic law and the state, international law would ultimately fade away with the growth of socialism.

In 1937 the commodity-exchange theory, and Professor Pashukanis himself, were abruptly discarded by Stalin, whose emphasis on such state-aggrandizing concepts as "socialism in one country" and "capitalist encirclement" rendered heretical all references to the withering away of the Soviet state. Andrei Vyshinsky, whose theories replaced those of Pashukanis, offered doctrines that amounted to little more than reaffirmations of Stalin's foreign policy goals. The principles of Stalinist international law espoused by Vyshinsky included "struggle for disarmament, struggle against all forms of aggression . . . [and] rallying the strength of progressive humanity in the struggle against fascism, reaction and war." Rather than producing a new theory of international law, in this period the Soviets merely reserved to themselves the right to reject certain institutions of bourgeois international law: "The USSR does not accept all institutions and models of bourgeois international law—it openly rejects those which emerged as institutions for the enslavement of small and weak peoples by the groups of imperialist governments."

18. The Soviets implicitly acknowledged Pashukanis' contribution by rehabilitating him in 1956. For a discussion of the revival of Pashukanis' theories in the 1950s, see Hazard, Pashukanis Is No Traitor, 51 Am. J. Int'l L. 385 (1957). His view that the Soviet Union's relations with capitalist countries should operate on the basis of "normal diplomatic relations and contractual exchange," R. Sharlett & P. Beirne, supra note 14, at 173, can be considered a forerunner to the Soviet Union's later adoption of "peaceful coexistence." See infra text accompanying notes 22-27. And, although during his lifetime the Soviet Union and Mongolia were the only socialist countries, Pashukanis anticipated that a unique set of rules—later known as soviet internationalism—would govern relations between socialist states. "The proletarian states, not having merged formally into one federation or union, must present in their mutual relationships an image of such close economic, political and military unity, that the measure of 'modern' international law becomes inapplicable to them." R. Sharlett & P. Beirne, supra note 14, at 173.

19. The formalization of our relationships with bourgeois states, by way of treaties, is part of our foreign policy, and is its continuation in a special form. A treaty obligation is nothing other than a special form of the concretization of economic and political relationships. But once the appropriate degree of concretization is reached, it may then be taken into consideration, and, within certain limits, studied as a special subject [i.e. international law]. The reality of this object is no less than the reality of any constitution—both may be overturned by the intrusion of a revolutionary squall. Id. at 181.

20. Tezisy po Mezhunarodnomu pravu, 1938:5 SOVETSKOE GOSUDARSTYE 121 (Vyshinsky is generally accepted as the author of this piece).

21. Id.
Following the stagnant Vyshinsky period, changed circumstances abroad and Khrushchev's de-Stalinization campaign combined to moderate and, to some extent, clarify Soviet international law doctrine. Under General Secretary Nikita Khrushchev, Soviet theorists eventually settled on a pluralist conception of international law which held that within "general international law" two different sets of norms govern. Socialist, or proletarian, internationalism controls relations among socialist countries, while peaceful coexistence governs the competition between the opposed capitalist and socialist systems.

Both peaceful coexistence and socialist internationalism double as political doctrines; as such they include many normative elements that do not apply as principles of international law. Since Khrushchev's 1956 declaration that war between the United States and the Soviet Union was not inevitable, the actual principles of peaceful coexistence have varied over time. As enumerated by Grigory Tunkin in 1975, peaceful coexistence includes renunciation of the threat or use of force or policies that could lead to war; the obligation to cooperate with, respect, and recognize states despite differences in socio-economic systems; and the obligation not to impose one's own socio-economic system on another with the aid of force. The United States, at the 1972 Nixon-Brezhnev summit, formally agreed to conduct its relations with the Soviet Union "on the basis of peaceful coexistence." The doctrine of peaceful coexistence has had minimal effect on international law because the norms it embodies essentially replicate principles already enunciated in the U.N. Charter.

Socialist internationalism, in contrast to peaceful coexistence, does constitute a revolutionary departure from established international law. Most importantly, socialist internationalism justifies, under its doctrine

22. "But the Soviet State proclaimed the principle of peaceful coexistence not only as a principle of its foreign policy, but also as a legal principle of relations between States of different socio-economic systems." Tunkin, supra note 5, at 27. "The main principle determining the relations between socialist countries is the principle of socialist internationalism. This is not only a political principle, but also a principle of international law." O. Khestov, The New Soviet-Czechoslovak Treaty, INT'L AFF., July 1970, at 9, 12.

23. Hazard, supra note 18, at 388.

24. As early as 1965, Leon Lipson, in searching for an enunciation of the principles of peaceful coexistence, noted: "It is not hard to find a list; the hard thing is to find which list to use." Lipson, Peaceful Coexistence, in THE SOVIET IMPACT ON INTERNATIONAL LAW 29 (H. Baade ed. 1965).


27. Lipson, The Rise and Fall of "Peaceful Coexistence" in International Law, in 1 PAPERS ON SOVIET LAW 6 (L. Lipson & V. Chaldize eds. 1977). Tunkin has acknowledged that peaceful coexistence does not depart from the norms of the U.N. Charter. Tunkin, Sozdanie sistemy mirogo sosushchestvovanija i mezhdunarodnoe pravo, SOV. GOS. & PRAVO, July 1987, at 100.
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of fraternal assistance, uses of force to defend the interests of world socialism. Tunkin attributes the origins of socialist internationalism to the principles guiding the international workers' movement in the 19th century; its status as a legal doctrine, however, only became relevant with the emergence of socialist nations in Eastern Europe and the formalization of relations within the Eastern bloc through documents such as the Warsaw Pact and the Charter of the Council for Mutual Economic Assistance.

On a simplistic level, the West can view socialist internationalism as a geopolitical justification for uses of force. However, I contend that the socialist perception of the role of individual states in the bloc mirrors the Marxist understanding of the role of individuals in society. In fact, socialist internationalism represents an effort by the Soviets to introduce certain norms applied domestically to Soviet citizens into the realm of international relations between socialist states. Part II traces these norms to Soviet law treatment of individuals and to the Marxist precepts that inform that law.

28. Tunkin outlines the tenets of this doctrine as follows:

The principle of socialist internationalism is a very broad principle, meaning above all close cooperation and fraternal mutual assistance of socialist States. At the same time this principle requires that co-operation among socialist States be developed on the basis of principles of respect for sovereignty, equality, non-interference in internal affairs and mutual benefit.

Tunkin, supra note 5, at 107.

