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**THE IMPACT OF REAL COMMUNISM ON THE DEVELOPMENT OF
INTERNATIONAL LAW SCHOLARSHIP IN EUROPE BETWEEN 1945 AND 1989,
IN ITALY, SPAIN, AND CZECHOSLOVAKIA**

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INTRODUCTION

Any retrospective analysis on the occurrence of the Cold War will always single out the one distinct element that crystallized the bipolar fragmentation of the world for over 40 years: the dawn of Real-Communism. There is no doubt on how this era profoundly shaped the development of the world, even touching on the evolution of international law. The heart of this thesis will be that of assessing the impact, or extent of impact, of Real-Communism on international law scholarship in three European countries pertaining to the Western and Eastern front: Italy, Spain, and Czechoslovakia. The focus of the research is centered on the specific historical context that affected the scholarships of each case study, as witnessed through the evolution of doctrinal theories, the reflections of various scholars, and specific legal issues of international law. Throughout World War II, Italy and Spain shared a very similar ideological development, only to be later marked by opposing political systems: a newfound democratic republic in the former, an ostracized autocratic regime in the latter. Geographically extremely close and yet ideologically raptured, their analysis exemplifies the extent of Communist influence across Western borders. The chosen Eastern European country is that of Czechoslovakia: a Socialist State deeply linked to the USSR, yet still experiencing some interludes of relative liberalization. Again, research will reveal the degree of influence stemming from Soviet presence.

The discoveries of the research are revealed through five distinct chapters. Chapter I will examine the general impact of Communist thought on Soviet interpretation of international law and, consequently, how this has given form to a distinct Soviet legal theory. The subsections are divided into two parts. The first section presents the historical background that surrounded the implications of Communist thought in international law; and, in turn, how this has fostered an ‘eccentric’ Soviet conceptualization, as scrutinized in Section B. This paper will not extend the discussion on the general impact of Marxist ideology, but rather mention the defining role of “Real-Communism” in doctrinal developments. The second, third, and fourth chapter will introduce the case-by-case

approach of this thesis. Chapter II assesses the influence of Real-Communism in the Western hemisphere by investigating the development of Italian international law scholarship. Sections A will introduce the socio-political circumstances surrounding Italian scholarship, while Section B will investigate the three main legal theories examined by Italian Scholars of the period. Chapter III will follow by examining the development of Spanish internationalist doctrine. Section A will analyze the international atmosphere that encircled Spanish scholarship, while Section B will examine how Spanish scholars approached Soviet doctrine. Chapter IV scrutinizes the regulation of Socialist inter-state relations, and the consequential reverberation into Czechoslovakian scholarship. Section A will address the overwhelming effects of the communist takeover, and Section B will analyze how the restrained freedom in doctrinal debates impelled the legal theories pursued by international law scholars. Chapter V will then consider how the sections and sub-sections of these three chapters, uncovering the historical evolution of anti-Fascist Italian sentiment, the strong reassertion of the Fascist mimesis in Spain, and implemented Soviet ideology, have shaped different legal-theory developments in international law.

Unveiling the general impact that Soviet doctrine has exerted in each distinct case study, the epilogue will deduce the significance of Real-Communism in wielding the overall European tradition of international law scholarship between 1945 and 1989.

CHAPTER I

Impact of Communist Thought on Soviet Interpretation of International Law Scholarship and the Consequential Evolution of a Soviet International Legal Theory

SECTION A: HISTORICAL BACKGROUND

The Soviet Union & The Rules of the International Game - The Implications of Communist Thought in the Internationalist Legal Doctrine

The Russian Revolution had opened a new era in modern history. The divergence between the new communist society and Western capitalist states was so ferocious, that it ultimately resulted in the utter non-recognition on behalf of both sides.¹ For international law, this attitude is the strongest possible expression of the lack of desire to conduct any form of relation, which is however impossible to fully achieve.² Surely, the elements of Marxist theory were liable to weaken the tradition of international law, given how it had “been built on the conception of the State as its principal subject, and used State sovereignty as the framework defining the relations between States.”³ The practice of Marxist ideology and beliefs translated into what we have now termed the concrete implementation of Real-Communism.

If followed rigorously by the Soviet elite, Marxist thought implied that the USSR had to consider all non-Socialist countries as “its enemies with which it can have no deep or lasting community of interest.”⁴ The Communist assertion to legitimacy “was purely ideological”⁵ and relied upon the credence that the Communist Party incarnated the one historical truth.⁶ History is understood as a form of antagonistic class struggle between the exploiters (the capitalists) who still reign in non-Communist states, and the exploited (the proletariat) that have prevailed in the Soviet bloc. This hostile conflict is expected to result in the universal triumph of the workers: “Communism as a way of life”⁷ admits no form of compromise between the two echelons of

¹ Monique Chemillier-Gendreau, “Marxism, National Liberation, And the Evolution of International Law,” in *Les Doctrines Internationalistes Durant Les Année du Communisme Réel en Europe* [Internationalist Doctrines During the Years of Real Communism in Europe], eds. Emmanuelle Jouannet and Iulia Motoc (Paris: Société de Législation Comparée, 2012), 181.

² *Ibid*, 181-182.

³ *Ibid*, 173.

⁴ Oliver J. Lissitzyn, “Western and Soviet Perspectives on International Law – A Comparison,” in *International Law in the Twentieth Century*, ed. Leo Gross (New York: Meredith Corporation, 1969), 135.

⁵ Vladimir Tismaneanu, “Dogma, Utopia and Heresy: De-Radicalisation and Ideological Extinction of Leninist Regimes,” in *Les Doctrines Internationalistes Durant Les Année du Communisme Réel en Europe* [Internationalist Doctrines During the Years of Real Communism in Europe], eds. Emmanuelle Jouannet and Iulia Motoc (Paris: Société de législation comparée, 2012), 41.

⁶ *Ibid*.

⁷ Lissitzyn, “Western and Soviet Perspectives on International Law,” 134.

society. Soviet leaders confidently spoke of “the eventual realization of the proclaimed Communist goal –the establishment of a universal classless society in which all forms of coercion, including law and the state, will disappear and human dignity will be maximized.”⁸ Therefore, the workers’ emancipation highly depended on the demise of state structure,⁹ considered as “a tool of oppression.”¹⁰ This sense of basic hostility towards non-Communist states, where any form of accommodation would be merely temporary, distances itself from Western traditional understanding of international law. In general, no such feeling of predetermined hostility normally entered relations between states; on the contrary, there had been a common expectation for lasting co-existence on harmonious terms.¹¹

Although profoundly connected to the original notions of Marxism, Communist ideology proposed East-West relations, officially “borrowing a practically unmodified theory of sovereignty from classical legal principles.”¹² This internationalist attitude stemmed from personal security interests in foreign policy, as “set forth in Vladimir I. Lenin's Decree on Peace, adopted by the Second Congress of Soviets in November 1917.”¹³ The ‘dual nature’ of Soviet internationalist doctrine was uncovered: embrace of the principles of *proletarian internationalism* and *peaceful coexistence*. Proletarian internationalism denoted the revolutionary solidarity of all communist parties and their common cause in struggling to overthrow the bourgeoisies of the world in an effort to achieve communism.¹⁴ Contrariwise peaceful coexistence meant, “to ensure relatively peaceful government-to-government relations with capitalist states.”¹⁵ The fundamental contradiction that appeared to underlie these two principles was, however, completely coherent for Soviet scholars. With the establishment of numerous Socialist States, revolutionary solidarity translated into

⁸ Lissitzyn, “Western and Soviet Perspectives on International Law,” 134.

⁹ Chemillier-Gendreau, “Marxism, National Liberation, And the Evolution of International Law,” 173.

¹⁰ *Ibid.*

¹¹ Lissitzyn, “Western and Soviet Perspectives on International Law,” 135.

¹² *Ibid.*

¹³“Soviet Union (former) Ideology and Objectives - Flags, Maps, Economy, History, Climate, Natural Resources, Current Issues, International Agreements, Population, Social Statistics, Political System," *The Library of Congress Country Studies; CIA World Factbook*, Photius Coutsoukis, last modified November 10, 2004, accessed May 15, 2015. http://www.photius.com/countries/soviet_union_former/government/soviet_union_former_government_ideology_and_objectives~1734.html.

¹⁴ Bernard A. Ramundo, “Socialist Internationalism,” in *Encyclopedia of Soviet Law*, eds. Ferdinand J.M. Feldbrugge et al. (Dordrecht: Martinus Nijhoff Publishers, 1985), 705.

¹⁵“Soviet Union (former) Ideology and Objectives.”

“socialist solidarity,” and proletarian internationalism transformed into “Socialist Internationalism.” Immortalized in Article 30 of 1977 Constitution, the policy of Socialist Internationalism aided the cause of world Socialism by promoting “friendships, cooperation and comradely mutual assistance.”¹⁶ Together with the principle of Peaceful Coexistence, these legislatively constituted the “Law of Coexistence.” The inherent contradiction of such law was justified on the grounds that it served both individual domestic interests of Socialist States and the collective interests of the entire bloc, “where a community of political, social, and economic interests has made possible new, higher type fraternal relations and more ‘progressive’ legality.”¹⁷ Both principles can be pursued simultaneously: “Peaceful coexistence does not rule out but presupposes determined opposition to imperialist aggression and support for peoples defending their revolutionary gains or fighting foreign oppression.”¹⁸

The fundamental philosophy of class struggle upheld a key role in providing the ideological guidelines until the very last decade of the 1980s. Real-Communism still reinforced those “characteristics of political culture that created an attitude of competition and conflict with other states.”¹⁹ The law and the state were always envisaged as “mere instruments of the will of the ruling class and as weapons in the class struggle.”²⁰ Peaceful Coexistence would be the “period in which the economic advantages of the soviet system will play an increasingly important role”²¹ with the West: a non-military conflict, though still a conflict. Indeed, Soviet authors referred to a “*prolonged peaceful co-existence*,” so to eliminate any implications that cooperation between capitalist and socialist countries could be permanent.²² Peaceful Coexistence was only a transient step for the ultimate worldwide victory of communism and the laws of coexistence, the result of a philosophy of expediency: “a good Communist must not allow moral scruples to interfere with his struggle

¹⁶ Art. 30, *Constitution (Fundamental Law) of the Union of Soviet Socialist Republics* (7 October 1977), accessed March 7, 2015, available from <https://www.marxists.org/reference/archive/stalin/works/1936/12/05.htm>.

¹⁷ Ramundo, “Socialist Internationalism,” 705.

¹⁸ “Soviet Union (former) Ideology and Objectives.”

¹⁹ *Ibid.*

²⁰ Lissitzyn, “Western and Soviet Perspectives on International Law,” 134.

²¹ *Ibid.*, 135.

²² *Ibid.*

against the class enemy. This would be illegitimate.”²³ Furthermore, Soviet system considered any “penetration of Western ideologies and habits”²⁴ as a potential threat to the control of the population. It was fiercely discouraged to nurture any formation of interests with “non-official contacts across the barriers separating it from the West.”²⁵ In this monolithic system, there was “no room for public disagreement with the official ideology.”²⁶ the advancement of Communism was “the supreme criterion of right and wrong and explicitly denie[d] the objective validity of law.”²⁷

When it came to the international law, rational self-interest and expediency were the underlying principles of Soviet conduct. The Western value of “faithful observance of international law as a condition of stability and orderly co-existence”²⁸ was likely to be irrelevant for Soviet interests, as was the “the history of law during the Communist period.”²⁹ For Soviet foreign policy, continued monolithic control of Eastern Europe was the line of thought that lay at the core of interstate relations between the Socialist-camp and the USSR. The established Socialist Satellites served a clear purpose in the eyes of the Soviet Union: Eastern Europe was the buffer zone that kept Western ideological foes at bay. Hence, the Soviet Union’s degree of respect towards international law is the expression of a deep-rooted conflict of goals, values, and expectancies.³⁰

²³ Lissitzyn, “Western and Soviet Perspectives on International Law,” 136.

²⁴ *Ibid.*, 137.

²⁵ *Ibid.*, 136-137.

²⁶ *Ibid.*, 136.

²⁷ *Ibid.*

²⁸ *Ibid.*, 138.

²⁹ Iulia Motoc, “Conclusion – Some Remarks on the Totalitarian Legacy in International Law: A European Vision,” in *Les Doctrines Internationalistes Durant Les Année du Communisme Réel en Europe* [Internationalist Doctrines During the Years of Real Communism in Europe], eds. Emmanuelle Jouannet and Iulia Motoc (Paris: Société de Législation Comparée, 2012), 547.

³⁰ *Ibid.*

SECTION B:
SOVIET CONTRIBUTION TO THE CONCEPTUALIZATION OF INTERNATIONAL LAW

Communist Thought and Nature of the Soviet System combine to produce among Soviet decision-makers an extremely 'eccentric' attitude towards International Law.

The building up of the economic and military power, and the need to avoid excessive hostility that could spark open warfare, required that the Soviet Union maintained relations with non-Communist states.³¹ Very pragmatic *raison d'état* unquestionably characterized Soviet approach to International law, recognized as “a useful device for the facilitation of peaceful and cooperative relations with the [capitalist] world when Soviet policy calls for them.”³² Soviet jurist and diplomat Grigory Tunkin first defined it as a “totality of norms, developed on the basis of agreements between states [...] one and identical with all international relations” and “independent of the class of the members of the international community.” Indeed, there has been a “considerable measure of routine observance of international law”³³ by the USSR. It has “respected the principle of the freedom of the seas,” “observed the generally recognized rules of diplomatic privileges and immunities sufficiently well,”³⁴ and largely sustained diplomatic relations with various Western countries; it has participated in several “international arrangements for the conservation of natural resources,”³⁵ such as the International Whaling Convention, International Convention for the Northwest Atlantic Fisheries, and the Antarctic Treaty (1959) establishing a system of peaceful management of the entire continent of Antarctica. Tunkin’s evaluation, however, met considerable resistance. For orthodox Soviet scholars (especially Korovin) the weakness of Tunkin’s argument lied in the inconsistency with the fundamental basis-superstructure model, “a must for a Soviet jurist,”³⁶ and the theory of historical materialism. Communist ideology had to be more assertive in International law. Furthermore, following the events of the Hungarian Revolution in 1956, the

³¹ Lissitzyn, “Western and Soviet Perspectives on International Law,” 138.

³² *Ibid.*

³³ *Ibid.*, 137.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ Kazimierz Grzybowski, *Soviet International Law and World Economic Order* (Durham: Duke University Press, 1987), 15.

USSR required a doctrine that would universally justify armed intervention and political pressure. Tunkin soon had to recant and retreat from his earlier position.

In general, the prescriptions of international legal norms “have in varying degrees an elastic or rubber-like quality, and can often be stretched to fit the policy objective of a decision-maker.”³⁷ In the beginning, international law had been applied more as a “symbol of rectitude” than an actual “guide to conduct.” Its norms were “converted into slogans with which an elite belabored its opponents and endeavors to create or strengthen an image and a consensus favorable to its own policies”³⁸ (particularly during the time of war). Hence, considering how the doctrine of one general international law posed numerous ideological concerns, the Soviet Union moved to derive from these “established legal rules and principles, an answer that accorded with its own material interests.”³⁹ The issues with one general public international law stemmed from its “neutral” class character nature: it applied to socialist and capitalist states alike, serving both the working classes and the exploitive bourgeoisie. This neutral construct became an issue for soviet jurists when the economic unity of the Western world was proclaimed, threatening to completely overshadow the Socialist region. To remedy this situation, the Soviet scholars converted “neutrality” in their favor: they established the theory that international law arises out of the superstructure created by the economic relations among the members of the entire international community. Moreover, international obligations were to be controlled by “genuine agreement” and, as Tunkin believed, would not be binding in the opposite case. The next doctrinal problem that required adjustment concerned the Marxist notion of historical materialism. General international law, although incorporating certain legal concepts of the 1917 October Revolution, remained at issue with the fact that it was not *uniquely* Socialist or dependent of the laws of societal development. Although the facilitating international cooperation, Law of Coexistence implied “no genuine community of interest or long-range accommodation with the West.”⁴⁰ Moreover, cooperation itself was also

³⁷ Lissitzyn, “Western and Soviet Perspectives on International Law,” 131.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*, 138.

considered a form of struggle, considering international law as “a weapon in the struggle against capitalism.”⁴¹ This conviction mirrored in USSR’s refusal to submit its international disputes, whether legal or political, to a third-party state,⁴² rooted in the credence of “the world being divided into two hostile camps between which there can be no impartial judge.”⁴³ The fundamental Soviet understanding of the laws of societal development became apparent: the laws of internationalizing armed revolutionary struggle.⁴⁴

Communist doctrine could have justified the total discarding of international law, however, Soviet scholars transcended the simple “denial” or “acceptance” of international law by concentrating on expanding its definition. According to Soviet interpretation, the realm of “inter-bloc” international law encompassed other independent subsystems, each one constituted by a different ideology: the imperialist (capitalist) international law and socialist international law. Thus, International law witnessed a rupture into two opposing systems: “one in force in nearly the entire international community”⁴⁵, the other regulating the socialist system. Although essentially equivalent, “capitalist” international law was dialectically inferior, regulating contradictory relations in all capitalist states that professed to respect the principle of noninterference and national sovereignty, while actually violated such rights in weaker states. Allegedly, Socialist International Law intended to protect the national sovereignty of all Socialist states as well as the interests of the entire socialist camp. Soviet experts heavily emphasized how the USSR was an “integral, federal, multinational state, founded on the basis of socialist federalism, and as the result of the free self-determination of nationalities [both internally and externally *sovereign*] and the *voluntary* association of equal Soviet Socialist Republics.”⁴⁶ When addressing the principle of sovereignty, the Soviet Constitution asserted the Soviet Union’s sovereignty as an entity is not based on the

⁴¹ Lissitzyn, “Western and Soviet Perspectives on International Law,” 138.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ Grzybowski, *Soviet International Law and World Economic Order*, 14.

