

# THE SOCIALIST CONCEPT OF HUMAN RIGHTS : ITS PHILOSOPHICAL BACKGROUND AND POLITICAL JUSTIFICATION

by

Dr. Franciszek PRZETACZNIK

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## INTRODUCTION

The object of this study is the Socialist concept of human rights, its philosophical background and political justifications. The Socialist concept of human rights means the understanding of these rights as they are applied and interpreted by the Soviet Union and other Socialist countries in the context of their political objectives. This concept, which, according to R. Dworkin's system, can be characterised as « arguments of policy », defined by him as arguments justifying « a political decision by showing that the decision advances or protects some collective goal of the community as a whole » (1), does not constitute a definitive coherent system of established norms and principles, but it is rather a very general, flexible guide for taking a position on human rights in a particular situation. Although the Soviet Union has already been in existence for more than fifty years and the majority of other Socialist States for more than thirty, the Socialist concept of human rights is still in the process of formation, its crystallisation depending on the internal political situation in the Socialist States as well as on the general international political situation.

In view of its purely political character, there is no reason to believe that this process of formation of the Socialist concept of human rights and its definite final crystallisation as a complete and coherent system of established norms and principles will occur in the near future, if at all. Despite this, the Socialist concept of human rights should be treated such as it is now. If treated as a whole — all positions on human rights held and expressed on any occasion by the Soviet Union and other Socialist States — it is possible to find many contradictions with regard to certain norms and principles, unless these contradictions are considered dialectical contradictions. There are, however, some basic principles concerning the protection of human rights with regard to which the position of the Socialist States has always been the same so far. These principles, their philosophical backgrounds, and their political justification will be discussed in this study.

HUMAN RIGHTS IN THE LIGHT OF THE POLITICAL OBJECTIVES  
OF SOCIALIST STATES

At the very outset, it should be observed that the Socialist concept of human rights and their international protection is closely connected with the political objectives of the Socialist States. Therefore, it seems indispensable to make a few remarks on the Communist's conception of the world and its objectives in order to understand the essence of the Socialist concept of human rights in general and their international protection in particular. The idea of the Socialist concept of human rights evolved gradually from the end of the First World War (in the case of the Soviet Union) and the end of the

(1) DWORKIN, R., « Hard Cases », 88 Harvard L. Rev. 1059 (1975).

Second World War (in the case of other Socialist States). Thus, the Soviet Union — and subsequently, under her direction, other Socialist countries — are attempting to bring about a reconstruction of the universe in conformity with the ideas expounded by K. Marl and F. Engels. The ultimate aim envisaged by their leaders is the construction of a Communist society in which, according to the classics of Marxism, the rules of life will be observed in common without the constant constraint exercised by a State mechanism, solely by virtue of the conscious discipline of the Communist social order, respect for each other and for their common interests, and habits which have become part of the mode of living.

Since everything in the Socialist States is subordinated to this ultimate aim, including the rights and interests of individuals, the Socialist concept of human rights must therefore be seen in the light of this ultimate objective pursued by the leaders of the Socialist States. According to Marxism, the abolition of class distinctions will be reached when the working class, in the course of its development, substitutes for the old order an association which will exclude classes and their antagonisms, and there will no longer be law which, having its roots in the material condition of life, represents the will of the class which in fact holds power in the State. In such a situation, the latter will lose the grounds for its existence and will disappear. F. Engels explains how this will take place : « The proletariat seizes the state power and transforms the means of production in the first instance into state property. But in doing this, it puts an end to itself as the proletariat, it puts an end to all class differences and class antagonisms, it puts an end also to the State as the State. Former society, moving in class antagonisms, had need of the state, that is, an organisation of the exploiting class, at each period for the maintenance of its external conditions of production; that is, therefore, for the forcible holding down of the exploited class in the conditions of oppression » (2).

#### a) *Withering Away of the State*

Such being the justification for the existence of the State, the State is bound to disappear. F. Engels continues : « As soon as there is no longer any class of society to be held in subjection;... there is nothing more to be repressed, which would also make a special repressive force, a state, necessary. The first act in which the state really comes forward as the representative of society as a whole — the taking possession of the means of production in the name of society — is at the same time its last independent act as a state. The interference of the state power in social relations becomes superfluous in one sphere after another, and then ceases of itself... The state is not 'abolished', *it withers away* » (3). The fate of the State after it ceases to function is foretold by F. Engels : « the society... will transfer the machinery of State where it will then

(2) ENGELS F., *Anti-Düring*, in Lord Lloyd of Hampstead, *Introduction to Jurisprudence*, 657 (New York, 1972).

(3) *Ibid.*, at 657-658.

belong : into the Museum of antiquities beside the spinning wheel and the bronze axe » (4). As regards Engels' statement concerning the withering away of the State, V.I. Lenin, considering it « so singularly rich in ideas », said that « [t]he abolition of the proletarian state, i.e., of all states, is only possible through 'withering away' » (5).

It was the prophecy of classical Marxism that not only the class differentiations and the State are doomed to disappearance, but the law as well. K. Marx and F. Engels foresaw a classless society in which disputes would be settled by the spontaneous unofficial social pressure of the whole community, by the group sense of right and wrong, or, at least, of expediency. They saw a precedent for this in the condition of certain primitive tribes who have no positive law, no State, but instead punish aberrant behaviour through informal, spontaneous group sanctions. It should be observed that when installing his dictatorship of the proletariat, V.I. Lenin announced the fall of the classic State, according to his thesis that « the bourgeois state... is 'put an end to' by the proletariat in the course of the revolution » (6). With the success of the Bolshevik Revolution in 1917, an immediate advent of a single world-wide, denationalised, classless society was anticipated, one in which there would be no place for a system of law regulating the international life of independent States.

Under such circumstances, Soviet writers on international law thenceforth attempted to prove the actual disappearance of the State in international law, which led them actually to undermine the concept of sovereignty. It is to be noted that at that time, the Communist (Sverdlov) University at Moscow excluded international law from the programme of study and called for « the need to destroy pitilessly the sovereignty, in all its historical configurations, from Bodin to Hobbes through Rousseau and Montesquieu, to Jellinek, the mensheviks and social revolutionaries » (7). During the reign of J. Stalin, it became established doctrine that the « withering away » of the State would ultimately come not by a weakening but an intensification of State authority. J. Stalin expressed this idea, *inter alia*, in his Political Report of the Central (Party) Committee to the XVI Congress in 1930. He said : « We are for the withering away of the state, while at the same time we stand for strengthening the dictatorship of the proletariat which represents the most potent and mighty authority of all the state authority to the end of making ready the conditions for the withering away of state authority : there you have the Marxist formula » (8).

(4) ENGELS, F., *The Origin of the Family, Private Property and the State*, edited by E.B. Leacock (New York, 1972).

(5) LENIN, V.I., *State and Revolution*, 20, International Publishers (New York, 1969).

(6) *Ibid.*, at 17.

(7) VERGER, V.L., *Law and State during the Transition Period*, Textbook of the Communist [Sverdlov] University, 200 (Moscow, 1924).

(8) STALIN, J., *12 Collected Works*, 369 (Moscow, 1949).

At the same time, J. Stalin recognised himself that this formula was contradictory. However, in his opinion, « it is a living, vital contradiction and it completely reflects Marxist dialectics » (9). This doctrine was dictated by the political situation in which the Soviet Union found itself. Instead of the immediate realisation of a Communist world empire, the first proletarian State found itself surrounded by States that refused to conform to Communist political philosophy, and confronted with the alternatives of complete isolation or compromise with the existing customs governing the foreign relations of States. Therefore, the Soviet lawmakers, instead of attempting to sweep away the existing complex of rules governing international relations by a single official denunciation, contented themselves with international law as expediency might require and, in the meantime, occupied themselves by transfusing its principles with their own political philosophy (10).

#### b) *Increasing of State Sovereignty*

Under these circumstances, it is understandable why the writers who attempted to prove the actual disappearance of the State in international law immediately after the Bolshevik Revolution later restored the State to its traditional importance through the concept of its absolute sovereignty. For instance, E.A. Korovin write in 1923 that « while the general movement of the evolution of the European international Law was towards restrictions of the notion of sovereignty... Soviet Russia appeared to be a champion of the classical concept of sovereignty » (11). In 1935, T.A. Taracouzio stated the same trend, indicating that « while the recent development of international law has shown a tendency to lessen the emphasis on sovereignty by stressing the interdependence of modern states, communist philosophy has increased it » (12). Soviet writers on international law have, until the present time, remained firm partisans of the classical notion of sovereignty (13). It is to be noted that the definitions of sovereignty given by different writers (14) or

(9) *Ibid.*, at 369.

(10) TARACOUZIO, T.A., *The Soviet Union and International Law*, 10 (New York, 1971).

(11) KOROVIN, E.A., *International Law of the Period of Transition* (in Russian), 45 (Moscow, 1923).

(12) TARACOUZIO, *supra* note 10, at 26.

(13) GRZYBOWSKI, K., *Soviet Public International Law, Doctrines and Diplomatic Practice*, 33 (Leyden, 1970); M. Chakste, « Soviet Concepts of State, International Law and Sovereignty », *Am. J. Int'l L.* 31 (1949); Yevgenyev, V.V. in F.I. Kozhevnikov (ed.), *International Law*, Academy of Sciences of the U.S.S.R., 93 (Moscow n.d.); TUNKIN, G.I., *Questions of the Theory of International Law* (in Russian), 203-204 (Moscow, 1962); USHAKOV, N.A., « International Law and Sovereignty », in TUNKIN, G.I., *Contemporary International Law*, 97 (Moscow, 1969).

(14) EVGENYEV, V.V., « Subjects of Law, Sovereignty and Non-Intervention in International Law » (in Russian), *Soviet State and Law*, 77 (N° 2, 1955); LEVIN, D.B. and KALUZHNIAIA, G.P., *International Law* (in Russian), 100 (Moscow, 1964); KOVALEV, F.N., « Sovereignty and International Obligations of the Socialist States (in Russian), *Pravda* (26 Sept. 1968); POLYANSKI, N.N., « The Principle of Sovereignty in the Security Council » (in Russian), *Soviet State and Law*, 30 (N° 3, 1946); USHAKOV, *supra* note 13, at 97; ZADOROZHNYI, G.P. and KOZHEVNIKOV, F.I., « Congress of the CPSU and Soviet Theory of International Law » (in Russian), *Institute of International Relations*, 10 *Uchenye Zapiski* (Scientific Notes), 3 and ff. (1962).

even the same writers (15) vary in detail, sometimes even considerably, because they are always designated to serve specific objectives of the Soviet Union in a precise political situation.

K. Grzybowski, analysing the Soviet writers' definitions of sovereignty, came to the conclusion that the Soviet Union uses the imprecise and fetishist significance of the term « sovereignty » precisely because of its indeterminate content (16). Despite differences in the formulation of sovereignty, in particular definitions by various Soviet writers, it is generally understood to mean a supreme power of the State within its own territory and an independence in relation to other States. This concept of sovereignty is shared by writers on international law of other Socialist States (17). Thus, State sovereignty is constantly paramount in the theory of international law as well as in the international practice for both the Soviet Union and the other Socialist States (18). This concept of sovereignty has provided the core for the Socialist States' objections to international supervision of the respect for human rights. The exaltation and the defence of such a concept of sovereignty by the Socialist States is an indication of their need to oppose any interference on the part of the United Nations or any other international organ.

## THE STATE AS MASTER OF ITS NATIONALS

The Socialist concept of human rights has remained firmly attached to the traditional principle of international law, which recognised the State as the only subject of that law with full supremacy over its subjects. According to this principle, international law governs the relations among States but recognises no rights to individuals as distinct from their relations with the State, and leaves exclusively to sovereign States the authority of regulating the relations of their subjects among themselves. The individual, however, does not benefit directly from international law, but only as a member of a larger community, as a national of the State, which is the subject of international

(15) KOROVIN, supra note 11, at 45; KOROVIN, E.A., « Survey of Basic Notions of International Law » (in Russian), *Soviet State and Law*, 30 (N° 6, 1925); KOROVIN, E.A., *Basic Problems of Contemporary International Relations* (in Russian), 60 (Moscow, 1960).