29. Id. at 24.


32. The model of intervention advanced by socialist internationalism differs substantially from the justifications typically presented by Western countries in that it imports, from outside the U.N. Charter, the norms by which it legitimates intervention. For example, Soviet statements defending the use of force in Czechoslovakia justified the action as a response to "the threat which has arisen to the socialist system in Czechoslovakia, and to the statehood established by the [Czechoslovakian Socialist] Constitution." Tass Statement on Military Intervention, 7 I.L.M. 1283 (1968). The Brezhnev Doctrine, the theoretical justification for the Soviet invasion of Czechoslovakia, dismisses self-determination as too laden with class prejudice to serve as a useful norm in this situation: "The formal observance of freedom of self-determination in the specific situation that had taken shape in Czechoslovakia would signify freedom of 'self-determination' not for the people's masses and the working people, but for their enemies." Kovalev, Sovereignty and the International Obligations of Socialist Countries, Pravda, Sept. 26, 1968, trans. in 20 CDSP, No. 39, at 11. Paradoxically, Kovalev described the invasion of Czechoslovakia as enhancing self-determination by allowing the Czechoslovak people to decide their destiny "without intimidation by counterrevolutionaries, without revisionist and nationalist demagoguery." Id.
II. The Socialist Domestic Analogy

In the absence of international law, relations between sovereign states would be anarchic; since uses of force would be unregulated, states would have "an unqualified prerogative . . . to resort to war." In contrast to this model, in which states unilaterally evaluate the need for and legality of force, the traditional system of international law is based on a domestic analogy which demands that uses of force between states strictly conform to rules of law. In domestic society, the government reserves for itself a monopoly on the use of violence; in the absence of a supranational authority, international law relies on states to monitor legal obligations and impose sanctions against other nations, if necessary through uses of force. Under the domestic analogy, a use of force is legitimate only if it enforces an internationally accepted legal right.

Apart from the self-evident appeal of transposing the tranquility associated with a community ruled by law to the sphere of interstate relations, the domestic analogy also draws strength from the historical memory in Europe of the "theoretical imperium of Pope and Emperor and the actual imperium of Rome." Consciousness of these ambitious systems of order together with the shadow cast by subsequent periods of discord culminating in World War I led many in the 20th century to adopt a model of international law organized around the domestic analogy.

In his book Just and Unjust Wars, political theorist Michael Walzer outlines a code of morality for nations considering war and details rules for conducting war justly. His "legalist paradigm" serves as a useful point of departure because it attempts to bridge the philosophical heritage of the Grotian just war theory to the fundamental concerns of contemporary Western international law for state sovereignty. The

34. According to Francisco de Vitoria, "There is a single and only just cause for commencing a war, namely, a wrong received." F. VITORIA, ON THE LAW OF WAR (J. Pawley trans. 1917), quoted in M. WALZER, JUST AND UNJUST WARS 62 (1977). "A 'legitimate' use of violence, then, is one in which the act has been authorized as a means of securing or enforcing a legal right." Kahn, From Nuremberg to the Hague: The United States Position in Nicaragua v. United States and the Development of International Law, 12 YALE J. INT'L L. 1, 32 (1987).
35. Bull, supra note 33, at 37.
36. M. WALZER, supra note 34, at 127-224.
37. In Grotius' conception of international society, all interstate uses of force are considered unjust unless undertaken to enforce a legal right. Although the make-up of these rights has changed since Grotius' time, see Bull, The Grotian Conception of International Society, in DIPLOMATIC INVESTIGATIONS, supra note 33, at 55, Grotius' central contribution remains widely accepted: violence can serve as a mechanism to enforce established legal rights, but it is illegitimate to use force to alter the legal regime itself. Id. at 54-55.
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paradigm’s essential idea—that “if states actually do possess rights more or less as individuals do, then it is possible to imagine a society among them more or less like the society of individuals”\textsuperscript{38}—assumes that individuals are naturally endowed with a set of inalienable rights. When the domestic analogy replaces individuals with states, Walzer specifies sovereignty and territorial integrity as the most critical rights of states. These concerns, a central feature of 20th century international law’s quest to outlaw the use of force, form the basis of the legalist paradigm:

1. There exists an international society of independent states. . . . 2. . . . This international society has a law that establishes the rights of its members—above all . . . territorial integrity and political sovereignty. . . . 3. . . . Any use of force or imminent use or imminent threat of force by one state against the political sovereignty or territorial integrity of another constitutes aggression and is a criminal act. . . . 5. . . . Nothing but aggression can justify war.\textsuperscript{39}

Thus Walzer’s paradigm uses a natural law-based civil order and the domestic analogy to postulate an international society that upholds the rights of territorial integrity and political sovereignty. But what if the domestic analogue upon which one bases a conception of international law is founded on something other than natural law? I argue that although a faithful analogue of Soviet domestic law, socialist internationalism differs from the Western domestic analogy. The Soviet conception of law does not derive from natural law but is instead guided by a Marxist \textit{weltanschauung} that makes rights contingent on their contribution to society’s development. If, as Walzer writes, “[t]he comparison of international to civil order is crucial to the theory of aggression,”\textsuperscript{40} then an analysis of the Soviet domestic order ought to signal that its notions of individual rights and, by implication, state sovereignty and uses of force are likely to diverge from the prevailing Western models.

A. The Marxist Foundation of Soviet Ethics

The fundamental differences between Marxist and Western conceptions of legal rights concern how they view the relationship of their societies to time and how they conceive of the interplay between individual and collective interests. The Western schema views individuals as endowed with rights inviolable by other people or the government through all time. John Locke writes:

The state of nature has a law of nature to govern it, which obliges everyone; and reason, which is that law, teaches all mankind who will but consult it

\textsuperscript{38} M. Walzer, \textit{supra} note 34, at 58.
\textsuperscript{39} Id. at 61-62 (emphasis in original).
\textsuperscript{40} Id. at 58.
that, being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions.\textsuperscript{41}

Proponents of a natural law basis for government demarcate a line dividing individual and collective interests. John Stuart Mill notes, “There is a sphere of action in which society, as distinguished from the individual, has, if any, only an indirect interest.”\textsuperscript{42}

In the Marxist view, the continual changes in the material forces of production perpetually change man and his needs.\textsuperscript{43} Marxist and Soviet theories reject the notion of natural law, and instead affirm that human rights derive

not from the “nature” of man but from the position of an individual in the society and, above all, in the process of public production. It proceeds from the premise that social opportunities and rights are not inherent in the nature of man and do not constitute some sort of natural attributes.\textsuperscript{44}

Although men are not vested with natural rights, Marx argues that man’s existence as an “object-creating being”\textsuperscript{45} dictates man’s social character. According to Marx,

The social character is the universal character of the whole movement; as society itself produces man as man, so it is produced by him. . . . The human significance of nature only exists for social man, because only in this case is nature a bond with other men, the basis of his existence for others and of their existence for him. Only then is nature the basis of his own human experience and a vital element of human reality.\textsuperscript{46}

Hence human nature dictates that men are universally dependent upon one another; there is, however, no natural law that protects an individual’s private interests with respect to the collective. In fact, under the Marxist conception, collectives embody the interests of all their members

\textsuperscript{41} J. Locke, The Second Treatise on Government para. 5, at 6 (Peardon ed. 1986).
\textsuperscript{42} J. Mill, On Liberty 15-16 (C. Shields ed. 1956). Marcuse maintains that property rights are inseparable from the right to privacy:

[F]reedom, according to the Western conception, is a function of privacy, and privacy is linked to property—as the institution through which the person is legally constituted as having a realm of his own. Freedom of thought and conscience requires freedom from interference with matters which belong to the individual and not to the state and society.


