

ARTICLES

THE PRINCIPLE OF EQUALITY OF STATES IN THE WAKE OF THE RUSSIAN REVOLUTION

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International law can be viewed as a project of exclusion and inclusion of events and ideas into its narrative. Some shake the pillars of international law, while others, influence its progressive development. Widespread wars and revolutions and events and ideas behind them occupy special place in this project: they expose irregularity in the system and at the same time may threaten its existence. The immediate and long-term effects of such events on international law can only be seen with a passage of time.

The 1917 Russian Revolution marking its 100th anniversary this year is an illustrative example to this statement. Though it did not end to be the event in international law when the soviet law as predicted by some Soviet scholars replaced bourgeoisie law, it significantly contributed to disseminate ideas that laid foundation of the general international law. Though in post-revolutionary context Soviet Russia advanced different radical approach to universal social and economic justice and criticized the pre-existing international law, international law remained resistant to extremes and capable of encompassing constructive ideas.

The most spectacular example of this approach is Soviet attitude towards equality of states – one of the main international law axioms and utopias and at the same time a cornerstone of Marxism-Leninism theory – and Russia's early attempts to give it more precise legal meaning.

This article briefly describes the bumpy way that this principle undertook before the Russian Revolution, to depict the background against which Soviet Russia started to advance its understanding of equality, in some sense, picking up and developing the ideas of the 1789 French Revolution. It further considers the meaning, that the early

Soviet doctrine attached to equality and concrete legal mechanisms through which the Soviet approach was translated into international law, specifically focusing on the works of Vladimir Lenin. The article then studies the actual early soviet international law practice, through the lens of predominant soviet theoretical approaches. Two conclusions are made: Marxism-Leninism had limited impact on the Soviet early practice of international law (1) and inconsistent application of principle of equality in the post-revolutionary context should not lead to its complete disregard (2).

To the contrary, it is here argued that the Revolution has been influential in the democratization of international law by developing the following legal dimensions of the equality principle. First, it restated equality in the terms of status, meaning equality in acquisition and exercise of rights (1). Second, it helped to eliminate “dual standards,” which meant the cases where a state could treat one state as dependent and the other – as independent (2). Third, it projected the concept of states’ equal rights to nations and peoples (3). Finally, in the early Soviet Russia practice, the idea that states have equal rights stopped to be confined to any group of states, as compared to international law at that time. To the contrary, it implied equality between all states, even in relations between socialist and capitalist states, thus helping in long-term perspective to abandon “civilization test” (4).

Keywords: 1917 Russian Revolution; principle of equality; capitulations; secret treaties; theory of international law; history of international law; soviet international law.

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Introduction

Three types of phenomena, according to Antonio Cassese, introduced critical changes

in both the organization and the functional rules of the international community: widespread wars; drastic changes in the social composition of the international community; and revolutions within States.¹

The 1917 Russian Revolution marking its 100th anniversary this year rightfully takes its place among these events. It stood up “towards a radical contestation of numerous traditional norms of the international community” that later significantly influenced the content of numerous fundamental international rules.² On one hand, Soviet Russia, based on its understanding of social and economic justice, tried to develop its own Soviet law – opposing it to prior existed “Tsarist” law – and Soviet international law – criticizing prior existed international law as a creation of European “bourgeois” states. On the other hand, it could not and did not completely oppose itself to the prior existed law, unwilling to become a pariah. Thus, as Vidya Kumar describes it, Soviet Russia in a revolutionary and post-revolutionary context tried to translate “the goals of widespread social and economic change through law,” and implement and fulfill “the comprehensive or radical, social, economic and political goals of the revolution, whether this be through the use or the dis-application of law.”³

In assessing the development of international law in the wake of the Russian Revolution, and using the Soviet attempt to re-read the principle of equality of states as an example – the authors argue that to say that after the Revolution Russia has excluded itself from international law for almost a century⁴ would be a great oversimplification and against the structure of international law itself. To the contrary, even though the USSR proved to be a costly experiment that failed to introduce radical communist ideas both in the country itself and into the international community of states, it promoted through the mechanisms inherent to international law several important conceptions that significantly influenced the evolution of international law, including concrete legal dimensions of the principle of equality of states.

¹ Antonio Cassese, *The Diffusion of Revolutionary Ideas and the Evolution of International Law in The Human Dimension of International Law: Selected Papers of Antonio Cassese* 71 (New York: Oxford University Press, 2008).

² *Id.* at 98.

³ Vidya Kumar, *International Law, Kelsen and the Aberrant Revolution: Excavating the Politics and Practices of Revolutionary Legality in Rhodesia and Beyond in The Power of Legality: Practices of International Law and Their Politics* 157 (N.M. Rajkovic et al. (eds.), New York: Cambridge University Press, 2016).

⁴ Some scholars argue that “in 1917 Russia has cut herself out of [*ius publicum europeum*], possibly for the next hundred years.” See Lauri Mälksoo, *Russia-Europe in The Oxford Handbook of the History of International Law* 764, 781 (B. Fassbender & A. Peters (eds.), Oxford: Oxford University Press, 2012).

We have chosen to focus on the principle of equality to illustrate the long lasting legal effects of the Russian Revolution. On one hand, equality is one of the cornerstones ideas of Marxism-Leninism and the ultimate goal of its world revolution. On the other, it is one of the great utopias of international law, as well as one of its great deceptions. It promises to abolish all unjustified privileges based on power, religion, wealth, or historical accident, to transcend the blatant injustices of the international system.⁵ Although the principle has always implied universal justice, its normative content is very vague and practice of application drastically contrasts to its original progressive aspirations. At the same time, this practice always aimed at broadening the formal content of the principle, fleshing it out with the legal rules. Thus, the early Soviet understanding of the principle of equality and its attempt to translate it through the legal means into international law is illustrative for the debate on inclusion in or exclusion from the international law of a revolutionary state.

This article aims to critically assess the case of the Russian Revolution, its effects on the principle of equality and include it into the traditional narrative of international law. Although the principle of sovereign equality is well studied in international law, Soviet scholars as a rule did not perform its systemic analysis. They generally overlooked the extent to which Marxism-Leninism – the official ideology of Soviet Russia – has influenced the Soviet understanding of equality in international law or failed to *critically* assess coherence of the Soviet foreign policy with its reading of equality (may be out of fear or because of a personal choice).⁶ Further, current international legal scholarship mostly focuses on theoretical approaches and pays little regard to Soviet Russia's early practice of international law.⁷ The authors study

⁵ Nico Krisch, *More Equal than the Rest? Hierarchy, Equality and US Predominance in International Law in United States Hegemony and the Foundations of International Law* 135 (M. Byers & G. Nolte (eds.), Cambridge: Cambridge University Press, 2003).