(16) GRZYBOWSKI, supra note 13, at 32.

(17) EHRlich, L., *International Law* (in Polish), 109 (Warsaw, 1958); KLAFKOWSKI, A., *International Public Law* (in Polish), 66 (Warsaw, 1966); RYSIAK, G., « Sovereignty », in KLAFKOWSKI, A., (ed.), *Encyclopedia of International Law and International Relations* (in Polish), 378 (Warsaw, 1976).

(18) EVGENYEV, supra note 13, at 97; USHAKOV, supra note 13, at 99; LACHS, M., SUCHY, J., BEREZOWSKI, C. and MUSZKAT, M., « The Problem of Sovereignty in the Light of the Polish People's Republic » (in Polish), 1 *Juridical Problems of the Constitution of the Polish People's Republic*, 115 (Warsaw, 1954).

law (19). The position of the Soviet Union and other Socialist States is that the rights of the individual lie outside the direct scope of international law, whose purpose is to regulate relations between States as independent sovereign entities, and that only by virtue of the legal bond which exists between the individual and the State can the rights of that individual be protected (20). The philosophical justification for the Socialist concept of human rights is not original. It derives many of its ideas from Western philosophical writers who preceded K. Marx, F. Engels, and V.I. Lenin by centuries.

Inter alia, the following ideas expounded by the Western philosophical writers concerning the position of the individual in society and his rights and duties in that society were implicitly incorporated in the Socialist concept of human rights : (1) man is by nature a political (21) and social (22) being (23), who is designated by nature to live in « community » (24), « society » (25), « commonwealth » (26) or « State » (27); (2) society is prior to the individual (28) and the State is a part of the natural order (29); (3) the existence of the State is justified by the very nature of man (30) for controlling and modifying men's desire for their sufficient life (31); (4) man entered

(19) KŁAFKOWSKI, *supra* note 17, at 60; KOROVIN, E.A., « New Textbooks of International Law » (in Russian), *Soviet State and Law*, 72 (N° 8, 1948); KRYLOV, S.B., « A Contribution to the Discussion of Question of Theory of International Law » (in Russian), *Soviet State and Law*, 77 (N° 7, 1954); KOULICHEV, L., « Garanties juridiques concernant l'application des Pactes relatifs aux droits de l'Homme », in KAMENOV, E., *La République populaire de Bulgarie et les Droits de l'Homme*, 135 (Sofia, 1970); RADAINOV, R., « La protection internationale des Droits de l'Homme », *ibid.*, at 113; TUNKIN, G.I., in 1 Y.B. Int'l L. Comm'n, 165 (1957).

(20) KOZHEVNIKOV, F.I., in 1 Y.B. Int'l L. Comm'n, 172-173 (1953).

(21) ARISTOTLE, *Selections... On Statecraft*, trans. by P. Wheelwright, 280 (The Odyssey Press, New York 1951); CRANSTON, M., « St Thomas Aquinas as a Political Philosopher », in DOWNTON, J.V. and HART, D.K., (ed.) *1 Perspectives on Political Philosophy*, 279 (New York 1971).

(22) The Pocket Aquinas, trans. BOURKE, V.J., 232 (Washington Square Press, New York 1976).

(23) The word « being » is used instead of that of « animal » used by Aristotle, *supra* note 21, at 280, Thomas Aquinas, *ibid.*, at 279.

(24) CRANSTON, *supra* note 21, at 280; LOCKE, J., *Two Treatises of Government*, ed. by P. Laslett, 375 (Mentor Book, New York, 1965).

(25) ARISTOTLE, *supra* note 21, at 281; DE SPINOZA, B., *A Theologico-Political Treatise, A Political Treatise*, trans. R.H.M. Elwes, 288 (New York, 1951); ROUSSEAU, J.J., *The Social Contract*, trans. W. Kendall, 33 (New York 1954).

(26) HOBBS, T., *Leviathan*, 139 (The Library of Liberal Arts, Indianapolis, 1958); LOCKE, *supra* note 24, at 399; HUME, D., *Political Essays*, 145 (The Library of Liberal Arts, New York 1953).

(27) PLATO, *Laws*, trans. by T.J. Saunders, 201 (Penguin Books 1970); ARISTOTLE, *The Politics*, trans. by SINCLAIR, T.A., 25 (Penguin Books 1972); HEGEL, G.W.F., *The Philosophy of History*, trans. by SIBREE, J., 40 (New York 1956); SPINOZA, *supra* note 25, at 200.

(28) ARISTOTLE, *supra* note 21, at 281; CRANSTON, *supra* note 21, at 279.

(29) ARISTOTLE, *supra* note 21, at 281.

(30) CRANSTON, *supra* note 21, at 284.

(31) REEVES, M., « Marsiglio of Padua and Dante Alighieri », in DOWNTON and HART, *supra* note 21, at 304.

society for his safe and peaceable living (32); (5) by entering into society, the individual renounced his original rights (33) and transferred them to the State (34); (6) all rights of the individual derive from the society (35) and should be subordinated to the interest of the society (36); (7) collective rights prevail over individual rights (37) for the welfare of the group is more important than the welfare of the individual (38); (8) the State is the very condition for the realization of the rights of the individual (39); (9) the individual has only such rights which the State deems useful to accord him for the common good (40); (10) man's freedom is inherently social (41) and can be realized only in the State (42); (11) the needs of the society as a whole justify the limitations of individual liberties (43); (12) the individual has duties towards the society (44); and (13) the individual has the duty to observe the laws (45) and obey the legitimate power of the State (46) and thus he finds his freedom (47).

#### THE ROLE OF THE STATE IN THE SOCIALIST CONCEPT

In spite of the prophecy by K. Marx and F. Engels of the withering away of the State, in the Socialist system the State has not withered away, nor has its authority been weakened; on the contrary, its authority was increased to the utmost and the role of the State in the protection of human rights became decisive. The Socialist concept of human rights is based upon the philosophy which rejects any natural origin of human rights and considers the State or collectivity as the repository of all rights, with individual rights being re-

(32) LOCKE, J., *The Second Treatise of Government*, 54 (The Library of Liberal Arts, New York 1952).

(33) HOBBS, T., *Man and Citizen*, trans. by WOOD, C.T., 171 (New York 1972); ROUSSEAU, J.J., *The Social Contract or Principles of Political Rights*, Ch. M. Sherover (ed.), Annotated Edition, 23 (New York 1974); KANT, I., in CAIRNS, H., *Legal Philosophy from Plato to Hegel*, 443 (Baltimore 1967).

(34) ROUSSEAU, *supra* note 33, at 23.

(35) *Ibid.*, at 5-6.

(36) *Ibid.*, at 6; KANT, *supra* note 33, at 448.

(37) ROUSSEAU, *supra* note 33, at 23 and 25.

(38) KANT, *supra* note 33, at 448.

(39) HEGEL, *supra* note 27, at 41.

(40) ROUSSEAU, *supra* note 33, at xvi.

(41) *Ibid.*, at xxv.

(42) HEGEL, *supra* note 27, at 40.

(43) ROUSSEAU, *supra* note 33, at xvi.

(44) *Ibid.*, at 30-31.

(45) *Ibid.*, at 33; STACE, W.T., *The Philosophy of Hegel*, 407 (Dover Publication, Toronto 1955).

(46) ROUSSEAU, *supra* note 33, at 11; KANT, *supra* note 33, at 451.

(47) STACE, *supra* note 45, at 407.



cognized only to the extent allowed by the State or collectivity. I. Szabó indicates that according to the Socialist standpoint, « all right is derived from the state » (48). This basic thesis is based on the idea of the supremacy of the interests of the Socialist State over the interests of individuals. According to Marxism-Leninism, as applied and interpreted by the Soviet Union and under her guidance by other Socialist States, pending the realisation of a classless society the proletariat as the ruling class holds the power of the State in its hands and uses it to socialise the means of production. To create the new society, the dictatorship of the proletariat utilises the whole apparatus of the State, including the army, police, civil service, and courts.

#### a) *Political Theory*

The programme of the twenty-second Soviet Party Congress in 1961 stated that the « dictatorship of the proletariat » had completed its historical mission at this contemporary stage of history and had been replaced by an all-people's State which now expresses the interests of the whole people. The dictatorship of the working class had become unnecessary during the transition period, but « the state as an all-people's organization will survive until the full victory of communism » (49). It is to be noted that the law served as an instrument of class oppression during the first period of the existence of the Soviet Union and, respectively, of other Socialist States, but that with the liquidation and elimination of all capitalist elements negative to the revolution, the law in these States changed its character. Thus, as interpreted in the Soviet doctrine, the law has been transformed into an instrument of State policy. Bearing this in mind, V. Chalidze indicates that « (f)rom an instrument for assuring the primacy of the rights of one class relative to the rights of other classes, Soviet law has become an instrument for assuring the primacy of the rights of the State over the rights of citizens » (50).

According to Socialist doctrine, which always expresses the political requirements of the moment, the Socialist State, as an incarnation of the totality of working people, coordinates the interests of society and of the individual, and creates the conditions indispensable to the formation of unity between the rights and duties of man and citizen. This unity eliminates the possibility of abusing the law, as the laws can only be implemented in a manner which does not encroach upon social interests. This idea is not new, because it was already advocated by J.J. Rousseau (51). Socialist doctrine opposes the concept of duality which can be found in the Constitutions of certain States differentiating between human rights and citizens' rights. It

(48) SZABO, I., « The Theoretical Foundations of Human Rights », in EIDE, A. and SCHOU, A., *International Protection of Human Rights*, Proceedings of the 7th Nobel Symposium, Oslo, 25-7 September 1968, 39 (Stockholm, 1968).

(49) LAPENNA, I., *State and Law : Soviet and Yugoslav Theory*, 72 (1964).

(50) CHALIDZE, V., *To Defend These Rights, Human Rights and the Soviet Union*, 13-14 (New York, 1974).

(51) ROUSSEAU, *supra* note 29, at 6-7.

speaks in a uniform manner of citizens' rights because, as I. Szabó indicates, « it considers every positive right as being created by the state » (52). In this way, human rights are considered to be incorporated into citizen's rights. It has been asserted that the problem of human rights and citizen's rights illuminates one of the most important aspects of the relationship which exists between the State and the individual (53).

It has been maintained that within the Socialist system, individuals may enjoy all prerogatives directly related to the expression of popular sovereignty and State power (54). State power returns to the working class and other urban and rural workers (55). This power is only exercised for the benefit of the workers, who are interested in the implementation of multiple rights to their benefit. It should be observed that if capitalist elements have not been eliminated within Socialist society, the rights of these elements negative to the revolution are limited. The limitation concerns « political rights insofar as it is indispensable that the exploiting class be deprived of the possibility of exerting negative action upon the revolution » (56). However, as pointed out by B. Spassov, these measures are only temporary; when, following concerted revolutionary measures, powerless classes will have disappeared, the rights in question will take on a universal character benefiting all members of the society (57). According to Socialist doctrine, the Socialist system contains no conflict between the individual and the State, whose task it is to assure the material welfare and cultural expansion of the individual in participation in economic and political life.

At the same time, the individual is expected to exhibit behaviour defined by the State since, as has been said, this behaviour is in the interest of society as a whole. In this context, it should be observed that the Socialist States have an official ideology, Marxism-Leninism, as interpreted by the latest Congress of the Communist Party of the U.S.S.R. or the plenum of its Central Committee, and subsequently accepted as the uniquely correct ideology by the Congresses of the Communist Parties or plenums of the Central Committees of each Socialist country respectively. In the Socialist countries, the relationship between the State and the individual, based on the requirements of a uniquely correct ideology, has been elaborated in great detail. These States

(52) SZABO, *supra* note 50, at 40.

(53) SPASSOV, B., « Bases constitutionnelles des Droits de l'Homme et du citoyen en République Populaire de Bulgarie », in KAMENOV, *supra* note 19, at 36; BURDA, A., « The Rights of the Citizen in the Socialist Constitutionality » (in Polish), *The Studies in the Matter of the Socialist Constitutionality* » 183 (Wroclaw, 1969); MICHALSKA, A., « The Covenants on Human Rights and the Catalogue of the Rights of the Citizen in the Polish People's Republic » (in Polish), *Panstwo i Prawo* (State and Law), 44 (N° 3, 1973).