\textsuperscript{43} In pre-communist society, for example, religion arises in response to man’s need for spiritual identification in light of his imperfect understanding. See Marx, The German Ideology, in The Marx-Engels Reader, supra note 15, at 154-55. And during the capitalist epoch, man’s need for money as a means to survival is wholly contingent upon the exchange relations specific to that historical phase. See K. Marx, Early Writings 168 (T. Bottomore trans. 1963).

\textsuperscript{44} Kartashkin, The Socialist Countries and Human Rights, in 2 The International Dimensions of Human Rights 631 (K. Vasek ed. 1982).

\textsuperscript{45} S. Avineri, The Social and Political Thought of Karl Marx 86 (1969).

\textsuperscript{46} K. Marx, supra note 43, at 157 (emphasis in original).
and the perceived dichotomy between the group and the individual ceases to exist.\textsuperscript{47}

This attempt to transcend the barrier between public and private realms eliminates such natural law rights as the right to hold property. Marx's rhetorical antipathy to private property\textsuperscript{48} has a firm basis in his theory of history, which views the advent of private property as one aspect of man's alienation from his labor-power and the collective.\textsuperscript{49} The "positive abolition of private property" accompanying the socialist revolution thus represents the "return of man himself as a social, i.e. really human, being."\textsuperscript{50} Thus the appropriation of property and the limitations on other individual freedoms are, in their original formulation by Marx, not part of a political strategy but the liberating consequences of historical development.

Marx views historical progress—culminating in communism—as the precondition for man to realize his nature as a social being. As the moving force of historical progress, man is characterized by the "principle of motion ... the essential power of man striving energetically for its object."\textsuperscript{51} As individuals and societies advance through time, they encounter unique conditions at every step; a rigid, static legal system blind to the laws of history would only impede social progress. Conscious of this, the Soviet legal system evolved with a dual purpose: to facilitate dispute resolution and the orderly functioning of society on the one hand and to realize the community's historical destiny to build communism on the other. The Preamble to the Soviet Constitution expresses the Soviet state's teleological self-perception: "The supreme goal of the Soviet State is the building of a classless communist society in which public communist self-government will receive development."\textsuperscript{52} The state's role as

\textsuperscript{47} "It is above all necessary to avoid postulating 'society' once again as an obstruction confronting the individual. The individual is the social being." \textit{Id.} at 158.


\textsuperscript{49} K. Marx, \textit{supra} note 43, at 133-34.

\textsuperscript{50} \textit{Id.} at 155. Earlier, Jean-Jacques Rousseau had also expressed the idea that unfettered use of property was not in society's best interests: "[T]he right of any individual over his own estate is always subordinate to the right of the community over everything; for without this there would be neither strength in the social bond nor effective force in the exercise of sovereignty." J. Rousseau, \textit{The Social Contract} 68 (M. Cranston trans. 1968).

\textsuperscript{51} \textit{Quoted in} E. Fromm, \textit{Marx's Concept of Man} 30 (1971) (quoting Karl Marx).

\textsuperscript{52} Konst. SSSR preamble (emphasis in original). The transcendental goals of state socialism contrast sharply with the classic natural law role of government as enunciated by the French National Assembly in 1789: "The end of all political associations is the preservation of the natural and imprescriptible rights of man; and these rights are liberty, property, security, and resistance of oppression." \textit{Quoted in} T. Paine, \textit{Rights of Man} 132 (H. Collins ed. 1969) (emphasis in original).
catalyst for historical progress rather than guardian of natural rights gives the Soviet state a unique sense of mission and subordinates law (in the reactive, Western sense) to the needs of the mission (law writ large). More concretely, Soviet law must be flexible enough to accommodate the changing needs of the community. Soviet ethics and the Soviet conception of justice provide insight into the legal doctrines governing individual rights in the U.S.S.R.

Although Marx proclaimed his theory of history to be ethically neutral, it is in fact inherently biased toward accommodating "historical progress": the dénouement of the class struggle is implicitly regarded as the morally preferable outcome. This immanent morality relates exclusively to the end goals of the class struggle; in the interim, the rejection of natural law rights governs. This denial of inherent rights exposes society to potentially harmful methods of achieving the desired ends: "Marxism has an inspiring moral vision, but no developed theory of moral constraints, of what means are permissible in the pursuit of its ends."  

B. The Soviet Legal System—Domestic and International

1. Individual Rights Under Soviet Law

The Soviets have clearly sought to create a code of ethics that legitimates socialist objectives and the peculiar means the Soviet Union has adopted in pursuit of them. Law serves as a potent force in seeking

53. Hannah Arendt writes: The tremendous intellectual change which took place in the middle of the last century consisted in the refusal to view or accept anything "as it is" and in the consistent interpretation of everything as being only a stage of some further development. Whether the driving force of this development was called nature or history is relatively secondary. In these ideologies the term "law" itself changed its meaning: from expressing the framework of stability within which human actions and motions can take place, it became the expression of the motion itself.


56. Lenin stated the essence of Soviet morality as follows: "[M]orality is what serves to destroy the old exploiting society and to unite all the working people around the proletariat, which is building up a new, a communist society." Speech at 3rd Komsomol Congress, 1920, quoted in Petscher, ethics, in id. at 154. Marcuse terms this "the instrumentalization of Soviet ethics." H. MARCUSE, supra note 42, at 198. "[T]hroughout all changes to which Soviet ethical theories have been subjected since the Bolshevik Revolution, they have been governed by one unifying principle, namely, the formulation and evaluation of ethical standards in accordance with the objectives of the Soviet state." Id. at 181.
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describes as an activist state, which uses the administration of justice to implement policy. A reactive state, on the other hand, uses the justice system primarily to resolve disputes between its citizens. The activist characteristics of the Soviet justice system manifest themselves in substantive criminal laws that subordinate individual rights to state interests and in procedural regulations that grant tremendous judicial discretion to such officials as the state procurator.

The Soviets justify the apparent denial of individual rights by assuming that the socialist state reflects the true interests of society, even if it conflicts with the perceived interests of its individual members. This reasoning follows from the proposition that the Soviet state is not founded on a ruling class distinct socially or economically from the population at large; since the Soviet state is "a state of all the people," it is able to resolve conflicts between individual and collective interests and ultimately succeed—as Marx predicted—in rendering the private-public duality obsolete.

In balancing individual rights with the interests of the collective, which are assumed to be perfectly represented by the state, political rights are always qualified by collective goals in Soviet law. The Soviet definition of crime is itself laden with the primacy of state interests:

A socially dangerous act (an action or omission to act) infringing the Soviet social or state system, socialist system of the economy, socialist ownership, the person, political, labor, property, and other rights of citizens, and also any other socially dangerous act infringing the socialist legal order which is provided for by a criminal law, shall be deemed a crime.