⁶ As a rule, the principle of equality was studied in the Soviet scholarship as one of the principles of international law. Not many researches focused on the principle of equality itself. See, for instance, Минасян Н.М. Равенство государств как принцип международного права [Nikolay M. Minasyan, *Equality of States as Principle of International Law*] in Советский ежегодник международного права, 1966–1967 [*Soviet Yearbook of International Law, 1966–1967*] 100–105 (Moscow: Nauka, 1968); Александриков Д.В. Влияние Великой Октябрьской Социалистической Революции на развитие и утверждение принципа равенства государств в международном праве [D.V. Aleksandrikov, *The Influence of the Great October Socialist Revolution on the Development and Establishment of the Principle of Equality of States in International Law*] in Советский ежегодник международного права, 1968 [*Soviet Yearbook of International Law, 1968*] 106–119 (Moscow: Nauka, 1969); Бараташвили Д.И. Принцип суверенного равенства государств в международном праве [Dmitry I. Baratashvili, *The Principle of Sovereign Equality of States in International Law*] (N.A. Ushakov (ed.), Moscow: Nauka, 1978).

⁷ As an example, see Lauri Mälksoo, *Russian Approaches to International Law* (Oxford: Oxford University Press, 2015). The early works, however, looked at the link between theory and practice, but were not focusing at specifically the principle of equality. See, for instance, Jan F. Triska & Robert M. Slusser, *The Theory, Law and Policy of Soviet Treaties* (Stanford, California: Stanford University Press, 1962) (more than half a century old, it remains one of the major works in the field). One of the contemporary authors, John Quigley considers the Soviet understanding of the principle of equality, but his focus is on the

the early Soviet foreign policy documents (treaties, diplomatic notes and other instruments) starting from the outbreak of the Russian Revolution in 21 October (7 November⁸) 1917 and ending on 31 December 1926. We also refer to the foreign policy documents outside of this timeframe to demonstrate, first, the continuity between the early and later readings of the principle of equality by Soviet Russia (1) and, second, the ways and means by which Soviet Russia translated the principle of equality into its early and later treaties (2).

This timeframe was chosen for the following reason: Vladimir Lenin became the first head of Soviet Russia, and his understanding of the principle of equality strongly influenced the Soviet foreign policy, being translated into official position of the state. He ruled the country till his death on 21 January 1924.⁹ However, Marxism-Leninism became the official ideology of Soviet Russia for decades, and the understanding articulated by Lenin can still be traced in the treaties and foreign policy documents concluded by Soviet Russia after his death. This is especially true for the soviet instruments dated before 1926: other states' refusal to recognize it (followed by several recognitions only in 1924 and 1925¹⁰), prompted Soviet Russia to reiterate the idea of equality in its foreign policy documents, consciously or unconsciously defining and unpacking its legal meaning when demanding equal treatment for itself. In this sense, the chosen timeframe allows us to see a concentrated Marxist-Leninist idea of equality and the ways Soviet Russia translated it into international law.

This article is divided in six parts. In the first part, the authors briefly describe the origin and the evolution of the principle of equality of states and outline the historical background against which Soviet Russia attempted to re-read the principle (1). The second part analyses the Soviet reading of economic and social justice linked to the idea of equality (2). The third part traces how Lenin shaped the existing legal mechanisms around his understanding of equality and advanced the new legal dimensions of the concept of equality in international law (3). The fourth part deals with the early Soviet diplomatic practice, illustrative for the formation of the new reading of the equality principle in the international law (4). The fifth part focuses on the treaty practice – a tool inherent to the international law – and one of the most important for Soviet Russia – for advancing its goals and ideas, including the

Soviet treaties – he is not linking it to the scholarship. See John Quigley, *Soviet Legal Innovation and the Law of the Western World* (New York: Cambridge University Press, 2007).

⁸ Hereinafter, the second date in brackets is according to the Gregorian calendar.

⁹ Сервис Р. Ленин [Robert Servis, *Lenin*] 544–545 (G.I. Levitan (trans.), Minsk: Popurri, 2002).

¹⁰ On recognition of the USSR see Потемкин В.П. История дипломатии. Т. 3: Дипломатия в новейшее время (1919–1939 гг.) [Vladimir P. Potyomkin, *The History of Diplomacy. Vol. 3: Diplomacy in Contemporary Times (1919–1939)*] 317–340 (Moscow: Direct-Media, 2015); Березкин А.В. и др. История внешней политики СССР (1917–1980). В 2 т. Т. 1: 1917–1945 гг. [Alexander V. Beryozkin et al., *The History of Foreign Policy of the USSR (1917–1980)*. In 2 vol. Vol. 1: 1917–1945] 186–214 (A.A. Gromyko & B.N. Ponomarev (eds.), 4th ed., Moscow: Nauka, 1980).

principle of equality (5). The last part shows the discrepancies between the high aspirations of Soviet Russia and its contradictory practice in treating states as equal (6). The authors conclude that the inconsistent Soviet attitude towards equality does not signify its complete failure to re-read the principle: Soviet Russia has laid the foundations for further democratization of international law expanding the scope of application of international law beyond great, fully sovereign and civilized countries and helped to abandon such practices as consular jurisdictions, capitulations, secret and unequal treaties.

1. International Law before the Russian Revolution: Civilization Test, Equality and the Great Powers

The concept of equality has already acquired some of its features in international politics and international law when the Bolsheviks took over Russia in the wake of 1917 October Revolution.¹¹ It mostly shaped the relations of great and civilized countries in a non-homogeneous international community of states that also included “uncivilized,” “not fully sovereign,” “dependent,” “smaller” and or “less powerful” ones. At that time, the principle was mostly reduced to the formal parity of certain predominately European states and followed from the recognition of their supreme authority over respective territories – in other words sovereignty. The concrete legal content of the equality principle however was defined on case-by-case basis by a handful of privileged states.

The bumpy road towards realization high aspiration of states’ equality in international law, shaken by several widespread wars and revolutions, traditionally starts from 1648 Westphalian Peace. Although some trace the doctrinal origin of the principle to the Spanish theologian and lawyer Francisco de Vitoria. According to James Brown Scott, Vitoria in his seminal work “De Indis” justified the

equality of states, applicable not only to the states of Christendom and of Europe, but also to the barbarian principalities of the Western World of Columbus.¹²

¹¹ See Бобров Р.Л. Великая Октябрьская социалистическая революция и международное право, 1 Известия высших учебных заведений. Правоведение 89 (1957) [Roman L. Bobrov, *The Great October Socialist Revolution and International Law*, 1 Proceedings of Higher Educational Institutions. Pravovedenie 89 (1957)]; Juliane Kokott, *States, Sovereign Equality*, Max Planck Encyclopedia of Public International Law (Oct. 20, 2017), available at <http://opil.ouplaw.com/view/10.1093/law/epil/9780199231690/law-9780199231690-e11113?rskey=F71E8A&result=1&prd=EPIL>.

¹² James B. Scott, *The Spanish Origin of International Law: Francisco de Vitoria and His Law of Nations* 281 (Oxford: Clarendon Press; London: Humphrey Milford, 1934). This view was however challenged by Antony Anghie, who reads Vitoria as justifying the imperial ambitions of the Spaniards to conquer the Amerindian territories in the veil of equality and neutrality. See Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* 13–31 (New York: Cambridge University Press, 2004).