(54) DIMITROV, D., « La Protection des citoyens contre les actes de l'administration entachés d'illégalité en République populaire de Bulgarie », in KAMENOV, *supra* note 19, at 56; SPASSOV, *supra* note 53, at 39.

(55) SPASSOV, *supra* note 53, at 38.

(56) *Ibid.*, at 28.

(57) *Ibid.*, at 28.

strictly control socially significant behaviour of its citizens, as V. Chalidze indicates, « making certain that this behaviour complies with the requirements of ideological doctrine » (58). By insisting so much that the individual owes everything to the Socialist State, the Socialist doctrine maintains that he must obey that State absolutely, as it expresses the will of the working rural and country masses and exerts power in their interests.

Starting from the premise that for the individual everything comes from the State, the ideologues of the Socialist States constantly justify the supremacy of the interests of the State over those of the individual. V. Chalidze explains that the interests of the individual in this sense « mean everything, including his life and freedom » (59). He vigorously criticises the concept of the « interests of the State », which is very vague. As such, this concept is very convenient for the State organs which, on the grounds of protecting the all-defined interests of the State, have violated the rights of individuals. For the sake of the interests of the State, one should make any sacrifices associated with the interests of the individual, including his life and freedom (60). V. Chalidze indicates, in this respect, that « it is always presumed that everything good comes from the state and is a result of the generosity of the state », even when « it is a question of rectifying monstrous violations of human rights » (61). For the reasons discussed above, according to the Socialist concept of the protection of human rights, it is the State which is the sole judge concerning when, how, and to what extent the rights of the individual are to be protected.

#### b) *Legal Theory*

Pursuant to Socialist doctrine, human rights are understood as the totality of the most substantial general democratic rights which States must grant to individuals within the sphere of their jurisdiction (62). These rights, as indicated by P.E. Nedbailo, acquire their legal significance through the State by being defined in its legislation (63). This doctrine reflects the Socialist concept of the protection of human rights, according to which the individual has no standing in international law and the relationship between an individual

(58) CHALIDZE, *supra* note 50, at 4.

(59) *Ibid.*, at 15.

(60) *Ibid.*, at 15.

(61) *Ibid.*, at 19.

(62) CHERNICHENKO, S.V., « Human Rights and the Principles of Non-Intervention in the Charter of the United Nations » (in Russian), *Soviet Y.B. Int'l L.* 181 (1964-1965); CHIKVADZE, V. and OSTROWSKI, Y.A., « International Human Rights Conference », *Int'l Affairs (Moscow)*, 16-21 (N° 8, 1968); RESICH, Z., « The Protection of Human Rights and Poland » (in Polish), in *The Foreign Policy of the People's Republic of Poland*, 276-277 (Warsaw, 1964); ROMANOV, V.A., « The Soviet Union and International Respect for Fundamental Human Rights » (in Russian), *Soviet Y.B. Int'l L.* 365 (1958).

(63) NEDBAILO, P.E., « International Protection of Human Rights », (in Russian), *Soviet Y.B. Int'l L.* 52 (1968).

and the State is regulated only by rules established by the State itself. F.I. Kozhevnikov defended this idea in the International Law Commission when he stated that « the rights of the individual lay outside the direct scope of international law, and, it was only by virtue of the legal bond which existed between the individual and the State that his right could be protected » (64). This statement reflects the general attitude of the Socialist States toward the problem of the international protection of human rights.

In the forum of the United Nations, they constantly reiterate the thesis that human rights of individuals depend upon their realization through the action of the sovereign State. For example, the Soviet delegate, A. Vyshinsky, speaking to the General Assembly of the United Nations on 10 December 1948, maintained that the realisation of human rights was inherent in the concept of national sovereignty. Accordingly, the concept of human rights was conceivable only within the context of the State, which assures their protection and enforcement (66). The thesis that human rights are outside the domain of international law was also continually repeated by the Soviet scholars, as well as by their colleagues from other Socialist countries. S.B. Krylov argued that the « individual is protected not directly by international law but only with the aid of national law » (67). Similarly, A.P. Movchan asserted that the « legal position of individuals is determined by national and not international law » (68), which proceeds from the recognition of the individual as a subject of national law and does not admit the direct protection of his rights by any international organ in circumvention of the State and in disregard of the jurisdiction of State organs in this sphere, since this would be tantamount to interference in the domestic affairs of States and to impingement upon their sovereignty (69).

This classical-orthodox view is generally held by other writers. For example, V.M. Koretsky, in his discussion on the Draft Declaration on the Rights and Duties of States in the International Law Commission, stated that « an individual is not subject of international law » (70). The Soviet Union and other Socialist States have staunchly opposed any attempts to recognize individuals as « subjects of international law » because it would restrict the sovereignty of States over their own citizens and would offer opportunities for interfering with the internal affairs of States (71). The official position of the Socialist States is that individuals are not subjects of international law

(64) 1 Y.B. Int'l L. Comm'n, 173 (1953).

(65) Ibid., at 226-227.

(66) GRZYBOWSKI, *supra* note 13, at 269.

(67) KRYLOV, S.B., *Materials on the History of the United Nations* (in Russian), 225 (1949).

(68) MOVCHAN, A.P., « The Human Rights Problem in Present-Day International Law », in TUNKIN, *supra* note 13, at 239.

(69) Ibid., at 240.

(70) 1 Y.B. Int'l L. Comm'n, 73 (1949).

(71) KOZHEVNIKOV, F.I., in 1 Y.B. Int'l L. Comm'n, 236 (1953); MOROZOV, P.D., in Sixth Committee of the General Assembly, U.N. Doc. A (CN. 4), SR. 409/52, 25 (12 October 1954).

(72). For these reasons, it is recognized that as regards the protection of human rights, « the role of the State is predominant » (73). Recognizing the predominant role of the State in the protection of human rights, Socialist doctrine does, however, admit that this protection consists of two elements, i.e. : (a) national; and (b) international.

Y.A. Ostrovsky, speaking of the international protection of human rights, recognizes that « it consists of two aspects — intrastate and international — which are inseparably linked » (74). P.E. Nedbailo also admits that human rights are the subject of activity of the State which it carries out both directly and through cooperation with other States through joint actions of States (75). On the national plane, the protection of human rights consists of actions undertaken by the particular State. The actions of such a character consist of the elaboration and setting up of norms designed for the protection of human rights, and their scope and character depend above all upon the socio-economic system, the level of development and on local conditions, the legal system, as well as national and other specific features. The national norms should not be uniform everywhere, but should differ from country to country. On the other hand, on the national plane the problem of the protection of human rights presents a different complexion, since States jointly elaborate in various organs or committees of the United Nations the norms concerning the protection of human rights which are then embodied in conventions, declarations and resolutions (76).

Although such instruments are common to all States, they should not, as indicated by K.Y. Chizhov, contain clauses establishing any supra-State agencies dealing with human rights and having legislative, administrative or judicial functions (77). In view of the importance of this question in the present state of international law, Socialist doctrine recognizes that international protection of human rights rests on two obligations of States. Firstly, every State undertakes the legal obligation to assume on its territory the protection of human rights. Secondly, by signing the Charter of the United Nations, States assume an obligation with respect to international cooperation with a view to promoting, protecting, and developing human rights (78). Recognizing these principles, the Socialist States, as indicated by K.Y.

(72) EVGENEV, *supra* note 14, at 75-76; KOROVIN, *supra* note 19, at 72; K RYLOV, *supra* note 19, at 77; LEVIN, D.B., « Falsification of the Concept of International Law by Bourgeois Pseudo-Scholarship » (in Russian), *Soviet State and Law*, 55-63 (N° 4, 1952); TUNKIN, G.I., in 1 *Y.B. Int'l L. Comm'n*, 165 (1957); KŁAFKOWSKI, *supra* note 17, at 66.

(73) NEDBAILO, *supra* note 63, at 52.

(74) OSTROVSKY, Y.A., « International Protection of Human Rights and the Principle of Non-Interference in the Internal Affairs of State » (in Russian - summary in English), *Soviet Y.B. Int'l L.* 87 (1966-67).

(75) NEDBAILO, *supra* note 63, at 52.

(76) OSTROVSKY, *supra* note 74, at 87.

(77) CIZHOV, in Kozhevnikov, *supra* note 13, at 138.

(78) BYSTRICKY, R., « The Universality of Human Rights in a World of Conflicting Ideology », in Eide and Schou, *supra* note 48, at 84.

Chizhov, seek to ensure that this cooperation should be directed towards the genuinely democratic development of rights and freedoms for all, without distinction as to race, nationality, sex and religion, on the basis of freely concluded equal agreements. At the same time, the Socialist States maintain that international agreements concerning the protection of human rights must not contain clauses infringing upon the sovereign rights of States to define independently the rights and obligations of their citizens in accordance with their economic and social characteristics (79).

## THE PROTECTION OF COLLECTIVE HUMAN RIGHTS

As regards the protection of human rights on an international scale, it should be observed that such protection can either concern individuals separately as such, or the peoples and nations as a whole. The former are all individual rights, which are recognized by the Universal Declaration of Human Rights (80) and guaranteed by the International Covenants on Human Rights (81). To these rights, human beings as such are exclusively entitled. In this context, it is to be noted that K. Marx, in his Papers on the « Jewish Question », defined human rights as partly political rights, which can be exercised only in community with others. Participation in the community, the political community of the State, provides their content (82). The rights of peoples or nations are the collective rights which are recognized and guaranteed by the norms and principles of international law. Human beings are entitled to these rights collectively as members of a greater community, such as a nation or State. The Socialist States attach particular importance to collective human rights because, in their opinion, individual human rights can only be assured in the situation when collective human rights are fully recognized and observed. The right to peace is considered the basic collective human right.

### A. THE RIGHT TO PEACE

According to the Socialist concept of the protection of human rights, the struggle for the protection of such rights must proceed side by side with the struggle for peace and the security of peoples, since peace favours these rights and war obstructs them. History shows that aggressive wars have not only abolished human rights in those States which were victims of aggression, but have also had unfavorable results in this regard in the aggressor State itself.

(79) CHIZHOV, *supra* note 77, at 137-138.

(80) United Nations, *Human Rights: A Compilation of International Instruments of the United Nations*, U.N. Pub. Sales N° E. 68. XIV.6, I (New York, 1967).

(81) United Nations Juridical Yearbook 1966, 170 (New York, 1968).

(82) *Karl Marx Dictionary*, ed. by M. Stockhammer, 107 (New York, 1965).

In view of the importance of this question, R. Bystricky notes that human rights can be protected and guaranteed only in time of peace (*inter arma silent leges*) and on the basis of international cooperation. « Hence, it follows that the right to peace and the right to pursue the policies of peaceful coexistence are to be considered as fundamental human rights » (83). The idea of the right to peace is not new, because it has been advocated already by some philosophers. St Augustine asserts that peace, which is « the end or supreme good of the City of God », is universally loved and desired by all men in their own society (84).

In his view, the desire of peace is inherent in human nature; therefore, men desire peace; even « while waging a war every man wants peace, whereas no one wants war while he is making peace » (85). St Augustine's idea concerning peace found its expression in S. Pufendorf's *Elements of Universal Jurisprudence*, wherein, in contrast to the theory of T. Hobbes that the natural condition is a struggle of all against all, he considers peace the condition best adopted to human society (86). According to S. Pufendorf, the natural status of a man is subordinated to peace, « for every man whatsoever,... is under obligation to cultivate peace with every other man whatsoever » (87). The philosopher of peace, I. Kant, in his work entitled « Toward Perpetual Peace », considered that the conditions of perpetual peace are contained in human inclinations and, therefore, they are a natural prerequisite of peace (88). The following are four components of Kant's « Natural guarantee » for perpetual peace : that (1) standing armies are a bar to peace among nations; (2) international peace depends upon the republican character of individual States; (3) the law of nations should be founded on a federation of free States; and (4) the effect of international travel or commerce is to increase the possibility of peace among States (89).