Similarly, the Constitution's protection of free speech does not insulate a Soviet citizen from criminal prosecution for utterances inconsistent with state interests. Article 50 reads, "In accordance with the people's interests

57. In the legal process of the reactive state, decisions are justified more in terms of the fairness of procedures employed than the accuracy of results obtained. In contrast, procedural rules and regulations in an activist state occupy a much less important and independent position: procedure is basically a handmaiden of substantive law. If the purpose of the legal process is to realize state policy in contingent cases, decisions are legitimized primarily in terms of the correct outcomes they embody.


58. Damaška summarizes different types of justice systems as follows: "Where government is conceived as a manager, the administration of justice appears to be devoted to fulfillment of state programs and implementation of state policies. In contrast, where government merely maintains the social equilibrium, the administration of justice tends to be associated with conflict resolution." Id. at 11.

59. KONST. SSSR art. 1.

60. Id. preamble.

and for the purpose of strengthening and developing the socialist system, USSR citizens are guaranteed freedom of speech, of the press, of assembly, of mass meetings, and of street processions and demonstrations.”

These examples demonstrate the dual role of law in a society advancing toward communism: it strives to insure order while allowing political leaders flexibility in promoting historical progress. Referring to the Soviet Constitution, Robert Sharlet writes, “The result is a Soviet-style Rechtsstaat, a legal framework through which the party can govern its vast domain without irrevocably limiting its ultimate power of action.”

The Soviet concept of justice emphasizes substantive results more than strict adherence to rules of procedure. As a consequence, the legal structure, combining flexible procedural rules with broad statutes protecting state interests, magnifies the discretionary powers of the administrators of justice. The rules invest great authority in state procurators, formally charged with the duty to “enforce legality and exercise supervision.”

The procuracy constitutes an effective way for the Soviet administration of justice to protect state interests and further the policy objectives of the Communist Party. The state procurators hold the power to initiate and terminate criminal proceedings, to conduct preliminary investigations independent of defense counsel, to issue arrest warrants, and to determine the legality of administrative detention and judge appeals of detainees. With these powers of investigation, preliminary guilt determination, and prosecution, the procurator is “the single most important official operating within the Soviet criminal justice system.”

62. Konst. SSSR art. 50 (emphasis added); see also id. art. 51: “In accordance with the goals of communist construction, USSR citizens have the right to unite in public organizations that facilitate the development of political activeness and initiative and the satisfaction of their diverse interests.” (Emphasis added). In a socialist society, Kartashkin writes, the freedom of the individual is understood as freedom of man in a society, State, collectivity, and not as freedom from them. Man lives in a certain collectivity, and he cannot be fully independent of it. Therefore, everyone should compare his behavior with the interests and requirements of the whole society.


64. W. Butler, supra note 13, at 161.

65. Although Damaška maintains that every system of justice executes both policy-implementation and conflict resolution functions, “in pronouncedly managerial states such as China or the Soviet Union, one should expect a heavy layer of policy implementing characteristics in all spheres of the administration of justice.” M. Damaška, supra note 57, at 12.


67. Id. art. 28.

68. Id. art. 24(11).

69. Id. art. 45.

procurators are well-positioned to advance state interests of policy implementation at the expense of individual rights in legal proceedings.

Since the administration of justice serves to promote state interests, the Communist Party influences the process of justice in both formal and informal ways. Formally, the Constitution declares that “[t]he Communist Party of the Soviet Union is the leading and guiding force of Soviet society, the nucleus of its political system and of state and public organizations.” Informally, administrators of justice are frequently members of the Party; ninety percent of all procurators, for example, are Party members. In addition to Party membership, which requires little active participation, procurators frequently have experience working as full-time salaried employees in the Party apparat in Moscow. The legal and informal connections linking the Party, the state, and the procuracy assure that the political leadership can manipulate the administration of justice to achieve its desired results.

The Soviet Union's alignment of state power against the individual often results in the denial of human rights. The organs of justice have consistently adopted a broad interpretation of state interests and used it as the justification for prosecuting countless political opponents. Discussing freedom of expression in the Soviet Union, Amnesty International concludes that “virtually any unauthorized criticism of official actions or policy may lead to imprisonment.” Thus, individual rights in the Soviet Union are circumscribed by a combination of procedural

71. Konst. SSSR art. 6.
73. George Ginsburgs describes the juridical division of labor as follows: “Thus, a combination is improvised with the courts ostensibly protecting the individual's rights, while the procuracy as the Party's privy councillor stands ever ready to steer the inquiries into the proper channels by nominally legal means in compliance with its patron's will.” Ginsburgs, The Political Undercurrents of the Legal Debate, 15 UCLA L. Rev. 1226, 1229 (1968). Damaška writes that in activist politics, “[i]t follows that state adjudicators must also be committed to the state: an umpire's indifference toward governmental policies is out of place, even reprehensible.” M. Damaška, supra note 57, at 72.
74. The most widely accepted codification of human rights is the Universal Declaration of Human Rights, Dec. 10, 1948, G.A. Res. 217A, 3 U.N. GAOR, U.N. Doc. A/810 (1948), reprinted in Human Rights: A Compilation of International Instruments 1, U.N. Doc. ST/HR/I/Rev. 2 (1983). For an examination of the Soviet Union's violation of the Declaration's article 9 right not to be subjected to arbitrary arrest or detention, see AMNESTY INTERNATIONAL, Prisoners of Conscience in the U.S.S.R. 65 (1980); for violation of the article 10 right to a fair and public hearing by an independent and impartial tribunal, see Ginsburgs, supra note 73; for violation of the article 18 right to freedom of religion, see AMNESTY INTERNATIONAL, supra, at 42; for violation of the article 19 right to freedom of expression, see id. at 9-10; for violation of the article 20 right to freedom of association, see id. at 19-20.
75. AMNESTY INTERNATIONAL, supra note 74, at 14 (1980).
and substantive factors including the instrumental character of Soviet ethics and the activist impulses of the justice system.\textsuperscript{76}

2. State Rights Under Socialist Internationalism

In theory, and especially in practice, Soviet international law reflects its domestic counterpart in the subordination of the perceived interests of constituent members to the collective interests of the socialist system as interpreted by the Communist Party of the Soviet Union (CPSU). In both Soviet domestic and international law, the laws of class struggle and the advance of socialism assume priority over respect for rights that may impede or reverse historical progress. The Brezhnev Doctrine itself highlights the similarities between socialist internationalism and the aspects of Soviet domestic law reviewed above. Kovalev, in the text that became known as the Brezhnev Doctrine, refutes bourgeois criticisms of socialist internationalism as overly formal and "untenable primarily because they are based on an abstract, nonclass, approach to the question of sovereignty and the right of nations to self-determination."\textsuperscript{77} In pursuing socialist internationalism's theoretical goal of compliance with the "common natural laws of socialist construction,"\textsuperscript{78} the substantive goal of protecting socialism justifies the abridgement of lesser rights such as sovereignty.

