

PEACEFUL COEXISTENCE*

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INTRODUCTION

“Peaceful coexistence” deserves provisionally to be examined as a principle or a set of principles of international law: not simply as a description of contemporary international relations, not as an index to a mood or as an expression for something desired, but as something proclaimed to be the basis for contemporary international law and indeed the most important principle within it. Is this a straw man?

A Polish Ambassador to India has written (in 1961) that coexistence is the norm applicable to present-day international relations, that coexistence besides being a concept of international relations becomes also a concept of the law of nations, that the principles of international law applied to contemporary relations are the principles of the conduct of coexistence, and that international law is the law of coexistence. The man who is perhaps the most eminent currently active Soviet scholar of international law, Professor Gregory Tunkin, said in 1958, “A new page in the development of international law constitutes the principle of peaceful coexistence,” and, in 1963, “There is every ground to call present-day international law the law of peaceful coexistence.”

The Committee on Peaceful Coexistence of the Soviet Association of International Law declared in 1962, “The principle of peaceful coexistence is a universally recognized principle of modern international law; . . . whereas international law of the past was a law of war and peace, it has today become a law of peace and peaceful coexistence.” The draft declaration of principles of peaceful coexistence submitted by the Association proposed that the United Nations proclaim that the principle of peaceful coexistence is a fundamental principle of modern international law.

More of the same is at hand; but enough has been cited to show that if there is a man of straw it is not I who set him up. Nor am I undertaking to knock him down. Though Soviet international law remains in large measure a fighting international law rather than a thinking international law, it does not therefore deserve a belligerent response.

At the same time, it should be possible to object to some of the proposals being made for a code or declaration of the principles of peaceful coexistence without falling under suspicion of opposing peaceful coexistence in the factual sense of the term. Just as it is not sufficient for genuine adherence to peaceful coexistence to make loud noises in its favor, it ought not to be necessary to make loud noises in

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its favor in order to avoid the charge that one is not committed to peaceful coexistence. On the other hand the claim for peaceful coexistence as a principle of international law is not to be dismissed on the ground that it is made and pushed by the Soviet Union. It is right to "consider the source," but it is not enough. Besides, as scholars, the leaders of today's international jurists in the Soviet Union have put forward a claim to be taken seriously, and that claim in turn deserves to be taken seriously, though upon examination we may decide that the claim is unfounded.

I

THE FIGHT FOR THE SLOGAN

The term "peaceful coexistence" as such has been found in Soviet literature, bearing as early a date as 1920. Contemporary Soviet writing ascribes the idea to Lenin; he does not seem to have used the term. The Soviet scholars who inveigh against the sin of quotationism have not been able to commit it in this instance. Western scholars have recalled that it was Chicherin, the People's Commissar for Foreign Affairs, who referred to the peace treaty with Estonia in 1920 as the first experiment in peaceful coexistence with bourgeois states. Twenty years later, the bourgeois state of Estonia having been rescued by Soviet forces, it became unnecessary to coexist with her except in the sense that the robin in Don Marquis' poem coexisted with the worm it had swallowed. The first experiment in peaceful coexistence had been unilaterally successful.

It is true the slogan has become central only since about 1956. At that time it took off from the Pancha Shila, the five principles which had been proclaimed in the Sino-Indian Pact of 1954 and expanded in the Bandung Declaration of 1955. As a proclaimed principle of international law, peaceful coexistence has been treated in numerous Soviet monographs and articles since 1956 and has been pressed with vigor by Soviet representatives at national meetings of governmental and non-governmental organizations. The thrust of the massive effort now being exerted in many forums is to place that which is called principles of peaceful coexistence in the center of contemporary international law.