It follows from the above considerations that the idea of the right to peace is very old, although it has not yet been precisely defined. According to the terms of the Charter of the United Nations, wherein are inscribed the experiences and lessons learned by a world which has undergone the scourge of war twice, the organisation's task of maintaining international peace and security aims, *inter alia*, at encouraging international cooperation in the field of the protection of human rights for all, without distinction as to race, sex, language, or religion, such protection being, possible, as A.P. Movchan

(83) BYSTRICKY, *supra* note 78, at 84.

(84) ST AUGUSTINE, *The City of God*, trans. by G.G. Walsh, D.B. Zema, G. Monahan, and D.J. Honan, 451-452 (Image Books, New York, 1958).

(85) *Ibid.*, at 452.

(86) PUFENDORF, S., *Elementorum Jurisprudentiae Universalis Libri Duo (The Two Books of the Elements of Universal Jurisprudence)*, translated by W.A. Oldfather, 34-35 (London, 1931).

(87) *Ibid.*, at 11.

(88) KANT, I., « Toward Perpetual Peace » (in 1795), in D. Sidorsky (ed.), *The Liberal Tradition in European Thought*, 308 (New York, 1970).

(89) *Ibid.*, at 298, 300, 301, and 305-307.

indicates, only if there is international peace (90). P.E. Nedbailo also points out that the international cooperation of States in the field of ensuring human rights is a composite part of the struggle for peace and the security of peoples (91). Similarly, H. Kissinger, defending the position of the USA on Human Rights, stated that in the nuclear age, « peace is a fundamental moral imperative » (92). It is important to recall that all principles and provisions of the United Nations, a veritable Constitution of the organised international community, have the primary purpose of saving succeeding generations from the scourge of war, which twice within the same generation has brought untold sorrow to mankind (93).

Bearing the importance of this question in mind, P. Radoinov indicates clearly that the problems concerning human rights, as well as those relative to safeguarding international peace and collective security and the peaceful settlement of international disputes, have first priority at the international level (94). Considering that the protection of human rights is only possible if peace exists, the Soviet Union and other Socialist States have frequently attracted the attention of other States, in their foreign policy, to the fact that respect for human rights is indissolubly linked with the consolidation of international peace and security (95). The U.S.S.R. was the first to point out the necessity for peaceful coexistence among States, particularly among States with different political and social structures. The notion of « peaceful coexistence » is a reinterpretation of Leninism that rejects the inevitability of a major war between the leading Western States and the States of the Warsaw Pact. The doctrine of peaceful coexistence was enunciated by N. Khrushchev before the Twentieth Soviet Communist Party Congress (96).

#### a) *Peaceful Coexistence as a Prerequisite for Peace*

N. Khrushchev stated at that Congress that peaceful coexistence was « a fundamental principle of Soviet foreign policy » (97). The official history of the CPSU defines this principle as follows : « Peaceful coexistence means competition in the economic and cultural spheres between countries of different social systems. This policy cannot lead to renunciation of the class struggle, to reconciliation of the socialist and bourgeois ideologies. It implies the development of the working class struggle for the triumph of socialist

(90) MOVCHAN, *supra* note 68, at 238.

(91) NEDBAILO, *supra* note 63, at 52.

(92) New York Times, 20 October 1976, at 3.

(93) GOODRICH, L.M., *The United Nations*, 349 (New York, 1963).

(94) RADOINOV, *supra* note 19, at 95.

(95) MOVCHAN, *supra* note 68, at 237.

(96) PLANO, J.C., GREENBERG, M., OLTON, R. and RIGGS, R.E., *Political Science Dictionary*, 278 (Hinsdale, Illinois, 1973); BIERZANEK, R., « Peaceful Coexistence », in Klafkowski, *supra* note 17, at 283. Keesing's Research Report, *The Sino-Soviet Dispute*, 7 (New York, 1969).

(97) ERICKSON, R.J., *International Law and the Revolutionary State*, 47 (Leiden, 1972).



ideas. But ideological and political disputes between states should not be settled through war » (98). R.J. Erickson indicates that by its very nature, as a foreign policy objective, peaceful coexistence was inapplicable to relations among Socialist States (99). This concept was also confirmed by N. Khrushchev, who stated on 30 June 1957 that peaceful coexistence was not universally applicable, but only to relations between Socialist and Capitalist States (100). There exist differences of opinion on the exact meaning of peaceful coexistence and its legal validity.

On the one hand, the Western scholars, taking into account the origin of the doctrine of peaceful coexistence and its interpretation by Soviet party leaders, considers it a slogan in Soviet foreign policy. They generally deem the doctrine of peaceful coexistence a recognition that the threat of nuclear annihilation required the adoption of a new tactical approach for spreading Communism (101). At the same time, they indicate that this doctrine did not espouse pacifism, because « just wars » of national liberation fought by indigenous peoples were designated as means for achieving the goal of communism in the developing areas of the world. The right to export aid to revolutionary groups to overthrow reactionary regimes became an integral part of that doctrine (102). In their view, the emphasis on avoiding a major war with the West was a realistic appraisal by Soviet leaders of the dangers of nuclear war (103). Moreover, Western scholars criticise the notion of peaceful coexistence for its vagueness, indicating that nobody knows what it means because the term is formulated at a very high level of generality and abstraction (104).

In response to those criticisms, Soviet scholars defined peaceful coexistence as follows : « The principle of peaceful coexistence is a fundamental principle of modern international law. No distinctions in the social and state structure shall hinder the exercise and development of relations and coope-

(98) *The History of the Communist Party of the Soviet Union*, 644 (Moscow : Foreign Languages Publishing House, 1964).

(99) ERICKSON, *supra* note 97, at 47.

(100) KHRUSHCHEV, in *Pravda*, 30 June 1957; cf. ZAKHAROVA, N.V., « Bilateral treaties of Friendship, Cooperation and Mutual Aid Among Socialist States » (in Russian), *Soviet State and Law*, 83 (N° 2, 1962).

(101) GORE, A., « Principles of International Law Concerning Friendly Relations Among States », 47 *Bul. Dep't State*, 973 (1962); PLANO, J.C. and OLTON, R., *The International Relations Dictionary*, 68 (New York, 1969).

(102) STRAUZ-HUPE, R., « Peaceful Coexistence », in J. Dunner (ed.), *Dictionary of Political Science*, 404 (New York, 1964); PLANO and OLTON, *supra* note 101, at 68.

(103) PLANO and OLTON, *supra* note 101, at 68; FILLER, L., *A Dictionary of American Social Reform*, 585 (New York, 1963).

(104) HAZARD, J.N., « Coexistence Codification Reconsidered », 53 *Am. J. Int'l L.* 91 (1963); LIPSON, L., « Peaceful Coexistence », in H. Baade (ed.), *Soviet Impact on International Law*, 36 (New York, 1965); LISSITZYN, O., « Soviet Union and International Law », 542 *Int'l Concil.* 18-19 (March); MCWHINNEY, E., « Soviet and Western International Law and the Cold War in the Era of Bipolarity », in FALK, R.A. and MENDLOVITZ, S.H., 2 *Strategy of World Order, International Law*, 193-194 (New York, 1966).

ration between States, since every nation has the right to establish such a social system, and to choose such a form of government as it considers expedient and necessary for the purposes of insuring the economic and cultural prosperity of its country » (105). The general principle concerning the right of every nation to establish such a social system and to choose such a form of government as it considers expedient for itself, contained in this formula, is denied by the Brezhnev Doctrine with regard to the Socialist State (106). From the Soviet viewpoint, peaceful coexistence was an implied principle upon which the United Nations was founded; therefore the West, which did not consider it a legal principle (107), was bound to adhere to peaceful coexistence which, as indicated by G.I. Tunkin, should be regarded as a universally recognized principle of international law (108).

With a view to avoiding armed conflicts, the Socialist States underline the necessity for inter-State politics based on peaceful coexistence and collaboration, in conformity with the Charter of the United Nations, respect for which is an essential condition for the existence of the international community itself in contemporary life (109). In view of the fact that human rights are intricately linked to the safeguarding of peace and the establishment of international security, the General Assembly of the United Nations, upon the initiative and active support of the Socialist States, adopted the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (110), and the Declaration on the Strengthening of International Security (111).

It must be observed that the second Declaration affirms a highly important statement, namely that the violation of human rights on the part of States engenders wars. Thus, in Article 22 of this Declaration, the General Assembly solemnly reaffirmed that « universal respect for and full exercise of human rights and fundamental freedoms and the elimination of the violation of those rights are urgent and essential to the strengthening of international security (112). In this manner, the United Nations recognized that upon the effectual protection of human rights rests, in effect, the implementation of

(105) Soviet Branch of the International Law Association, « Draft Declaration of Principles of Peaceful Coexistence », *Report of the 50th Conference* (Brussels, 1962); ERICKSON, *supra* note 97, at 48.

(106) COLEMAN, G.C., « The Brezhnev Doctrine », 30 Fed. Bar J., 208 (N° 3, 1971).

(107) RAMUNDO, B., *The Socialist Theory of International Law*, 29 (Washington, 1964); LAPENNA, I., « Legal Aspects and Political Significance of the Soviet Concept of Peaceful Coexistence », 12 Int'l Comp. L. Quart. 766-767 (1963).

(108) TUNKIN, G.I., « Coexistence and International Law », 95 Hague Recueil, 65 (1958, II).

(109) International Law Association, Legal Aspect of Co-existence, Report of the French Branch by AUER, P. and GOVARE, J.P., *Report of the 48th Conference*, 492-493 (New York, 1958); RADOJKOVIĆ, M., *ibid.*, at 455.

(110) United Nations Juridical Yearbook 1970, 105 (New York, 1972).

(111) *Ibid.*, at 62.

(112) *Ibid.*, at 65.

the U.N.'s fundamental goals, which consist of reinforcing international peace and security. In this regard, we should mention Article 20 of the International Covenant on Civil and Political Rights, adopted with the active support of Socialist delegates. This Article stipulates that « any propaganda for war shall be prohibited by law » (113).

b) *The Right to Peace in the Negative Form*

The right to peace can be expressed not only directly in the positive form, as indicated earlier, but may also be expressed in the negative form or negative manner indirectly. The right to peace found its expression in the negative manner in the form of the trial of persons charged with crimes against peace (i.e., planning, preparing, initiating or waging of war of aggression, or a war in violation of international treaties, or conspiracy for the accomplishment of any of these acts), war crimes (i.e., violation of the laws or customs of war), crimes against humanity (i.e., murder, extermination, enslavement, deportation, other inhumane acts against any civilian population, or persecutions on political, racial or religious grounds), the non-applicability of statutory limitations to war crimes and crimes against humanity, and in the prevention and punishment of the crime of genocide. The crimes of the Germans and Japanese during World War II, which reached dimensions unparalleled in human history, so immensely shocked world public opinion that the punishment of war criminals came to be regarded among the most urgent problems to be solved after the war.

On the basis of the London Agreement of 8 August 1945 concerning the Prosecution and Punishment of the Major War Criminals of European Axis (114), twenty-two major German war criminals were tried at Nuremberg by the International Military Tribunal, which consisted of judges from the United Kingdom, France, the U.S.S.R., and the U.S.A. Charged with crimes against peace, war crimes, and crimes against humanity, twelve defendants were sentenced to death, others received jail sentences, and three were acquitted (115). Under the Charter of the International Military Tribunal for the Far East, major Japanese war criminals were tried in Tokyo on similar charges by judges representing the eleven countries at war with Japan (116). The concept of crimes against peace in the Nuremberg and Tokyo war trials opened a new page in the development of the right to peace as a basic collective human right. In its Resolution 3/I of 13 February 1946, the General Assembly of the United Nations affirmed the Principles of International Law recognized by the Charter of the Nuremberg Tribunal (117).

(113) UN. J.Y., *supra* note 81, at 184.

(114) WHITEMAN, M.M., 11 *Digest of International Law*, 881-883 (Washington, 1968); 82 U.N.T.S., at 286-290; U.S. EAS 472; 59 Stat. at 1547-1548.

(115) WHITEMAN, *supra* note 114, at 884-890.