The majority of scholars (lately criticized for creating “Westphalian myth” as not every sovereign was party to the deal¹³) believe that the foundations for the contemporary legal order based on the principle of sovereign equality were only laid out by the 1648 Westphalian Peace concluded in two treaties – the treaties of Munster and of Osnabruck, ending the Thirty Years War.¹⁴ It introduced the twofold understanding of equality principle, although not perfectly expressed.¹⁵ First, the supreme authority of states over their territories stopped to be challenged by the Holy Roman Empire, implying their independence, absence of other supreme authority and as a result their equality. Secondly, the interventions into religious matters that could lead to abridgment of sovereign prerogative came to the end, implying states equality notwithstanding their religious beliefs. Still, the sovereign equality was limited to the European Christian states, as L. Oppenheim points:

there is no doubt that the Law of Nations is a product of Christian civilization. It originally arose between the States of Christendom only, and for hundreds of years was confined to these States.¹⁶

Thus, only belonging to the group of “fully-sovereign” and “civilized states” generally gave states the right to participate in the formation of international law. The divisibility of sovereignty, distinction between civilizations and focus on power led to its only limited application in practice.

Apart from rare exceptions, world of sovereign states was composed from European, Christian and monarchic countries, formed because of heredity or wars of conquest.¹⁷ The state was regarded to be a property of a monarch, who could use it accordingly. This was translated into international relations that were reduced to the relations between the reigning houses. The 1789 French Revolution challenged the existed privileges of aristocracy. It proclaimed that people are born free and equal.¹⁸ These new ideas of the Enlightenment and natural law provided a new justification for the principle of sovereign equality, famously supped up by Vattel in 1774 as

¹³ See, for instance, Randall Lesaffer, *Peace Treaties from Lodi to Westphalia in Peace Treaties and International Law in European History: From the Late Middle Ages to World War One* 9 (R. Lesaffer (ed.), New York: Cambridge University Press, 2008).

¹⁴ Jose-Manuel Barreto, *Cerberus: Rethinking Grotius and Westphalian System in International Law and Empire: Historical Explorations* 149 (M. Koskeniemi et al. (eds.), New York: Oxford University Press, 2016).

¹⁵ For 1648 Westphalia Peace Treaties see Treaty of Westphalia: Peace Treaty between the Holy Roman Emperor and the King of France and their respective Allies, Avalon Project at Yale Law School (Oct. 20, 2017), available at http://avalon.law.yale.edu/17th_century/westphal.asp. For full texts in different European languages see <http://www.pax-westphalica.de/ipmipo/indexen.html>.

¹⁶ Lassa Oppenheim, *International Law: A Treatise. Vol. I: Peace* 30 (New York & Bombay: Longmans, Green and Co., 1905), para. 26.

¹⁷ Cassese 2008, at 72.

¹⁸ *Id.*

a dwarf is as much a man as a giant; a small republic is no less a sovereign state than the most powerful kingdom. By a necessary consequence of that equality, whatever is lawful for one nation, is equally lawful for any other; and whatever is unjustifiable in the one, is equally so in the other.¹⁹

Thus, equality was once again restated and gained new justification: all interstate relations must be equal and sovereign and no state should be superior to the other. It implied states' independence, obligations to respect territorial integrity and not to interfere into domestic affairs. Though the French Revolution shook the traditional foundations of the legal order, it did not completely abandon the "civilization standard" but substituted it with the idea of respect for "human rights" and asserted "better" equality for fully sovereign states. And since the use of force was not completely outlawed back then, the principle of equality, according to Simpson, was further undermined during the 1818 Vienna Congress that reorganized Europe after the Napoleonic Wars and factually legitimized hegemony.²⁰

By the outbreak of the Russian Revolution, the use of the principle of equality to a large extent still depended on the Great Powers' (Russia including²¹) discretion to count the state willing to be treated on equal footing among "civilized" ones. The division into "civilized" and "uncivilized" nations remained inherent to the international law of the 19th and the beginning of the 20th centuries,²² limiting its scope of application only to relations between the "civilized" states and leaving "uncivilized" out.²³ When they were not being conquered by their "civilized" neighbors, "uncivilized" states were routinely forced to sign treaties on terms favoring civilized states. Those included, for instance, consular jurisdiction and capitulations. The local systems of justice were viewed by European states as unacceptable, and no European citizen could have ever been submitted to them. As a result, countries regarded "uncivilized" were forced for to sign treaties of capitulation, which granted the "civilized" powers

¹⁹ Emer de Vattel, *The Law of Nations, Or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns* 59 (J. Chitty (ed.), Philadelphia: T. & J.W. Johnson, 1854), para. 19.

²⁰ Gerry Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* 95–96 (Cambridge: Cambridge University Press, 2004).

²¹ Oppenheim 1905, at 193.

²² For further information on "civilized nations" see Liliana O. Tarazona, *The Civilized and the Uncivilized in The Oxford Handbook of the History of International Law* 917 (B. Fassbender & A. Peters (eds.), Oxford: Oxford University Press, 2012); James Sloan, *Civilized Nations*, Max Planck Encyclopedia of Public International Law (Oct. 20, 2017), available at <http://opil.ouplaw.com/view/10.1093/law/epil/9780199231690/law-9780199231690-e1748?rskey=bcaZiC&result=1&prd=EPIL>; Wilhelm G. Grewe, *The Epochs of International Law* 457 (M. Byers (trans.), Berlin; New York: de Gruyter, 2000); Daniel Högger, *The Recognition of States: A Study on the Historical Development in Doctrine and Practice with a Special Focus on the Requirements* 137–138 (Wien; Zürich: LIT, 2015). Relics of this division survived up until the end of decolonization when this term started to be considered as "anathema" (Sloan, at para. 12).

²³ Högger 2015, at 135–141.

“extra-territorial jurisdiction over the activities of their own citizens in these non-European states.”²⁴ This limitation on the sovereignty was regarded

as a massive humiliation by that state, which sought to terminate all capitulations at the earliest opportunity.²⁵

According to Anthony Anghie,

capitulations were a part of the unequal treaty regime imposed on these states and generally comprised one part of a treaty which usually granted rights to trade and rights to establish residences, for example.²⁶

To sum up, as Arnulf Lorca puts it:

Western and non-Western states signed treaties establishing formal international legal relations that occasionally sanctioned formal equality, but mostly instituted unequal treatment.²⁷

At that time, smaller and weaker states were insisting on their equality with the Great Powers.²⁸ One of the prominent examples of such “equality” struggle of smaller

²⁴ Anghie 2004, at 85.

²⁵ *Id.*

²⁶ *Id.* He further cites Alexandrowicz (Charles H. Alexandrowicz, *An Introduction to the History of the Law of Nations in the East Indies* 97 (Oxford: Clarendon Press, 1967)), who argues that “originally, capitulations were voluntarily undertaken by Asian states who were sympathetic to the problems faced by traders in a foreign culture, and who sought to facilitate trade by means of the capitulation which, in the early stage of the colonial encounter, took place on equal terms. Capitulations at that stage did not signify inequality or inferiority; that occurred by the nineteenth century” (*Id.* at 86). Further on unequal treaties see Arnulf B. Lorca, *Mestizo International Law* 46–47 (Cambridge: Cambridge University Press, 2014). V. Andersen wrote that “[t]he essence and the feature of an unequal treaty is that its provisions are characterized by obvious limitation of sovereignty of one of the contracting parties” (Андерсен В. Неравноправные договора царской России с Китаем в XIX веке, 9 Борьба классов 102 (1936) [V. Andersen, *Unequal Treaties of Tsarist Russia with China in the 19th Century*, 9 Class Struggle 102 (1936)]). A.N. Talalaev and V.G. Boyarshinov wrote that such treaties to a greater or lesser extent violated states’ sovereignty (Талалаев А.Н., Бояршинов В.Г. Неравноправные договоры как форма удержания в колониальной зависимости новых государств Азии и Африки [A.N. Talalaev, V.G. Boyarshinov, *Unequal Treaties as a Mode of Prolonging the Colonial Dependence of the New States of Asia and Africa*] in Советский ежегодник международного права, 1961 [Soviet Yearbook of International Law, 1961] 168 (G.I. Tunkin (ed.), Moscow: Nauka, 1962).