To this end, the purity of the slogan as such is defended against objection from without or within. Thus, in the summer of 1962 when an attempt was made in the International Law Association to change the title of the relevant committee by dropping the term "coexistence" so as to bring the title in line with that which was used in the United Nations, the Soviet delegation quit work in the committee until the change of name was blocked. In 1963 at a meeting of the Soviet Association of International Law one Soviet jurist made the error of depreciating the slogan in a similar way. He is reported as having contended that the principles of cooperation and friendly relations between states (a term used in the United Nations) were identical with the principles of peaceful coexistence. On this he was opposed, according to published report, by eight speakers who were named and others who

were not; no one is reported to have risen to his defense. I shall suggest, below, some reasons for the criticism. Here it suffices to note that the phrase "principles of peaceful coexistence" is sacred. Chairman Khrushchev has made merry over those who have trouble pronouncing the phrase; for Soviet jurists, it seems, it is not easy to stop pronouncing the phrase. We and they might save time by abbreviating it to PCX, which would also help to distinguish the slogan from the very important fact of peaceful coexistence.

II

THE CONTENT OF PCX

When PCX is offered as a legal principle and an envelope for subordinate legal principles, it is natural to seek a list, representative or exhaustive, and a principle of organization that gives unity to the list. It will not do to say that PCX in international law means that men ought to live in peace. That would be little more than to describe the commonplaces in international relations, as Professor Jennings of Cambridge has said. Nor is it enough to say that PCX means that men should live in peace and collaboration. That would be a desirable outcome, and it may be a good thing to express the aspiration, but we should not have gone far along the road to proving that something new had arrived in international law.

It is not hard to find a list; the hard thing is to find which list to use. In view of the friendly Soviet references to the Pancha Shila, we might begin there. We find that the five principles are mutual respect for territorial integrity and sovereignty, mutual non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful coexistence itself. These are noble if not quite clear; if they were more clear they might not sound quite so noble. Some aid to interpretation may be found in the course taken by Sino-Indian relations since the signing of the agreement in 1954.

We note that PCX is number five on the list. Does it embrace all or any of the others? Does any of the others embrace No. 5 as well as others on the list? In the mid-1950s several Soviet authors took up the five principles and gave to all of them the term "The Principles of Peaceful Coexistence." That was the period in which the Leninist origin of the idea was discovered.

In the Bandung Conference of 1955 the list had swollen to ten. The first four principles of the Sino-Indian Pact survive in altered or lengthened form. Several new ones included (among others) respect for fundamental human rights and for the purposes and principles of the Charter of the United Nations, respect for the right of each nation to defend itself singly or collectively in conformity with the Charter of the United Nations, abstention from the use of arrangements of collective defense to serve the particular interests of any of the big powers, abstention by any country from exerting pressure on other countries, and respect for justice and international obligations. Coexistence was lifted from the list of enumerated principles to the caption of the list.

By 1961 a politically authoritative list had appeared in Part One of the Program of the Communist Party of the Soviet Union. There PCX was defined as implying 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 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 equality and mutual benefit.

One may note certain features of these and other lists besides the fluidity of their contents. Most of the items stressed and most of the reasons advanced in their support have been conspicuous for failure to specify a concrete secondary content; that is, a content that is sufficiently arguable to have meaning. Where the content is arguable, it is tendentious. For example, the proclamation of the inalienable right of peoples to their natural resources is silent upon the form or extent of compensation or other redress in the event of expropriation. For another example, in the Soviet draft declaration submitted to the International Law Association in 1962 the proclamation of the equality of states was accompanied by the sentence, "States shall be represented in international organizations with consideration for the fact of the existence at present of three large political groupings." It is easy to see that that rider was mounted on a *troika*.

On the whole, Soviet publicists have not shown themselves jealous of the purity of the list. The slogan is one thing; the content of the principles is something else. Soviet jurists have included some principles designed to have general appeal and some that were designed for particular advantage. They have been hospitable to lists advanced by others if only the others were willing to go along with the idea that an agreed list of PCX should be worked out. Even their opposition to certain principles in competing lists, principles that likewise were designed for particular advantage, has been relatively mild. We shall presently consider an explanation for the generality and fluidity of these enumerations.

One of the ways of testing the content of PCX is to ask whether the suggested extension of the term points to all of the particulars that normally would be considered. For instance, arbitral or judicial determination of legal issues between states is not a principle of peaceful coexistence in Soviet formulation. Now, one of the Bandung principles of 1955 was settlement of all international disputes by peaceful means such as negotiation, conciliation, arbitration, or judicial settlement, as well as other peaceful means of the parties' own choice in conformity with the Charter of the United Nations. It is true that the residual phrase, "other peaceful means of the parties' own choice," can be read so as to require consent of the parties in each case before resort to arbitration or judicial settlement, or indeed any of the other specified peaceful means. Still, the reference to arbitration and judicial settlement is there.