(116) *Ibid.*, at 984-998.

(117) U.N. Resolutions adopted by the General Assembly during the Second Part of its First Session from 23 October to 15 December 1946, at 188.

Bearing in mind the unprecedented atrocities committed during the Second World War, and guided by the spirit of international cooperation, the delegates of the Socialist States became extremely active in the elaboration of international instruments relating to the prevention and repression of the crime of genocide (118), to the punishment of war criminals and of persons who have committed crimes against humanity (119), and of the non-applicability of statutory limitations to war crimes and crimes against humanity (120). In the preparation of each of these instruments, the delegations of the Socialist States made important contributions, and the final texts were adopted with their strong support (121). It follows from the foregoing considerations that the right to peace is a basic collective human right. The enjoyment of the right to peace is a necessary condition for the normal enjoyment not only of other collective human rights by States or nations as a whole, but also individual human rights by particular individuals belonging to those States or nations.

#### B. THE RIGHT OF PEOPLES TO SELF-DETERMINATION

##### a) *Western Ideas*

The problem of human rights is closely linked to that of self-determination of peoples and nations. The principle of self-determination of peoples means that they have the right to choose freely the path of their social and economic development, and not merely the form of their political system. The idea of the principle of self-determination of peoples or nations, which found its practical application for the first time during the early years of the French Revolution and subsequently no earlier than after the First World War, originated in the Western conception of nationhood, which took definite shape in the second half of the eighteenth century, when philosophers like J.J. Rousseau considered the nation-state as a community held together by something more than mere authority of government. In his view, the political community was the product of the « General Will » of the people (122). The French Revolution, which failed to apply in practice the principle of self-determination of peoples or nations, nevertheless made a significant contribution to the development and crystallisation of the idea of self-determination by the creation of political prerequisites favorable to its justification.

(118) KŁAFKOWSKI, *supra* note 17, at 193; PRZETACZNIK, « International Protection of Human Rights » (in Polish), *Labour and Social Security*, 12 (N° 8, 1967).

(119) KŁAFKOWSKI, *The Search for War Criminals in the Federal Republic of Germany in the Light of International Law* (in Polish), 185-196 (Poznan, 1968).

(120) RESICH, Z., « Poland in the Protection of Human Rights » (in Polish) *International Affairs*, 84 (Nos 7-8, 1967).

(121) PRZETACZNIK, F., « The Socialist Concept of Protection of Human Rights », 38 *Social Research*, 343 (N° 2, 1971).

(122) ROUSSEAU, *supra* note 27, at 30-32.

The French Revolution gave a mortal blow to the post-medieval theory of the Divine Right of Kings, which was replaced by the Divine Right of the People. Under the latter theory, the people ceased to be an atomic dust of individuals; it took shape and form, became a whole, which was called a nation, endowed with sovereignty, and identified with the State (123). This revolutionary theory, according to which a people had the right to form its own constitution and choose its own government for itself, serves as the claim that the people had the right to decide whether to attach itself to one State or another, or constitute an independent State by itself (124). The idea of self-determination is to be found in Kant's « Toward Perpetual Peace », wherein he indicates that « (n)o State having an existence by itself » could « be acquirable by another State through inheritance, exchange, purchase or donation » (125). In his view, the State « is a society of men, over which no one but itself has the right to rule or to dispose. Like the stem of a tree it has its own root, and to incorporate it as a graft in another State is to destroy its existence as a moral person; it is to reduce it to a thing, and thereby to contradict the idea of the original compact without which a right over a people is inconceivable » (126).

Although I. Kant does not use the term self-determination, his statement still constitutes a very strong philosophical justification of the idea of self-determination. He stresses that a particular society has the exclusive right to rule or to dispose itself, and nobody else has such a right over it. The doctrine of self-determination, which postulated the right of a group of people who consider themselves separate and distinct from others to determine for themselves the State in which they will live and the form of government it will have, was the vehicle by which national groups sought to ensure their identity by institutionalising it in the form of an independent sovereign State. The name most frequently associated with national self-determination is that of W. Wilson, the President of the United States, i.e., the State which was the first child of the principle of self-determination. The principle of self-determination is found in Wilson's famous speech on War Aims and Peace Terms laid down in the fourteen points. Point XIII provided that « an independent Polish state should be erected which should include the territories inhabited by indisputably Polish populations » (127).

#### b) *The Attitude of the Classics of Marxism*

The Socialist concept of the right of peoples to self-determination is based on the Marxist-Leninist ideology adapted to the political requirements of the

(123) COBBAN, A., *The Nation State and National Self-Determination*, 40-41 (New York, 1969).

(124) *Ibid.*, at 41.

(125) KANT, *supra* note 88, at 297.

(126) *Ibid.*, at 297-298.

(127) COMMAGER, H.S., *2 Documents of American History*, 138 (New York, 1963).

Soviet Union at a given time. It must be observed that in the beginning, Marxism was the enemy of nationalism. K. Marx considered such national European movements as those of the Czechs and Irish unprogressive and counter-revolutionary (128). However, when his hopes of immediate revolution in the advanced States of Europe receded, K. Marx began to look favorably on national movements in the more backward countries as a step towards proletarian revolution. In conformity with this idea, F. Engels, in his letter to K.J. Kautsky dated 12 September 1882, wrote that the colonies, which are simply subjugated — India, Algeria, and the Dutch, Spanish and Portuguese possessions — « must be taken over for the time being by the proletariat and led as rapidly as possible towards independence » (129). V.I. Lenin considered that there was a democratic content in the nationalism of every oppressed nation, and that in this respect it should be supported in spite of its bourgeois character (130).

Under his influence, the second Congress of the Russian Social-Democratic Labour Party, in 1903, adopted as a clause in its programme « The right to self-determination for all nations forming part of the state » (131). When the Revolution broke out, V.I. Lenin, in his speech of May 1917, declared that « If Finland, if Poland, if Ukraine break away from Russia, there is nothing bad about that » (132). The leading specialist of the Communist Party on the question of self-determination was J. Stalin, who defined a nation as follows : « A nation is a historically evolved stable community of language, territory, economic life and psychological make-up, manifested in a community of culture » (133). In his view, understanding the nation in this sense has its right of self-determination, namely : 1) the right to arrange its life on the basis of autonomy; 2) the right to enter into federal relations with other nations; and 3) the right to complete secession (134). A. Cobban indicates that there are two important qualifications to Stalin's principle of self-determination, namely that : 1) national rights do not include the right to the maintenance of petrified forms and reactionary institutions; and 2) this right must be based on territorial contiguity, i.e., regional autonomy, and not on personal nationality, i.e., national autonomy (135).

In 1917 the Bolsheviks, with a view to outbid the Western democracies for the support of subject nations, substituted the right of secession for the right of self-determination. J. Stalin was then authorised to prepare a Report on

(128) COBBAN, *supra* note 123, at 189.

(129) CARRIERE D'ENCAUSSE, H. and SCHRAM, S.R., *Marxism and Asia*, 124 (The Penguin Press, 1969).

(130) LENIN, V.I., 4 *Selected Works* (On the Right of Nations to Self-Determination, 1914), 267 (Moscow 1936).

(131) STALIN, J., *Marxism and the National and Colonial Question*, 294 (Moscow, 1936).

(132) 5 LENIN, *supra* note 130, at 310.

(133) STALIN, *supra* note 131, at 8.

(134) *Ibid.*, at 19.

(135) COBBAN, *supra* note 123, at 192-193.

the National Question in 1917, on the basis that « the oppressed nations forming part of Russia must be allowed the right to decide for themselves whether they wish to remain part of the Russian State or to separate and form an independent state » (136). On the basis of that Report, the All-Russian Party Conference decided that « the right of all nations forming part of Russia to secede freely and form independent states shall be recognized » (137). As a first step, the right of Finland to independence was recognized (138). However, in the view of V.I. Lenin, the right of self-determination is not an absolute, it is a particle of the general socialist world movement. « In individual concrete cases a particle may contradict the whole; if it does then it must be rejected » (139). A similar position was taken by J. Stalin, who argued that « the right to self-determination cannot and must not serve as an obstacle to exercise by the working class of its right to dictatorship. The former must give way to the latter » (140).

c) *The Soviet Practice and its Justification*

Thus, when the Soviet State was taking shape, the principle of self determination which, pursuant to the doctrine of the classics of Marxism-Leninism, presupposes the recognition of the right of every nation freely to determine its political, economic and cultural status — i.e., with the above specified qualifications, to decide all questions of its existence right up to and including secession and formulation of an independent State — was, in the opinion of J. Stalin as indicated by K. Grzybowski, « to be promoted according to how it served the interests of the world revolution » (141). K. Grzybowski, showing how Soviet scholars justified the position assumed by their leaders on the subject of the right of self-determination, states that they : (1) « described with approval the process of the integration of the nationalities, which one belonged to the Russian empire, into the Soviet state »; and 2) « defended Soviet annexations effected during World War II in collaboration with Germany and later with the Western Allies without ever consulting the people involved. The theory was that annexations of various territories in Finland, Poland, Romania, etc., were made in order to strengthen the Soviet Union and were justified because they served the cause of peace and the cultural interests of the population » (142).

For instance, F.I. Kozhevnikov writes that the Soviet Union developed as a union of various nations which had been a part of the former Russian Empire

(136) STALIN, *supra* note 131, at 63.

(137) *Ibid.*, at 269.

(138) COBBAN, *supra* note 123, at 194.

(139) LENIN, V.I., *Marx, Engels, Marxism*, 147 (Moscow, 1934).

(140) STALIN, *supra* note 131, at 168; COBBAN, *supra* note 123, at 196.

(141) GRZYBOWSKI, *supra* note 13, at 42.

(142) *Ibid.*, at 42.

and included even those beyond the limits of imperial Russia by means of compacts with the nations concerned. He recognizes that sometimes the association of new territories with the Soviet Union took the form of direct annexation which, in his view, differed profoundly from imperialist annexations. Since joining territory to the Soviet Union in application of Socialist principles — i.e., in the interest of and with the consent of the working masses of these territories — is totally legal and a perfectly natural process, as it assures the population of these territories quick economic development, a full growth of national culture, and increase of power of the great Soviet Union, it is thus in the interest of the working masses of the entire world (143). Kozhevnikov's justification of Soviet annexations is, in substance, the same as those used in the past to justify beneficent civilised missions of the colonial powers towards the populations of colonised territories.

Starting from Soviet practice and justifying it, F.I. Kozhevnikov argued that the Soviet Union may, if necessary, place on the agenda the problem of the frontiers of a State which threatens its territorial integrity, as was the case with Finland in 1939; thus a territorial question — in view of the security of the U.S.S.R. — may be resolved by resorting to just war, and therefore has nothing in common with the acquisition of foreign territory (144). The League of Nations, however, was of a different opinion from that advocated here by F.I. Kozhevnikov and, on 14 December 1939, it expelled the Soviet Union from its membership for her military actions against Finland (145). Following the armed intervention of the Warsaw Powers in Czechoslovakia in August 1968, the right of self-determination was reformulated in the sense that it may be exercised only to promote the cause of Socialism, which precludes the change of the regime in a Socialist country from Socialism to democracy in the traditional sense (146).

As regards the right of self-determination of peoples or nations outside the Socialist countries — which, according to Socialist doctrine, have achieved it to the fullest extent — this right contains two aspects, namely : 1) a formal attainment of statehood; and 2) a free choice of the form of the State system. G.B. Starushenko describes this dual right in terms of an international aspect and an internal aspect of the principle. Thus, in his view : 1) The international aspect of the principle of self-determination presupposes the right of a people or nation to (a) secede and form an independent State, (b) secede and join another State, and (c) remain in a State as a federal, autonomous, etc. member; 2) The international aspect of the principle of self-determination, i.e., the right of a people to manage its domestic affairs without interference from without, presupposes recognition of the right of a people or nation to (a)

(143) KOZHEVNIKOV, F.I., « The Creative Role of the U.S.S.R. in the Just Solution of the Territorial Problems » (in Polish), *State and Law*, 5 (N° 5, 1950).

(144) *Ibid.*, at 5.

(145) HACKWORTH, G.H., *5 Digest of International Law*, 676 (Washington, 1943).