²⁷ Lorca 2014, at 47.

²⁸ Грабарь В.Э. Начало равенства государств в современном международном праве [Vladimir E. Grabar, *The Principle of Equality of States in Modern International Law*] in Известия Министерства иностранных дел. Кн. I [Bulletin of the Ministry of Foreign Affairs. Book One] 195, 198 (St. Petersburg: Tip. V.F. Kirshbauma, 1912). He considered that at the beginning of the 20th century he named 8 states as the Great Powers: states members of the Quadruple Alliance (Prussia, Russia, Austria, England) and France that in time joined the Alliance. Italy entered the Great Powers’ circle in the second half

states can be found at the Second Hague Conference of 1907. When the Great Powers tabled a proposal on their larger representation in a new permanent international court, the smaller states opposed this by demanding equal representation of all states. As a result, negotiations stalled, and no permanent court was established.²⁹

The Great Powers used to pick and choose, which state would be added to the “civilized nations” list and not every state was able to upgrade its status. Two examples of Japan and China vividly illustrate this point. Japan was accepted into the family of nations in 1905 following the Japanese defeat of Russia.³⁰ Whereas it was attending the Paris Peace Conference of 1919–1920 in the status of the only Asian Great Power, its proposal to insert an article or at least a paragraph into Preamble on equality of all human races into the Covenant of the League of Nations was rejected outright by the Western Powers.³¹ Another signature of the Treaty of Versailles, China, remained bound by unequal treaties till 1940s. According to the Chinese international jurist and “leading expert on treaties”³² Wang Tieya,

[the era of 100 years of Western intrusion and domination of unequal treaties – started with signing of the 1842 Treaty on Nanjing under the threat from the British fleet – has only ended] with the conclusion of new treaties with the United States and the United Kingdom in 1943 that abolished in principle the extraterritorial system in China, and founding the [People’s Republic of China] in 1949 when all unequal treaties were abrogated in reality as well as in name.³³

of the 19th century and the U.S. – in the end of that century. At the beginning of the 20th century, Japan took its place among the Great Powers (*see id.* at 197–198). Joshi Srivastava was of the same opinion concerning the list of the Great Powers at the outbreak of World War I (*see Joshi Srivastava, International Relations* 103 (9th ed., Meerut: GOEL, 2005)). However, that circle of the Great Powers was not remained unchanged: after World War I “Austria, and Russia and Germany temporarily were removed from the list of Great Powers” (*id.*).

²⁹ For details *see* Lorca 2014, at 158–168, 179–180.

³⁰ Anghie 2004, at 137; Lorca 2014, at 112–114.

³¹ Kinji Akashi, *Japan-Europe in The Oxford Handbook of the History of International Law* 724, 739 (B. Fassbender & A. Peters (eds.), Oxford: Oxford University Press, 2012). Though the author doubts that Japan’s intention to introduce this principle was genuine citing instances where Japan was in turn discriminating other Asian states during the examined period.

³² Xue Hanqin, *Chinese Contemporary Perspectives on International Law: History, Culture and International Law* 51 (Leiden: Martinus Nijhoff, 2012).

³³ Wang Tieya, *International Law in China: Historical and Contemporary Perspectives* 238 (Leiden: Martinus Nijhoff, 1990) (references omitted); Chi-Hua Tang, *China-Europe in The Oxford Handbook of the History of International Law* 701, 706 (B. Fassbender & A. Peters (eds.), Oxford: Oxford University Press, 2012). Though Shin Kawashima in the other chapter of same book argues that the Qin Dynasty when concluding 1842 Nanjing Treaty was not thinking about it as unequal: it was only labelled as such by future generation (*see Shin Kawashima, China in The Oxford Handbook of the History of International Law* 451 (B. Fassbender & A. Peters (eds.), Oxford: Oxford University Press, 2012)). Lorca 2014, at 88.

According to Dickinson, writing in the end of 1910s, the principle of equality, was used in resolving interstate disputes, was mentioned in international instruments and was advocated by state officials at the international conferences.³⁴ Though it rather tended to work in relations between the Great Powers themselves, it tended not to – in their relations with “civilized” but smaller states where the interests of the Great Powers prevailed. In 1912, Grabar concluded that practically no political matter was solved at that time without direct or indirect participation of the Great Powers, who completely ruled world politics. History has shown that the factual inequality in the relations between the Great Powers and the smaller states persisted. The First World War, being the ultimate manifestation of inequality, has not changed a thing. Inequality has further culminated, when France, Italy, United Kingdom and Germany concluded 1938 Munich Agreement that allowed German annexation of the Sudetenland in Western Czechoslovakia and became the prologue to World War II.³⁵ A sharp brief characteristic to the principle of equality in the beginning of the 20th century – when Soviet Russia has emerged – was given by McNair: if equality before the law was then “a normal fact of international jurisprudence” equality in the sense of equal capacity to exercise rights was far enough from reality.³⁶

2. Marxism-Leninism on Equality and International Relations in the Early 20th Century

The Russian Revolution to certain extent picked up and developed the ideas advanced by the French Revolution, but came from different premises as it differently construed social and economic justice, on which it based its understanding of equality. The soviet understanding of principle of states’ equal rights was heavily inspired by Lenin’s views, who headed the Russian Revolution and whose ideas substantially influenced the Soviet policy during the early years of Soviet Russia.

The understanding of states’ equal rights by Soviet Russia was indeed closely linked with the notion of “equality.”

By political equality, – Lenin wrote, – Social-Democrats mean equal rights, and by economic equality... they mean the abolition of classes... Political equality is a demand for equal political rights for all citizens of a country who

³⁴ For further details see Edwin D. Dickinson, *The Equality of States in International Law* 153–187 (Cambridge: Harvard University Press, 1920).

³⁵ Христофоров В.С. Мюнхенское соглашение – пролог Второй мировой войны (по архивным материалам ФСБ России), 1 Новая и новейшая история 21 (2009) [Vasily S. Khristoforov, *The Munich Agreement is the Prologue of World War II (Following Archival Materials of the Federal Security Service of the Russian Federation)*, 1 Modern and Contemporary History 21 (2009)].