The assumption of a unity of interests between the individual and the collective provides another similarity between Soviet justification for international intervention and Soviet municipal law. Theoretically, a unity of interests prevails within the socialist commonwealth, which renders the distinction between national and international interests irrelevant.\textsuperscript{79} From this point of view, "intervention" in Czechoslovakia was a united effort by fraternal socialist countries to defeat anti-socialist forces.\textsuperscript{80} Just as a socialist state embodies the will of all its members, thereby preempting the possibility of conflicts between citizen and state, the socialist commonwealth does not deviate from the collective interest of its members.

\textsuperscript{76} Harold Berman suggests that traditional Russian attitudes toward law, and not the influence of Marxism, may explain the Soviet system's subordination of individual rights to collective interests. He claims that the doctrines of the Russian Orthodox church are partly responsible for this attitude: "Soviet conceptions of crime and the criminal have deep roots in the Russian orthodox conception of the corporate character of sin. . . . Such a conception has nonlegal and even antilegal implications." H. BERMAN, JUSTICE IN THE USSR 248 (1963).

\textsuperscript{77} Kovalev, \textit{supra} note 28, at 10.

\textsuperscript{78} Brezhnev, \textit{Address to the Polish United Workers' Party}, Pravda, Nov. 13, 1968, 20 CDSP No. 46, at 4.

\textsuperscript{79} "The Sovereignty of individual socialist countries cannot be counterposed to the interests of world socialism and the world revolutionary movement." Kovalev, \textit{supra} note 28, at 11.

\textsuperscript{80} \textit{Id.} at 11-12.
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The leadership role played by the CPSU is a third element that social-
ist internationalism shares with the Soviet domestic legal system. Do-
merically, the Party's role has a constitutional sanction which it
reinforces by placing its members at strategic points in the judicial sys-

The Soviet Union's role as leader of the socialist commonwealth, however, is not accorded the same legitimacy that the CPSU enjoys at

home despite attempts by the Soviets to formalize their leadership status at conferences of socialist countries. In practice, though, there is no
doubt that within the socialist commonwealth the CPSU has the preroga-
tive to pass judgment on questions requiring the application of socialist

internationalism and the power to impose sanctions to enforce its
decisions.

Beginning with the proposition that the international norms governing intervention have a basis in domestic laws regulating individual rights, I
have tried to trace the doctrine of socialist internationalism back to So-
viet domestic law and Marxist ethics. Viewed from this perspective, the
rules of socialist international law can be explained by the dual role of
Soviet law as a social stabilizer and a tool for policy implementation.

Just as Soviet domestic law resembles its Western counterparts in many

matters relevant to governing a society, the Soviets recognize peaceful
coeexistence as functional international law governing relations between
socialist and non-socialist states, while paying rhetorical homage to con-
tinuing the conflict through non-violent means. However, in the Soviet
view, peaceful coexistence must not interfere with obedience to the
Marxist laws of history which legitimate Soviet rule and define its mis-

sion, including the goal of socialist internationalism.

The domestic analogy thus does not lead to a conclusive judgment re-
garding the propriety of intervention in international law. The Walzer-
natural law model starts from the assumption that individuals have ina-

lienable rights from which states derive rights, including the right to

81. Given the word's associations with the British Commonwealth, which was character-
ized by the strong leadership of one state, Soviet use of "commonwealth" for this group of
countries is ironic.

82. The 1957 Declaration of the Twelve Communist Parties in Power described the Soviet
Union as "the first and mightiest socialist power" and the bloc as a whole is called the "indivis-
ible camp of Socialist countries headed by the Soviet Union." Declaration of the Twelve Com-
munist Parties in Power, Nov. 1957, reprinted in THE NEW COMMUNIST MANIFESTO 169,

174, 173 (D. Jacobs ed. 1962). The Bratislava Statement, a communiqué issued by six mem-
bers of the Warsaw Pact two weeks before the Soviet invasion of Czechoslovakia, is less force-
ful, merely singling out the Soviet Union for achieving "especially great successes in the
construction of socialism and communism." Conference of Central Committee of Communist
and Workers' Parties of Bulgaria, Czechoslovakia, G.D.R., Hungary, Poland, and U.S.S.R.,
Aug. 3, 1968, reprinted in 7 I.L.M. 1280 (1968) [hereinafter Bratislava Statement]. This in-
dicates that the Soviet Union has significant influence in determining the "legislative" pro-
nouncements made by socialist international organizations.
sovereignty. In contrast, the Soviet-Marxist model couples "instrumentalist ethics" with a rejection of natural law to produce a system of domestic law that freely subordinates individual rights to the collective goal of historical progress. Consciously or not, this framework for rights has been appropriated by Soviet international law, under which the right of state sovereignty ends where the interests of world socialism begin.

The Soviet example suggests that the intuitive appeal of Walzer's legalist paradigm depends more on a presumption of shared values based on natural law than on the logic of the domestic analogy. As transposed by the domestic analogy to the level of inter-state law, the doctrine of socialist internationalism is entirely consistent with Soviet ethics and domestic law even as it conflicts with the professed international law goal of protecting state sovereignty. Thus, Soviet interventions in Czechoslovakia and Hungary had a theoretical basis logically, though not morally, explicable by reference to Soviet domestic law and principles of Marxism.

III. "New Thinking" and Socialist Internationalism

This section analyzes recent developments in Soviet foreign policy and Soviet international law scholarship for indications of a change in Soviet behavior or a resolution of the legal conflicts between socialist internationalism and current standards of Western international law regarding the use of force as embodied in the U.N. Charter. In the past, the Soviets defended socialist internationalism as constituting a legitimate sub-system of general international law. Recent statements by General

83. See supra notes 54-56 and accompanying text.
84. The application of these principles to the international arena runs counter to Western international law, which in this century has sought to ban uses of force by strengthening respect for state sovereignty.
85. The U.N. Charter is an appropriate standard against which to evaluate socialist internationalism's justification for using force since the Charter attempts to codify the natural law norms, which are the basis of the legalist paradigm, by divorcing uses of force from ideological objectives. As Professor Kahn notes, "The Charter was founded on the historically new idea that ideology could no longer safely employ violence, that future ideological battles must be fought with other weapons." Kahn, supra note 34, at 60. Although this new conception has not resulted in the actual elimination of uses of force for ideological purposes, it has delegitimized them to the extent that states have consistently tried to portray uses of force as being in accord with the spirit of the U.N. Charter. At worst, one could dismiss these often tortured justifications as vice cynically paying tribute to virtue through hypocrisy; at best, state actions of questionable legality and subsequent illogical justifications could be optimistically regarded as sincere misapplications and misinterpretations of laws still in their infancy that lack competent institutions of interpretation and enforcement. The actual influence of international law on state uses of force probably fluctuates between these views. Even at the cynical end of the spectrum, law's veneer—however thin or cracked—does cover state actions. Although not observed scrupulously, the Charter's rules governing the use of force have been approved by all Member states and, at a minimum, a stigma of criminality attaches to states that would violate them. See Schacter, The Right of States to Use Armed Force, 82 Mich. L. Rev. 1620, 1646 (1984).
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Secretary Gorbachev and Soviet international law jurists, however, imply that the Soviet Union's pluralist conception of international law (which divides international law into norms of peaceful coexistence and socialist internationalism) may yield to a single set of norms based upon the U.N. Charter that will govern the Soviet Union's relations with both capitalist and socialist countries.