(146) KOVALEV, *supra* note 14, *Pravda* (26 Sept. 1968).



decide what its political and social system will be like, (b) freely dispose of its natural resources and manage its economy, and (c) decide all other domestic issues concerning culture, religion, etc. (147). This formula reproduces, without any change of substance, Stalin's concept of self-determination.

d) *The United Nations' Contribution*

It is to be noted that the principle of self-determination of peoples, which is rooted in the Charter of the United Nations (148), found its expression in the Covenants on Human Rights, which define it as follows: « All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development » (149). This right found its solemn consecration in the Declaration on the Granting of Independence to Colonial Countries and Peoples, which was adopted by the General Assembly of the United Nations in 1960 on the initiative of the Soviet Union. This Declaration, which is one of the most important documents that has come out of the United Nations, points out that a people's subjection to foreign domination and exploitation constitutes a denial of fundamental human rights and represents a violation of the Charter of the United Nations. The Declaration in question, which expresses the principles of contemporary international law with reference to the right of self-determination of peoples, contains solutions which are satisfactory with reference to colonial peoples' accession to independence.

The regulations established by the Declaration on the Granting of Independence to Colonial Countries and Peoples represents a whole complex of rules protecting and guaranteeing the right to self-determination and respect for human rights. As regards this right, the Declaration states in its Article 2 that all peoples have the right to choose freely their political and cultural status. Article 3 recognizes that inadequate preparation in the political, economic or social sphere, or in the educational field, cannot be used as a pretext for delaying independence. Other provisions of this Declaration represent a normative system completing the protection of the right of peoples to self-determination. It is true that the adoption of the Declaration in question, with the very active support of the Socialist States, has been a great success for them in their struggle against colonialism because the granting of independence to numerous new States led to the disintegration of the colonial system and a weakening of colonial States from the political, economic and military points of view.

(147) STARUSHENKO, G.B., *The Principle of National Self-Determination in Soviet Foreign Policy*, 173, 180 (Moscow 1963).

(148) This principle is expressed in Articles 1 (2), 55, 73, and 76 of the Charter; KELSEN, H., *The Law of the United Nations*, 840, 852, 855-857 (New York, 1951).

(149) Article 1 (1) of the International Covenant on Economic, Social and Cultural Rights, U.N.J.Y., supra note 81, at 171; and Article 1 (1) of the International Covenant on Civil and Political Rights, *ibid.*, at 178.

Mention also should be made of the principle of self-determination of peoples contained in the above mentioned Declaration of Principles of International Law concerning Friendly Relations. By virtue of this principle, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter. Every State has the duty to promote, through joint and separate action, realisation of the principle of self-determination of peoples, since subjection of peoples to alien subjugation, domination, and exploitation constitutes a denial of fundamental human rights, and is contrary to the Charter. The establishment of a sovereign and independent State, the free association or integration with an independent State, or the emergence into any other political status freely determined by a people constitute modes of implementing the right to self-determination by that people. Finally, every State has the duty to refrain from any forcible action which deprives peoples concerned of the principle of their right to self-determination and freedom and independence (150).

It follows from the foregoing considerations that the principle of self-determination of peoples and nations, which means the right of each of them to decide freely on the formation of an independent State and its international status, as well as a free choice of the form of that State's socio-political system, evolved from a political principle into a basic norm of contemporary international law. The generally recognized right of self-determination of peoples and nations, which is inherent in the nature of each people, nation and State, constitutes an absolute collective human right. The will to enjoy this collective human right must be the genuine will of the whole people, nation or State in a given case, expressed in the true democratic way, without any doubt that it is the collective will of the whole and not only of the leaders expressed instead of or even on behalf of the whole people, nation or State. In the case of self-determination, the individual will of leaders or even of an elite group cannot replace a genuine general will; especially in the cases in which, for reasons political or otherwise, the leaders would renounce the right of self-determination of peoples, nations or States, or limit the enjoyment of this right or delay such enjoyment.

Any renunciation of or acquiescence to the limitation of the enjoyment of the right of self-determination of peoples, nations or States by their leaders, if such renunciation or limitation does not constitute a general genuine will of the whole people, nation or State in a given case, expressed in the way without any doubt that it is the will of the whole, is illegal and invalid, and it should not be recognised by the international community. The right of self-determination, which has been consecrated in the Covenants on Human Rights, in the Declaration on the Granting of Independence to Colonial Countries and Peoples, as well as in other international instruments, is a

(150) U.N.J.Y., *supra* note 110, at 109.

positive norm of international law, obligatory for all States of the World. The right of self-determination of peoples and nations cannot be denied, delayed or limited under any pretext. Any political or social doctrine under which a State denies or limits the right of self-determination of peoples, nations or States constitutes a violation of contemporary international law in general, and those international instruments wherein it is guaranteed in particular, and such a doctrine is illegal and must be rejected by the international community.

### C. SOVEREIGNTY OVER NATURAL RESOURCES

One of the elements of the right of self-determination of peoples and nations is their right to dispose freely of their riches and natural resources. This right means the sovereignty of a nation or State over its resources and is directly connected with the abolition of colonialism; it is sometimes called « economic nationalism », especially by its opponents. A. Cobban indicates that the triumph of economic nationalism was naturally aided by the growth of the idea of national self-determination (151). It is true that political independence is usually taken to involve independent control of economic policy. It is also true that small nations which had achieved political independence did not feel secure in the enjoyment of it while remaining in economic dependence. Bearing this in mind, the Socialist States have consistently taken the position that the independence which most former colonies received from the metropolitan States was independence in name only, since self-determination may only be fully realised on condition that the States which achieved independence in the process of decolonisation can freely dispose of their natural wealth and resources.

The opposite view was taken, *inter alia*, by A. Cobban, who asserts that « economic sovereignty for small states is a thing of the past, but the determining factors for the application of the political right of self-determination are... political; they belong not to the realm of economics but to that of power politics » (152). State sovereignty over natural resources derives from the territorial supremacy which is essential to State sovereignty. According to the Socialist concept of the protection of human rights, the State, by virtue of its territorial sovereignty, has the exclusive right to organise the law of property as it sees fit. Thus, it has the right to regulate questions connected with title to ownership of natural wealth, irrespective of whether the owners are its own citizens or foreigners; to determine the condition for the exploitation of these resources; to introduce conservation measures, etc. (153). It is true that legal independence without economic independence is but a

(151) COBBAN, *supra* note 123, at 273.

(152) *Ibid.*, at 283.

(153) LACHS, M., « The Position of Property in Contemporary International Law », 8 *Rev. Contemp. L.* 20 (N° 2, 1961).

new form of dependency, worse than the first because it is less obvious. G.I. Tunkin remarks, in this context, that the economic dependence of the smaller States upon the larger ones means that their sovereignty is merely formal (154).

This problem arises particularly in connection with the great economic, commercial and financial undertakings which, although located outside the borders of their respective States, enormously increase their riches by exploiting the poverty of underdeveloped States. Bearing in mind the profound transformations which have occurred in economic and social life since the creation in the international community of the first Socialist Republic in Russia in 1917, and the aspirations of new States which have now rounded out the circle of the community of nations, increasing the number thereof almost threefold, M. Bedjaoui underlines that State sovereignty finds its primary expression in its right to organize the property law as it sees fit (155). This principle was confirmed by the Permanent Court of Arbitration in the North Atlantic Coast Fisheries Case, in which the Court stated that the right to dispose of property is an attribute of sovereignty, and as such resides in the territorial sovereign (156). Mention also should be made of the position taken by the League of Nations Economic Committee in September, 1937, that « (e)very country seeks, and seeks rightly, to protect its own economy » (157).

It is generally a recognized principle of international law that by virtue of its sovereignty, the State has the right to decide freely the measures necessary to protect and reinforce its sovereignty over its natural resources (158). Resolution 1303 (XVII) of December 1962 of the General Assembly of the United Nations, designated by M<sup>r</sup> Bedjaoui as « the charter of combat of the poor against the rich » (159), proclaims that States have the absolute, inalienable and permanent right freely to dispose of their natural resources (160). It has been maintained that this resolution, which constitutes a powerful conception expressing the contention of the proletarian peoples, is an instrument for the economic liberation of formerly subject peoples (161). In conformity with this principle, the doctrine and practice of Socialist States assert that natural resources, particularly those of the developing countries, constitute the basis of their economic development in general and of their industrial progress in particular. Accordingly, the best way to guarantee the

(154) TUNKIN, G.I., *Droit international public*, publié avec le concours du Centre Français de la Recherche Scientifique, at 237.

(155) BEDJAOU, M., (Second) Report on Succession in Respect of Matters Other than Treaties, 2 Y.B. Int'l L. Comm'n, 75 (1969).

(156) SCOTT, J.B., *The Hague Court Reports*, 141 ff. (New York, 1916).

(157) BOISSONADE, P., *Colbert, le triomphe de l'étatisme*, 6 (1932).

(158) SAPOZHNIKOV, V.I., « Sovereignty over Natural Resources », (in Russian), Soviet Y.B. Int'l L. 94 (1964-1965).

(159) BEDJAOU, *supra* note 155, at 91.

(160) *Ibid.*, at 91.

(161) *Ibid.*, at 91.

developping countries permanent sovereignty over their natural resources is to let them exploit and market such resources themselves.

Socialist doctrine maintains that normal economic relations cannot develop if one State ignores the other's right to sovereignty over its own riches and natural resources. True international cooperation, designated to help newly independent States or underdevelopped countries, should be based upon this principle. This concept was consecrated in Articles 1 (2) of the Covenant on Human Rights, wherein it is provided that » all peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence » (162). This principle found categorical affirmation in Resolution 2158 (XXI) of the General Assembly of the United Nations of 25 November 1966, under which every country has the inalienable right to exercise permanent sovereignty over its natural resources in the interest of its national development, in conformity with the spirit and principles of the Charter of the United Nations (163).

The State's right over its own natural resources has been confirmed in a special manner by the Declaration of the Algiers Conference of Non-Aligned Countries in September 1973. According to that Declaration, nationalisation of foreign property carried out by States is an expression of their sovereignty in order to safeguard their natural resources (164). Mention also should be made of the Charter of Economic Rights and Duties of States, adopted by the General Assembly of the United Nations on 12 December 1974 (165). Pursuant to Article 2 (1) of this Charter, « every State has and shall freely exercise full permanent sovereignty, including possession, use and disposal over all its wealth, natural resources and economic activities » (166). The legal consequences of the State's right to sovereignty over its natural wealth and resources are spelled out in paragraph 2 (a) of this Article. Accordingly, each State has the right to regulate and exercise authority over foreign investments within its national jurisdiction in accordance with its law and in conformity with its national objectives and priorities (167). It follows from the foregoing considerations that the right of the State to sovereignty over its natural wealth and resources is generally recognized by contemporary international law, and this recognition constitutes a great success for the Socialist States, which strongly advocated it.

(162) U.N.J.Y., supra note 81, at 171, and 179.

(163) 2 Y.B. Int'l L. Comm'n, 120 (1969).

(164) HAIGHT, J.T., « The New International Economic Order and the Charter of Economic Rights and Duties », 9 Int'l Lawyer, 591 (N° 4, 1975).

(165) BROWER, CH.N. and TEPE, J.B., « The Charter of Economic Rights and Duties of States : A Reflection or Rejection of International Law », 9 Int'l Lawyer, 295 (N° 2, 1975).

(166) 79 Am. J. Int'l L. 487 (N° 2, 1975).

(167) Ibid., at 487.

## THE UNITY OF HUMAN RIGHTS

The adoption of the International Covenants on Human Rights on 16 December 1966 was a historic event particularly important in the process of elaboration of international instruments for the protection of human rights. The Covenants consist of three separate international documents, namely the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; and the Optional Protocol to the International Covenant on Civil and Political Rights (168). In the Covenants on Human Rights, these rights have been divided into two categories : 1) economic, social, and cultural rights, such as the right to work, to rest, to social security, to a standard of living worthy of a human being, as well as the right to integrity in matters of health, education, participation in cultural life, etc., and 2) civil and political rights, such as the right to life, to freedom of movement, to liberty, to personal inviolability, and to safety, as well as the rights of citizenship, i.e., the right to elect and to be elected, the right to privacy, freedom of thought, conscience and religion, freedom of expression, the right of peaceful assembly, freedom of association, protection of family and children, and the right to equality before the law, to equal protection of law, etc. (169).