In the Soviet lists arbitration and judicial settlement are smothered. Some time ago Professor Jennings asked whether this refusal to submit legal disputes to legal determination was a part of the concept of peaceful coexistence. If it was, he said, Professor Tunkin might be thought not progressive but somewhat reactionary. Chairman Khrushchev, in his New Year's message in 1964 to heads of state of other governments on the settlement of territorial disputes, proposed four points for an international agreement on the settlement of territorial disputes. The fourth point was an undertaking to settle all territorial disputes exclusively by peaceful means such as negotiation, mediation, conciliatory procedure, and also other peaceful means at the choice of the parties concerned in conformity with the Charter of the United Nations. The accordance with the Bandung Declaration is almost exact. The only exceptions are the limitation of the subject matter to territorial disputes, which after all was the general subject of the New Year's message; the insertion of a reference to mediation; and the consistent absence of a reference to arbitration or judicial settlement.

Also conspicuously absent from Soviet lists of principles of PCX is condemnation of war as such. Wars that serve the ends of Soviet foreign policy have never been termed illegal. They are given the label of wars of national liberation or revolutionary civil war or wars against the counterrevolution and are accepted as just. Sometimes the implicit *eirenicon* is that the wars being outlawed are wars between states. The abjuration of war as a means of settlement of disputes between states ought to be read with the emphasis on "between states"; disputes that are not between states may well be subject to settlement by war. Soviet doctrine has consistently preserved the negative pregnant.

So PCX is not the same as pacifism. Soviet doctrine has never accepted pacifism; but at times when the movements of pacifist interest groups or pressure groups or groups of principle in the Open World have happened to serve the ends of Soviet foreign policy, pacifism has been acclaimed exoterically. Soviet international lawyers tell us that the *jus ad bellum* is now obsolete, but they still distinguish between rightful wars and wrongful wars. A book entitled *Peace, Freedom and You*, published in Prague in 1963, is quoted in a recent Western study as containing the statement: "Peaceful coexistence creates the most favorable conditions for the fight of the oppressed nations against their imperialist oppressors. Peaceful coexistence means the maximum support to the oppressed nations, including arms."

A third absent item is a principle that would uphold free international interchange of ideas. Peaceful coexistence in the sphere of ideology has been repudiated by Soviet leaders and writers in many statements directed principally at the Soviet population but used also in the context of the Sino-Soviet dispute. As recently as 1961 Chairman Khrushchev referred to the policy of peaceful coexistence as representing in its social content a "form of intensive, economic, political, and ideological struggle of the proletariat against the aggressive forces of imperialism in the inter-

national arena"; the current Program of the Communist Party uses similar language. When it was suggested in a Soviet forum that an enumeration of principles of friendly relations between states, suggested by a Czechoslovak delegation, was transferable to PCX, the orthodox critics pointed out that such an identification ignored the character of the relationship between socialist and capitalist states as a form of the class struggle.

For the present we need not scruple to take the terms of Marxist-Leninist polemics at face value. It is not now within my scope to ask whether the states called "socialist" and "capitalist" deserve those names or whether the class struggle in the form derived by Marx in the mid-nineteenth century in Western Europe has much bearing, except for purposes of religion and myth on both sides, upon the confrontation across the Iron Curtain today. Similarly, when reporting Khrushchev's statement, I do not stop to ask whether the proletariat is in fact represented by those who most often invoke its name, whether aggression is a monopoly of one state or party, or whether imperialism is any less imperialistic when it is exercised over contiguous colonies than when it is exercised from a distance.