The traditional Soviet model of intervention, in stark contrast to the U.N. Charter's prohibition on uses of force, condones intervention as a means of defending the gains of socialism. The Soviet model challenges accepted Western standards of state sovereignty in that it values community uniformity over individual autonomy. In the absence of U.N.

86. A tension between the sovereign state system and competing objectives of international society exists within Western international law as well. Most importantly, the aspirations of achieving self-determination and human rights everywhere in the world have been advanced as justifying uses of force at the expense of state sovereignty. The human rights challenge denies a priori respect for sovereignty because sovereignty sanctions abuses of human rights by illegitimate regimes. Luban writes that "the concept of sovereignty is morally flaccid, not because it applies to illegitimate regimes, but because it is insensitive to the entire dimension of legitimacy." Luban, Just War and Human Rights, in International Ethics 195, 201 (1985). He adds, "The violence of modern nationalism and its indifference to basic human rights arises, I believe, from the conviction that the only right which matters politically is the right to a unified nation state." Luban, The Romance of the Nation-State, in id. at 239. This evolutionary trend in Western international law, grounded in concern for human rights, rejects the rigid use of the domestic analogy in favor of a pragmatic application of natural law rights directly to people rather than to states allegedly responsible for human rights. This model thus sets a much lower threshold for legitimate intervention for the protection of human rights than Walzer's legalist paradigm.

Yet another Western justification advanced to legitimize intervention is the pursuit of civil or political rights, most notably the right of self-determination. "Though all interventions are lamentable," Reisman writes, "the fact is that some may serve, in terms of aggregate consequences, to increase the probability of the free choice of peoples about their government and political structure." Reisman, Article 2(4): The Use of Force in Contemporary International Law, in Am. Soc'y of Int'l Law: Proceedings 74, 85 (1984). This doctrine would raise the status of desirable political norms like self-determination to a level above state sovereignty, and is one of the more radical calls for using international law to pursue goals of justice at the expense of international stability. As such, it has aroused considerable criticism and little consent. See Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), 1986 I.C.J. 409 (Judgment of June 27, 1986) (Schwebel, J., dissenting; emphasis in original) at para. 180.

In contemporary international law, the right of self determination, freedom and independence of peoples is universally recognized; the right of peoples to struggle to achieve these ends is universally accepted; but what is not universally recognized and what is not universally accepted is any right of such peoples to foreign assistance or support which constitutes intervention.

In contrast to the human rights challenge, Walzer's legalist paradigm, with some exceptions, see, e.g., M. Walzer, supra note 34, at 85, 90, 108, 121, links human rights with state sovereignty. States, he argues, are the best arenas for people to realize human and political rights and sovereignty should be zealously protected accordingly. Walzer notes, "We need to establish a kind of a priori respect for state boundaries; they are... the only boundaries communities ever have." Id. at 85, 90. Walzer does, however, allow for some uses of force against states to remedy a situation in which the illegitimacy of the government is "radically apparent." In Walzer's view, interventions are justified to the extent that they restore "communal
principles legitimating intervention to fulfill duties of fraternal assistance, the Soviets have traditionally claimed that legal relations between socialist countries form an independent system of international law based on progressive class relations. Fourteen years ago, Tunkin noted, "To assert that relations between socialist countries should be regulated only by principles of general international law is to deny the different class character of relations between the countries of socialism, to be derailed from party principle into the morass of bourgeois normativism." \(^8^7\)

The Soviet Union justified the use of force against the sovereignty of Hungary and Czechoslovakia by pointing to socialist internationalism's doctrine of fraternal mutual assistance. The two major conventional agreements organizing the socialist countries of Eastern Europe, the Warsaw Pact and the Charter of the Council for Mutual Economic Assistance (CMEA), both prominently incorporate declarations of allegiance to the principles of socialist internationalism, mentioning fraternal assistance in each case. Through these multilateral treaties, the Soviets claim to have created their own sub-system of international law; thus, according to the maxim *lex specialis derogat legis generalis*, relations between socialist states are governed primarily by socialist internationalism rather than general international law. \(^8^8\)

The Soviet claim, however, cannot sustain itself in light of the Soviet commitment to the U.N. system. That commitment includes the following pledge: "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail." \(^8^9\) Combining this international supremacy clause with Article 2(4) effectively prohibits all uses of force inconsistent with the principles of the United Nations. Thus, the Soviet pledge at Bratislava to participate in obligations to defend the gains of socialism\(^9^0\) cannot legally be carried out through the use of force.

General Secretary Gorbachev's "new thinking" in foreign policy,\(^9^1\) some of which has influenced Soviet international law doctrine, is autonomy" because states protect the "conceptions of life and liberty that underlie the [legalist] paradigm and make it plausible." *Id.* at 86.

89. U.N. CHARTER art. 103.
91. *See* Gorbachev, *October and Restructuring: The Revolution Continues*, Pravda, Nov. 3, 1987, 39 CDSP, No. 45, at 16. Gorbachev defines his new approach to foreign policy primarily as a new process of looking at the world rather than as a static set of answers to international problems. M. GORBACHEV, PERESTROIKA 151 (1987) ("We do not consider new thinking as something fixed once and for all."). In addition to encouraging international
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designed to repudiate certain elements of the Brezhnev Doctrine, including the requirement that all socialist countries follow the same path of economic and political development. Gorbachev's policies raise interesting questions about the future of socialist internationalism as the operative set of norms governing relations among socialist countries. The Soviet Union's rejection of natural law and the socialist domestic analogy underlying socialist internationalism, however, suggest that socialist internationalism will not fade away rapidly.

The most visible intimation of a change in the Soviet doctrine of socialist internationalism appeared in Gorbachev's November 1987 speech to the Central Committee honoring the 70th anniversary of the Russian Revolution. In an extended discussion of relations among socialist countries, Gorbachev emphasized the principle of sovereign equality and actually suggested a convergence between the doctrines of peaceful coexistence and socialist internationalism:

Accumulated experience makes it possible to do a better job of building relations among socialist countries on generally recognized principles. These principles include unconditional and complete equality. They include the responsibility of the ruling party for affairs in its state, and patriotic service to its people. They include respect for one another, a serious attitude toward what has been achieved and tested by one's friends, and voluntary, diversified cooperation. They include strict observance of all the principles of peaceful coexistence. The practice of socialist internationalism is grounded in these principles.