³⁶ See Arnold D. McNair, *Equality in International Law*, 26(2) Michigan Law Review 131, 151 (1927).

have reached, a certain age and who do not suffer from either ordinary or liberal-professorial feeble-mindedness.³⁷

He also noted that

as for establishing human equality in the sense of equality of strength and abilities (physical and mental), socialists do not even think of such things.³⁸

For Lenin, the concept of equality was more important than its corollary – capacity to exercise equal rights. First, Lenin repeatedly wrote that equality means abolition of classes³⁹ and that according to Marxism-Leninism the absence of classes should become a distinctive feature of the society organized on a communist basis – being the ultimate goal of the communist revolution.⁴⁰ Thus, the concept of equality was a cornerstone of the Marxist-Leninist doctrine of class struggle.

Secondly, Lenin considered the concept of “equal rights” as a tool to deceive the oppressed classes. He wrote:

Abstract or formal approach to the question of equality as such including national equality pertains to the very nature of bourgeois democracy. In the guise of equality of human personalities... the bourgeois democracy declares formal or legal equality of a proprietor and a proletarian, an exploiter and an exploited thereby greatly deceiving the oppressed classes.⁴¹

Lenin wrote that bourgeois society

³⁷ Ленин В.И. Либеральный профессор о равенстве [Vladimir I. Lenin, *A Liberal Professor on Equality*] in Ленин В.И. Полное собрание сочинений. Т. 24: сентябрь 1913 – март 1914 [Vladimir I. Lenin, *Collected Works. Vol. 24: September 1913 – March 1914*] 362 (5th ed., Moscow: Politizdat, 1973) (citations omitted). For English translation see <https://www.marxists.org/archive/lenin/works/1914/mar/11.htm>.

³⁸ *Id.*

³⁹ Ленин В.И. Первоначальный набросок тезисов по национальному и колониальному вопросам (для второго съезда Коммунистического Интернационала) [Vladimir I. Lenin, *Draft Theses on National and Colonial Questions (for the Second Congress of the Communist International)*] in Ленин В.И. Полное собрание сочинений. Т. 41: май – ноябрь 1920 [Vladimir I. Lenin, *Collected works. Vol. 41: May – November 1920*] 162 (5th ed., Moscow: Politizdat, 1981); Ленин В.И. Государство и революция [Vladimir I. Lenin, *The State and Revolution*] in Ленин В.И. Полное собрание сочинений. Т. 33: Государство и революция [Vladimir I. Lenin, *Collected Works. Vol. 33: The State and Revolution*] 99 (5th ed., Moscow: Politizdat, 1969).

⁴⁰ Энгельс Ф. Принципы коммунизма [Friedrich Engels, *The Principles of Communism*] in Маркс К., Энгельс Ф. Сочинения. Т. 4 [Karl Marx & Friedrich Engels, *Essays. Vol. 4*] 331–336 (2nd ed., Moscow: Gospolitizdat, 1955); Ленин, *The State and Revolution*, at 86, 89. For English translation see <https://www.marxists.org/ebooks/lenin/state-and-revolution.pdf>.

⁴¹ Lenin 1981, at 162.

disguises factual, economic unfreedom and inequality for workers, for all working people and people exploited by the capital by means of formal recognition of freedom and equality...⁴²

For him, the formal equality, or equality of rights, was a deception if there was no economic equality that he defined as equality in the position in social production.⁴³ Addressing the problem of inequality in the US, Lenin wrote:

Some owns land, factories, capitals and lives at the expense of unpaid labor of workers... Others... do not have any means of production and live off selling their labor...⁴⁴

In Lenin's view, economic equality was a goal that could only be achieved in a communist society. He understood the economic equality as abolition of classes⁴⁵ that, according to Marxism-Leninism, would be pertinent to a communist society. Lenin wrote:

The abolition of classes – means placing all citizens on an equal footing with regard to the means of production belonging to society as a whole. It means giving all citizens equal opportunities of working on the publicly-owned means of production, on the publicly-owned land, at the publicly-owned factories, and so forth.⁴⁶

In his paper "The State and the Revolution," when describing the development of society from the lowest phase of a communist society (i.e. socialism) to the highest, Lenin wrote:

As soon as equality is achieved for all members of society in relation to ownership of the means of production, that is, equality of labor and wages, humanity will inevitably be confronted with the question of advancing further from formal equality to actual equality, i.e. to the operation of the rule from each according to his ability, to each according to his needs.⁴⁷

⁴² Ленин В.И. Фальшивые речи о свободе (вместо послесловия) [Vladimir I. Lenin, *False Speeches about Freedom (Instead of Afterword)*] in Lenin, *Collected works*. Vol. 41, at 425–426.

⁴³ Lenin 1973, at 363.

⁴⁴ *Id.* (citations omitted).

⁴⁵ *Id.* at 362.

⁴⁶ *Id.* at 363.

⁴⁷ Lenin, *The State and Revolution*, at 99.

It follows that, for Lenin, formal equality was only the starting point on the way to a better state of society based on “actual” equality as opposed to formal one. However, Lenin’s “actual” equality closely resembles economic equality: the formula – “each according to his ability, to each according to his needs” – is *per se* a concise description of economic relations in a communist society.

However, Soviet Russia could hardly mean Lenin’s concept of economic equality when wording its legal position in terms of equality in international relations. Soon after the Revolution, it has found itself in a difficult political situation: unrecognized by other states⁴⁸ subject to foreign intervention by former Entente allies and suck into the mire of the civil war.⁴⁹ Getting international recognition and winning the civil war, restoring diplomatic relations with “bourgeois” states was of paramount importance to Soviet Russia. Thus, the ultimate goal of the abolition of classes that implied the economic equality was not, as a rule, explicitly advanced in foreign policy-related official speeches or records, however, was widely practiced through “encouraging revolutions.”⁵⁰ Besides, advancing even the idea of economic equality in international negotiations would have been the least successful tool for pursuing another priority need: Soviet Russia demanded equal treatment from “bourgeois” and especially European states who have frequently negotiated matters affecting Soviet interests in Russia’s absence.⁵¹ Soviet delegations were also treated unequally as compared with delegations of other states, which caused repeated protests of Soviet diplomats.⁵²

Analysis of the early Soviet diplomatic documents leads to the same conclusion. For instance, G. Chicherin, the RSFSR People’s Commissar for Foreign Affairs at the time, when making a declaration on behalf of the Russian Delegation at the Genoa Conference on 10 April 1922, stressed that:

⁴⁸ For details see Бобров Р.Л. Шар, продиктованный историей: международно-правовое признание Советского государства [Roman L. Bobrov, *A Step Dictated by the History: International Legal Recognition of the Soviet State*] 59–65 (2nd ed., Moscow: Mezhdunarodnye otnosheniya, 1982).

⁴⁹ For details see Гаспарян А. Россия в огне Гражданской войны: подлинная история самой страшной братоубийственной войны [Armen Gasparian, *Russia in the Fire of Civil War: True Story of the Most Terrible Fratricidal War*] (Moscow: E, 2016); Поляков Ю.А. Гражданская война в России: возникновение и эскалация, 6 Отечественная история 32 (1992) [Yuriy A. Polyakov, *Civil War in Russia: The Emergence and Escalation*, 6 Russian History 32 (1992)].

⁵⁰ See Part 6 of this article.