Another way of testing the content of PCX in international law is to reduce the general ideas to manageable proportions by imagining cases. Here the imagination ought not to be confined to illustration from Soviet practice, for the idea that it is worth working out PCX in international law has won support in other quarters. If, for example, the United States' support of the Bay of Pigs invasion of Cuba is to be justified under international law, then we have a better idea of what the justifying speaker means by the principle of non-intervention. If the Indian embrace of Goa or the Israeli advance in Sinai is praised as the righting of historic wrongs or as preventive counteraction, then we have a better idea of what the speaker means by the principle of settlement of territorial disputes by peaceful means. If the Soviet suppression of the Hungarian revolution of 1956 is supported as justifiable in international law, we have a clearer notion of the supposed content of the principle of non-interference in the internal affairs of other states. If the events that have taken place in the last three or four years along the Sino-Indian border are an explication of the inner meaning of Pancha Shila, then some of the mystery of the mysterious Orient is dispelled. If the annexation of the Baltic states during the period of the Soviet-Nazi pact is defended on the ground of the plebiscites carefully arranged there, then we can understand better the meaning being attached by the speaker to the principle of self-determination.

III

THE STRATEGY OF THE CAMPAIGN

Is the idea of PCX taken seriously by its Soviet proponents as a guide for Soviet foreign policy, or is it put forward to advance that policy, or both? A full answer would lead us into a general discussion of international relations in the cold war, of

the Soviet system, of the détente and the Sino-Soviet split, of the multiple audiences for Soviet statement on peaceful coexistence and their reciprocal eavesdropping. Here a few pertinent episodes must suffice.

When the leaders of the Soviet regime were somewhat more candid than they have since become, it was reasonably clear that the idea of PCX was to serve as a tactic in the conduct of foreign policy. In 1922 Lenin wrote to Chicherin when Chicherin represented Russia at the Genoa Conference:

We Communists have our own Communist program, the Third International. Nevertheless, we consider it our duty as merchants to support (even if there is only one chance in ten thousand) the pacifists in the other [bourgeois] camp. It will be both biting and amicable and will help to demoralize the enemy. With such tactics we will win even if Genoa fails.

Though expressed in universal terms, in practice the principles of PCX have seemed to be used to indicate duties of states outside the Soviet bloc but rights of states inside the Soviet bloc. One small example is worth our attention because the evidence, noticed by some close readers of the Soviet press, was so striking. Early in 1962, Mr. Suslov, a chief Soviet Marxist theoretician, made a speech at a conference of Soviet university teachers in the social sciences. His speech was published in *Pravda* on February 4th. The *Pravda* report had him saying: "Peaceful coexistence means . . . the rejection of war, the settlement of disputes between states through negotiations. It means the refusal to export revolution and to export counterrevolution." The symmetry of the last sentence is the thing to notice. Thirteen days later the same speech was published again in the chief Soviet magazine of general political theory, *Kommunist*. In that version, peaceful coexistence means ". . . the refusal to violate the territorial integrity of states, the inadmissibility of the export of counterrevolution." The reference to the refusal to export what the Soviet leaders call revolution was omitted; and the action seems not merely an omission but a deletion, made at a late stage of the printing in *Kommunist*, perhaps from galley proof or page proof, for the key sentence in *Kommunist* is now very widely spaced.

The strategic uses of "principles of PCX" vary with the audience. Afro-Asian audiences are assured that the Soviet Union sides with them in their campaigns for the Pancha Shila and, more fundamentally, that the Soviet Union as an important European power takes seriously a form of words that the Afro-Asians take seriously. With certain other audiences the aim is to influence non-Soviet disarmament, to attract East-West trade, to enlist support for various other current objectives of Soviet foreign policy. With Communist audiences the declaration of adherence to PCX is a taking of sides on one of the main issues between the Chinese and Soviet Communist leaders, which may be defined as the question whether the expansion of the Communist system can be rapidly achieved without actions that increase the risk of world-wide nuclear war.

Recently, before a Soviet audience, some Soviet international lawyers took pains

to distinguish the concept of peaceful coexistence "as the fundamental principle of international law which is also the basis of the foreign policy of peace-loving states" from "the concept of coexistence of the two systems as an indication of the stage of history referred to by V. I. Lenin, a stage which is inevitable by virtue of the fact that the socialist revolution does not triumph simultaneously in all countries." All of the audiences eavesdrop on one another with differing success. That complicates the task of Soviet publicists, but they are assisted by the durable propensity of us all to hear what we wish to hear and to close our ears to what we would rather not hear.