⁴⁶ Art. 70, *Constitution (Fundamental Law) of the Union of Soviet Socialist Republics* (7 October 1977), accessed March 7, 2015, available from <https://www.marxists.org/reference/archive/stalin/works/1936/12/05.htm>.

conferral of powers on behalf of the fifteen union republics, but *is* its equal.⁴⁷ Soviet scholars commented how only the socialist federation grants its components full, indisputable and flawless sovereignty: a bright contradistinction with the capitalist federal system – i.e. the United States– where the constituent federal units are conceded residual and largely trivial qualities of state sovereignty.⁴⁸ Socialist International law was thus qualitatively superior to the capitalist system, harmonious and lacking in contradictions.⁴⁹ Guided by the legal principles of Socialist Internationalism and Peaceful Co-existence, Socialist International Law not only guaranteed national sovereignty to Socialist States but also evolvment towards world-Communism.⁵⁰ Nevertheless if by sovereignty one means “the right of a state to act un-coerced both on the internal and external planes,”⁵¹ then it is abruptly sarcastic to say that the USSR indorsed the national sovereignty of its indoctrinated satellites.

In retrospect, Soviet decision-makers felt free to re-interpret and use international law norms to serve their own interests, sharing little concern for consistency, and even less for unanimity. True, the ‘elasticity’ of legal norms empowers the law to be recurrently developed and adapted to new needs.⁵² It is an indispensable element in order to systematically progress, while rendering “futile the quest for absolute objectivity.”⁵³ Nevertheless, a legal norm cannot be stretched infinitely without ever being broken: “there is a point beyond which a norm cannot be reconciled with actual conduct by any plausible interpretation.”⁵⁴ Sound theories need to be based on a serious apprehension of reality and “not only by the decision-makers but also by the public whose opinion the decision-makers should take into account.”⁵⁵ Thus, the ultimate distinction between Western and Soviet interpretation of international law lies in the goals and values that each regional systems upholds; for the USSR, that being of implacable and incessant hostility. In general, the lack of

⁴⁷ Art. 75 and Art. 76, *Constitution (Fundamental Law) of the Union of Soviet Socialist Republics* (7 October 1977), accessed March 7, 2015, available from <https://www.marxists.org/reference/archive/stalin/works/1936/12/05.htm>

⁴⁸ Ramundo, “Socialist Internationalism,” 713.

⁴⁹ Grzybowski, *Soviet International Law and World Economic Order*, 15.

⁵⁰ *Ibid.*

⁵¹ Ramundo, “Socialist Internationalism,” 713.

⁵² Lissitzyn, “Western and Soviet Perspectives on International Law,” 131.

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*, 139.

restraint in Soviet “manipulation” of international law was largely directed against the West: they “continually resorted to international law as a symbol of rectitude in propaganda campaigns.”⁵⁶ Criticizing ‘imperialist’ states as law-breakers was almost obligatory for Soviet writers. This also resembles in Soviet attitude toward the international settlement of disputes: unlike Western powers, the Soviet Union remained adamant in its refusal to accept the compulsory jurisdiction of the International Court of Justice, and in general it even limited its acceptance of international adjudication and arbitration to cases in which it had expressly consented to the procedure.

Based on a very specific concept of “legitimism,”⁵⁷ Communist thought was bound to influence the development of the international law within its sphere of influence in Eastern Europe, and to a certain extent, even outreach into the Western European region.

⁵⁶ Lissitzyn, “Western and Soviet Perspectives on International Law,” 137.

⁵⁷ Grzybowski, *Soviet International Law and World Economic Order*, 17.

CHAPTER II

Western European Attitude Towards Real-Communism and the Impact of Communist Thought on Italian International Law Scholarship

A Brief Historical Setting

By early 1945 the seeds of conflict were in place. As the iron curtain gradually descended, the ideological discrepancies marked significant developments in United States' foreign approach. In responding to the pressures of large-scale competition, the US abandoned its interwar isolationist policy and truly endorsed its fundamental role as an international superpower. A form of *Pax Americana* crossed the Atlantic, overarching most of Western Europe. Thus, one cannot speak of "Western European Communism," as its influence in this hemisphere was constantly combatted by United States' attempts to contain the opposing ideology within the Eastern borderline. Still, its very existence remained a persistent source of international tension, holding key political relevance. The world did not just witness the unraveling of the conflict between the US and the USSR, but also the involvement of those European countries that pertained to each distinct alliance.

SECTION A: RENOUNCING THE FASCIST LEGACY

The Engagement of Communist Theories by Italian International Law Scholars throughout the various decades of the Cold War

The fall of Italian Fascism had left a political vacuum, leaving Italy at the mercy of the superpowers. By June 1946 a new Republic had been established with a newly crafted Constitution: “a regime of popular unity founded on War was replaced by another regime of popular unity this time founded on anti-Fascism.”⁵⁸ Unsurprisingly, the Italian Communist Party (PCI) gained considerable momentum, symbolizing “an ideal of radical renewal of a Nation that had been devastated by the War, corrupted by rhetoric and moral emptiness of the Fascist regime.”⁵⁹ However, the April 1948 elections signed the Christian Democratic Party as main player in Italian politics. De Gasperi excluded Communists from his government to “placate the Vatican and the conservative south,”⁶⁰ and guarantee US support. With the *conventio ad excludendum* in place, Communism became the primary opposition to government, never leaving the political arena, and promoting Communist ‘presence’ in Italian life.⁶¹ Indeed, the PCI exerted its influence over large sectors of society and political culture. It provided a constant stimulus in the political arena, gaining particular prominence in the 1970s, culminating in 1978-79. The impact of Italian Communist Party and Communist ideology on Italian international law scholarship is revealed in the writings and opinions of various Italian scholars.

Beginning in mid-1940s, Italian academia was somewhat ‘sympathetic’ towards the Communist doctrine. Along with the preservation of legal positivism, other significant social and political elements contributed to the “lack of reactivity of Italian scholars *vis-à-vis* major political events involving the Soviet Union.”⁶² Induced by the memory that communist *partigiani* had

⁵⁸ Martin Clark, *Modern Italy – 1871 to the Present*, 3rd ed. (Harlow: Pearson Longman, 2008), 363.

⁵⁹ *Ibid.*

⁶⁰ John A. Marino, "Italy," *Encyclopedia Britannica Online*, Encyclopædia Britannica, last modified May 19, 2015, accessed June 6, 2015, <http://www.britannica.com/place/Italy>.

⁶¹ Clark, *Modern Italy*, 389.

⁶² Francesco Francioni and Federico Lenzerini, “Reflection on the Impact of Communism on Italian International Law Scholarship: 1945-1989,” in *Les Doctrines Internationalistes Durant Les Année du Communisme Réel en Europe* [Internationalist Doctrines During the Years of Real Communism in Europe], eds. Emmanuelle Jouannet and Iulia Motoc (Paris: Société de Législation Comparée, 2012), 338.

“offered their youth and often their life for the emancipation of the Nation from the bane of Fascism and for the liberation of their country from foreign occupation,”⁶³ many Italians shared in this “romantic vision of Communism” and “unfinished revolution.”⁶⁴ Scholars would identify Communism with “the fight against and the victory over the supreme evil of the entire national history,”⁶⁵ namely, Fascism. One corrupting legacy of the Mussolini regime had been the “low profile attitude,”⁶⁶ that of pushing the cultural and scientific establishment “into the precarious refuge of the arts, science and studies where [intellectuals] could cultivate the illusion of saving culture and their personal conscience.”⁶⁷ Thus, most scholars were desperate for the *Resistenza* to continue “through political action toward a radical renewal of the Italian society and of the State, still considered to be contaminated by the Fascist legacy in its deepest layers of the public administration and bureaucracy.”⁶⁸ The epitome of Communism as the main antagonist of Nazism bestowed upon it a long-lasting effect of “popular legitimation.”⁶⁹ Even in those cases where communist sympathizers could not reconcile Soviet foreign policy for its blatant violation of international law, completely indefensible on political grounds, it still remained difficult for scholars to directly criticize Soviet governments.⁷⁰ Quite alternatively, intellectuals preferred to concentrate their attention on circumstances in which Western powers⁷¹ could instead be accused for the same, if not worse, deliberate violations. For example, Bernardini commented on the US’s “illegal use of force” in the Vietnam War, indisputably considered as “armed aggression.”⁷² Ironically, “it is easier to find traces of anti-Americanism in some of the best post-World War II textbooks of international law than it is criticism of Communism.”⁷³

The Soviet armed interventions in Hungary (1956) and Czechoslovakia (1968) are clear demonstrations of this prominent reluctance to openly debate Communist international law

⁶³ Francioni and Lenzerini, “Italian International Law Scholarship,” 338.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*, 338-339.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² *Ibid.*, 339.

⁷³ *Ibid.*

implications in political-legal controversies. In November 1956, *Rivista di Diritto Internazionale* (the specialized journal of international law) remained silent on the brutal Soviet repression of Hungarian uprising: “one would search in vain for a single line with respect to the situation in Hungary.”⁷⁴ Similarly, there were various publications that included defensive opinions on the Prague invasion (1968). Among scholars that regarded armed intervention as the defensive measure against Western intimidations, the words of Pasquale Paone resound the most. In 1971 he legitimized Soviet intervention on the basis that Czechoslovakia was bound by an obligation of loyalty “to adopt and to accept any measure designed to prevent a defeat of socialist solidarity,”⁷⁵ because it “was part of a community of States strictly linked by the ideological and practical fact of proletarian internationalism.”⁷⁶ Furthermore, no explicit commentary on the occurrence was expressed in prominent journals of international law, such as *Rivista di Diritto Internazionale* (criticism of Soviet actions was however provided by *Democrazia e Diritto* and the Association of Democratic Lawyers). Essentially, in a context where it would have been genuine to denounce the USSR’s escapades as illicit, numerous academics were “more inclined to dodge the issue, as a controversial political question, even if they had no sympathy for Communism.”⁷⁷

Largely, the 1970s were the years of Communist integration into the Italian government: in 1973 Enrico Berlinguer had proposed the “Historic Compromise” that progressed into “National Solidarity” by 1976. This decade witnessed various Italian international lawyers covering institutional positions, where the political orientation was bound to be influential.⁷⁸ In particular the positions as legal adviser of the Ministry of Foreign Affairs, as well as that of elected member of the Constitutional Court were upheld. Noteworthy scholars that covered political positions are Mario Giuliano (member of the House of Representatives in the VIII Legislature from 1979), and Altiero Spinelli (although not an international lawyer, he proved essential for European integration

⁷⁴ Francioni and Lenzerini, “Italian International Law Scholarship,” 340.

⁷⁵ Pasquale Paone, “Sovranità dello Stato e Potere Internazionale (a proposito dell’attuale problematica dell’intervento) [State Sovereignty and International Power (on the Present Issue of Intervention)],” *Democrazia e Diritto* (1971): 109, in Francesco Francioni and Federico Lenzerini “Italian International Law Scholarship,” 347.

⁷⁶ *Ibid.*

⁷⁷ Francioni and Lenzerini, “Italian International Law Scholarship,” 339.

⁷⁸ *Ibid.*, 363-364.

between 1976 and 1984).⁷⁹ Throughout this decade many academics were inspired to revisit Communist theory, gradually succumbing to its enchantment.⁸⁰ Among those authors expressing a pro-Communist embrace, Bernardini, Picone, Paone, and Giardina are most worth mentioning. In 1970, Bernardini published a dense essay proposing an insistent reliance on Marxist doctrine for understanding the “a peculiar form of protection in the relations among the [Socialist] States of the same kind.”⁸¹ For Bernardini: “the protection of sovereignty in a socialist state is especially finalized to the preservation of the real conditions of people’s sovereignty,”⁸² regulated by the power of proletarian internationalism, and not by “the relations among the government apparatus.”⁸³ Picone’s essay, “International Economic Law and International Economic Constitution” combines legal realism with distinct notions of Marxist theory to define international community. It “borrows the language of the “modes of capitalist production” and “international division of labor [...] to identify the social and economic forces that determine the material structure of the international community and its influence on the creation and renewal of international legal norms.”⁸⁴ Similarly, in “The Concept of International Community and Change of Historical Conditions,” Paone calls for a “new critical approach that would look beyond the normative superstructure of legal positivism to grasp the socioeconomic substratum of the international community.”⁸⁵ In the essay “International Law and Defensive Policies” (1984), Giordina justified the Soviet terms for disarmament by scrutinizing how the US proposed “solutions that were objectively disproportionate [in USSR’s favor], being thus unacceptable to the Soviet Union.”⁸⁶ Essentially, the impact that socialist thought has had on numerous Italian authors resounds in those academic works reviewing the international regulations of the use of force, self-determination, military interventions, as well as the national struggles for independence.

⁷⁹ Francioni and Lenzerini, “Italian International Law Scholarship,” 363-364.

⁸⁰ *Ibid.*, 356.

⁸¹ *Ibid.*, 357.

⁸² *Ibid.*

⁸³ *Ibid.*, 357-358.

⁸⁴ *Ibid.*, 356-357.

⁸⁵ *Ibid.*, 347.

⁸⁶ *Ibid.*

With the collapse of Fascist high politics, Italian diplomacy appeared useless. Experts observed how “Italy always seemed to toe the American line,”⁸⁷ desperate for assistance, and “questioned whether she had a foreign policy at all.”⁸⁸ Italy accepted Marshall Aid (1947), membership to NATO (1949), and the European integration project (1950), marginalizing Communists from government in hope to “rehabilitate her in the eyes of the democratic world”⁸⁹ and secure American economic and military support. Most Italians ignored foreign policy, occurrences mattered only when they had domestic repercussions: “half of them did not know, in 1958, what NATO was; three-quarters of them had no idea, in 1962, that reducing tariffs was one of the aims of the European Community.”⁹⁰ Newspapers provided inadequate foreign coverage; parliamentary debates were rare, even a cursory glance at the leading Journals revealed an unanticipated lack of discussion on the role of International law in world politics.⁹¹ The evolution of Italian international law unfolded within a weak and unstable political system where “America would always provide.”⁹² Surprisingly, however, Italy was the birth of the largest communist party in the Western hemisphere, “rooted in the territory of all Italian regions, organized in a capillary manner and responsive to a highly centralized bureaucratic structure dominated by the Secretary General of the party and the Central Committee.”⁹³ The workers’ union that represented the majority interests of Communist workers in all economic and social policy matters, acted in “a symbiotic relation”⁹⁴ with the PCI.

Communism had essentially come to be viewed as “the axis and the most uncompromising component of anti-Fascism” serving “the cathartic purpose” of granting “large strata of the Italian society and of intellectuals to position themselves on the side of the *good*.”⁹⁵ In spite of this, not all Italian scholars shared in this distorted perspective: an absence of political consensus persistently

⁸⁷ Clark, *Modern Italy*, 414.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*, 415.

⁹¹ Francioni and Lenzerini, “Italian International Law Scholarship,” 336.

⁹² Clark, *Modern Italy*, 415.

⁹³ Francioni and Lenzerini, “Italian International Law Scholarship,” 330.

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*, 366.

underplayed the belief that communism was actually the *evil* in the world, “with its history of terror, brutality and totalitarian oppression.”⁹⁶ Moreover, as already noted, Italy was at the mercy of superpowers, and by pertaining to the Western Front, it was more to its strategic advantage to remain under the sphere of influence of the United States. Overall, in spite of the Italian “anti-Fascist” claim, as subtly epitomized by the Constitution and by the fact that the PCI never thoroughly entered government, the Italian attitude toward Communism witnessed a thorough duality, thus explaining “the high degree of aloofness of established Italian international law scholarship with regard to the crimes committed by Soviet Communism.”⁹⁷

⁹⁶ Francioni and Lenzerini, “Italian International Law Scholarship,” 366.

⁹⁷ *Ibid.*

SECTION B: UNVEILING THE
RADICAL DUALITY OF ITALIAN ATTITUDE TOWARD COMMUNIST DOCTRINE

The Three Main Theoretical Issues Stemming from Communist Legal Thought as Examined by Italian International Law Scholars

The decade following 1968 marked a turning point for the engagement of Communist theories in Italian academia.⁹⁸ In general, the tragic events that had occurred across the iron curtain, such as in 1956 in Hungary or in 1962 in Cuba, hadn't sparked an extensive legal analysis.⁹⁹ During the years of the National Solidarity government, however, various theoretical issues derived from the Communist perspective, and legal arguments directly inspired by Socialist doctrine,¹⁰⁰ finally reverberated amongst Italian academics. Indeed, the 1970s witnessed considerable scholarly publications by Aldo Bernardini in 1969, Pasquale Paone in 1971, Francesco Bigazzi in 1976 and 1978, and Augusto Sinagra in 1978.