If the Soviets in fact intend to adhere to the principles of peaceful coexistence rather than socialist internationalism in relations with socialist cooperation through the United Nations, Gorbachev has also stressed the common destinies of Eastern and Western Europe through the concept of the "common European house." In U.S.-Soviet relations, Gorbachev has altered the policies of his predecessors by underscoring the mutual interdependence of American and Soviet security concerns. "We can never be secure so long as the United States feels itself insecure." Shulman, *The Superpowers: Dance of the Dinosaurs*, 66 FOREIGN AFF. 494, 502 (1988) (quoting Gorbachev).

92. In 1968, Brezhnev declared that the fraternal socialist countries must follow a uniform path to development: "[I]t is well known comrades that there are common natural laws of socialist construction, deviation from which could lead to deviation from socialism as such." Brezhnev, *Address to Polish United Workers Party*, Pravda, Nov. 13, 1968, 22 CDSP, No. 46, at 4.

93. Gorbachev, *supra* note 91.

94. Although socialist internationalism includes the rights of sovereignty and equality, the Soviet Union traditionally treats these norms as subordinate to the interests of the socialist movement. See *supra* notes 77-82 and accompanying text. Gorbachev hints at a change in the Soviet attitude by stressing the diversity within the socialist movement: "We have become convinced that unity does not at all mean identity and uniformity. We have also become convinced that socialism does not and cannot have any 'model' that everyone must measure up to." Gorbachev, *supra* note 91, at 16.

95. *Id.*
states, this implies a renunciation of fraternal assistance, the doctrine by which the Soviets have justified intervention in Eastern Europe. Such a Soviet reorientation to peaceful coexistence would indicate the end of the socialist domestic analogy since peaceful coexistence is not designed to protect the socialist system in the same manner as socialist internationalism. Instead, peaceful coexistence is essentially a reiteration of basic U.N. principles like non-use of force, non-interference, and respect for state sovereignty and territorial integrity.\textsuperscript{96} As observed earlier, this doctrine evolved as a means of governing the relations and competition between states with opposed socio-economic systems, as reflected in its calls for deference to the independence of states to determine their form of government. In the realm of international law, Gorbachev’s “new thinking” seeks to elevate peaceful coexistence to a universal norm.\textsuperscript{97} Since the norms of peaceful coexistence and the principles of the U.N. Charter are intimately connected in Soviet international law theory,\textsuperscript{98} the objective of universalizing peaceful coexistence could be interpreted as a change in Soviet attitudes toward the United Nations.\textsuperscript{99}

In fact, Soviet enthusiasm for the United Nations has increased in recent years. In a speech prior to the start of the 42nd session of the U.N. General Assembly, Gorbachev expressed the Soviet objective of strengthening the role of the U.N. Security Council in conformity with chapter VII of the U.N. Charter.\textsuperscript{100} Chapter VII empowers the Security Council to “determine the existence of any threat to the peace, breach of the peace or act of aggression and shall make recommendations, or decide what measures shall be taken ... to maintain or restore international peace and security.”\textsuperscript{101} Perhaps to demonstrate the sincerity of their commitment to the Security Council, the Soviets agreed to pay the United Nations over $200 million in arrears, including unpaid contributions for U.N. peace-keeping operations that the Soviets had previously opposed.\textsuperscript{102} Gorbachev has also signaled a Soviet willingness to accept

\textsuperscript{96} The current definition of peaceful coexistence is unchanged from the doctrine enunciated by Tunkin in the 1970s. In addition to the legal norms mentioned, “[t]he establishment of a world order characterized by good neighborliness and cooperation and not by force, with extensive exchanges of scientific and technological achievements and cultural values for the good of all nations.” Yermoshkin, supra note 26, at 75.

\textsuperscript{97} I. Lukashuk, 70-letie Oktiabria i mezhdunarodnoe pravo, Sov. Gos. & PRAVO, Nov. 1987, at 57, 60.

\textsuperscript{98} See Tunkin, supra note 27.

\textsuperscript{99} Gorbachev has pledged to strengthen the authority of the United Nations, which he described as “a universal mechanism which can ... ensure the collective search for a balance of the interests of all governments.” Gorbachev, supra note 91.

\textsuperscript{100} Gorbachev, Reality and Guarantees for a Secure World, INT’L AFF., Nov. 1987, at 10.

\textsuperscript{101} U.N. CHARTER art. 39.

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the compulsory jurisdiction of the International Court of Justice, provided other members of the Security Council reciprocate. An earnest commitment to these U.N. enforcement mechanisms would require the Soviets to pay greater respect to the U.N. Charter's norms governing the use of force. Stricter Soviet adherence to the U.N. Charter would limit the nation's flexibility under socialist internationalism; the U.N. system is designed to remove decisions on the use of force from individual states, instead making them subject to collective deliberation and action.

In addition to Gorbachev's comments, Soviet international law scholars have devoted considerable attention in the last year to studying the United Nations, including its significance in governing uses of force and its procedural mechanisms for achieving these normative objectives. One author, Movchan, for example, stresses the importance of Article 103, which binds all members of the United Nations to respect their obligations to the Charter above all other commitments. Article 103, Movchan writes, "was given serious attention during the creation of the U.N.; the principles of the U.N. Charter have indeed become immutable juridical rules to which all governments without exception must strictly adhere." Soviet jurists are also exhibiting a new interest in chapter VII and the activist role it designates for the Security Council. Soviet scholar Skakunov has linked Gorbachev's call for greater adherence to U.N. procedural instruments for conflict resolution with the objective of widening the application of the principle of peaceful coexistence.

These Soviet views, supporting the supremacy and universality of the U.N. Charter and by implication its principal role in adjudicating all uses of force, undercut the claim made earlier by Tunkin that socialist internationalism is a legitimate sub-system of international law.

Despite these writings, as well as Gorbachev's comments and the continuing Soviet withdrawal from Afghanistan, it is premature to conclude

103. Gorbachev, supra note 100 at 10.
104. Tunkin, for example, writes that Soviet theorists are unanimous in believing in the binding character of Article 2(4). He notes that the Soviet view on this question is in complete accord with Western scholars such as Henkin. Tunkin, Principe neprimenenii sily v sovremen- 

106. For example, on September 23, 1986, Soviet Foreign Minister Shevardnadze stated: We believe that the United Nations should again take the matter of Middle East settlement into its hands. As a practical step in that direction, the Soviet Union proposes that a preparatory committee be set up within the framework of the Security Council to do the necessary work for convening an international conference on the Middle East. N.Y. Times, Sept. 24, 1986, at A10, col. 1.
107. Skakunov, Bseob"emliuschaia bezopastnost': model' perestroika mezhdunarodnikih 

that the Soviets are in the process of abandoning socialist internationalism in favor of a total commitment to the United Nations. A number of factors counsel a cautious reaction to the evident Soviet revision of socialist internationalism. First, the doctrine still exists in the bilateral and multilateral treaties in force between the Soviet Union and the socialist countries of Eastern Europe. The continuation of agreements like the CMEA and the Warsaw Pact in their present forms implies that the socialist domestic analogy, which determines how the Soviets perceive of and justify the use of force, remains intact. While Gorbachev's policies have fueled hope that Eastern European nations may enjoy greater independence from their fraternal ally, one should question the prospects for change while the legal foundations of the status quo in Eastern Europe remain unaltered.