PCX obtains only between states of different social systems, to use Soviet language. In the last analysis that comes down to states with diverse attitudes toward the Soviet Union. Relationships between states in the open world are not characterized in Soviet terminology as PCX; neither are relationships between states in what Soviet writers call the socialist camp. Between socialist countries the governing principles are those of proletarian internationalism, a term now being replaced (since the proclamation of the end of the period of dictatorship of the proletariat) by the term socialist internationalism. Principles of PCX are no part of the law of socialist internationalism, because there can be no class struggle between comradely, freely collaborating, brotherly states, and principles of PCX are meant to guide the class struggle.

In the higher phase of interstate relations that has been attained within the socialist camp, as we are told, genuine equality prevails. The principle of non-aggression becomes superfluous between socialist countries, for under those conditions aggression is too unthinkable to be worth warding off. The rights of national minorities are so well protected in socialist countries that there is no point in recognizing the principle of the protection of national minorities as being a principle of international law for those states. The provisions of the declaration on the rights of man with regard to the protection of democratic rights and freedoms of the representatives of various nations are likewise read out of the field of play for this part of the world. So are the provisions of the Convention on Genocide, and so it goes with slightly varying language for the principle of the equality of states, for the principle of non-intervention in the internal affairs of other states, and others.

What ought we to make of the idea that emerges: that legal principles are not applicable to him who propounds them if he states that he never violates them? The Soviet writers at this point would appear to be distinguishing their polity from lesser breeds within the Law. From the standpoint of international relations, what underlies this limitation of the principles of PCX to relationships between the Soviet bloc and the open world is the implication that that is the only important confrontation in the world today. The Soviet concept of PCX, in short, presupposes bipolarity and the cold war, rather than offering a way out of the cold war. Indeed, when combined with the repudiation of peaceful coexistence in the realm

of ideology, it furnishes a Soviet equivalent of the cold war. The emphasis upon confrontation between socialism so-called and imperialism so-called lines up states on two sides of the Iron Curtain, ignores *pro tem* other bases of division and alliance, purports to set out rules for the conduct of states across the Curtain, and scores points in the Sino-Soviet debate.

IV

PCX AND CUSTOMARY INTERNATIONAL LAW

We can now arrive at some conjectures as to the utility of PCX in Soviet plans for the development of international law, after rehearsing briefly the position of the Soviet Union in the international legal community and recalling some of the other techniques the Soviet Union has applied in order to improve that position. The Soviet Union began its statehood under conditions of Soviet theory that implicitly denied the validity of traditional international law as the regulating idea of the system of nation-states. Upon coming into the international community the Soviet Union was very much in a minority. Even today, though it is stronger with satellites and friends in power and out of power throughout the world, the Soviet Union finds it useful for morale and ideology to emphasize at times that it is beleaguered by a hostile majority. Not only were many of the doctrines of international law disagreeable or hampering to Soviet leaders but the process by which international law was made and applied seemed under Soviet analysis to be necessarily exclusive and anti-Soviet. The facts indeed lent some support to this opinion despite the elements of humbug and hypocrisy that disfigured its expression.

In such a situation Soviet theory in international law, whatever its twists in regard to the course of Soviet foreign relations, made use of a variety of techniques to depreciate existing processes of the development of international law and to enlarge the role to be reserved for the Soviet Union in those processes. There was the time when international law was generally repudiated. Later, international law was to be accepted during a period of transition, admitted to be necessary before the time when international law could be discarded along with the general system of separate nation-states. There was the assertion that a state whose polity was based upon a new and just social theory had the right and duty to repudiate those particular doctrines of international law that offended that theory. There was the continued insistence upon the primacy of treaties as sources of international law, the belittling of the role of custom, the stress upon the necessity of the consent of a state before that state could be bound by a rule. When the United Nations Charter was adopted, with institutional arrangements allowing a very important role to the Soviet Union and its text corresponding in many ways to demands upon which Soviet representatives had insisted, Soviet publicists extolled what was called the international law of the Charter over what was called traditional or, indeed, obsolete international law. I have listed these various techniques roughly in the

chronological order of their appearance, but there was no neat sequence of invention-use-abandonment-replacement. Many of them are alive today though not all of them flourish. They all have been overshadowed, even if not quite superseded, by the emphasis upon the principles of PCX. The picture I am drawing may have foreshortened the mental processes of Soviet lawyers, who perhaps did not plan it that way all at once; and the engine that I believe they have tried to build may not march along the intended route, and even the route may change. But as of today the course seems clear.