Overall, Communist thought had some impact on the writings of Italian scholars whom either sustained or denounced the Communist doctrine, illustrating the radical duality surrounding publications on “the international regulation of the use of force in the context of self-determination, of military intervention and of the need to provide assistance to movements of national liberations in their struggle for independence.”¹⁰¹ Three theoretical issues can be singled out in Italian international law scholarship: the general principles of international law, those considerations on the principle of non-intervention, and the sources of socialist international law, devoting considerable attention to the policy of socialist internationalism.

1. The General Principles of International Law

Among the various issues that arose from Communist legal scholarship, theoretical debate was certainly triggered by the distinct interpretation of the general principles of law, in particular

⁹⁸ Francioni and Lenzerini, “Italian International Law Scholarship,” 343.

⁹⁹ *Ibid.*, 366.

¹⁰⁰ *Ibid.*, 351-356.

¹⁰¹ *Ibid.*, 361.

those interpreting customary international law. For orthodox-Soviet scholars, such as Korovin or Vyshinski, international custom is born out of the *will* of the states when all parties agree to its binding nature. In other words, custom relies exclusively on the principle of consent: the *tacitus consensus* of states, existing in the form of *tacita convention*; only then can a legal fiction echo reality.¹⁰² Italian understanding of Soviet theory found expression in Augusto Sinagra's essay, "General Principles of Law in Socialist Conceptions of International Law" (1978). In his work, the author provides a severe criticism of the Socialist interpretation, exposing the various legal restraints that this argument places on the principles of international law.

First, the author discussed how the principle of state autonomy would be recognized without conditions under the Socialist view: "with the consequence that any rule of international law could be modified each time that a subsequent agreement is concluded in this respect."¹⁰³ In fact, Soviet scholars such as Krylov, placed high importance on "the active manifestations of the wills of the participating states"¹⁰⁴ being more flexible to revision. Second, Sinagra debates how the principle of autonomy of states is actually constrained by the consistent requirement that "basic principles [safeguard] those supreme values shaping the concept of international public order."¹⁰⁵ Socialism, excludes its existence as an autonomous source of law, believing that it can only result from "the scheme of legal production of agreements or custom."¹⁰⁶ Sinagra points out how Socialist rationale on important principles of international law, such as the safeguarding of "repression of genocide, abolition of slavery, trade in children,"¹⁰⁷ were undermined to "rules of *contemporary* international law."¹⁰⁸ Meaning, they are not accepted by states as *universally* binding and irremissible. Furthermore, the author borrows from Rolando Quadri's theory in *Diritto Internazionale Pubblico* (International Public Law) of how "general principles were the direct expression of the prevailing

¹⁰² Ferdinand J.M. Feldbrugge, ed., *Codification In the Communist World*, vol. 9 of *Law in Eastern Europe* (Leiden: A.W. Sijthoff, 1975), 298.

¹⁰³ Augusto Sinagra, "I Principi Generali di Diritto nelle Concezioni Socialiste del Diritto Internazionale [General Principle of Law in Socialist Conceptions of International Law]," *Comunicazioni e Studi* (1978): 417, in *CINECA IRIS Institutional Research Information System*, Sapienza Università Di Roma, accessed April 10, 2015, <https://iris.uniroma1.it/handle/11573/784396#.VYAG984RpR1>.

¹⁰⁴ Feldbrugge, *Codification In the Communist World*, 297.

¹⁰⁵ Francioni and Lenzerini, "Italian International Law Scholarship," 354-355.

¹⁰⁶ Sinagra, "I Principi Generali," 439.

¹⁰⁷ Francioni and Lenzerini, "Italian International Law Scholarship," 355.

¹⁰⁸ *Ibid.*

forces of international community,”¹⁰⁹ in order to further emphasize his Socialist criticism. Essentially the heart of Sinagra’s argument is that “the original autonomy of States cannot be conceived and recognized without limits,”¹¹⁰ especially when it comes to defending the general principles of international law, such as principles of non aggression, self-determination of peoples, states’ territorial inviolability, etc. Thus, in accordance with Sinagra, Socialist interpretation of general principles sparked questionable legal theories for international law scholarship, particularly for the principle of non-intervention.

2. The Principle of Non-Intervention

One of the fundamental issues central to international academic debates was certainly that of the Communist attitude towards the principle of non-intervention. In retrospective analysis, amongst the various Soviet escapades, the Prague invasion denotes the epitome of blatant disregard for the principle of non-intervention. It is sufficient to recall the warning on the 16th July 1968, that the members of the Warsaw Pact¹¹¹ addressed to Czechoslovakia: “[w]e do not have the intention to interfere with problems which are internal to your party and your State [...] but each of our parties is responsible not only *vis-à-vis* its working class and its people, but also *vis-à-vis* the international working class and the world’s communist movement and cannot thus avoid to pursue the resulting obligations.”¹¹²

Soviet undertakings in Prague undoubtedly sparked immense commotion amongst Italian Communist-oriented scholars and international lawyers who fervently condemned Soviet actions as “unlawful under any legal perspective.”¹¹³ The immense disapproval from the Italian Left voiced the publications of *Democrazia e Diritto*, which defined Soviet invasion as “an unjustifiable intromission in the internal affairs of a sovereign State” in direct violation with international law

¹⁰⁹ Francioni and Lenzerini, “Italian International Law Scholarship,” 337.

¹¹⁰ Sinagra, “I Principi Generali,” 435.

¹¹¹ Francioni and Lenzerini, “Italian International Law Scholarship,” 352.

¹¹² *Ibid.*

¹¹³ *Ibid.*, 344.

and the UN Charter.¹¹⁴ Soviet actions solemnly defied: self-determination of peoples, national independence, territorial intangibility, and state sovereignty. It reached an “even greater level of gravity [considering] fact that it was aimed to stop a laborious process of democratic evolution of a socialist country by other countries which are inspired by the same principles” by attempting to “solve relations among States through the use of force.”¹¹⁵ In the article “On the Facts of Czechoslovakia” (1968), Umberto Cerroni (a comparative law scholar) explains how the Soviet Union was also in breach of the Warsaw Pact: “no formal or informal act of Czech representative organs had been adopted in order to invoke the state of danger which could justify the activation of the mechanism of mutual military solidarity and defense of the Warsaw Pact.”¹¹⁶ In addition, various scholars, amongst whom Fabbri, also noticed how this intervention was actually negating the essence of the October Revolution: “it removed the “*jus repraesentationis*” of Socialism from peoples (which are the legitimate owners of it) to States,”¹¹⁷ thus annulling the essentiality of the Communist revolution, which was that “of building the bases for socialism in the world and of building a *new* international legal order, the *primary source* of which must be the class struggle, inspiring the peoples’ behavior in their fight against imperialism.”¹¹⁸ Furthermore the Prague invasion was criticized for the blatant contradiction of Socialist Internationalism, whose existence meant to ensure state sovereignty and equality to all socialist states.

In response to Western accusations, Soviet scholars quickly provided an eccentric re-adaptation of this principle. In the 1968 issue of the *Pravovedenie* (the journal of the Faculty of Legal Sciences of the University of Leningrad), Soviet scholar A.I. Botvin commented in his article, “On the Principle of Non-intervention in Contemporary International Law,” how the agenda of Socialist Internationalism, does presuppose a unanimously recognized “not only direct,

¹¹⁴ *Democrazia e Diritto* (1968): 428, in Francioni and Lenzerini, “Italian International Law Scholarship,” 343.

¹¹⁵ *Ibid.*

¹¹⁶ Umberto Cerroni, “Sui Fatti di Cecoslovacchia [On the Facts of Czechoslovakia],” *Democrazia e Diritto* (1968): 293, in Francioni and Lenzerini, “Italian International Law Scholarship,” 344.

¹¹⁷ Francesco Fabbri, “I Fatti di Cecoslovacchia dell’Agosto 1968 e l’Attuale Dinamica di Base della Comunità Internazionale [The Facts of Czechoslovakia of August 1968 and the Present Basic Dynamics of the International Community],” *Democrazia e Diritto* (1969): 61, in Francioni and Lenzerini, “Italian International Law Scholarship,” 346.

¹¹⁸ *Ibid.*

dictatorial intervention (aggression), but also any kind of indirect intervention.”¹¹⁹ This distinct Soviet interpretation of the principle of non-intervention was voiced by Italian scholar Pasquale Paone in “State Sovereignty and International Power (on the Present Issue of Intervention)” in 1971. Following in the same line of thought, Arata and Bochicchio assessed how the “formal respect of the principle of self-determination of nations would ensure freedom of self-determination not in favor of the peoples, but of their enemies pushing for the loss of Czech independence.”¹²⁰ Ultimately, this legitimacy of “limited sovereignty,” regulating all Socialist satellites, justified military interference when threatened by Western influence.¹²¹

Essentially, the legal judgment of the Soviet intervention was downgraded to a political “negativity” stemming from the internal dynamics of the Socialist world,¹²² and not from the disregard of Czechoslovak sovereignty. To further defend Soviet policy, Italian scholars also concentrated their writings on the vast array of criticism offered by Western politics. This reflects an indirect influence of Socialist theory on the works of Italian scholars. In particular, the scholar Aldo Bernardini provides a close analysis of United States intervention in the Vietnam War in two articles: “Vietnam in Present International Law” and “Aggression against Vietnam and Mining of Vietnamese Harbors,” published in 1969 and 1973 respectively. In his first essay, Bernardini determined how US intervention was indeed that of armed aggression: “an international illicit act [...] an active intervention in the internal affairs of an independent and sovereign State.”¹²³ In his second essay, Bernardini continued to lament how US behavior in Vietnam “may be undoubtedly considered as the most serious form of intervention in the internal affairs of an independent State, aimed at least a breaking its territorial integrity and mutilating its independence [...] an aggression with substantial occupation of part of the territory of a sovereign State.”¹²⁴ For Bernardini, the

¹¹⁹ Francioni and Lenzerini, “Italian International Law Scholarship,” 344.

¹²⁰ *Ibid*, 352-353.

¹²¹ *Ibid*, 345.

¹²² *Ibid*, 345-346.

¹²³ Aldo Bernardini, “Il Vietnam nel Diritto Internazionale Attuale [Vietnam in Contemporary International law],” *Democrazia e Diritto* (1969): 443, in Francioni and Lenzerini, “Italian International Law Scholarship,” 362.

¹²⁴ Aldo Bernardini, “L’aggressione Contro il Vietnam e il Minamento dei Porti Vietnamiti: Considerazioni Giuridiche [Aggression against Vietnam and Mining of Vietnamese Harbours: Legal Reflections],” *Democrazia e Diritto* (1973): 104, in Francioni and Lenzerini, “Italian International Law Scholarship,” 363.

United States policy in Vietnam was the champion of the “most various figures of war crimes and crimes against humanity.”¹²⁵ In comparison, Soviet intervention in Prague could not be considered any more illegal in pursuant with international law, as the monstrous American intervention in Vietnam. It could only be considered erroneous “in so far as it was unfit to resolve the endogenous problems of Socialist society.”¹²⁶

With the invasion of Czechoslovakia, the doctrinal debate surrounding the principle of non-intervention clearly marked a turning point in the attitude of Italian academia vis-à-vis Socialist legal theory.¹²⁷ Its occurrence also resulted in the disintegration of the Italian Communist block: “a group of influential communist intellectuals (among them L. Pintor, R. Rossanda and L. Castellina) took a very critical, uncompromising position the role of the Communist Party.”¹²⁸ Following their expulsion from the PCI, they founded “one of the most sophisticated and intelligent newspapers of the independent left in post-World War II Italy, *Il Manifesto*.”¹²⁹ The diverging doctrinal assessments were the result of “a radical critique stemming within the Communist doctrine.”¹³⁰ The conflicting voices on the subject matter, echoed in the writings of those Italian scholars whom either condemned Soviet actions, or sustained their legitimacy.

3. The Sources of Socialist International Law

As already denoted in Chapter I, the most significant Soviet contribution to the re-conceptualization of international law took the form of Socialist International Law. As expressed in Korovin’s *International Law of the Period of Transition* (1923), Socialist International law would safeguard the sovereignty and equality of Socialist states, combat any form of threat leaking from the West, and guarantee Communist survival until the rest of the world developed proletarian democracies.

¹²⁵ Bernardini, “Il Vietnam nel Diritto Internazionale Attuale,” 443.

¹²⁶ Francioni and Lenzerini, “Italian International Law Scholarship,” 362.

¹²⁷ *Ibid.*, 343.

¹²⁸ *Ibid.*, 344.

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

In the mid-1970s, two important works penned by Francesco Bigazzi signed a turning point for the interest in the material content of Soviet international law, which until then had been proposed in comparative law.¹³¹ In his first published article, “Socialist Conception of International Law” (1976), Bigazzi provided a deep analysis of how the Communist ideological overtone profoundly shaped its internationalist doctrine. Accordingly, the sources of Socialist international law originate in a paradoxical reality where the traditional conception of international law as an “order based on the equilibrium of sovereign forces”¹³² is in stark contrast with Communist understanding of the *state*, which is “destined to disappear with the realization of the Communist Society.”¹³³ Thus, as Bigazzi emphasizes, when “the ruling party of a Socialist state is *forced* to entertain multifaceted relations with governments which, as revolutionary movement, it is bound to fight.”¹³⁴ Ideological discrepancies will inevitably strain the international arena, and consequently legal scholarship. For Soviet doctrine, international law must be of transitory nature “to permit the establishment of relations among States based on a different social and economic order,”¹³⁵ for *temporary* peaceful coexistence until the completion of worldwide Communist revolution.¹³⁶

Bigazzi also devoted considerable attention in defining the “local custom”¹³⁷ of Socialist International Law: the policy and legal principle of Socialist Internationalism. Socialist international law would have to coexist with general international law, but the latter would have to be set aside if it contradicted the “particular *principles* which are proper of the community of socialist States.”¹³⁸ Furthermore, Sinagra’s “General Principle of law in Socialist Conceptions of International Law”, identified its underlying incoherence as it challenged “the effectiveness of certain principles recognized by Socialist scholars,”¹³⁹ (for instance the violation of State sovereignty when USSR invaded Hungary or Czechoslovakia). Essentially, Bigazzi discarded the

¹³¹ Francioni and Lenzerini, “Italian International Law Scholarship,” 351.

¹³² *Ibid*, 352.

¹³³ Francesco Bigazzi, “Concezione Socialista Del Diritto Internazionale [Socialist Conception of International Law],” *Comunità Internazionale* (1976): 321, in *Banche Dati Professionali Stairs*, Banche Dati Professionali Della Camera Dei Deputati, accessed May 25, 2015, <http://bdp.camera.it/init/doct/lista/3983>.

¹³⁴ *Ibid*, 329.

¹³⁵ Francioni and Lenzerini, “Italian International Law Scholarship,” 352.

¹³⁶ Bigazzi, “Concezione Socialista,” 329.

¹³⁷ *Ibid*, 343.

¹³⁸ Sinagra, “I Principi Generali,” 463.

¹³⁹ *Ibid*, 457.

belief that Socialist international law entailed a completely independent sphere of international law, which advocated innovative principles intended to solely regulate relations of exclusive Socialist nature. Socialist international law could only exist in the form of a limited “regional sub-system of local customs,”¹⁴⁰ a different way of interpreting and applying the already existing rules, but never constituting a distinct international law *inter-se*, unlike the belief of the majority of orthodox Soviet scholars.

After his first publication, Bigazzi continued to account other constitutive elements of Socialist International Law. In 1978, his second article “Developments in the Socialist Conception of international Law” was published in the important international relations journal *Comunità Internazionale*. In this analysis, Bigazzi provides a general assessment on the Soviet practice of defining the elements of the various principles of its doctrine.¹⁴¹ He noted how the Soviet Union placed fundamental importance on “consolidating unity, cohesion, friendship and brotherhood amongst socialist States,”¹⁴² to strengthen the Socialist camp against the aggression of the capitalist system. In the eyes of USSR, the imperialist West was depriving states of their independence and right to self-determination,¹⁴³ thus by endorsing “voluntary cooperation and unity of States in the fight against imperialism and for the construction of the new society,”¹⁴⁴ it claimed to be in line with the contemporary purposes of international law.¹⁴⁵ This very notion triggered considerable concerns in the international arena, especially when it came to the Communists’ countries diligence in refusing to submit legal and political disputes to third-party states.¹⁴⁶ Recurrent Soviet actions had caused a considerable paralysis in international institutions, most of all afflicting the International Court of Justice. The shared perspective amongst Western scholars was that Socialist doctrine wanted to overthrow the Western liberal world. However, Italian scholars have overruled

¹⁴⁰ Francioni and Lenzerini, “Italian International Law Scholarship,” 355.

¹⁴¹ Francesco Bigazzi, “Sviluppi nella Concezione Socialista del Diritto Internazionale [Developments in the Socialist Conception of International Law],” *Comunità Internazionale* (1978): 83, in *Banche Dati Professionali Stairs*, Banche Dati Professionali Della Camera Dei Deputati, accessed May 26, 2015, <http://bdp.camera.it/init/doct/lista/3983>.