A second ground for skepticism is that Soviet jurists have not publicly discussed the consequences of applying peaceful coexistence and the U.N. Charter universally, nor have they openly repudiated the elements of socialist internationalism that conflict with peaceful coexistence. In fact, with the exception of Gorbachev's pronouncement—which itself was ambiguous—the scholarly articles on peaceful coexistence and the United Nations have not confronted the issue of how "new thinking" in international law would affect the legal relationships among socialist countries. There may be resistance among Soviet scholars to jettisoning the pluralist conception of international law. Levin, an elder statesman of Soviet international law, in a recent article summarizing the development of Soviet conceptions of international law makes clear that he still regards the principles of socialist internationalism as governing the relations between socialist countries. Skakunov argues that the restructuring (perestroika) of international relations along the lines proposed by Gorbachev has both regional and universal consequences, but he does not specify precisely what these consequences are or how they differ. This questioning by Soviet scholars may indicate that the jury is still out on whether, as Gorbachev claims, socialist internationalism is grounded in the principles of peaceful coexistence or still stands as an independent doctrine.

108. See supra notes 30-31 and accompanying text.
109. See, e.g. N.Y. Times, June 10, 1987, at A7, col. 1, describing a clash between East German youths and police in which the demonstrators chanted "Gorbachev! Gorbachev!" in addition to "The wall must go!"
110. Levin, Razvitie sovetskoj konceptsi po voprosy o sushchnosti mezhdunarodogo prava, SOV. GOS. & PRAVO, June 1986, at 96.
111. Skakunov, supra note 107, at 102, 111.
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A third factor revolves around the Soviet commitment to Marxism, which it professes to be unshakable. As demonstrated above, socialist internationalism has strong ties to Marxist-Soviet ethics. To the extent that one accepts the Soviet Constitution's goal of building communism in the Soviet Union and abroad, the doctrine of socialist internationalism would seem to serve that objective particularly well. In other words, while fraternal assistance is surely an affront to the U.N. principles governing the use of force, the converse is true as well: the U.N. Charter system, with its deference to state sovereignty, contradicts the Marxist idea that nation-states hinder human development. By recognizing the state-centered U.N. norms as the code of conduct in socialist relations, the Soviets would commit the sin of employing "an abstract, non-class approach to questions of sovereignty and self-determination" of which Kovalev accused bourgeois critics twenty years ago.\footnote{112. Kovalev, supra note 28, at 10.}

An examination of the theoretical (and perhaps practical) implications of the choice between peaceful coexistence and socialist internationalism reveals that more is at stake than terminology. If the Soviets decide to conduct all relations on the basis of the Western domestic analogy as embodied in the U.N. Charter and respect the rights of Eastern European countries to evolve independently according to Western definitions of self-determination, they would be revising a code of international law based on the Marxist domestic analogy that justifies intervention in defense of the collective interests of the socialist commonwealth. This would not constitute the first contradiction between Marxist \textit{theoria} and Soviet \textit{praxis}. It is essential for us, as observers of Soviet foreign policy, to consider seriously apparently semantic changes in Soviet international law doctrine because, in the words of Tunkin, "[i]n the process of creating new norms or changing existing norms of international law, every government strives to assure that the new norms will reflect, to the fullest possible extent, the principles of its foreign policy."\footnote{113. Tunkin, supra note 27, at 100.} A change in Soviet international law doctrine regarding the socialist internationalist norms governing relations with Eastern Europe would represent a profound shift in Soviet foreign policy.\footnote{114. See Reisman, \textit{Old Wine in New Bottles: The Reagan and Brezhnev Doctrines in Contemporary International Law and Practice}, 13 \textit{Yale J. Int'l L.} 171, 197-98 (1988).}

Conclusion

I have attempted to examine socialist internationalism by returning to its philosophical antecedents—Soviet domestic law and Marxist theory—
and to review its content using the language and logic that produced it. I do not suggest that the Soviets scrupulously adhere to their own theoretical conception of international law nor that Soviet behavior is any more or less ideologically motivated than that of other countries. My intention is to demonstrate that although Soviet actions often violate Western conceptions of international law, the Soviets look to other, non-Western norms of international conduct. In place of the Western deontological approach to international law in which states have a priori rights, socialist legal theory circumscribes states' rights with the socialist theory of history which embodies the logic of material progress. This worldview promises the ultimate demise of nation states. In practice, this theory predicts the inevitability of a *Pax Sovieticus* in which the lexicon of "commonwealth" will truly apply to the federation of socialist countries. Under this arrangement the legal regime would best be described in constitutional,\(^\text{115}\) rather than international law, terms.\(^\text{116}\) Beyond the evident political and historical factors influencing the rise (and possible fall) of socialist internationalism, the principle of limited sovereignty should be viewed as a compromise that recognizes the resiliency of the nation-state construct and the professed ideological consensus within the socialist bloc regarding the international imperative of abolishing mankind's contrived divisions.

Gorbachev's new foreign policy and recent Soviet international law scholarship suggest that Soviet perceptions of socialist international law are evolving to allow for greater tolerance of diverse strains of socialism. However, if the domestic analogy in fact accurately captures how societies conceive of international law, the Soviet rejection of natural law indicates that protection of socialism may continue to receive a higher priority than state sovereignty. Intervention sanctioned by socialist internationalism has strong roots in Marxist doctrine and in the norms of Soviet domestic law. Thus, while Gorbachev's recent statements, as well

115. V. KUBLKOVA & A. CRUIKSHANK, supra note 10, at 190.
116. In reality, though, the socialist promise of transcending divisive patterns of human behavior, such as nationalism, appears to be as distant now as in 1917. Within the Warsaw Pact, the Soviet Union, and even the Russian Republic, the embers of national chauvinism burn continually and sparks of ethnic hatred periodically ignite. The persistent appeal of nationalism suggests that Marxian theory profoundly misjudged the potential for economic class rather than the "imagined communities" of nation states to constitute the basis of human self-definition. See B. ANDERSON, IMAGINED COMMUNITIES (1983). As Anderson notes, "The reality is quite plain: the 'end of the era of nationalism,' so long prophesied, is not remotely in sight. Indeed, nation-ness is the most universally legitimate value in the political life of our time." *Id.* at 12. Whether or not nations are inevitable by nature, or desirable, as Walzer argues, the state as a political, linguistic, and psychological construct thus far appears impervious to the model of history postulated by Marx. *See id.*; J. TALMON, THE MYTH OF THE NATION AND THE VISION OF REVOLUTION (1981).
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as the writings of Soviet theorists, suggest a new direction in Soviet conceptions of international law, they should not be considered as necessarily leading to a wholesale change in Soviet attitude toward its socialist neighbors. It is too early to determine the extent to which the "new" foreign policy will move away from the Soviet Union's traditional emphasis on socialist internationalism.