According to Socialist doctrine, human rights are the result of a historical evolution on social and economic levels. These rights, pursuant to I. Szabo's formulation, do not represent an *ultima ratio*, but rather express certain social exigencies attached to the human person (170). It has been maintained that the economic, political, cultural and other characters of these exigencies are oriented towards a progressive evolution in international society (171). In view of the importance of this question, the Socialist delegates — who participated very actively in the elaboration and preparation of the International Covenant on Human Rights, using as a base their own national constitutions, which guarantee the full range of economic, social and cultural rights as well as civil and political ones (172) — have always maintained that civil and political rights, as well as economic, social and cultural rights, should be the object of a single Covenant (173). According to the Socialist concept of human rights, the political rights alone, without equivalent opportunities, do not lead to full realisation of human rights.

In the view of the Socialist States, everyone should have the same chances in political, economic and social life; therefore, all human rights — i.e.,

(168) U.N.J.Y., *supra* note 81, at 170, 178, and 193.

(169) *Ibid.*, at 170 and 178.

(170) SZABO, I., « La portée juridique de la Déclaration Universelle », R.D.C., 41 (N° 1, 1968).

(171) RADOINOV, *supra* note 19, at 106.

(172) PEASLEE, A.J., *Constitutions of Nations* (The Hague, 1956), v. 1, at 262, 330, 689; v. 2, at 185, 723; v. 3, at 187, 239, 419, and 485.

(173) PRZETACZNIK, *supra* note 121, at 349.

political and civil rights as well as economic, social, and cultural rights — should be guaranteed and implemented in the same way. For these reasons, the division of human rights into civil and political rights on the one hand and economic, social and cultural rights on the other hand, is not justified. Such formal division of human rights into two distinct instruments is artificial because the human personality is indivisible (174). There was no justification for the establishment of a hierarchy between traditional human rights, i.e., civil and political rights on the one hand, and modern human rights, i.e., economic, social and cultural rights, on the other.

Since there is a close interdependence and inextricable connection between these two categories of rights, their realisation can therefore not be separated. The full recognition and enjoyment of economic, social and cultural rights is one of the most effective means of ensuring the effective protection of political rights. Without effective protection and implementation of the economic, social and cultural rights, the political and civil rights become almost meaningless, because in fact the majority of these rights cannot be realised. For instance, how can an illiterate person enjoy such civil and political rights as participation in public affairs and public service, freedom of information and thought, and the right to be elected; how can hungry and jobless persons enjoy most political and civil rights; how can sick persons without a guaranteed adequate health protection enjoy these rights? In all such situations and others where the enjoyment of economic, social and cultural rights is not guaranteed, the enjoyment of civil and political rights is only illusory.

It is impossible to enjoy human rights without the enjoyment of basic human rights such as the right to life, which means that every person is entitled not to be deprived of his life. The right to life is a primordial, basic human right from which all other human rights stem. This right is basic because only through it can a person enjoy other rights: the person who is deprived of his right to life is automatically deprived of all other human rights. The next basic human right is the right to freedom and security of person. Everybody is born free and cannot be deprived of his liberty except for reasons established by law. Next comes the right of everyone to education, which enables the person to learn an appropriate profession and to participate in political and social life. The next is the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses and accepts. To enjoy all these rights adequately, as well as others, the person must have guaranteed appropriate health protection. The enjoyment of these fundamental human rights is the prerequisite for the enjoyment of all other economic, social and cultural rights as well as civil and political rights, if such enjoyment is to be real and not merely illusory.

(174) RADOINOV, *supra* note 19, at 108.

In the view of the Socialist States, in order to effect all the categories of human rights incorporated into international instruments concerning the protection of human rights, it is necessary and essential that a corresponding economic, social, political and cultural basis exist, i.e., a system which would render injustice, dependence, or privileged position impossible. Upon recalling these questions of principle, it should be indicated that in spite of the International Covenants' division of human rights into civil and political rights and economic, social and cultural rights, the relationship between the two Covenants, as justly remarked by P. Radoinov, should be envisaged as a relationship established between two parts of the same whole (175). The material unity of these two categories of human rights is confirmed by the identical structure of the two Covenants concerning them. Although most of the provisions are contained within the International Covenant on Civil and Political Rights, it should be observed that this Covenant possesses the same subdivisions and the same provisions of principle as the International Covenant on Economic, Social and Cultural Rights (176). The essential difference in the regulations established by the two Covenants substantially concerns their implementation.

#### IMPLEMENTATION OF THE INTERNATIONAL CONVENTIONS

The measures of implementation of human rights constitute a complex problem, which assumes a topical character from a theoretical and practical point of view. The expression « measures of implementation » signifies application of the provisions of an international convention on the protection of human rights. The adoption of multilateral conventions on the protection of human rights is really a very important step towards the ultimate goal envisaged in the Charter of the United Nations and in the Universal Declaration of Human Rights, but a definition of such rights without the simultaneous setting up of adequate machinery for their implementation is not satisfactory. The fundamental human rights, once defined and guaranteed in positive international law, must be directly enforceable by appropriate measures of implementation of these rights. Thus, the effectiveness of international conventions on the protection of human rights is conditional upon having Member States act upon and implement them. International Conventions on Human Rights in effect encompass an entire gamut of guarantees designated by the term implementational measures, all of widely ranging nature.

Some of them are limited only to measures which should be effectuated by a particular State within its internal order. Thus, the States parties assume the

(175) *Ibid.*, at 109.

(176) DABROWA, S., « The International Covenants on Human Rights » (in Polish), *State and Law*, 579 (N<sup>o</sup>4-5, 1967).



obligation of elaborating and applying indispensable legislation for the implementation of human rights proclaimed in these conventions, and the obligation of abrogating any of their internal law, which is inconsistent with these human rights. In addition, they are obliged to provide adequate procedures for the implementation of these rights as well as appropriate sanctions for their violation (177). Other guarantee measures assume an international character and relate, for example, to the reports which the States parties should submit to an international organ established therefor, and to the complaints one of the parties could address to the international organ in case of violation by another party (178). The measures which might have been taken to implement the international conventions on the protection of human rights generally fall into two categories depending on whether they operate on the national or the international level.

#### I. NATIONAL LEVEL OF IMPLEMENTATION

As indicated earlier, according to Socialist doctrine the position of the individual is determined by internal law, not by international law. In this manner, the implementation of the international conventions on the protection of human rights is above all a matter lying within the internal competence of each sovereign State. Implementation of such conventions, which is the State's primary duty, must be effected by administrative and other measures within the limits of its national competence. In this regard, M. Markovic observes that in the first place, it is the State which is expected to guarantee the economic and political conditions for complete realisation of human rights (179). P.E. Nedbailo expresses the same idea in a more detailed fashion; according to him, the States are invited to play a decisive role in this matter, both individually and through international cooperation. They should take effective measures with a view to creating the social, economic and political conditions as well as legal guarantees ensuring genuine implementation of human rights, taking into account the peculiarities of each State (180). As regards the implementation of the conventions on the protection of human rights, the Socialist States always maintained that this question should be solved in accordance with the Charter of the United Nations and the basic principles of international law.

In this regard, the Charter's provisions are very clear. The preamble and various Articles of the Charter contain provisions for the promotion and encouragement of respect for human rights for all, without distinction as to

(177) KOULICHEV, *supra* note 19, at 136.

(178) *Ibid.*, at 136.

(179) MARKOVIC, M., « Implementation of Human Rights and Domestic Jurisdiction of States », in Eide and Schou, *supra* note 48, at 62.

(180) NEDBAILO, *supra* note 63, at 53.

race, sex, language or religion (181). It has been justly remarked that even though the provisions of the Charter of the United Nations regarding the protection of human rights are couched in general terms, they nevertheless have the force of positive international law and create basic duties which all the members of the organisation must fulfill in good faith. In the view of the Socialist States, the imperative character of these norms, derived from the United Nations Charter, in itself imposes the duty to become a member of international conventions on the protection of human rights. The full universality of membership in these conventions would be the initial step toward securing their implementation at the national level. The second stage would be the scrupulous observance in good faith by all signatory States of all their provisions, in compliance with the basic principle of international law that the parties to an international convention must take every necessary step to carry out the obligations spelled out in its text (182).

Since the fundamental axiom of international law, *pacta sunt servanda*, applies to all conventions on the protection of human rights, just as to all international treaties that are properly concluded, signed and ratified, the States parties to these conventions are therefore obliged to adopt suitable measures to implement principles not yet recognized by their respective legal systems (183). In this manner, every State party to such a convention is obligated to execute and strictly observe the obligations arising therefrom. International convention concerning the protection of human rights represent, for the States parties, a source of rights and duties whose goal is the establishment of rules within the framework of international law. State authorities, i.e., the legislative, judicial, and administrative authorities of the States parties are obliged to implement the human rights provided for in international conventions on the protection of human rights. The legislation of every State party to such a convention should thus be made to conform to the obligations provided in that convention (184). It should be noted that according to the Socialist concept, international protection of human rights consists of the co-ordination of internal legislation with the obligations arising from international conventions in this matter, and this co-ordination is to be effected as quickly as possible.

The Covenants on Human Rights and various conventions on the protection of human rights envisage their domestic implementation, in accordance

(181) Articles 1 (3), 13 (1b), 55 (c), 56, in GOODRICH, L.M., HAMBRO, E. and SIMONS, A.P., *Charter of the United Nations*, 676, 679, 687 (New York 1969).

(182) KŁAFKOWSKI, A., « International Treaty and Law » (in Polish), *Legal, Economic, and Social Trends*, 1 (N° 4, 1965); LAZARIEV, M.I., « On the Relationship of Norms of Constitutional Law and International Treaty » (in Russian), *Social Sciences in Uzbekistan*, 14 (N° 5, 1966).

(183) KŁAFKOWSKI, *supra* note 182, at 3; LEVIN, D.B., « Problem of the Relationship of International Law and Municipal Law » (in Russian), *Soviet State and Law*, 86 (N° 7, 1964).

(184) DABROWA, S., « International Measures of the Protection of Human Rights in the Light of the International Covenant on Civil and Political Rights » (in Polish), *State and Law*, 505 (N° 10, 1967); KOULICHEV, *supra* note 19, at 134; RADOINOV, *supra* note 19, at 114.

with each State's constitutional processes. Thus, it is obviously the duty of the executive to recommend such legislation and the legislature to enact it, and if the executive fails to do so, it is then the duty of the legislature to act independently of the executive and upon its own initiative (185). The way in which a State party to the convention on the protection of human rights gives effect to its provisions is, in principle, left to the discretion of its constitutional organs. However, certain international conventions on human rights contain provisions providing for specific national measures for their implementation by the States parties. It should be observed that the Convention on the Prevention and Punishment of Crimes of Genocide is one of the first conventions of this nature. The States Parties to that Convention, confirming that genocide (186) is a crime under international law, which they undertook to prevent and punish (Article 1), under Article V undertook « to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions » of the Convention (187). Measures of this nature are also embodied in the International Covenants on Human Rights (188).

As regards national measures for the implementation of the International Covenants on Human Rights, it should be noted that they are more complete in the International Covenant on Civil and Political Rights, and in a rudimentary form in the one on Economic, Social, and Cultural Rights. Under Article 2, paragraph 2 of the International Covenant on Civil and Political Rights, each State party to this Covenant undertakes to fulfil the necessary requirements, in accordance with its constitutional processes and with the provisions of this Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the Covenant (189). Pursuant to Article 2, paragraph 1 of the International Covenant on Economic, Social and Cultural Rights, each State party to this Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognized in this Covenant by all appropriate means, including particularly the adoption of legislative measures (190).

According to these provisions, the States Parties to the conventions in question are obliged to adopt the necessary measures with a view to implementation of the principles which are not yet recognized by their respective legal systems. It is, of course, an obvious breach of treaty obligations when

(185) Harvard Law School Research in International Law, *Draft Convention on the Law of Treaties*, 29 Am. J. Int'l L. Supp. 979 (1935).