¹⁴² Francioni and Lenzerini, “Italian International law Scholarship,” 353.

¹⁴³ Bigazzi, “Sviluppi nella Concezione Socialista,” 80-83.

¹⁴⁴ *Ibid*, 71.

¹⁴⁵ *Ibid*, 71-72.

¹⁴⁶ Lissitzyn, “Western and Soviet Perspectives on International Law,” 138.

this view by noting how “this argument was often misused by Western countries as a pretext to cover their own position.”¹⁴⁷ In fact, the effect on the international jurisdiction following the complete overturn of the traditional Soviet stance with Gorbaciov’s publication of “Reality and Safeguards for a Secure World” in 1987, was profoundly destabilizing. As Italian scholar Luigi Ferrari Bravo pinpoints in “Perspectives of International Law at the End of the Twentieth Century” (1991), this sudden change “put several Western countries in crisis, as they well liked to cover themselves behind the *niet* of Moscow and are now forced to disclose their reservation and ambiguities or to revise their positions.”¹⁴⁸

¹⁴⁷ Francioni and Lenzerini, “Italian International Law Scholarship,” 356.

¹⁴⁸ Luigi Ferrari Bravo, “Prospettive del Diritto Internazionale alla fine del Secolo XX [Perspectives of International law at the End of the Twentieth Century],” *Rivista di Diritto Internazionale* (1991): 530, in Francioni and Lenzerini, “Italian International Law Scholarship,” 356.

CHAPTER III

Spanish International Isolation and the Impact of Anti-Communist Thought on Spanish International Law Scholarship

A Brief Historical Setting

The close relations between the Italian and Spanish principalities, portrayed during the early modern period, did not continue into the Cold War. Throughout the early 20th Century, there is no doubt of the importance that Fascist Italy played in the rise of the Franco regime: Mussolini had hailed his Spanish Counterpart as “the chief of Spanish Fascism”¹⁴⁹ providing “more support to the Spanish Nationalists both absolutely and proportionately than did Hitler.”¹⁵⁰ Until the early 1940s these two countries shared a similar nationalist and militarist ideology, characterized by a strong practice of high politics; yet, with the fall of Mussolini, such close relations never reestablished. While Italy instituted a democratic republic, Spain remained under Francisco Franco’s tight fascist grasp. This new political climate catapulted Franco’s Spain into a new foreign policy approach, whose design during this particular period went significantly hand in hand with the development of international law.

¹⁴⁹ Stanley G. Payne. "Fascist Italy and Spain, 1922–45," *Mediterranean Historical Review*, 101.

¹⁵⁰ *Ibid*, 99.

SECTION A: THE FASCIST-MIMESIS DICTATORSHIP

The Prevailing Climate Surrounding the Evolution of Spanish Foreign Policy Mirroring in the Development of Spanish International Law Scholarship.

By the end of 1944, in patent contrast with the Italian historical context, high politics, militarism, and nationalism continued to survive in Franco's Spain. With Hitler and Mussolini's defeat, it was only natural for Spain to attempt to rehabilitate itself by abandoning its "Axis temptation" in pursuit of Allied "benevolent neutrality." Regardless of this opportunistic conversion, Spain was ostracized by all Eastern and Western European states. The world was unforgiving: on the grounds that Franco had come to power with the assistance of the Axis powers and had collaborated with them during the war, Spain was denied membership to the UN General Assembly in 1946, and was subsequently excluded from the Marshall Plan in 1947.¹⁵¹ The dictator, however, was not too concerned by this marginalization, he was "convinced that attacks on his regime were the work of communist forces, and he felt certain that the Western powers would someday recognize Spain's contribution in maintaining its solitary vigil against bolshevism."¹⁵² Distorted by the totalitarian regime that "made of ultra-Catholicism and anti-Communism the flagship of its foreign policy for almost 40 years,"¹⁵³ Spain's strong anti-communist stance poured into its international law scholarship, unfolding within three distinct periods of historical transition. First, Spain experienced an era of autarchy beginning in 1939, followed by a period of international realignment in 1953, and finally, an extremely short-lived phase of "intellectual dissent," culminated by 1967.

From 1939, Spanish foreign policy confronted an international arena that was "undergoing radical transformations."¹⁵⁴ The long triennium of the Spanish Civil War (1936-1939) and "its slow

¹⁵¹ "Foreign Policy under Franco," *Spain: A Country Study*, Country Studies, accessed May 14, 2015, <http://countrystudies.us/spain/24.htm>.

¹⁵² *Ibid.*

¹⁵³ Ignacio de la Rasilla del Moral, "The Zero Years of Spanish International Law," in *Les Doctrines Internationalistes Durant Les Année du Communisme Réel en Europe* [Internationalist Doctrines During the Years of Real Communism in Europe], eds. Emmanuelle Jouanet and Iulia Motoc (Paris: Société de Législation Comparée, 2012), 239.

¹⁵⁴ *Ibid.*

historically autarchic aftermath”¹⁵⁵ infected the field of Spanish scholarship. Death and exile devastated academic ranks: “imprisonment and university purges were soon to complete the elimination of all vestiges of Republicanism from the twelve universities that existed in the country”¹⁵⁶ only those who had participated in the “anti-Spain crusade” could hope to continue their careers. The ashes of civil war generated a “forced entanglement in an imagery of anti-liberal, nationalist and ultra-catholic references” causing a “radical cut in the intellectual Spanish production.”¹⁵⁷

Spanish scholarship evolved with Carl Schmitt’s “conceptual schemes that played a pivotal role in the political theory of a regime that was in urgent need of a solid theoretical basis to legitimize its coup d’état from a totalitarian perspective.”¹⁵⁸ Spanish policy was primarily aimed at “instrumentally nurturing the theoretical legitimization of the new authoritarian regime” whose main justification was “premised on the transcendence/immanence dichotomy of the leader as the genuine updated source of the Spanish historical tradition and its best interpreters.”¹⁵⁹ Schmittian orientation voiced the works of numerous scholars, generating a new doctrine of international law forged within the framework of Fascist mimesis. Numerous articles were published in *Revista de Estudios Políticos*, a Falangist-oriented journal, amongst which “International Community and International Society” (1943) by Poch and De Caviedes. Induced by “the radical transformation of Spanish law and essays on totalitarian legal scholarship,” their writings would “cohabit with the comparative notice of legal developments in foreign jurisdictions.”¹⁶⁰ Moreover, the leading article of the first issue of *Revista de Estudios Políticos*, entitled “Reivindicaciones de España,” by Alfonso García Valdecasa (one of the founders of the Spanish Phalanx and first director of the *Instituto de Estudios Políticos*) was awarded the Spanish National Prize of Literature for “elaborating in extensor on the legal-historical titles of the Franco regime’s neo-colonialist

¹⁵⁵ Rasilla, “The Zero years of Spanish International Law,” 242.

¹⁵⁶ *Ibid.*

¹⁵⁷ Celestino del Arrenal, *La Teoría de las Relaciones Internacionales en España*, International Law Association (1979): 53, in Rasilla, “The Zero Years of Spanish International Law,” 239.

¹⁵⁸ Rasilla, “The Zero years of Spanish International Law,” 246.

¹⁵⁹ *Ibid.*

¹⁶⁰ *Ibid.*, 249.

territorial pretensions.”¹⁶¹ Valdecasa analyzed “Phalanx underlying effort to portray vis-à-vis other competing political factions, a coherent ideological construction oriented at influencing the institutional and ideological conceptualization of the new regime.”¹⁶² In condemning previous governments for having abandoned nationalistic attitudes in Spanish foreign policy, Luis Legaz Lacambra’s sociological perspective “on the philosophical underpinnings of labor law and social policy,” also contributed to this construction of “the new Spanish state in the very early Franquismo.”¹⁶³ Other distinguished Spanish intellectuals enshrining a similar ideological affinity with the imperial-oriented foreign agenda are: Camilo Barcia Trelles, whom in “Punto Cardinales de la Política Exterior Española” contributed to the nationalist front and intellectual exaltation of *Hispanidad*; J. Cordero Torres, the founder of Spanish Society of International and Colonial Studies; Fernando Maria Castiella, co-author of “Reivindicaciones de España” and the longest serving Minister of Foreign Affairs; and Antonio de Luna, the first Spanish member of the International Law Commission and permanent judge at the International Court of Justice. In 1948, both Castiella and Luna founded *Revista Española de Derecho Internacional* (Spanish Journal of International Law), further nurturing the development of Spanish international law scholarship. The 1940s, essentially, experienced the acute climax of *Falangist intelligentsia*, the intellectual phenomenon that combined ideological underpinning of the New Order with the motherland exaltation of Spanish historical values and imperial ambitions of Spanishness.¹⁶⁴ Spanish scholarship remained “a loyal fellow traveller of an authoritarian regime born in a war that had been legislatively defined as a popular revolt to prevent a criminal conspiracy from making Spain a slave to the Soviet tyranny.”¹⁶⁵ The profound emphasis placed on anti-Communism as the ideological pillar of Franco’s constituency proved to be of vital importance¹⁶⁶ in rehabilitating Spanish

¹⁶¹ Rasilla, “The Zero years of Spanish International Law,” 250.

¹⁶² *Ibid.*

¹⁶³ *Ibid.*, 246.

¹⁶⁴ *Ibid.*, 249.

¹⁶⁵ *Ibid.*, 239.

¹⁶⁶ “Foreign Policy under Franco.”

diplomatic relations. In August 1953 Spain signed Concordat with the Vatican and by September, three important economic-military pacts were signed with the United States.¹⁶⁷

The encircling international atmosphere of 1953, “a time when Spain’s international isolation was gradually coming to an end,”¹⁶⁸ contributed to the politico-ideological turn from the “Fascist-Mimesis” into a more “ultra-catholic oriented de-fascination.”¹⁶⁹ Academic debates became more concerned with “Spanish nationalist cultural forms drawn from the mythology of Reconquista, Counter Reformation and Empire,” as well as the “anti-Spain crusade”¹⁷⁰ that had called for national reunification in 1936. This ultimately provoked the intellectual restoration of the Salamanca School: a return to the “cultivation of historical-legal studies”¹⁷¹ particularly devoted to Francisco de Vitoria’s “line of imperialist continuity in Spanish foreign policy.”¹⁷² In 1948, this academic evolution signed the launching of two important journals, *Revista de Política Internacional* and *Revista Española de Derecho Internacional*. Furthermore, in 1950, the Instituto de Estudios Políticos established *Revista de Política Internacional*, where Castiella was appointed as its second Director. Antonio de Luna, along with co-founding *Revista Española de Derecho Internacional*, also directed the division of International Politics at the *Instituto de Estudios Políticos*. The period of international realignment also coincided with notable editorial shifts in exemplary Falangist publications such as *El Escorial* and in the writings of Legaz Lacambra. The international consequences were clear: “strategic portrayal of Spain as the last bastion of traditional European Catholic values after the Second World War”¹⁷³ reinforced “the external image of Spain as the only European country that had successfully resisted”¹⁷⁴ Real-Communism.

Despite the essentiality of anti-Communism in molding Franco’s “organically orchestrated international legal doctrine during the first twenty years,”¹⁷⁵ the early 1960s witnessed a transient

¹⁶⁷ “Foreign Policy under Franco.”

¹⁶⁸ Rasilla, “The Zero years of Spanish International Law,” 259.

¹⁶⁹ *Ibid*, 256.

¹⁷⁰ *Ibid*, 263.

¹⁷¹ *Ibid*, 265.

¹⁷² *Ibid*, 264.

¹⁷³ *Ibid*, 256.

¹⁷⁴ “Foreign Policy under Franco.”

¹⁷⁵ Rasilla, “The Zero years of Spanish International Law,” 241.

return to “the history of the late 19th and early 20th centuries through the launching of a scientific project called *Notes for the history of Spanish internationalist thought*.”¹⁷⁶ The “ius-naturalist lineage” that had dominated previous Spanish legal doctrine slowly translated into a “new force.”¹⁷⁷ The historical background of this short-lived transition coincided with the astounding “phenomenon of internal intellectual dissent,”¹⁷⁸ triggered by literary authors and student movements causing numerous ministerial crises.¹⁷⁹ Ultimately, this era resulted in the first “scientific attempt at engaging with the Soviet theory of international law”¹⁸⁰ that appeared in 1963 in *Revista Española de Derecho Internacional*. The author Augilar Navarro provided a very insightful analysis of Tunkin’s “Das Völkerrechte der Gegenwart Theorie und Praxis” (1962), examining the complex ideological foundations that characterized Socialist approach to international law, focusing on “a historical perspective to examine what he termed as the *neuralgic points* of the most important phases in the process of the Russian adaptation to general international law.”¹⁸¹ Regrettably by 1967, however, less than four years after its doctrinal shift, a distinguished member of the post-Civil war school of natural law –namely Luis García Arias– reverted the journal to its original ideological line.¹⁸² Considering it an “unimportant editorial coup,”¹⁸³ he eradicated all Communist theoretical engagement from all publications of *Revista Española de Derecho Internacional*, restoring the “thematic orientation towards natural law and the reinstatement of the *Siglo de Oro*’s Salamanca School among Spanish international lawyers.”¹⁸⁴

¹⁷⁶ Rasilla, “The Zero years of Spanish International Law,” 241.

¹⁷⁷ *Ibid*, 268.

¹⁷⁸ *Ibid*, 271.

¹⁷⁹ *Ibid*, 272.

¹⁸⁰ *Ibid*, 241.

¹⁸¹ *Ibid*, 271.

¹⁸² *Ibid*, 275.

¹⁸³ *Ibid*.

¹⁸⁴ *Ibid*, 241.

SECTION B:
THE INVERSE ANALYSIS OF THE POSSIBLE INFLUENCE THAT COMMUNIST
DOCTRINE EXERTED ON SPANISH INTERNATIONALIST ACADEMIA

Why Spanish International Law Scholarship Does NOT Invite Any International Legal Perspective

Broadly speaking, “neither the post-Civil nor the post-World War were periods to study the Marxist thought objectively in Spain.”¹⁸⁵ Spanish academia of the Francoist era remained confined within the overwhelming ideological framework of Anti-Communism, limiting the engagement of Socialist theories. One of the preferred themes cultivated by Spanish scholarship was the continuation of the 16th century Salamanca School, considered the foundation of international law. The intellectuals of this school of thought were “the first who spoke out on rights [...] of all human beings,”¹⁸⁶ asserting their innate dignity. Its revival became part of the “Spanishification” that Franco channeled into society, where the “cautionary tale of the Spanish Civil War had already wielded to show that Marxism was a fairly uncomfortable waiting-room to hell.”¹⁸⁷

Regrettably, Spanish academia vis-à-vis the Soviet doctrine was not grounded on “any legal perspective of International law.”¹⁸⁸ Instead, Spanish intellectuals employed the framework provided by foreign policy and international relations,¹⁸⁹ establishing three main general traits: a geopolitical approach, a realpolitik strategic perspective (a cold diplomatic lenses), and the rhetorical nationalist device of anti-Communism in shaping *Hispanidad*. These three main strands are the manifestation of the type of scientific approach adopted by Spanish internationalist scholars’ vis-à-vis the Communist doctrine, during the majority duration of the Cold War.

1. A Geopolitical Analysis

The geopolitical approach is the method of assessing a country’s foreign policy in order to comprehend, rationalize, and predict its international political behavior. It focuses on the role of

¹⁸⁵ Rasilla, “The Zero years of Spanish International Law,” 240.

¹⁸⁶ Pablo Antonio Fernández-Sánchez, “Spanish School of International Law (c. 16th and 17th Centuries),” *Spanish School of International Law*, Oxford Bibliographies, last modified September 30, 2013, accessed May 14, 2015, <http://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0082.xml>.

¹⁸⁷ Rasilla, “The Zero years of Spanish International Law,” 243.

¹⁸⁸ *Ibid*, 261.

¹⁸⁹ *Ibid*, 241.

history and social science, making reference to geography, in relation with international affairs. The most representative geopolitical approach of Spanish academia is surely provided by the work of Camilo Barcia Trelles, whom in studying Russian history and Marxist ideology, outright condemned the Soviet approach to international politics. Barcia Trelles' leading article, entitled "El Pacto Atlántico y Las Inclinaciones Geopolíticas de la URSS," as published in the first issue of *Revista de Política Internacional*, was comprised for the occasion of the signing of the North Atlantic Treaty (1949). The scholar provided a detailed historical context of the Atlantic Pact and the underlying relations between the North American and Russian hemisphere, in particular focusing on the "uncertainties"¹⁹⁰ surrounding Russian approach to international affairs. In delivering a concrete retrospective analysis of the works of H. Mackinder, an affirmed geopolitician, the author addressed the "corazón de Rusia" expanding on the role of "the history of Russia as a "geocratical power," essentially conceptualizing it as a "talasocracia."¹⁹¹ The Spanish scholar eventually unveiled the geopolitical framework of the Pact, by first stipulating an in-depth analysis of the geographical position of Russia: it is a potential "European power with interests in Asia, or an Asian power with interests in Europe."¹⁹² Following in this line of thought, Russia is essentially "invulnerable"¹⁹³ to any possible terrain threat. The surrounding geopolitical framework was essentially constrained by the "dissuasive value of the Atlantic Pact," and a "temporally disoriented US foreign policy," against the "ideological Soviet tactic," regarded by the USSR as a mere "instrument of execution of the great Russian historical geopolitical designs originated in the times of Peter the Great."¹⁹⁴ Barcia Trelles' devoted further pages analyzing how the "messianic" Soviet Union had the "international initiative on its side" and knew perfectly well where it was "orientating its steps [...] with certain indeclinable geopolitical laws."¹⁹⁵ Barcia fundamentally denounced the "myopia" of certain approaches underlying the culminating phase of struggle

¹⁹⁰ Camilo Barcia Trelles, "El Pacto Atlántico y Las Inclinaciones Geopolíticas de la URSS [The Atlantic Pact and Geopolitical Inclinations of the USSR]," *Revista de Política Internacional* (1949): 17, in *Dialnet*, accessed May 17, 2015, <http://dialnet.unirioja.es/descarga/articulo/2495222.pdf>.