⁵¹ See for instance Документы внешней политики СССР. Т. 2 [*Documents on the Foreign Policy of the USSR. Vol. 2*] 252–253 (G.K. Deev et al. (eds.), Moscow: Gospolitizdat, 1958); Документы внешней политики СССР. Т. 4 [*Documents on the Foreign Policy of the USSR. Vol. 4*] 224–226 (L.S. Garonenko et al. (eds.), Moscow: Gospolitizdat, 1960); Документы внешней политики СССР. Т. 5 [*Documents on the Foreign Policy of the USSR. Vol. 5*] 286, 593–595 (A.E. Bogomolov et al. (eds.), Moscow: Gospolitizdat, 1961).

⁵² See, for instance *Documents on the Foreign Policy of the USSR. Vol. 5*, at 620–621.

the universal peace should be established, in our opinion, by a world congress based on *complete equality of all peoples...*⁵³

It cannot, however, be deduced either from the text, or from the context that he meant economic equality, or abolition of classes. This term was rather used as a synonym of “states’ equal rights.” This, to our best knowledge, is equally true for the references to equality that Soviet officials included in diplomatic documents and international treaties.

As compared to Lenin’s original idea, the understanding of equality was adjusted to encompass the need to prioritize economic relations with “bourgeois” states over immediate advancing of economic equality. As a result, the meaning of equality in foreign policy documents was a slightly different reading of the old historical concept rather than “abolition of classes.” This difference, however, was novel and progressive for the actual practice of international relations at the beginning of the 20th century. The Soviets advanced the idea of equal enjoyment of rights by states, which was largely inspired by the Lenin’s understanding of how states should treat each other.

3. Lenin on Equality: New Legal Dimensions of the Old Principle

Lenin contributed to the fleshing out of the principle of equality with the concrete legal rules in a fourfold way. First, he explained his general view of equality in international law in his article “Finland and Russia” published in the Pravda Newspaper No. 46 of 2(15) May 1917. Lenin wrote:

Agreement is possible only between equals. If the agreement is to be a real agreement, and not a verbal screen for subjection, both parties to it must enjoy *real* equality of status that is to say, both Russia and Finland must have the right to disagree.⁵⁴

It was not the first attempt to define the scope and meaning of “equality of status” by adding an adjective before the word “equality.” For instance, Art. 3 of General Convention of Peace, Amity, Commerce and Navigation between the United States of America and the Federation of the Centre of America signed on 5 December 1825 started with following words:

⁵³ Русская декларация 10 апреля 1922 года [*Russian Declaration of 10 April 1922*] in Коровин Е.А. Международные договоры и акты нового времени [Evgeny A. Korovin, *Treaties and Acts of a New Time*] 149–150 (Moscow; St. Petersburg: Gosizdat, 1925) (emphasis added) (citation omitted).

⁵⁴ Ленин В.И. Финляндия и Россия [Vladimir I. Lenin, *Finland and Russia*] in Полное собрание сочинений. Т. 32: май-июль 1917 [Vladimir I. Lenin, *Collected Works. Vol. 32: May-July 1917*] 5 (5th ed., Moscow: Politizdat, 1969). For English translation see <https://www.marxists.org/archive/lenin/works/1917/may/02b.ht>.

The two high contracting parties, being likewise desirous of placing the Commerce and Navigation of their respective Countries on the liberal basis of *perfect* equality and reciprocity...⁵⁵

Chicherin used "*complete* equality" in his speech cited above.⁵⁶ Further, as evidenced by the drafters of the Volume II of the Soviet Foreign Policy Documents, Leonid Krasin, the head of the Russian Foreign Trade delegation at the first meeting with the members of the British government on 31 May 1920 stressed the aspiration of the Soviet Government to "establish normal economic ties with the capitalist states, United Kingdom including, on the basis of *complete* equality."⁵⁷ On 20 August 1920 at the international conference on the "status of Danube" in Paris, Chicherin pronounced in the Diplomatic Note to France the view of Russian Government that "all nations shall be granted freedom and *absolute* equality regarding navigation in this river..."⁵⁸

It seems that these attempts are brought together by the desire to see "equality of status" as not merely an empty phrase, but a meaningful promise that all states should always comply with. Arguably, Lenin expressed a similar idea in his article, writing about Russian-Finnish relations, where he viewed principle of equality not as just a pure abstraction but a tool that should be applied in practice. This derives from the textual interpretation of the term "real equality of status." Consequently, all the wordings above shall be viewed as full synonyms having the same legal effect: equality cannot be real if it is qualified, not complete or not absolute equality. Such phrases used in soviet diplomatic documents (analyzed in part 4 below) and in treaties concluded by the USSR (studied in part 5 below) are mere paraphrase of Lenin's "actual equality;" they add nothing new to the Lenin's principle of equality. Though soviet diplomatic documents generally prefer unqualified terms "equality" or "equal rights" to "absolute," "complete," "perfect" or "real" equality, the study of the latter helps to shed the light on the meaning of the former words when Soviet diplomats used them in the context of international law.

Second, in Lenin's eyes equality was closely linked with solving the problem of "dependent relations," including those between colonies and their mother states and between states and nations annexed by them.

In the era of capitalist imperialism, – he wrote describing the division of the world between the Great Powers, – ...[n]ot only are the two main

⁵⁵ General Convention of Peace, Amity, Commerce and Navigation Between the United States of America and the Federation of the Centre of America, 5 December 1825, 8 Stat. 322, Art. 3 (Oct. 20, 2017), available at <https://www.loc.gov/law/help/us-treaties/bevans/b-caf-ust000006-0503.pdf>.

⁵⁶ *Supra* note 53 and accompanying text.

⁵⁷ *Documents on the Foreign Policy of the USSR. Vol. 2*, at 762, 695.

⁵⁸ Документы внешней политики СССР. Т. 3 [*Documents on the Foreign Policy of the USSR. Vol. 3*] 140–141 (G.A. Belov et al. (eds.), Moscow: Gospolitizdat, 1959).

groups of countries, those owning colonies, and the colonies themselves, but also the diverse forms of dependent countries which, politically, are formally independent, but in fact, are enmeshed in the net of financial and diplomatic dependence, typical of this epoch.⁵⁹

He further reiterated this approach with respect to the Russian-Finnish relations that he viewed as a display of annexionism “both Russia and Finland must have the right to disagree.”⁶⁰ Lenin’s idea of equality implied that states should treat each other as well as their colonies and other dependent territories as fully independent entities, i.e. without *any* forms of dependence. Thus, before tackling the issue whether states have equal rights, one should answer the question: do they feel independent when negotiating with the other states?

According to Cassese, the USSR advocated for the principle of substantive equality of states (as opposed to their formal equality) in international relations.⁶¹ However, as the above first and second aspects of the Lenin’s equality concept suggest, this is only partially true. In fact, though Soviet Russia advocated for a principle of equality it believed that equality could only be achieved when states treat each other as equals without any coercion.