(186) U.N. Human Rights, *supra* note 80, at 39.

(187) *Ibid.*, at 39.

(188) U.N.J.Y., *supra* note 81, at 170 and 178.

(189) *Ibid.*, at 179.

(190) *Ibid.*, at 171.

the States Parties do not effectively implement the individual human rights created under a convention concerning the protection of human rights. It should be observed that for the ordinary citizen, as W. Korey indicates, implementation measures on the national level are, of course, decisive (191). In this context, it is to be observed that delegates of the Socialist States, in their statements on procedures for the implementation of the multilateral conventions on the protection of human rights, took the position that the use of national means was the most satisfactory solution and that recourse to international measures may be possible only in the case when national measures failed. The entire idea of international implementation is based precisely on the assumption that the treaty obligations with respect to national implementation will not be carried out.

## II. INTERNATIONAL LEVEL OF IMPLEMENTATION

When human rights are respected and enforced in the national sphere, international implementation is unnecessary. It is doubtless true that the inclusion of obligations with respect to national implementation of the conventions on human rights is of paramount importance, but the effectiveness of national measures can be enhanced by the existence of international machinery that can be invoked to secure the vindication of an individual's right. International measures of implementation mean the ensemble of legal techniques through which the States Parties to multilateral conventions on the protection of human rights try to secure the fulfilment of the obligations undertaken by each contracting State. Their aim is to compel the signatories to live up to their conventional obligations regarding the protection of human rights and to apply in practice a uniform interpretation of the relevant clauses. However, according to Socialist doctrine, international measures for the implementation of human rights, whose goal is the observance of international conventions concerning the protection of human rights, should be compatible with the principles of the Charter of the United Nations in general, and with the principles of national sovereignty in particular. Therefore the Socialist States objected against the creation of any kind of supranational body or international institution authorized to control or supervise the implementation of international conventions concerning human rights (192).

Thus, they were opposed to the creation of an International Criminal Court, of an International Court of Human Rights, and the establishment of the post of the United Nations High Commissioner for Human Rights (193).

(191) KOREY, W., « The Key to Human Rights Implementation », 570 Int'l Concl. 6 (1968).

(192) CHIZHOV, *supra* note 77, at 138; NEDBAILO, *supra* note 63, at 53.

(193) DABROWA, *supra* note 184, at 517; NEDBAILO, *supra* note 63, at 53; PENKOV, S., « Nature juridique et portée de la Déclaration Universelle des Droits de l'Homme », in Kaménov, *supra* note 19, at 146; RADOINOV, *supra* note 19, at 111.

Given that the goal of international application of human rights is to encourage States to be more conscientious in fulfilling their obligations in this matter, the Socialist States pronounced themselves in favour of a reporting system, according to which the States parties to an international convention on human rights undertake to send periodic information concerning the fulfillment of the obligations they have assumed (194). The competent international organ has the right to make pronouncements concerning these reports and to address recommendations it considers opportune to the States. The goal of the report system is not only to obtain information concerning the execution of international conventions concerning human rights, but also to exert some moral pressure upon the States with reference to implementation of these conventions. The obligation of presenting reports by the State constitutes the principal international measure for implementing the International Covenant on Civil and Political Rights, and the only means of implementation of the International Covenant on Economic, Social and Cultural Rights.

With reference to the system of complaints provided on an optional basis by the International Covenant on Civil and Political Rights, the Socialist States believed it to be susceptible to easy influence by political factors. For these reasons, in their opinion, the system should not be mandatory, but optional for the States which accept it freely. Under Article 41 of this Covenant, the right to address communications belongs to each State Party who recognizes the competence of the Committee to receive and examine communications in which one State party alleges that another State party is not fulfilling its obligations as specified in the Covenant, regardless of whether the alleged violation has resulted in damage to it. L. Kulichev considers this case « typical of *actio popularis* » (195). The purpose of the system of communications is settlement of differences between States concerning implementation of the International Covenant on Civil and Political Rights. The optional communications procedure, as established in Article 41 of this Covenant, has three phases : the first relates to direct negotiations, whereas the other two are concerned with implementation of conciliatory procedures (196).

In the case of individual petitions, the Socialist States were against such a procedure because they feared it might be used for political purposes by certain States against others, thus leading to a resurgence of cold-war tactics. In their view, United Nations organs only had the power to intervene and take measures in cases of flagrant and systematic violations of human rights which constituted a threat to peace, a breaking of peace, or an act of aggression, and the criteria to be used for identifying such flagrant, systematic

(194) K OULICHEV, *supra* note 19, at 140.

(195) *Ibid.*, at 142.

(196) MOURGEON, J., « Les Pactes internationaux relatifs aux Droits de l'Homme », 17 *Annuaire Français de droit international*, 356 (1967).

violations should be based upon Chapter VII of the Charter of the United Nations (197). This concept is reflected in the Optional Protocol to the International Covenant on Civil and Political Rights. Accordingly, written communications which individuals could address to the United Nations would in effect depend upon twofold prior agreement on the part of the State in question; firstly, recognition of the competence of the Committee on Human Rights created according to the terms of the Covenant; secondly, recognition of the individuals' right to address communications following the adoption of the Optional Protocol.

With reference to judicial settlement of disputes between the Contracting Parties concerning interpretation, application or implementation of international conventions concerning the protection of human rights, the Socialist States considered obligatory jurisdiction of the International Court of Justice inconsistent with the sovereignty of the State and always pronounced themselves against such jurisdiction in this matter. Instead, they pointed out that a number of means were open to States for peaceful settlement of disputes under Article 33 of the Charter of the United Nations. According to this Article, the parties to any dispute should first of all seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, etc. (198). In the view of the Socialist States, the judicial settlement of disputes is one of the settlements of such disputes and should therefore not be the only means of settlement of disputes between States concerning the interpretation, application or implementation of conventions on human rights.

For this reason, they declared themselves in favour of the principle of optional jurisdiction of the International Court of Justice relating to the interpretation, application or implementation of international conventions on the protection of human rights; disputes could only be brought before international jurisdiction with the agreement of all parties involved. As an example, we may cite a reservation of the U.S.S.R. to Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide, wherein she declared that « the Soviet Union does not consider as binding upon itself the provisions of article IX which provides that disputes between the Contracting Parties with regard to the interpretation, application and implementation of the present Convention shall be referred for examination to the International Court at the request of any party to the dispute, and declares that, as regards the International Court's jurisdiction in respect of disputes concerning the interpretation, application and implementation of the Convention, the Soviet Union will, as hitherto, maintain the position that in each particular case the agreement of all parties to the dispute is essential for the submission of any particular dispute to the International Court for decision » (199).

(197) GOODRICH, *supra* note 93, at 360-364.

(198) GOODRICH, *supra* note 93, at 359.

(199) U.N. Multilateral Treaties in respect of which the Secretary-General Performs Depositary Functions, List of Signatures, Ratifications, Accessions, etc., as at 31 December 1970, Doc. ST/LEG/SER. D/4, 69 (New York, 1971).

Reservations of a similar nature were made by the Socialist States to all conventions concerning the protection of human rights (200). It should be observed that, upon obstinate insistence on the part of the Socialist delegations, the provisions on the International Court of Justice's obligatory jurisdiction were excluded from some international conventions concerning the protection of human rights, including the International Covenants on Human Rights (201). It should also be added that the Socialist States still insist that States should be able to make their agreement to international conventions concerning the protection of human rights, as well as international treaties in general, contingent upon certain reservations (202). Socialist States usually apply this principle in practice by making reservations to the provisions of international conventions concerning the protection of human rights which they cannot approve. It follows from the above considerations that in the system of the Socialist concept, international measures of implementations of the conventions on the protection of human rights are ostensible, because they depend entirely upon the will of the States concerned.

#### THE UNIVERSALITY OF MEMBERSHIP

Finally, a few words should be said on the universality of membership of the conventions concerning the protection of human rights. In the light of the close interdependence of all States in the contemporary world and their common responsibility for the promotion of the economic and social advancement of all peoples, the Socialist States used these arguments advocating the universality of conventions on the protection of human rights, as well as of any other international treaties (203), with a view to enable some Socialist countries which, according to legal technicalities, could not become members of the international conventions concluded in the system of the United Nations and under its auspices. It concerned the following countries : East Germany, North Korea, and North Vietnam. Therefore, the Socialist States pointed out always the great importance to the recognition of the principle of universality in international conventions concerning the protection of human rights, and made reservations to the provisions of all such conventions excluding this principle.

As an example, let us cite the Hungarian reservation to the International Covenants on Human Rights, expressed as follows : « The Government of the Hungarian People's Republic declares that paragraph 1 of article 26 of

(200) *Ibid.*, at 66-69, 73, 75-76, 166-167, 320-324.

(201) U.N. Human Rights, *supra* note 80, at 3, 8, 23, and 87.

(202) KŁAFKOWSKI, *supra* note 17, at 265; LACHS, M., *Multilateral Treaties* (in Polish), 129 (Warsaw, 1958); TRISCA, J.F. and SLUSSER, R.M., *The Theory, Law and Policy of Soviet Treaties*, 82 (Stanford, 1962).

(203) BIERZANEK, R., « Rights of States to Participate in General Multilateral Treaties » (in Polish), *International Affairs* (Warsaw), 36 (N° 1, 1970).

the International Covenant on Economic, Social and Cultural Rights and paragraph 1 of article 48 of the International Covenant on Civil and Political Rights according to which certain States may not become signatories to the said Covenants are of a discriminatory nature and are contrary to the basic principle of international law that all States are entitled to become signatories in general multilateral treaties. These discriminatory provisions are incompatible with the objectives and purposes of the Covenants » (204). There is reason to believe that soon the problem of the universality of multilateral conventions on the protection of human rights will become theoretical rather than practical, since it now concerns only virtually North Korea, which, not being a member of the United Nations or of any of its agencies, cannot become a member of such conventions.

### CONCLUSIONS

The foregoing considerations support the following conclusions. The Socialist concept of human rights, owing to its origin to the establishment of Socialist States based upon the ideology of Marxism-Leninism, is closely connected with the nature of these States and is subordinated to their political objectives. According to the Socialist concept, which is based upon a philosophy that rejects any natural origin of human rights :

1. Human rights are understood as the totality of the most substantial general democratic rights which States must grant to individuals within the sphere of their jurisdiction.

2. The State is considered the repository of all rights, and individual rights are recognized only to the extent allowed by the State, since the rights and interests of individuals are subordinated to the interests of the State, which expresses the interests of society as a whole.

3. The rights of individuals can be protected on the international scale only in the aspect of the collectivist idea of the relationship between an individual and the State, which is the sole judge concerning what, in what way, and to what extent the rights of the individual are to be protected.

4. Special importance is attached to the protection of collective human rights, which are to be recognised and guaranteed to peoples or nations as a whole by the norms and principles of international law.

5. The following collective human rights, which are prerequisites for the enjoyment of individual human rights, must be recognised and guaranteed : (a) the right to peace ; (b) the right of peoples and nations to self-determination; and (c) the sovereignty of peoples or nations over their wealth and natural resources.

(204) U.N. Multilateral, *supra* note 199, at 79.



6. All individual human rights constitute an organic whole, and they should not be artificially divided into civil and political rights on the one hand and economic, social and cultural rights on the other, with different measures for their implementation, because the enjoyment of one category of these rights without the enjoyment of the other category at the same time cannot be effective.

7. The measures of implementation of international conventions on the protection of human rights are, above all, a matter lying within the internal competence of each State party, which is obliged to adopt suitable measures to implement principles of such conventions not yet recognized by its legal system.

8. International measures for the implementation of international conventions on the protection of human rights should be of such a nature as not to constitute interference with the domestic affairs of States or encroachment on their national sovereignty. Therefore, all international measures of implementation of such conventions should have only an optional character.

9. All international conventions on the protection of human rights by reason of their importance should be open for membership to all States, regardless of their political or social system, or their membership in particular international organisations, and irrespective of the recognition of one State by other States.