¹⁹¹ *Ibid.*, 20-23.

¹⁹² *Ibid.*, 45.

¹⁹³ *Ibid.*, 38.

¹⁹⁴ *Ibid.*, 52.

¹⁹⁵ *Ibid.*, 48.

between the World Island and the periphery world: “*asistimos a una fase culminante en la lucha entre la Isla Mundial y el Mundo Periferico.*”¹⁹⁶ The author concluded his evaluation by considering a number of foreign policy recommendations for the US decision makers in Asia in order to supplement the “incomplete vision of ensemble of those who articulated the Atlantic Pact understood by him as the United States dialectical suit of armor.”¹⁹⁷ Camilo Barcia Trelles’ is an explicit example of Spanish negativity towards the Soviet Union and its internationalist attitude, marking a clear distinctive line “between communism as an instrument of expansion and Russian imperialism as the final goal of the former.”¹⁹⁸

2. A Strategic Realpolitik Perspective

By Realpolitik one intends the diplomatic and political attitude that is primarily founded on power and on practical considerations of material factors, rather than ideology. The use of this strategic perspective in Spanish international legal academia can be singled out into three exponents. The first consists in the works of Spanish scholar José Sebastián de Erice y O’Shea, the second is provided by the statistical accounts proving Spanish realignment with the West (especially with the UN), and the last consists in the works of Fernandez de la Mora in examining the role of USSR in having influenced Spanish international law approach.

In two important volumes of Diplomatic Law, *España y las Naciones Unidas* (published in *Revista de Política Internacional* in 1950) and *Derecho Diplomático* (1954), O’Shea attentively examined the cold Realpolitik diplomatic lenses that constituted his interpretation of Soviet Union’s internationalist attitude. O’Shea’s analysis in the *España y las Naciones Unidas* commences with his considerations on the General Assembly’s “rehabilitation” at the UN Resolution of the 4th November 1950, retracing the “UN’s obscure USSR-led gambling and deals of corridors.”¹⁹⁹ He further provides an in-depth assessment of what he regarded as the “monstrously anti-juridical

¹⁹⁶ Barcia Trelles, “El Pacto Atlántico,” 36-38.

¹⁹⁷ *Ibid*, 52.

¹⁹⁸ *Ibid*, 40.

¹⁹⁹ Rasilla, “The Zero years of Spanish International Law,” 262.

unfolding between 1945 and 1950 of the so called Spanish case”²⁰⁰ at the United Nations. The Western world had committed the mistake of falling trap to the “completely mendacious and injurious” diplomatic strategy of the Soviet Union, who’s real intention was that of undermining the only nation that protected the “European stronghold against Russia imperialism.”²⁰¹ Naturally, this argument was born out of the Spanish foreign policy desire to demonstrate its valuable allegiance against Communist Europe and re-enter the international arena. The second hardline exponent of the Realpolitik approach is drawn in the documented entries of the first Spanish Ambassador, Román Oyarzun, to the United Nations, in 1955. His work presents a detailed gradual evolution of the votes that were “diplomatically scratched” in favor Spanish recognition amongst UN member countries. In particular, the ambassador notes an increased support: from “51 states against in 1945, to 6 votes in favor in 1946, 16 in 1947, 26 in 1949, and finally 38 in 1950.”²⁰² O’Shea further commented on these findings in *España y las Naciones Unidas*, by assessing the extensive effort of “Spanish policies of diplomatic substitution both towards South American and countries of the Arab world, against the odds of the fierce anti-Spanish international strategy led by international communist forces.”²⁰³ The final exponent of the enduring antagonism toward the Soviet Union originated was also confronted by the writings of General Francisco Franco himself. In 1960, the dictator published the prologue for the official commemorative book of the twenty-five years of the National Movement and New Order. The exaltation of the Spanish dictatorship was then reinforced through the writings of scholar, diplomat and Minister of Public Works for four years, Gonzalo Fernandez de la Mora.²⁰⁴ In his article “La Política Exterior de España,” published in *Instituto de Estudios Políticos* in 1961, the author stressed the fifteen successful years of Spanish foreign policy that he regarded as “always ancillary to the domestic one, the literally binding evidence of the

²⁰⁰ José Sebastian de Erice y O’Shea, “España y la Naciones Unidas [Spain and the United Nations],” *Revista de Política Internacional* (1950): 9, in Rasilla, “The Zero years of Spanish International Law,” 262.

²⁰¹ *Ibid.*

²⁰² Rasilla, “The Zero years of Spanish International Law,” 262.

²⁰³ *Ibid.*

²⁰⁴ *Ibid.*, 262-263.

Spanish neutrality in World War II.”²⁰⁵ The author stretched so far as defending the strategic nature of Franco’s “appeasement policy” throughout the years of the Axis temptation.²⁰⁶ He revealed how anti-communism was central in shaping the national identity and character of Spanish society: it produced the historical and spiritual affinities of “*Hispanidad*, the Iberian bloc, the Hispanic-Arab friendship.”²⁰⁷ The Spanish national identity was not only constructed on *Falangist intelligentsia*, but also on the myth of anti-Communism: “twenty five years of Spanish foreign policy become by this dint officially diplomatic relations with the USSR [...] configured [the] current State in its fight against the Marxist conception of man and the world.”²⁰⁸

3. The Call for National *Hispanidad*

Amongst the three main axes of Spanish academic approach to Communist doctrine, the role of anti-Communist identity proved vital for the cultivation of the thematic of *Hispanidad* –i.e. “Hispanic world, Hispanic culture and any other analogous meaning that makes reference to the spiritual community of the people of the Spanish language.”²⁰⁹ Already in 1943, the National Delegation of Propaganda had disseminated “a series of intellectual directive guidelines that had seen it fit to remind Spanish academia in peremptory terms that the Spanish state is exclusively grounded on principles, political norms and a philosophical basis of a strictly national character.”²¹⁰ Given such intellectual censure, under no circumstance was it tolerated “to compare [Spanish] State with other States which might appear similar, and even less to extract consequences of supposed foreign adaptations to our country.”²¹¹ These constituted the direct guidelines for the ideological framework to be followed by Spanish academics.

²⁰⁵ Gonzalo Fernandez de la Mora, “La Política Exterior de España [The Spanish Political Exterior],” *Instituto de Estudios Políticos* (1961): 70-71, in Rasilla, “The Zero years of Spanish International Law,” 263.

²⁰⁶ *Ibid.*

²⁰⁷ *Ibid.*

²⁰⁸ Rasilla, “The Zero years of Spanish International Law,” 263.

²⁰⁹ *Ibid.*, 265.

²¹⁰ *Ibid.*, 264.

²¹¹ *Ibid.*

Essentially, Spanish scholars were required to continue the works of Catholic Spanish priests who had founded international law in the 16th century.²¹² The School of Salamanca had inherited the “just war theory in Christian thought,” where custom was a real source in international doctrine and where “the rights of human beings go beyond the borders of the states.”²¹³ The “Christian community-oriented universalism of Vitoria and especially Suarez,”²¹⁴ had already dominated academia in 1920s-1930s. Francisco de Vitoria’s theory of “*totus orbis* was the revolutionary idea of a unique international community,”²¹⁵ defending the “intercultural coexistence [...] that all entities have the same right of equal sovereignty.”²¹⁶ This revival of “natural-law oriented, ultra catholic and anti-Marxist stronghold,”²¹⁷ constituted the “healthy road to modernity.”²¹⁸

The desired combination of traditional Spanish writings with contemporary Fascist-Mimesis ideology found expression with the publications of *Revista Española de Derecho Internacional*. From 1948 until 1963, and then again from 1967 onwards, the journal was thematically ordered around the main centers of Spanish doctrinal interest: “the Spanish school of the *ius gentium*,”²¹⁹ and the endogamous line of continuity with the Fascist dictatorship, religiously tailored by its board of directors seated by Fernando Maria Castiella and Antonio de Luna. This “involutionary cultural mood”²²⁰ was further exemplified by the launching of *Revista de Política Internacional* on behalf of the Instituto de Estudios Políticos, where Castiella was appointed as its second director, while de Luna contributed extensively with “articles of an ultra- nationalistic orientation.”²²¹ This nationalist purist orientation also reached the writings of the most exemplary Falangist journal: *El Escorial*. Running parallel with Fascism, the journal witnessed the direct influence of literary and historical

²¹² Fernández-Sánchez, "Spanish School of International Law (c. 16th and 17th Centuries)."

²¹³ *Ibid.*

²¹⁴ Rasilla, “The Zero years of Spanish International Law,” 270.

²¹⁵ Fernández-Sánchez, "Spanish School of International Law (c. 16th and 17th Centuries)."

²¹⁶ *Ibid.*

²¹⁷ Rasilla, “The Zero years of Spanish International Law,” 263.

²¹⁸ *Ibid.*

²¹⁹ *Ibid.*, 260.

²²⁰ *Ibid.*, 263.

²²¹ *Ibid.*, 260.

topics of Catholic and ius-naturalist perspectives from 16th century.²²² Also representative of this underlying ideology is Legaz Lacambra's work after the mid-1940s. His interest for the revival of the historical-doctrinal realm, "although coherent with the totalitarian humanism that characterized the period,"²²³ are traceable in such articles as: "the Modern and the Medieval in Vitoria" (1946) and the "Foundamentation of *Ius Gentium* in Suarez" (1948).

This fundamental *Vitorianization* of Spanish scholarship was "intensified by the wave of ultimate propagandist expression in the barely caricatured myth of the existence of a nebulous "Judean-Masonic-Marxist international conspiracy against Spain."²²⁴ Any remote consideration of Soviet theory not straightforwardly condemned was not permissible in Franco's regime. Spain adopted a decisive anti-Communist stance, viewing Communist ideology as "the antithesis of the Spanish genius."²²⁵ Surely, this is the most distinguishing feature that has shaped Spanish legal academia: the inverse analysis that Socialist international legal theory has exerted on the works of Spanish international law scholarship.

²²² Rasilla, "The Zero years of Spanish International Law," 256.

²²³ *Ibid*, 270.

²²⁴ *Ibid*, 242-243.

²²⁵ *Ibid*, 243.

CHAPTER IV

Eastern European Internationalist Attitude Regulated by the Soviet Doctrine and the Consequential Impact on Czechoslovakian International Law Scholarship

A Brief Historical Setting

By the early 1950s, the USSR had already molded the Eastern region into a subjugated alliance serving its personal security interests. Undeniably, the turbulent and tragic circumstances of War set the scene for the facilitated Soviet process of thoroughly penetrating the local establishments, reshaping them along Soviet lines, to ensure their loyalty to the newly established political order. An essential element in guaranteeing the desired buffer-zone effect was the Soviet installation of communist-oriented governments, the notorious “people’s democracies,” throughout the entire newly freed region. In spite of the great dissimilarities in history, military, and traditions between the regions, the USSR would institute control through local communist parties, inspired by the original Soviet model. Fundamentally, *Sovietization* reached both an *inter-state*, as well as *intra-state* effect, not only did it create the international institutions that governed relations amongst the various Eastern European countries, it also affected the internationalist doctrine that would develop within each individual nation.

SECTION A: THE COMMUNIST TAKEOVER

The Elements of Continuity and Discontinuity in Czechoslovak International Legal Scholarship

Throughout the 20th century Czechoslovakia witnessed three brutal disruptions to its internationalist doctrine: in 1939, 1948 and 1968. February 1948 marks Czechoslovakia's "preliminary step towards socialism."²²⁶ The Communist Party of Czechoslovakia (KSC) assumed leadership and the ideological principles of Socialist realism permeated all intellectual and cultural life. Bureaucratic centralism was now directing a "democratic" state purged of any dissident elements from all levels of society. The economy became committed to "comprehensive central planning and the elimination of private ownership"²²⁷ and the entire education system was "submitted to state control."²²⁸ International Socialist integration would be intensified by the common social, historical, and cultural framework shared amongst Socialist-States, under the regulation of Soviet law.²²⁹ The Institutional mechanisms for preserving *Sovietization* were ensured through the implementation of the Council For Mutual Economic Assistance (COMECON) and the *Treaty of Friendship, Cooperation, and Mutual Assistance* (Warsaw Pact), of which Czechoslovakia became a founding member in 1949 and in 1955 respectively.²³⁰ The COMECON was the international organization that coalesced its participant states to effectively institute an exclusive Socialist economic integration.²³¹ The Warsaw Pact, the Soviet response to NATO, functioned as part of the Soviet Ministry of Defense²³² and served for years as a primary mechanism for asserting political and military authority over its East European allies. The original terms of the Pact were grounded on "total equality, mutual noninterference in internal affairs, and

²²⁶ Ihor Gawdiak, ed., *Czechoslovakia: A Country Study*, (Washington, D.C: Federal Research Division, 1989), 57.

²²⁷ *Ibid.*

²²⁸ *Ibid.*

²²⁹ Pieter VerLoren Van Themaat, *The Changing Structure of International Economic Laws* (The Hague: T.M.C Asser Institute, 1981), 143.

²³⁰ Ramundo, "Socialist Internationalism," 705.

²³¹ William Elliott Butler, ed., *International Law and the International System* (Dordrecht: Martinus Nijhoff Publishers, 1987), 113.

²³² Glenn E. Curtis, ed., "The Warsaw Pact," *Czechoslovakia: A Country Study*, Country Studies, accessed April 10, 2015, http://www.shsu.edu/~his_ncp/WarPact.html.

respect for national sovereignty and independence,”²³³ while guaranteeing collective self-defense against an external aggression that resulted from supposed “imperialist provocations.”²³⁴ Hoping to avoid international criticism, the USSR officially legitimized any future actions that would suppress dissenting member-states, disguising them as “the product of joint Warsaw Pact decisions.”²³⁵ Patently, the Pact was “a façade of collective decision-making, and action around the reality of its political domination and military intervention in the internal affairs of its allies.”²³⁶

In falling beneath the sphere of influence of the Soviet Union, Czechoslovakia concealed its scholarship within a historical period that plainly excluded “a possibility of free and open scientific discussion in legal and other social sciences in a society which was far from being free and democratic.”²³⁷ Probably more so in Czechoslovakia than any other East European State, the external conditions for research in international law had become extremely difficult: certain scholars and law professors inevitably had to flee the country and “new members of the teaching staff joined the faculties of law.”²³⁸ Any scholar, who did not emigrate and wanted to publish legitimately, was obliged to respect and “not to openly question the official political line.”²³⁹ Researchers and scholars had “very limited contacts with the development of the doctrine in the West.”²⁴⁰ Traveling freely to Western countries was not permitted. Taking part in international conferences was out of the question, as was the access to “new international legal literature published in the West.”²⁴¹ Czech Scholars could only entertain contacts with colleagues of the Eastern bloc, and most of the publications were of exclusive Soviet provenience. Moreover the Faculty of Law of the Masaryk University in Brno was closed: “the fruitful pre-war competition between the Prague law school and the Brno law school came to an end in 1950.”²⁴² As if it weren’t

²³³ Glenn E. Curtis, “The Warsaw Pact.”

²³⁴ *Ibid.*

²³⁵ *Ibid.*

²³⁶ *Ibid.*

²³⁷ Pavel Šturma, “The Internationalist Doctrine and Communism in Czechoslovakia (1945-1989),” in *Les Doctrines Internationalistes Durant Les Année du Communisme Réel en Europe* [Internationalist Doctrines During the Years of Real Communism in Europe]. ed. Emmanuelle Jouannet and Iulia Motoc (Paris: Société de législation comparée, 2012), 517.

²³⁸ *Ibid.*, 518.

²³⁹ *Ibid.*, 519.

²⁴⁰ *Ibid.*, 518.