Third, despite the differences in social systems, Lenin believed that socialist and capitalist states should be recognized as equals. The following two examples demonstrate that. First, the statement made by Chicherin at the 1922 Genoa Conference:

the Russian delegation arrived [at the conference]... willing to enter commercial relations with governments and businesses of other countries based on reciprocity, equality of status and full and complete recognition [of Soviet Russia]⁶²

was addressed to both socialist and capitalist countries, participating in the conference. Thus, he implied that both socialist and capitalist countries were accorded equal status. Second, when during the same year the United Kingdom, France, Italy, Yugoslavia, Bulgaria, Romania, Greece and Egypt attempted to settle the issue of the Black Sea Straits without Russia, it has filed a note of protest, stating that:

⁵⁹ Ленин В.И. Империализм как высшая стадия капитализма: популярный очерк [Vladimir I. Lenin, *Imperialism, the Highest Stage of Capitalism: A Popular Outline*] in Полное собрание сочинений. Т. 27: август 1915 – июнь 1916 [Vladimir I. Lenin, *Collected Works. Vol. 27: August 1915 – June 1916*] 383 (5th ed., Moscow: Politizdat, 1969). For English translation see <https://www.marxists.org/archive/lenin/works/1916/imp-hsc/ch06.htm>.

⁶⁰ Lenin, *Finland and Russia*, at 4–5.

⁶¹ Antonio Cassese, *International Law* 31 (New York: Oxford University Press, 2001).

⁶² *Russian Declaration of 10 April 1922*, *supra* note 53, at 148.

the Government of Russia hopes to have its voice heard by everyone willing to achieve the true peace based on states' equal rights... and full respect for Turkish sovereignty over its territories.⁶³

This message was conveyed to "capitalist" (bourgeois) states. Further, as Lenin accorded equal rights to both capitalist and socialist states, that he conceded as a provisional state of things to the legal equality of two types of property – capitalist and communist.⁶⁴

Fourthly, according to the early Soviet doctrine, the idea of equal rights was not confined to the relations between states and was extended to relations between states and nations willing to choose their form of state existence (their geographical location in or outside Europe notwithstanding). As the Decree on Peace put it:

The government conceives the annexation or seizure of foreign lands to mean every incorporation of a small or weak nation into large or powerful state without the *precisely, clearly, and voluntarily expressed consent and wish of that nation*, irrespective of the time when such forcible incorporation took place, irrespective also of the degree of development or backwardness of the nation forcibly annexed to the given state, or forcibly retained within its borders, and irrespective, finally, of whether this nation is in Europe or in distant, overseas countries. If any nation whatsoever is forcibly retained within the borders of a given state, if, in spite of its expressed desire – no matter whether expressed in the press, at public meetings, in the decisions of parties, or in protests and uprisings against national oppression – is not accorded the right to decide the forms of its state existence by a free vote, taken after the complete evacuation of the troops of the incorporating or, generally, of the stronger nation and without the least pressure being brought to bear, such incorporation is annexation, i.e., seizure and violence.⁶⁵

⁶³ *Documents on the Foreign Policy of the USSR. Vol. 5*, at 595.

⁶⁴ Ленин В.И. Проект постановления ВЦИК по отчету делегации на Генуэзской конференции [Vladimir I. Lenin, *The Draft of the VTSIK Resolution According to the Delegation Report at the Genoa Conference*] in Ленин В.И. Полное собрание сочинений. Т. 45: март 1922 – март 1923 [Vladimir I. Lenin, *Collected Works. Vol. 45: March 1922 – March 1923*] 192–193 (5th ed., Moscow: Politizdat, 1970).

⁶⁵ Декрет о мире: принят 26 октября (8 ноября) 1917 г. [*The Decree on Peace of 26 October (8 November) 1917*] in Второй Всероссийский съезд советов [*Second All-Russian Congress of Soviets*] 95–98 (M.N. Pokrovsky & Ya.A. Yakovlev (eds.), Moscow, St. Petersburg: Gosizdat, 1928). For English translation see <https://www.marxists.org/archive/lenin/works/1917/oct/25-26/26b.htm>. For details see Тузмухамедов Р.А. Международное значение опубликования Советским правительством тайных договоров царской России [Rais A. Tuzmukhamedov, *The International Significance of the Publication of Secret Treaties of Tsarist Russia by the Soviet Government*] in Вопросы теории и практики международного права. Ученые записки. Вып. 2 [*Issues of Theory and Practice of International Law. Scholarly Notes. Issue 2*] 5–26 (V.N. Durdenevsky & L.A. Mogioryan (eds.), Moscow: Institute of International Relations, 1959).

This idea was further put forward in 1917, when Ioffe, then the head of the Soviet Delegation, was sent to Brest-Litovsk to negotiate the terms of the peace treaty with Germany. He set forth six main pre-conditions, the third of which required that national groups, which were not politically independent before the war, should be allowed by referendum to decide on their independence.⁶⁶ According to the last pre-condition, the colonial question was meant to be resolved taking into consideration all the above.⁶⁷

Had the Soviet Government not adhered to the principle of equality of states and nations opting for self-determination, it would have been impossible for it to demand from other states to grant all nations “forcibly retained within their borders” the right to solve “the question of the forms of their state existence.” Such attitude of a state towards a nation demonstrates its desire to treat the latter as a legally equal partner. This idea has subsequently paved the way to the right of self-determination of people. Given that the nations struggling for independence did not enjoy any rights under the international law of that time, the idea to grant to them and states equal rights was novel and quite progressive. In a wider context, this approach implied, first, universalization of international law broadening the scope of its territorial application and, second, its democratization by erasing the distinction between “civilized” and “non-civilized” nations. However, to put into practice the idea that states enjoy equal rights, Soviet Russia needed to introduce it into international law. As history shows, it has consistently pursued that aim.

4. Great Expectations: Principle of Equality in the Early Soviet Foreign Policy Documents

The interests of the class struggle urged Soviet Russia to expand its ideas and views on international law among other states. By translating it into the international community of states it either consciously or unconsciously played its role in the

⁶⁶ Декларация, сделанная уполномоченным РСФСР Иоффе на первом пленарном заседании мирной конференции в Брест-Литовске 9(22) декабря 1917 года [*Statement Made by Plenipotentiary of the RSFSR Ioffe at the First Plenary Meeting of Peace Conference in Brest-Litovsk of 9(22) December 1917*] в Ключников Ю.В., Сабанин А.В. Международная политика новейшего времени в договорах, нотах и декларациях. Ч. II: от империалистической войны до снятия блокады с Советской России [Yuriy V. Klyuchnikov, Andrey V. Sabanin, *International Policy of the Newest Time in Treaties, Notes and Statements. Part II: From Imperialist War to Lifting the Blockade Imposed on Soviet Russia*] 103 (Moscow: Litizdat NKID, 1926). The 3rd precondition did not limit this right only to national groups precluded by powerful states from becoming independent notwithstanding their expressed desire to do so. This condition shall be read together with the Decree on Peace cited above. Thus, the 3rd condition put forward by Ioffe should be construed to allow the possibility to solve the question on nationality or independence to a national group which “[was] [held] forcibly in the boundaries of this state...” or which, “against the wish it had expressed, [was] not given the right to solve the question of its forms of state existence without even the slightest coercion with the help of free vote, withdrawing all troops of annexing or any stronger nation.”

⁶⁷ *Id.* at 104.

development of international law. As the general rule Soviet state translated its idea of equality on the international by either of the following means: diplomatic or treaty practice.

