

# LAW AND CONTEMPORARY PROBLEMS

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## FOREWORD

On February 28 and 29, 1964, the American Society of International Law and the Association of Student International Law Societies held a joint conference on the subject of this symposium at Duke University. This conference, which was attended by a large number of scholars and public officials, was ably arranged and managed by the Duke International Law Society.<sup>1</sup> All of the contributions appearing below have been originally presented by their authors at that time; they are reproduced here with a minimum of editorial revision. The Editor gladly takes this opportunity to express his gratitude to the Duke International Law Society and its officers and members for the opportunity to publish the papers presented at the conference, and for their competent and untiring work in this connection.

In the immediate wake of the momentous changes brought about on the international scene by the emergence of the Soviet Union and its bloc as one of the two principal actors in a bipolar world (bipolar, that is, because of this emergence), and on the eve of possibly equally momentous changes that could result from a détente or the re-emergence of a polycentric world power pattern, it seems somewhat presumptuous to undertake the assessment suggested by the title of this symposium. And indeed, such an assessment has not been attempted here. The aim, even if two-fold, has been much more modest. The first and foremost concern is the analysis and critique of Soviet legal doctrine and policy in specific areas of international concern, especially peaceful coexistence, international organizations (both regional and world-wide), treaties, nuclear weapons, outer space, and the colonial question. The second focus is on the economic and political consequences of Soviet foreign trade and aid, and on the legal regulation of East-West trade in the United States.

With one conspicuous exception,<sup>2</sup> the contributors on the various topical facets of Soviet international law teaching and practice arrive at negative, and to a varying degree hostile, conclusions as to the Soviet impact on their chosen subjects. The cumulative result would appear to be that while there has, of course, been a Soviet impact on international relations and economics, and some international response to Soviet foreign and economic policy, there has been no specific Soviet impact on international law in the sense of a positive contribution to the shaping of now generally accepted doctrines or rules.

<sup>1</sup>For a brief report of this conference, see Warren, *Southeastern Regional Conference and the Association of Student International Law Societies, Annual Conference, Duke University School of Law, February 28-29, 1964*, 58 AM. J. INT'L L. 744 (1964).

<sup>2</sup>Karpov, *The Soviet Concept of Peaceful Coexistence and Its Implications for International Law*, *infra*, at 858.

Is such a conclusion really justified? Although not new,<sup>3</sup> it is still seemingly based on fragmented and occasional research, suggesting at once the dangers of specialization, language and source limitations, and, to an extent that can hardly be overlooked, individual and environmental predisposition. This is, of course, not the place for an attempt to redress the balance (if, indeed, it needs redressing); and in any event, the task would have to be undertaken by those who, like the contributors to this symposium, have more specialized knowledge and ability than does the Editor. Still, on the basis of some reflection, it is suggested that at least two areas would appear to need additional attention. The first and probably most important is the impact of specific international legal doctrines and policies which, while not Soviet in origin, were championed by the Soviet Union in such a manner that their initial and/or particularly emphatic endorsement by *this* world power accelerated their general acceptance, no matter what the discrepancies between Soviet theory and practice. Subjects that immediately come to mind in this connection are world peace, open treaties, self-determination, collective security, and peaceful coexistence.

A second subject for fruitful research might lie in the more philosophical field: To what extent has historical materialism generally, and Marxism-Leninism in particular, contributed to the theoretical foundations of modern international law? Again, it apparently has to be pointed out to international lawyers as well that "one must never make the fatal mistake in the history of ideas of requiring of a notion that it be 'true,'"<sup>4</sup> and that a pedantic search for self-reversals or contradictions or yawning gaps between professed ideals and actual practice is hardly more fruitful here than a preoccupation with witch-burnings would be for historians of theological dogmata.

It might well be that the essentially negative assessment of the Soviet impact on international law now prevailing among Sovietologists will not ultimately be in need of substantial revision. After all, even historical materialism appears to have been a more effective stimulant outside of the Soviet sphere than within it; Soviet social science has neither assimilated Freud, nor produced an impressive number of convincing historical studies that could serve as the foundation of a radical and reasonably well-founded re-evaluation of the past. Then, Soviet international lawyers should have added incentive to ponder the causes of a monumental lack of rapport. Is the rejection of coexistence in ideology and the insistence on partisanship in science really worth the price that has apparently been paid in the past, and that is seemingly still exacted today? And is it ultimately worthy of a great power to make its marks primarily by way of a response of others to its own challenge, not as a partner who stimulates emulation: by impact, not by cooperation?

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<sup>3</sup> For a typical recent reaction, see Schwebel, *The United Nations and the Challenge of a Changing International Law*, 1963 AM. SOC'Y INT'L L. PROCEEDINGS 83, 87.

<sup>4</sup> Samuelson, *Economists and the History of Ideas*, 52 AM. ECON. REV. 1, 14 (1962). This remark is specifically addressed to Marxism.