²⁴¹ *Ibid.*

²⁴² *Ibid.*, 513.

enough, Czech authors also encountered various censures for publishing their own work. The opportunity to freely express and publish individual ideas was rather confined by the widespread sentiment of “self-implied limits of socialist political correctness.”²⁴³ The consequences for challengers to the regime were abundantly clear: in the best-case scenario, “threats to the professional promotion or the very existence of jobs.”²⁴⁴

Political and ideological orientation during the 1950s disclosed “the deep difference between the positivist (consensualist) and the anti-positivist streams in the Czech internationalist doctrine.”²⁴⁵ The early years of Czechoslovakian socialism experienced the antagonism between those scholars that now promoted a deeply orthodox Soviet doctrine, advocated by Korovin or Vyshinski, and those Czech authors who disapproved of such excessive “imperialist” or “bourgeois” criticism.²⁴⁶ Those elements of continuity with previous scholarship are owed to Professor Antonin Hobza in 1948, who kept his position as Chair of International Law at Charles University in Prague; and especially to his follower in 1951, Professor Vladimir Outrata, whose exceptional work included the “first de-facto nation-wide textbook of international law that influenced the next generations of international lawyers,”²⁴⁷ entitled *Public International Law*.

While the 1950s were a decade of ideological transition, the 1960s instead were the time of “real and relatively free development of Czechoslovak doctrine of international law.”²⁴⁸ From 1965, the “most pro-Communist Central European country”²⁴⁹ passed a series of domestic reform movements that began to affect defense and foreign policy, just as had previously occurred in 1956 in Hungary. Scholars now ‘openly’ discussed various theoretical issues, in particular the topic of the principles of international law, whose ongoing debate would even influence the 1970 adoption of Declaration of Principles of Friendly Relations (UN GA Resolution 2625) in the West.²⁵⁰ However, this open discussion was not bound to last forever. A turning point for Czechoslovak public and

²⁴³ Šturma, “Communism in Czechoslovakia,” 518.

²⁴⁴ *Ibid.*

²⁴⁵ *Ibid.*, 526.

²⁴⁶ *Ibid.*, 514.

²⁴⁷ *Ibid.*

²⁴⁸ *Ibid.*, 516.

²⁴⁹ Kuhn, *The Judiciary in Central and Eastern Europe*, 22.

²⁵⁰ *Ibid.*

academic research certainly came in August 1968 with the invasion of Czechoslovakia, on behalf of the Warsaw Pact. In spite of Dubcek's declared intent on keeping Czechoslovakia within the Warsaw Pact, the Prague Spring constituted the main rationale for Soviet intervention. In fact, on 20th August 1968, "a force consisting of twenty-three Soviet Army"²⁵¹ and Warsaw Pact contingent divisions invaded Czechoslovakia. A bloody suppression of the reform movements that had animated the intellectual liberalization and the vision of "Communism with a human face,"²⁵² immediately followed. The Soviet Union then instituted "a more compliant communist party leadership and concluded a status-of-forced agreement with Czechoslovakia, which established a permanent Soviet presence in that country for the first time."²⁵³ A ruthless purge outreached all realms of life causing "intellectual stagnation and a closure of society."²⁵⁴ The exile of significant scholars and professors, such as Rudolf Bystricky, Jaroslav Zourek, and Michael Milde, caused "even more serious losses to the Czech doctrine of international law than the political turnover that occurred after 1948."²⁵⁵

The consequences of the Prague invasion continued to implicate Czechoslovak international legal academia even after the 1970s-1980s: development of theoretical issues continued at a quieter pace. Professor Miroslav Potocny succeeded Professor Outrata as Chair of International Law in 1973, focusing his work on the law of international organizations and the principles of law. Professor Čestmír Čepelka also became a leading figure in various theoretical issues. In 1978, he developed a critical method, together with professor Vladislav David, in a new textbook: *Introduction to International Law*. He presented "an original combination of the influence of both normativism and sociological approach to international law."²⁵⁶ Essentially, to ensure the survival of traditional ideas of the internationalist doctrine, these had to remain hidden underneath the surface of the superstructure of the socialist theory. Maintaining contacts with other Socialist countries of Eastern Europe was fundamental in ensuring some persistence in Czech scholarship.

²⁵¹ Curtis, "The Warsaw Pact."

²⁵² Francioni and Lenzerini, "Italian International law Scholarship," 343.

²⁵³ Curtis, "The Warsaw Pact."

²⁵⁴ Kuhn, *The Judiciary in Central and Eastern Europe*, 30.

²⁵⁵ Šturma, "Communism in Czechoslovakia," 516.

²⁵⁶ *Ibid*, 517.

Furthermore, access to older literature in International Law was permissible;²⁵⁷ and the official UN publications such as the Yearbooks of the International Law Commission were also available,²⁵⁸ becoming “an important source of information.”²⁵⁹

Throughout the official socialist label, the development of Czechoslovak international legal scholarship observes both elements of continuity and of discontinuity.²⁶⁰ Any meaningful contribution to Czechoslovak scholarship resulted from the teachings of leading figures that were able to provide some sense of continuity with pre-Soviet publications; yet never denouncing, till the very last textbook,²⁶¹ the principle of proletarian internationalism. Hence, to a certain extent, Czech internationalist doctrine did discuss theoretical issues: “the more theoretical these issues were, the more freedom to develop their ideas did some Czechoslovak authors have.”²⁶² As Austrian Professor Michael Geistlinger has commented in his contribution to *Liber Amicorum*: “It was the fate of many legal writers in the zone of influence of the former Soviet Union to have to find an arena for quiet research work without interferences by the Communist party or by any allied political party when they devoted themselves to key issues of dogmatic in law.”²⁶³ Therefore, in spite of the numerous restrictions that the communist era imposed, sagacious scholars would still attempt to pursue the major impulses from foreign doctrine; stimulating a plurality of doctrinal views, whose in-depth analysis coincided with the degree of social and political pressure.

²⁵⁷ Šturma, “Communism in Czechoslovakia,” 518.

²⁵⁸ *Ibid.*

²⁵⁹ *Ibid.*

²⁶⁰ *Ibid.*, 513.

²⁶¹ *Ibid.*, 525.

²⁶² *Ibid.*, 518.

²⁶³ *Ibid.*, 519.

SECTION B: THE HIDDEN PLURALITY OF CZECHOSLOVAK DOCTRINAL VIEWS

The Main Theoretical Issues Discussed in Czechoslovak International Law Scholarship throughout the Communist Era, influenced by Communist Pressure and Ideology

Beginning with the Communist purges, international legal scholarship was “forcibly subjugated to dogmatically practiced Marxism-Leninism.”²⁶⁴ only Socialist scholars were the ones equipped “with the only correct science in the world.”²⁶⁵ Their superiority was of objective nature, “resting upon the ‘scientific’ arguments of Marxism.”²⁶⁶ The new publications of the early 1950s metamorphosed into some of “the worst forms of monolith adoration of the Soviet model.”²⁶⁷ However, not all Czech authors endorsed Communist theories. From 1957 International law began to develop with the establishment of the Institute of International Politics and Economics (UMPE) and then further in 1966 with the publication of its journal, *Mezinarodni Vztahy*.²⁶⁸ Moreover, by reopening the Faculty of Law of the Masaryk University in Brno in 1969, the very existence of two law schools (the other being in Prague), along with the two faculties of law in Slovakia (in Bratislava and Kosice), created “a certain possibility for pluralism in theoretical and pedagogical matters.”²⁶⁹ Essentially, in spite of the many political and ideological handicaps,²⁷⁰ Czech scholars were able “to press for a more active and independent course.”²⁷¹

Overall, Czech writings followed one of two directions: either concurred with the exegeses of Soviet principles, or very subtly confronted the indoctrinated ideology by hiding various doctrinal views beneath the surface, but even here one cannot escape the underlying Soviet pressure. The development of the plurality of Czechoslovak doctrinal views has been determined by the discussion of three specific theoretical issues: principles of international law, Socialist International Law, and customary international law.

²⁶⁴ Zdenek. Kuhn, *The Judiciary in Central and Eastern Europe: Mechanical Jurisprudence in Transformation?* (Leiden: Martinus Nijhoff, 2011), 23.

²⁶⁵ *Ibid*, 23.

²⁶⁶ *Ibid*, 24.

²⁶⁷ *Ibid*, 24.

²⁶⁸ Harold Gordon Skilling, *Czechoslovakia's Interrupted Revolution*, (Princeton, NJ: Princeton University Press, 1976), 116.

²⁶⁹ Šturma, “Communism in Czechoslovakia,” 516.

²⁷⁰ Skilling, *Czechoslovakia's Interrupted Revolution*, 116.

²⁷¹ *Ibid*.

1. The General Principles of International Law

As the analysis of Chapter I has demonstrated, general international law had caused numerous concerns for Soviet interpretation because of its inconsistencies with certain ideological affinities. International law was regarded as an “instrument of foreign policy” for promoting “temporary peaceful coexistence,” while actually aiming at internationalizing revolutionary struggle. These ‘excessive’ Soviet interpretations, however, did not imply a sharp departure from earlier academia for Czechoslovak scholars. True, most of the new publications criticized pre-1948 doctrine as “bourgeois” and “imperialist.”²⁷² Yet already by 1961, Professor Outrata triggered a debate on the general principles of international law through his influential article “On the Notion of General and Fundamental principles of International Law.”

In his analysis, Outrata implicitly pointed out the underlying problem of the different meanings of the notion of “principle.” Accordingly, he defined general norms as “general ideas, which are expressed in the entire international law in the sense that concrete legal rules...are only particular expression of the given principles on a certain category of interstate relations.”²⁷³ Being the most “generalized” rules of international law, these formed “the very foundations of contemporary international law.”²⁷⁴ For Outrata, general principles “are not only those guiding ideas which the lawmaker expressly formulated in a legal norm, but also the principles that States and legal doctrine draw from positive legal materials by way of generalization.”²⁷⁵ An extreme level of *generalization* was required in order for its “highly abstract content” to be applicable to a very large scope of facts. An “objective social need,”²⁷⁶ rather than outlined rights and obligations, with which “international law would be in conformity with,” transcended the “legal rule” imperfections, becoming a “postulate of political or moral nature.”²⁷⁷ However, this very *generalization* was obviously creating problems, Outrata was aware of the underlying paradox: he wanted the

²⁷² Šturma, “Communism in Czechoslovakia,” 514.

²⁷³ *Ibid.*, 521.

²⁷⁴ *Ibid.*

²⁷⁵ *Ibid.*

²⁷⁶ *Ibid.*, 522.

²⁷⁷ *Ibid.*

principles to keep a certain degree of concreteness that would enable its outstretched applicability, although admitting that rights and obligations arising from general principles need to be concretized²⁷⁸ in the form of a treaty, otherwise the application of the principles could be hindered.

In dissent with Outrata's conclusion, Professor Čepelka, presented a method that differentiated between five (and subsequently six) meanings of term "principles of international law." These different meanings, presented in *Introduction to International Law* (1975-1978), are:

General principles of law that stem from internal legal orders of "civilized nations"

- (1) *Principles in the sense of natural law ideas (leges naturales)*
- (2) *Principles in the sense of doctrinal generalization of particular international law, as formulated by the early positivist doctrine.*
- (3) *Principles in the sense of norms of general international law.*
- (4) *Principles in the sense of a generalized doctrinal interpretation of general international law (i.e.: the principle of the prohibition of the use of force, exceptions from the prohibition, and consequences of the violation)*
- (5) *Principles in the sense of postulates (leges ferendae) reflecting needs of the international community*
A Subcategory of general principles of law: a new category of principles, which are distinct from the mere doctrinal postulates,
- (6) *Principles that are adopted by states in a legal form as principles of future regulation (pacta de contrahendo).*²⁷⁹

Also since the 1960s, the Czechoslovak doctrine has discussed and examined the concept of *jus cogens*, whose respect depended on the diverse interpretations of general international law. Broadly speaking, the view of general international law was rather extensive as it "provided comprehensive regulation binding on all States," encompassing both customary rules and multilateral treaties.²⁸⁰ However, such "comprehensive regulation" granted only a "limited space for particular norms," considered admissible only where:

- (a) *No general legal regulation on the given subject-matter had been adopted.*
- (b) *A similar historical development and cultural relations among states of a certain region led to a particular norms, respecting however the framework of general law.*²⁸¹

²⁷⁸ Šturma, "Communism in Czechoslovakia," 521.

²⁷⁹ *Ibid*, 522-523.

²⁸⁰ *Ibid*, 524.

²⁸¹ *Ibid*.

Essentially the mainstream doctrine of general international law did “not clearly perceive the distinction between peremptory and dispositive norms,” therefore failing to consider states “free to derogate *inter partes*, by way of treaty, from any general norms”²⁸² of non-mandatory nature. The crucial function of peremptory norms remained overshadowed: as *jus cogens* was considered “an axiological level and linked to fundamental principles of international law.”²⁸³ Accordingly, it was not permissible to “conclude international treaties that would lower the normative content of a multilateral regulation under a generally recognized minimum standard.”²⁸⁴ This line of arguments was expressed so to justify the existence and practice of “the new” general international law that had “dispositive norms of a different nature”²⁸⁵ –i.e. Socialist International Law.

The results of the Czech debate on the principles of international law clearly experienced evident problems concerning both theoretical and practical reasons. Nonetheless, it is positively surprising how the Czechoslovak doctrine was able to continue the research started in the 1960s with Outrata, and to develop a line of analytical jurisprudence that culminated with Čepelka in 1978, despite the devastating effects of communist ‘normalization’ following the post-1968 era.

2. Socialist International law

According to Soviet doctrine, so-called Socialist International Law constituted a new type of *inter-se* international law²⁸⁶ that filled “some norms of general international law with more progressive content.”²⁸⁷ Principles such as state sovereignty and equality, peaceful settlement of disputes, and non-intervention are claimed to transcend their “conventional meaning,” under general international law, through socialist internationalism:²⁸⁸ State sovereignty and non-

²⁸² Šturma, “Communism in Czechoslovakia,” 524.

²⁸³ *Ibid.*

²⁸⁴ *Ibid.*

²⁸⁵ *Ibid.*

²⁸⁶ *Ibid.*, 523.

²⁸⁷ Bindshedler et al., *International Relations and Legal Cooperation*, 350.

²⁸⁸ *Ibid.*

intervention have expanded their quality by affording “mutual protection to the independence and the unity of all socialist States and defend the achievements of the socialist bloc.”²⁸⁹

In principle, Czechoslovak scholarship did not accept the radical Soviet belief of an independent subsystem. Socialist International Law was admissible as a kind of *specific* law in force among the Socialist states with the “same historical development and ideological values.”²⁹⁰ However, as stressed by Professor Outrata, even such particular law “had to remain *within* the framework of general international law.”²⁹¹ In practice, however, the Czechoslovak doctrine was inconsistent, especially in regards to the applicability Socialist Internationalism. Professor Potocny observed how “general international law did not exclude the existence of particular norms deepening and specifying the content of its dispositive rules, but that is counted on this possibility.”²⁹² Scholarship should have ruled out the “superimposition” of the principle policy of socialist internationalism, “an euphemistic term for the doctrine of limited sovereignty of the socialist states, over the general principles of international law.”²⁹³ However, in the odious context of the Warsaw Pact occupation of Prague, Czechoslovak writings were concerned with praising the principles of socialist internationalism, professing the sharp distinction between the dual concepts of sovereignty and competence: “whereas the sovereignty of the Soviet federal state is inherent and objective, its competence is conditional upon those powers collectively delegated to her by the fifteen union republics that participate in the union”²⁹⁴. Throughout the 1970s, numerous articles were published considering contemporary international law “to be of a mixed-class nature, while the future world community of socialist States would be governed by principles of socialist internationalism.”²⁹⁵ Indeed, even in “the last nation-wide Czechoslovak textbook of international law,” published in late 1988, the principle of “proletarian internationalism” was essential for ensuring Socialist-state sovereignty.

²⁸⁹ Bindshedler et al., *International Relations and Legal Cooperation*, 350.

²⁹⁰ Šturma, “Communism in Czechoslovakia,” 523.

²⁹¹ *Ibid.*, 524.

²⁹² *Ibid.*, 523.

²⁹³ *Ibid.*, 524.

²⁹⁴ Ramundo, “Socialist Internationalism,” 713.

²⁹⁵ Šturma, “Communism in Czechoslovakia,” 525.

By the end of the 1970s, the academic debate on the concept of Socialist International Law ignited the development of “a sort of sociological approach in the internationalist doctrine”²⁹⁶ of the norms of *jus cogens*, co-formulated by Čepelka and David. These authors shared in the mainstream theory that a particular Socialist International Law existed among the Communist-bloc, yet they did not consider these norms as *one* complete system: “they admitted the different levels of economic and socialist development of socialist States in Europe and other parts of the world, which would require different particular rules.”²⁹⁷ Essentially, the norms that governed relations between capitalist and socialist states were in the nature of a ‘compromise’. However, the norms of *jus cogens* were explained as being “a normative reflection of the influence of socialist states in the international community.”²⁹⁸ In other words, peremptory norms of international law “do not have a mixed-class character.”²⁹⁹ Clearly, these authors did not intend to criticize Soviet theory, simply “they admitted the different levels of economic and social development of socialist States [...] which would require different particular rules.”³⁰⁰ Still, their theory presented an original alternative explanation to the logical consequence of the “non-consensual theory” of *jus cogens* in particular³⁰¹, and international customary law in general.