What counts for this purpose is not that PCX shall have one content instead of another, or indeed that it shall have any content at all. The content will become important at the second stage of the campaign. At the first stage, which is the stage of the present, what counts is that something under the name of PCX, preferably without definition, should win recognition as lying at the heart of international law; that it should be acknowledged the world over that to define PCX is the most urgent task of contemporary international law; that it should be acknowledged that the process of defining PCX requires participation and consent of the Soviet Union; and, by implication, that any existing principle or norm of prior international law that has not been accepted by the Soviet Union as part of or consistent with PCX in general statement or in particular application has to be rejected as being for that reason invalid.

It is there, in my opinion, that we have the chief significance of the campaign for PCX in contemporary Soviet work on international law. It is there, too, that we have an explanation for the hospitality of the Soviet publicists toward so many of the items furnished on provisional lists of principles of PCX by Americans, Yugoslavs, Indians, and others. They are hospitable because at the present stage the content of the term does not matter. Arguments about the content can and expediently should be postponed until the stage that would follow after the centrality of the as yet undefined principles had been conceded by the rest of the world. To that end, which is nothing less ambitious than a veto power over the formation and application of customary international law, many particular questions of content can be sacrificed for the time being.

CONCLUSION

If we now find PCX as principles of international law to be either truisms or religious dogmas (like the reference, in the Soviet draft declaration of principles of PCX, to "mankind's advance toward the most just social system which is Communism") or tactics in particular Soviet moves in foreign policy, or an effort to secure the veto in the formation and application of customary international law, does it follow that we ought to oppose any further effort to codify and declare the principles of PCX?

There is respectable argument to the negative. We are urged that we ought to consider the difficulties that even the best modern Soviet international lawyers

must face in coping with the heritage of the past, in the policy of the Chinese Communists, in the views of some of their own Soviet colleagues, in their personal inner debate. We are urged to allow for the technical underdevelopment of Soviet international law: underdevelopment due not to any lack of intellectual quality but to years of isolation and difficulties of training, political interference, the constrictions of Soviet dogma. We are urged to be grateful for the relatively mild expression, the relatively friendly approach. We are urged not to set our faces against the de-Stalinization of the cold war. The *détente*, we are told, is genuine but it is fragile, it requires concessions. If Soviet international lawyers find one form of words so agreeable to them or so binding upon them by virtue of politically authoritative pronouncement, then the concession here is in an area that will not do much harm.

These arguments are not without substance; but the substance is more diplomatic than scholarly. As an amateur diplomat or even as a professional diplomat one might be well advised to take those arguments into account. But if one were acting in that capacity many other factors ought also to be considered and the balance might tilt in another direction. As scholars, we ought not to say that that has sense which seems to us to lack sense or that that is full which seems to us to be empty.

And yet the very process of examining the campaign for PCX ought to lead us to consider the beam in our own eye and to ask ourselves whether we have devised adequate procedures for the development of international law, whether we are proceeding as fast as we ought in the re-evaluation of the international situation, whether we are doing our duty in the effort to make law more just and peace more worthy. The attempt to answer those questions will not leave us complacent.

Chairman Khrushchev once let fall from his lips the famous and now often regretted boast, "We will bury you." He has insisted many times that the statement was only meant figuratively, that it was not meant to refer to particular individuals, that it was compatible with peaceful coexistence, that it has been misunderstood. But the best answer on Khrushchev's behalf was, as I have observed elsewhere, made for him more than twenty years before he made his statement. In 1936, at the exercises celebrating the tercentenary of the founding of Harvard College, President Conant moved that the meeting be adjourned to the same day of the same month of the year 2036. Ex-President Abbott Lawrence Lowell intervened: "Before putting that motion [of adjournment] I want to say a word in its favor. If I read history aright human institutions have rarely been killed while they retain vitality. They commit suicide or die from lack of vigor, and then the adversary comes and buries them. . . ."