Essentially, Socialist International law was an attempt to establish a regional international law governing the relationships within the socialist camp. Its practice, it greatly diverged from the principles of general international law in many aspects.³⁰² It is a pure understatement to say that the Soviet Union endorsed individual state sovereignty, the principles of non-intervention, or the prohibition of the use of force.³⁰³ In fact, following the aftermath of the Soviet-led Warsaw Pact occupation of Czechoslovakia (1968),³⁰⁴ the Brezhnev Doctrine clearly underlined the limitations contained in Socialist International law concerning the socialist states’ sovereignty and national

²⁹⁶ Šturma, “Communism in Czechoslovakia,” 525.

²⁹⁷ *Ibid.*

²⁹⁸ *Ibid.*

²⁹⁹ *Ibid.*, 526.

³⁰⁰ *Ibid.*

³⁰¹ *Ibid.*

³⁰² Rudolf L. Bindshedler et al. eds., *International Relations and Legal Cooperation in General Diplomacy and Consular Relations*, vol. 9 of *Encyclopedia of Public International Law* (Amsterdam: Elsevier Science B.V., 1986), 350.

³⁰³ Ramundo, “Socialist Internationalism,” 713.

³⁰⁴ *Ibid.*, 705.

autonomy.³⁰⁵ Both domestically and internationally, socialist states had to conform their activities to foster the best interests of the communist bloc: “render fraternal assistance, including armed intervention, to protect the achievements of socialism, to counter any threat to socialism,”³⁰⁶ socialist states “may not embark upon, or permit, internal developments, which are at variance with the collective needs of the socialist camp.”³⁰⁷ Can such a subsystem of international law justify the actions of states that derogate from general international law, in their mutual relations, which otherwise were illegal? In the case of prohibition of the use of force, a legal notion that does not pertain to norms of *jus cogens*, or directly threaten the interests of the international community, generally does not generate immense opposition.³⁰⁸ However, any attempt to define the relations between various union republics as being grounded on a defined socialist-federalist law, which grants the internal use of force, may ultimately encourage the Soviet Union to offer even more occasions for “fraternal assistance.”

In retrospect, the USSR’s exercise of this de-facto hegemony, “to whose fate by virtue of history befell the toughest assignment of paving the way to a new social-economic organism”³⁰⁹, should have prevented its recognition as a subsystem of international law. The legal basis of its actions was not only contradictory, but also a direct violation to general international law.³¹⁰ It enabled the Soviet Union to assert a form of coercive ‘police power,’ tightening its grip on the socialist satellites.

3. Customary International Law

Although recognizing international custom as a primary source of international law, the Soviet doctrine did not conceal its ideological preference for treaty law, as expressed by Krylov. It viewed treaties as easily verifiable and most importantly as reflecting, “active manifestations of the

³⁰⁵ Kazimierz Grzybowski, *Soviet International Law and World Economic Order* (Durham: Duke University Press, 1987), 17.

³⁰⁶ Ramundo, “Socialist Internationalism,” 705.

³⁰⁷ *Ibid.*

³⁰⁸ *Ibid.*

³⁰⁹ Bindshedler et al., *International Relations and Legal Cooperation*, 350.

³¹⁰ *Ibid.*

wills of the participating states and consequently are more amenable to codification.”³¹¹ Indeed, when discussing international custom, soviet scholars cautiously indicated how only through the expressly or implied will of consenting states could custom directly result:

“At the basis of any international custom lies the will of state which creates the custom. States behave just as if there exists an agreement between them to so behave. But this agreement flows not out of any talks and is not manifested in any fixed agreement. This is why in the science of international law custom is often qualified as the tacit consensus of states (*tacitus consensus*) and even as a tacit agreement (*tacita convention*). The agreement between states which lies at the basis of customary law is a legal fiction which reflects the reality.”³¹²

In order to establish the existence of international custom, one had to prove two things: the material element of uniform state practices and repetitious behavior over a long duration of time; and the psychological element that the states acted out of some legal compulsions (*opinion juris sive necessitatis*), thus generating some legal compulsion.³¹³ Consequently, the soviet internationalist doctrine took a rather negative attitude towards international custom.

For obvious axiological and practical reasons, Czechoslovak professors, such as Ján Tomko and Juraj Cúth, also preferred international treaty law to customary international law that had “been historically superseded.”³¹⁴ Indeed, in the mid-1960s Professor Outrata expressed the view that since the late 19th century the field of international custom had become “narrower” due to its “slow” development which could not “suffice to the need for quick and precise legal regulation of changing and deepening interstate relations.”³¹⁵ The same opinion was also shared by his successor Professor Potocny. However, by the late 1970s -early 1980s the opposite view was expressed by Č. Čepelka and V. David in *Introduction to International Law*. Čepelka, in a polemic with the Soviet doctrine, and inspired by the English doctrine of Ch. de Visscher,³¹⁶ stressed the role of international custom and refused its consensual interpretation. For the Czechoslovak doctrine, in particular Professor Outrata, the explanation for the emergence and binding force of customary norms of international

³¹¹ Ferdinand J.M Feldbrugge, ed., *Codification In the Communist World*, vol.19 of *Law in Eastern Europe* (Leiden: A.W. Sijthoff, 1975), 298.

³¹² *Ibid.*

³¹³ *Ibid.*

³¹⁴ Šturma, “Communism in Czechoslovakia,” 520.

³¹⁵ *Ibid.*

³¹⁶ *Ibid.*

law was through the “tacit consent of states, which is *presumed*,”³¹⁷ whereas international treaties are based on “*express* consent.”³¹⁸ Čepelka, instead, criticized this acceptance of the consensual theory of custom seeming to be “more of a mixture of the traditional theory of two elements and the theory of tacit consent.”³¹⁹ In his approach he underlined the essentiality of “the real behavior of states (*usus generalis*) and the reflecting social reality (*opinio necessitatis*).”³²⁰ On the surface, the theoretical debate evidently concerned the detail issues of which concept fitted better with the interests of Socialist states. However, the main ideas that each scholar professed remained disguised underneath the surface. In fact, when transcending this underlying legal argument, scholars could distinguish the “positivist or anti-positivist approaches” in assessing the concept of international custom and “the grounds for its binding nature”³²¹ –a clear exercise of abstract thinking for Czechoslovak international law scholarship.

³¹⁷ Šturma, “Communism in Czechoslovakia,” 520.

³¹⁸ *Ibid.*

³¹⁹ *Ibid.*

³²⁰ *Ibid.*

³²¹ *Ibid.*

CHAPTER V

Concluding Evaluation on the Impact of Real-Communism on the Development of International Law Scholarship in Italy, Spain, and Czechoslovakia

The years of real communism have marked a distinct era in the history of mankind, witnessing international political and military tension between the rival powers of the Western and Eastern European region. In order to apprehend the immense impact that real-Communism has exerted on the development of international law between 1945-1989, this analysis has adopted a case-by-case study in evaluating the internationalist doctrines that unfolded within three European states: Italy, Spain, and Czechoslovakia.

1. The Radical Duality of Italian International Law Scholarship

Following the end of World War II, Italy had been catapulted into a newly instituted democratic Republic, whose Constitution deliberately combatted any mere resemblance with the previous Fascist dictatorship. The newly elected government attempted to ensure its Western stance by marginalizing the Communist party in domestic politics. However, an aura of “anti-Fascism” engulfed the Italian peninsula, and Communist ideology was its quintessence. Indeed, until 1992 the PCI exerted an overwhelming influence over large sectors of the Italian society and political culture, providing constant incitement in the political arena. It would gain particular prominence throughout the 1970s, after the Historic compromise and National Solidarity government, culminating with Aldo Moro’s assassination in 1978. From such socio-political context, a profound influence exerted by the Italian Communist Party and Communist ideology, in igniting a considerable amount of doctrinal debates amongst Italian scholars, was expected.

Surprisingly, however, the impact of Communism on the evolution of Italian legal doctrine has been rather limited. The relationship between real-Communism and Italian international law scholarship appears to be constrained by: an overall lack of response of scholars in addressing major political-legal controversies triggered by Soviet undertakings (with some exception after the Prague invasion), a limited scrutiny on the role of Socialist theories in shaping international law, as well as a ‘late’ engagement of Communist theories as an object of study by Italian scholars

(considering how analytical legal commentaries did not surface until the mid 1970s). Most probably, these constraints are best explained by the radical duality that actually characterized Italian attitude toward Communist ideology. In fact, in recalling the Nazi-Fascist occupation, the understanding of Socialist theories systemically diverged amongst those intellectuals who would considered themselves the side of the “good” by upholding Communism; and those strata of society that did not share in such political consensus, viewing Communism as the main “evil” that had to be eradicated form the world.

Nevertheless, this limited influence of Socialist thought does echo in the writings and opinions of Italian scholars, especially when analyzing three theoretical issues: the general principles of international law, the principle of non-intervention, and the sources of socialist international law. Overall, besides the narrow academic response to numerous political-legal concerns surrounding Soviet actions, and in spite of the fact that the first publication that scrutinized socialist conception of international law only appeared in 1976, one can still say that Communist internationalist doctrine did spark some, albeit limited, debate in Italian scholarship. Most certainly, the contributions to Italian evaluation of Socialist International Law must be attributed to the works of Bigazzi and Sinagra, as well as to the writings of Bernardini, who clearly fell under the spell of Marxist doctrine; and to Ferrari Bravo, who recognized the merit of communist states in favoring important developments of international law, in particular those relevant to the concept of international crimes.

2. *The Inverse Impact of Socialist Theory on Spanish International Law Scholarship*

The last pro-Axis dictatorship in Europe, Francoist Spain was alienated from diplomatic affairs in the aftermath of the Second World War. It returned to the international area after 1953, nurturing its irrevocable anti-Communist stance. Throughout the majority of the Cold War, the very constitutive enshrining of a Spanish tradition of international law was found at the core of the

regime's foreign policy. Indeed, for the entire duration of the Francoist reign, and for some time later, Spanish international law scholarship was closely linked to the development of the country's foreign approach, experiencing three historical unfoldings: Autarchy, Realignment, and an extremely short-lived period of intellectual dissent, before reverting to its traditions.

As a result, when considering Soviet doctrine in international affairs, Spanish academia employed its foreign policy framework. It derived three main traits: a geopolitical approach, a realpolitik perspective, and the use of anti-Communism as a nationalistic to achieve *Hispanidad*. Regrettably, none of these scientific approaches invited a legal analysis of Soviet theories and Communist doctrine in international law. Generations of Spanish intellectuals contributed to anchoring the works of Vitoria and Suarez, with their natural law and ultra-Catholic universalism, grounding their theories on strict nationalistic grounds. The prevailing moral conception of the Spanish fatherland, exemplified by the neo-colonialist credentials in "Reivindicaciones de España," continued to be preserved in the editorial of *Revista de Estudios Políticos*, "which pledged the journal to be at the service of the "whole and radical truth" of the Movimiento Nacional in the construction of a functional knowledge that "now more than ever is required from us to be urgently sure."³²² Amongst other similar works penned³²³ by Spanish international law scholars, Luis Legaz Lacambra served as director of the Instituto de Estudios Políticos, whose numerous "journals, reports, legal opinions and pre-legislative projects of political and legal transcendence"³²³ were essential in nurturing legal academia throughout the forty years of Fascist mimesis. Aside from brief intellectual rapture of 1963-1967, that attempted to introduce new premises and methodologies, the Vitorian aftermath in Spanish international law continued even after the date that signed Spanish diplomatic re-alignment (as epitomized by the cover of the *Revista Española de Derecho Internacional* that featured the image of Francisco de Vitoria).

Fundamentally, Spanish international law would always remain the "last reservoir of European Catholic traditional values after the Second World War" that had truly resisted and

³²² Rasilla, "The Zero years of Spanish International Law," 248.

³²³ *Ibid.*

combated the “spread of Russian imperialism and Marxism.”³²⁴ Ultimately, all the unique features that appeared to characterize the Spanish academic approach to international law reveal a solid inverse analysis of the possible influence that the Socialist international legal theory has exerted on the works of the Spanish doctrine.

3. *The Hidden Theories of Czechoslovakia’s International Law Scholarship*

The regime that the Soviet Union instituted in Eastern Europe is clearly identifiable with the power exerted “by the Holy Alliance in the first half of the nineteenth century”³²⁵, whose assertion was based on “a specific concepts of legitimism combined with the right to intervene in defense of its principles in the affairs of any European country.”³²⁶ The Soviet Union’s very eccentric understanding of self-determination empowered it to decide on all matters governing the relations in the Eastern bloc, granting the right to intervene in a situation that threatened its cohesion.³²⁷ Soviet jurists and scholars sincerely regarded the principles of state sovereignty and socialist internationalism as being compatible: the latter is a realization of the former, “a vehicle for mutual assistance and collective survival against external threats to the independence and supremacy of the constituent sovereignties of the fraternity.”³²⁸ The Soviet Union directly exploited these obligations in order to secure its interests over the established soviet satellites.

Therefore, in the context of such rigorous and restraining circumstances, the plurality of doctrinal views of Czechoslovak international law scholarship were able to develop only in hidden forms. To recall what Austria Professor Geistlinger had commented, the fate of many Czech authors was that of concealing their research opinion in an area free of Soviet interference. By doing so, the theoretical debates of three key issues, the principles of international law, socialist international law, and customary international law, were able to flourish. Indeed, the Czech doctrine never fully

³²⁴ Rasilla, “The Zero years of Spanish International Law,” 270.

³²⁵ Grzybowski, *Soviet International Law and World Economic Order*, 16.

³²⁶ *Ibid.*

³²⁷ *Ibid.*, 14.

³²⁸ Ramundo, “Socialist Internationalism,” 705.

submitted to Soviet ideology, it always asserted the existence and importance of *one* general international law, although described as a progressive ‘compromise’ between the two existing social systems, due to increased influence of the socialist countries in international relations. Indeed, in his leading textbook *Public International Law*, Professor Outrata presented “a moderate, compromise-oriented view of international law, based on the consent of States and principles of peaceful coexistence.”³²⁹ Despite some marginal elements of ideological approach, he also emphasizes “the general and absolute relevance of the principles of non-interventions as a necessary basis for a peaceful coexistence of States and the economic and cultural development of peoples.”³³⁰

Unquestionably, the official socialist able did exercise a certain pressure over the development of Czechoslovak international law, by restraining the free expression of ideas. However, it was not able to altogether halt development or conform all scholars to Marxism-Leninism ideology. Hence, admittedly in spite of the absence of democracy, the imposed heavy restrictions, the abandonment of academic careers by many eminent scholars, and the brutal interruptions in 1948 and especially in 1968, the national traditions of Czechoslovak internationalist doctrine still managed to survive until 1989.

³²⁹ Šturma, “Communism in Czechoslovakia,” 515.

³³⁰ *Ibid.*

Epilogue

The general impact and significance that Real-Communism has wielded over the European tradition of international law scholarship, as witnessed through Italy, Spain, and Czechoslovakia between 1945 and 1989

The immense cultural, intellectual, political, economic, and sociological hegemony that saw the light during the Cold War period, and the consequent impact that real-Communism has exercised over Europe, expanding across all national borders, would take a life time to be fully examined. The approach that has been proposed by this thesis invites a case-by-case study of only three European countries following the aftermath of World War II. Each country has been assessed by first providing the historical context that produced the background for the development of international law; and subsequently a more specific analysis of the legal perspectives that were addressed in each country's international doctrinal debates. The ultimate aim of this approach was to reveal the impact, or the extent of impact, that real-Communism has exerted on Italy, Spain, and Czechoslovakia. Certainly, when analyzing the extent of real-Communist influence across Western and Eastern frontiers, any realistic internationalist doctrine must not only consider the various theoretical notions, but also the encircling social circumstances and the established balance of power of the era, which determine the development of theoretical debates within each country.

Overall, what can safely be deduced is that Real-Communism did definitely affect the development of each country's legal academia. Despite its "anti-Fascist" democracy, Italy still experienced a form of duality in its scholarship; Spanish "anti-Communist" identity prohibited any consideration of Socialist legal perspective, ultimately experiencing an "inverse" effect on its legal writings; and Czechoslovakia, despite the numerous doctrinal interruptions and severe ideological repression, did not fully succumb to Soviet doctrine and continued, albeit in hidden forms, the development of various internationalist theories. Each nation has provided a different result concerning the impact of real-Communism on the development of international law scholarship. However, some general similarities can be detected. Communist ideology did impact the writings of various scholars who confirmed Soviet theories, most notably in Czechoslovakia and to a certain

extent in Italy. The inverse effect was achieved in Spain, where Anti-Communist ideology prevailed. Also, Socialist International Law was never altogether accepted, neither in Italy nor in Czechoslovakia, as an independent system of international law. This was a fundamental dissention from Soviet theory, that ultimately reveals how in spite of the major political force that real-Communism has implemented across the European continent, its influence was certainly not invincible.

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THESIS SUMMARY

Riassunto della Tesi in Lingua Italiana

L'IMPATTO DEL COMUNISMO REALE SULLO SVILUPPO DELLA DOTTRINA DEL DIRITTO INTERNAZIONALE IN EUROPA TRA IL 1945 E IL 1989 IN ITALIA, SPAGNA E CECOSLOVACCHIA

Introduzione:

Per poter valutare la reale portata dell'impatto del Comunismo sulle dottrine internazionali in tutto il continente europeo, l'approccio che è stato prescelto in questa tesi propone lo studio di tre soli paesi europei, influenzati, ciascuno a suo modo, dalle conseguenze della seconda guerra mondiale. Lo studio di ogni dottrina accademica sarà scisso in due parti. L'analisi inizierà esaminando l'impatto del pensiero comunista e la successiva evoluzione di quest'ultimo in una teoria giuridico-internazionalistica sovietica propriamente detta. Particolare attenzione sarà rivolta alle implicazioni del pensiero comunista e al successivo contributo sovietico alla "ri-concettualizzazione" del diritto internazionale.

Obiettivo finale di questo studio sarà quello di affrontare la rilevanza degli sviluppi cui si è fatto cenno poc'anzi sull'approccio al diritto internazionale intrapreso dal mondo accademico italiano, spagnolo e cecoslovacco. La prima sezione di ogni caso prenderà in esame il contesto storico che ha influenzato lo sviluppo del diritto internazionale, mentre la seconda sezione si concentrerà sulle prospettive giuridiche emerse da quello stesso contesto, come testimoniate dai dibattiti dottrinali fra i diversi ricercatori di diritto internazionale. In particolare, la dottrina internazionalistica italiana sarà inserita nella cornice della repubblica "anti-fascista", quella della Spagna nel quadro della dittatura di tipo "filo-fascista" e quella della Cecoslovacchia nell'ambito dell'opprimente sfera di influenza seguita alla conquista sovietica. Ambienti questi che, direttamente o indirettamente influenzati dal pensiero comunista, hanno inevitabilmente contribuito a plasmare le dottrine giuridico-internazionalistiche di Italia, Spagna e Cecoslovacchia.

Capitolo I: Evoluzione di una Teoria Giuridico-Internazionalistica Sovietica

La linea-guida della politica estera sovietica, alla base delle relazioni tra gli stati socialisti e l'URSS, era il pieno controllo dell'Europa orientale. Quest'area, infatti, avrebbe dovuto svolgere un ruolo ben preciso agli occhi dell'Unione Sovietica: essa intendeva usare i Paesi satelliti come zona cuscinetto a protezione dei suoi confini occidentali per tenere a debita distanza principi ideologici ostili. In

seguito agli eventi della rivoluzione ungherese del 1956 però, L'URSS aveva bisogno di un'interpretazione che giustificasse a livello universale l'intervento armato e la pressione politica. Per queste ragioni la dottrina sovietica avrebbe infine elaborato una propria, distinta interpretazione del diritto internazionale, cercando contemporaneamente di dare ad essa la più ampia diffusione possibile.

Il diritto internazionale, quindi, è stato protagonista di una vera e propria scissione in due opposti sistemi: quello in vigore in quasi tutta la comunità internazionale e l'altro che disciplinava le relazioni all'interno del blocco sovietico. L'ideologia comunista era basata sulla convinzione, propria dell'Unione Sovietica, che tutti i paesi non comunisti dovessero essere considerati come nemici, escludendo qualsiasi possibilità che potesse esistere una profonda e durevole comunità d'interessi con essi. L'intento di creare un sistema giuridico-internazionale indipendente per gli Stati socialisti derivava dalla convinzione dell'esistenza di un diritto internazionale "capitalista" visto come dialetticamente inferiore a quello socialista e destinato a disciplinare esclusivamente i conflitti tra gli Stati capitalisti. Il diritto internazionale socialista era quindi considerato qualitativamente superiore, privo di contraddizioni e caratterizzato dalla persistente presenza di armonia all'interno del mondo socialista. Guidato da principi giuridici propri dell'internazionalismo e del diritto di coesistenza, il pensiero socialista avrebbe consentito di realizzare non solo la piena sovranità nazionale degli stati socialisti, ma anche la progressiva evoluzione verso il comunismo. Per questi motivi il differente livello di rispetto delle prescrizioni di diritto internazionale, non era altro che l'espressione di un profondo conflitto tra obiettivi, valori e aspettative. L'URSS ha così potuto consolidare in Europa orientale un potere basato su un concetto molto particolare di "legittimazione".

Capitolo II: Sviluppo della Dottrina Internazionalista Italiana

L'evoluzione del diritto internazionale in Italia si è manifestata all'interno del panorama socio-politico conseguente alla fine della seconda guerra mondiale: l'Italia era stata catapultata in una Repubblica democratica di nuova istituzione, la cui Costituzione deliberatamente ripudiava qualsiasi accostamento con la precedente dittatura fascista. Il governo appena eletto intendeva garantire la collocazione internazionale del Paese all'interno del blocco occidentale, emarginando il partito comunista nella politica interna. Ciononostante, un alone di "antifascismo" si era diffuso massivamente nella penisola italiana e l'ideologia comunista ne era la sua quintessenza. Sino al 1992, infatti, il Pci avrebbe esercitato un'enorme influenza su ampi settori della società italiana e

sulla cultura politica, guadagnando particolare importanza negli anni Settanta con la stagione del compromesso storico e del governo di solidarietà nazionale, conclusasi con l'assassinio di Aldo Moro nel 1978. In tale contesto storico, sarebbe ragionevole aspettarsi una profonda influenza esercitata dal Partito Comunista Italiano e dall'ideologia comunista anche all'interno dei dibattiti dottrinali tra gli studiosi di diritto internazionale. Sorprendentemente però, l'impatto del Comunismo nel diritto internazionale italiano è stato piuttosto limitato. Il rapporto è stato caratterizzato da una generale mancanza di risposta degli studiosi nell'affrontare le principali questioni politico-legali originate dalle azioni sovietiche, da un'analisi limitata dell'influenza delle teorie socialiste sulla creazione della dottrina italiana di diritto internazionale e da un impegno tardivo sulle teorie comuniste come oggetto di studio da parte degli studiosi italiani (non si rileva l'apparizione di alcuna analitica elaborazione giuridica sino alla metà degli anni Settanta).

È possibile dare una spiegazione di questi limiti facendo riferimento al dualismo radicale che ha caratterizzato l'attitudine italiana nei confronti dell'ideologia comunista. Alcuni studiosi, influenzati dalla memoria della Resistenza, in cui i partigiani comunisti avevano sacrificato la propria giovinezza e spesso la vita per l'emancipazione del Paese dal veleno del fascismo e per la liberazione dall'occupazione straniera, hanno cominciato ad avere una visione *romantica* del comunismo. Tra le opere di autori d'ispirazione comunista meritano di essere ricordate il commento di Bernardini sull'intervento degli Stati Uniti nella guerra del Vietnam e quello di Paone sull'intervento militare sovietico a Praga. Non tutti gli studiosi italiani hanno però condiviso questo punto di vista. Gli anni del governo di solidarietà nazionale, hanno segnato un punto di svolta nelle teorie comuniste del mondo accademico italiano, dando origine ad una differente elaborazione giuridica. Le considerazioni sul pensiero socialista hanno avuto ripercussione sull'analisi di tre specifiche problematiche teoriche: i principi generali del diritto internazionale, il principio di non-intervento e le fonti del diritto internazionale socialista. Le opere più significative pubblicate da Bigazzi, nel 1976 e nel 1978, e Sinagra, nel 1978, hanno prodotto considerevoli elaborazioni teoriche sui principi giuridici, sulle categorie giuridiche dell'elaborazione comunista e sullo sviluppo delle argomentazioni teoriche direttamente ispirate alla dottrina socialista.

In generale, l'interpretazione delle teorie socialiste divergeva sistematicamente tra quegli intellettuali che accoglievano il Comunismo ritenendo di essere dalla parte del "giusto" e quegli strati della società che non condividevano questa visione politica, vedendo invece nel comunismo una forma d'immoralità che avrebbe dovuto essere sradicata dal mondo. L'Italia, inoltre, apparteneva al blocco occidentale e riteneva essere un proprio vantaggio strategico rimanere sotto la sfera d'influenza degli Stati Uniti. Si può comunque affermare che la dottrina internazionale

comunista ha certamente ispirato, ancorché in modo limitato, il dibattito teorico nella dottrina giuridica italiana.

Capitolo III: Sviluppo delle Dottrina Internazionalista Spagnola

Per tutta la durata della dittatura franchista e per qualche tempo a seguire, la dottrina spagnola è stata sostanzialmente allineata sulla politica estera del regime, testimoniando in particolare tre fasi distinte: l'autarchia spagnola, il riallineamento internazionale ed un periodo, estremamente breve, di dissenso sociale negli anni Sessanta, per poi far ritorno alle proprie origini. Dai primi anni Quaranta sino al 1953, la Spagna era stata oggetto di censura internazionale per il fatto che Franco era giunto al potere con l'aiuto delle potenze dell'Asse e aveva collaborato con loro durante la guerra. Fintanto che Franco fosse rimasto al governo, la Spagna sarebbe stata esclusa dalla partecipazione a tutte le agenzie internazionali della Nazioni Unite. In questo contesto politico, la residua dottrina giuridico-internazionalistica spagnola avrebbe sperimentato l'acuirsi della dottrina falangista, fenomeno ideologico e culturale che combinava il profondo accento posto sull'anti-marxismo militante con l'esaltazione dei valori storici della patria spagnola e con le ambizioni imperiali della Spagna. Tale pilastro ideologico è stato essenziale nell'influenzare la decisione americana di rivedere la sua politica isolazionista verso la Spagna, favorendo progressivamente il suo riallineamento internazionale dopo il 1953.

Per l'analisi scientifica della dottrina comunista, gli studiosi spagnoli hanno fatto ricorso al quadro politico fornito dalle relazioni internazionali e dalla politica estera. Tre tratti principali sono stati rilevati: un approccio geopolitico, una prospettiva strategica di *realpolitik*, e l'uso dell'anti-marxismo come strumento retorico nazionalistico per esaltare la cosiddetta *Hispanidad*. Purtroppo, nessuno di questi approcci scientifici ha ispirato un'analisi giuridica delle teorie sovietiche e della dottrina comunista di diritto internazionale. Qualsiasi considerazione sulle teoria sovietiche, che non esprimesse nei confronti di queste una condanna senza mezzi termini, non sarebbe stata ammissibile nel regime di Franco, rivelando così una solida analisi inversa della possibile influenza che la teoria giuridico-internazionale socialista ha esercitato sulle opere della dottrina spagnola. Questo aspetto è stato evocato in numerosi articoli e pubblicazioni dell'epoca da scrittori falangisti come Luis Legaz Lacambra, A. Poch, G. de Caviedes, Alfonso García Valdecasa, Camilo Barcia Trelles. Una considerazione speciale dovrebbe essere dedicata a Fernando Maria Castiella e Antonio de Luna. Castiella è stato uno dei co-autori di “*Reivindicaciones de España*” e il ministro più longevo degli Affari Esteri del tempo, mentre de Luna è stato il primo membro spagnolo della Commissione di Diritto internazionale nonché primo giudice permanente presso la Corte

internazionale di giustizia. Nel 1948 hanno entrambi partecipato all'evoluzione della dottrina spagnola di diritto internazionale fondandone il principale organo scientifico: la “Revista Española de Derecho Internacional”. Generazioni di studiosi spagnoli hanno contribuito ad ancorare le opere di Vitoria e Suarez con l'universalismo ultra-cattolico legato al diritto naturale, elaborando le proprie teorie su rigorose basi e motivazioni nazionalistiche. La concezione morale, prevalentemente diffusa nella madrepatria spagnola, era espressa anche nelle elaborazioni neo-colonialiste in “Reivindicaciones de España” e ulteriormente ribadita nella “Revista de Estudios Políticos.”

I disordini politici degli anni Sessanta avevano successivamente provocato un "fenomeno di dissenso intellettuale interno", espresso da letterati e movimenti studenteschi. In un breve slancio nel periodo 1963-1967, si è tentato di introdurre "nuovi ambienti e in parte diverse problematiche e metodologie." Qui ha visto la luce il primo impegno scientifico sulla teoria sovietica di diritto internazionale nel mondo accademico spagnolo, come evidenziato nella “Revista Española de Derecho Internacional” in cui Augilar Navarro ha fornito un'analisi molto approfondita del testo di Tunkin "Das Völkerrechte der Gegenwart Theorie und Praxis" (1962). Tuttavia, nel 1967, a seguito del ristabilimento di forme di controllo repressivo, ribadito poi nel 1967, la rivista è improvvisamente ritornata sulla sua profonda repressione ideologica originale.

Capitolo IV: Lo Sviluppo delle Dottrina Internazionalista Cecoslovacca

Il febbraio 1948 ha segnato la transizione della Cecoslovacchia in una forma di democrazia popolare: l'assunzione della leadership da parte del Partito Comunista Cecoslovacco (KSC) e l'accoglimento dei principi ideologici del realismo socialista hanno permeato il mondo intellettuale e culturale del Paese nella determinazione delle scelte politiche, economiche e sociali nazionali. I meccanismi istituzionali per il mantenimento della “sovietizzazione” sono stati garantiti attraverso la creazione del Comecon e dal Patto di Varsavia. La rilevanza del Patto di Varsavia nello sviluppo della ricerca accademica cecoslovacca sarebbe divenuta sempre più manifesta a seguito degli eventi del mese di agosto 1968: la successiva sanguinosa repressione dei movimenti di riforma aveva portato ad influenzare tutti gli ambiti della vita politica, sociale e intellettuale del Paese.

Nel contesto di una situazione politica estremamente limitativa e restrittiva, l'assenza di democrazia e le forti restrizioni imposte alla libera espressione delle idee, il fatto che molti eminenti studiosi abbiano dovuto abbandonare la carriera accademica e le brutali interruzioni del 1948 e, soprattutto, del 1968, la dottrina di diritto internazionale cecoslovacca è comunque stata in grado di produrre opinioni dottrinali pluralistiche, anche se solo in segretezza. In certa misura pertanto, la dottrina

internazionalistica cecoslovacca ha avuto modo di discutere su tre questioni fondamentali: i principi del diritto internazionale, il diritto internazionale socialista e il diritto internazionale consuetudinario (tanto più teoriche erano le questioni, tanto maggiore era la libertà degli autori cecoslovacchi di sviluppare le proprie idee, potendo nascondere le opinioni reali sotto un cumulo di dettagli teorici). In effetti la dottrina cecoslovacca non si è mai completamente sottomessa a quella sovietica che non è stata in grado di arrestare completamente lo sviluppo autonomo della prima o di determinare la piena adesione dei ricercatori all'ideologia marxista-leninista.

Ogni significativo contributo alla dottrina internazionalista cecoslovacca è stato il risultato degli insegnamenti di figure chiave in grado di fornire un senso di continuità nel settore del diritto internazionale con le dottrine precedenti, pur senza mai contestare il principio dell'internazionalismo proletario. Tali elementi di continuità si sono avuti grazie al professor Vladimir Outrata, che nel 1951 ha ottenuto la Cattedra di Diritto Internazionale presso Charles University di Praga e del cui lavoro merita di essere citato il testo "Diritto Internazionale Pubblico". Gli anni Sessanta invece sono stati un periodo di vero e relativamente libero sviluppo della dottrina cecoslovacca di diritto internazionale, ma il dibattito dottrinale nato in quel tempo sarebbe poi culminato nell'invasione del Patto di Varsavia del 1968. Inevitabilmente, le conseguenze dell'invasione avrebbero determinato ripercussioni sostanziali sulla dottrina giuridico-internazionale cecoslovacca (molti rinomati ricercatori e professori di diritto internazionale furono esiliati) come un'onda travolgente di repressione ideologica che avrebbe finito per estendersi, attraverso gli anni Settanta, sino alla fine del 1980. Negli anni Ottanta, invece, il professor Čestmír Čepelka divenne una figura di spicco in diverse questioni teoriche. Sviluppò un nuovo metodo critico, insieme al professor Vladislav David, che sarebbe culminato in un nuovo testo: "Introduzione al Diritto Internazionale".

Capitolo V: Conclusioni

La concettualizzazione comunista del diritto internazionale non ha potuto non avere importanti ripercussioni nei dibattiti dottrinali internazionali, transcendendo i confini dell'Europa orientale e occidentale. Il diritto internazionale e le teorie giuridico-internazionalistiche hanno testimoniato sviluppi molto interessanti in Italia, Spagna, e Cecoslovacchia. Ognuno di questi Paesi ha fornito alla Storia un risultato differente. Quando si analizza il grado di influenza del Comunismo in Europa per tutto il periodo della guerra fredda, si deve certamente tenere in considerazione l'esigenza politica di equilibrio di potere dell'epoca. In generale, ciò che si può affermare è che il Comunismo ha certamente saputo incidere sull'evoluzione del mondo accademico giuridico di

ciascuno di questi Paesi: nonostante la sua democrazia "antifascista", l'Italia ha sperimentato una forma di dualismo nella propria dottrina; l'identità spagnola "anti-comunista" ha impedito qualsiasi forma di considerazione delle prospettive giuridiche socialiste, sperimentando, in ultima analisi, un effetto "opposto" sulla propria dottrina; la Cecoslovacchia, infine, nonostante le fasi di "interruzione dottrinale" e di dura repressione ideologica, ha finito per non soccombere pienamente alla dottrina sovietica ed ha continuato a perseguire, sia pure in forma nascosta, lo sviluppo di diverse teorie internazionalistiche.