Soviet ideas infiltrated international law by way of international treaties, advancing soviet ideas, either through the “equality clause” or other provisions based in the soviet idea of equality as discussed in the next part of the article. Here we will focus on the non-treaty based way of expansion of the soviet views. This mechanism did not immediately lead to the creation of the rule, but could be supported by other states and then be translated into international law either as a customary or treaty rule.

This non-treaty based diplomatic way encompasses several legal mechanisms. First, Soviet Russia translated its ideas through the wording of the national laws that had effect in the foreign policy. The Decree on Peace, promoting the principle of equality of states and nations willing to exercise their right to self-determination.⁶⁸ drafted by Lenin himself, it became the first framework foreign policy instrument of Soviet Russia, which expressed its position on international law.⁶⁹ Besides, as one of its first laws, the Council of Peoples Commissars of the Russian Socialist Federal Soviet Republic adopted on 4 June 1918 the Decree on Abolition of Diplomatic Representatives’ Ranks, by which according to its name, abolished diplomatic ranks and renamed its representatives into plenipotentiaries. Paragraph 2 of the Decree stressed that

the main idea of international law – communication of states with equal rights

required –

to regard all diplomatic agents of foreign states accredited to the Russian Socialist Federal Soviet Republic as equally authorized irrespective of their ranks.⁷⁰

⁶⁸ See *supra* note 65.

⁶⁹ Bobrov 1957, at 87.

⁷⁰ Декрет Совета Народных Комиссаров об упразднении рангов дипломатических представителей и об именовании таковых Полномочными Представителями Российской Социалистической Федеративной Советской Республики от 4 июня 1918 г. [*Decree of the Council of the People’s Commissars on Abolition Diplomatic Representatives Ranks’ and Naming Them Russian Socialist Federal Soviet Republic Plenipotentiaries of 4 June 1918*] in *Документы внешней политики СССР*. Т. 1 [*Documents on the Foreign Policy of the USSR. Vol. 1*] 346 (I.N. Zemskov et al. (eds.), Moscow: Gospolitizdat, 1957). The main idea of international law – communication of states with equal rights – can further be traced in the official position and diplomatic practice of the Soviet state (for details see Сабанин А.В. Советская власть и международное право, 15 *Международная жизнь* 14 (1922) [Andrey V. Sabanin, *Soviet Power and International Law*, 15 *International Affairs* 14 (1922)]).

Second, the notion of equality was frequently used in the diplomatic acts of Soviet Russia. References to equality and equal rights of states,⁷¹ as well as criticism of inequality between states⁷² are most often met in the diplomatic documents from October 1917 till December 1926.

Third, concrete political actions helped to promote the spread of the idea of equality, as they gave additional weight to the wording of domestic laws and diplomatic acts that, without concrete political steps, could hardly arouse sympathy from other states.

For example, principle of equal rights was stressed by the newly emerged Soviet Russia when it has published and abolished both secret⁷³ and unequal⁷⁴ treaties concluded by Tsarist Russia. Many of them confirmed inequality of states as they provided for division of territories or delimitation of spheres of influence in third states without their consent.⁷⁵

One of such *secret* treaties was the Agreement concluded between the United Kingdom and France in 1916, to which Russia has subsequently acceded. It provided for future delimitation of zones of influences and future territorial acquisitions in

⁷¹ See, e.g., Нота Народного Комиссариата Иностранных Дел РСФСР Министерству Иностранных Дел Китайской Республики от 10 марта 1921 г. [*Note of the People's Commissariat for Foreign Affairs of RSFSR to the Ministry of Foreign Affairs of Chinese Republic of 10 March, 1921*] in *Documents on the Foreign Policy of the USSR. Vol. 3*, at 584; Телеграмма Президиума Центрального Исполнительного Комитета СССР Центральному Исполнительному Комитету Гоминьдана от 22 марта 1925 г. [*The Telegram of the Presidium of Central Executive Committee of the USSR to Central Executive Committee of Kuomintang of 22 March 1925*] in *Документы внешней политики СССР. Т. 8* [*Documents on the Foreign Policy of the USSR. Vol. 8*] 187 (I.K. Koblyakov et al. (eds.), Moscow: Gospolitizdat, 1963); Выступление Полномочного Представителя СССР в Китае Л.М. Карахана на банкете в Пекине, данном лидером японской партии Кэнсэйкай Мотидзуки от 24 июля 1925 г. [*The Speech of the USSR Plenipotentiary L.M. Karakhan in China at the Banquet in Peking Held by the Leader of Japanese Party "Kenseikai" Mochizuki of 24 July 1925*] in *Id.* at 450, 452.

⁷² See, e.g., Речь Полномочного Представителя СССР в Китае, Председателя Советской делегации по переговорам с Китаем Л.М. Карахана на открытии советско-китайской конференции от 26 августа 1925 г. [*The Speech of the USSR Plenipotentiary in China, the Chairman of the Soviet Delegation for Negotiations with China L.M. Karakhan at the Opening of Soviet-Chinese Conference of 26 August 1925*] in *Documents on the Foreign Policy of the USSR. Vol. 8*, at 506. Karakhan spoke about unequal treaties with China calling them shameful.

⁷³ *Decree on Peace*, *supra* note 65, at 96.

⁷⁴ См.: Бояршинов В.Г. Великая Октябрьская Социалистическая революция и начало распада империалистической системы неравноправных договоров, 5 *Известия высших учебных заведений. Правоведение* 149–153 (1967) [V.G. Boyarshinov, *The Great October Socialist Revolution and the Beginning of the Disintegration of the Imperialist System of Unequal Treaties*, 5 *Proceedings of Higher Educational Institutions. Pravovedenie* 149–153 (1967)]; Захарова Н.В. Отказ Советского государства от договоров царской России, нарушавших права народов восточных стран [N.V. Zakharova, *Renunciation by the Soviet State of Treaties of Tsarist Russia Which Violated the Rights of the Peoples in Eastern Countries*] in *Советский ежегодник международного права, 1962* [*Soviet Yearbook of International Law, 1962*] 126–132 (G.I. Tunkin (ed.), Moscow: Nauka, 1963).

⁷⁵ See more about the secret treaties, for instance, in Tuzmukhamedov 1959, at 6–7, 9–12.

Asiatic Turkey as well as creation of an independent Arab state or a confederation of Arab states within Arabia. According to the treaty, Russia was to acquire Erzurum, Trebizond, Van and Bitlis provinces along with some other territories; France was to acquire *inter alia* the Syrian coastal strip and the Vilayet of Adana; the United Kingdom was to obtain control over the Southern part of Mesopotamia including Baghdad along with some other territories. The non-delimited area, including the "Holy Sites," was to be subject to international administration later established by a trilateral agreement between Russia, France and the United Kingdom.⁷⁶ This secret treaty was unilaterally terminated by Soviet Russia. In the Appeal to the Moslems of Russia and the East, the Council of People's Commissars announced "...the treaty for the partition of Turkey, which was to 'despoil' it of Armenia, [to be] null and void."⁷⁷

As a further example of *unequal* treaties is the 1907 Convention between Russia and the United Kingdom relating to Persia, Afghanistan and Tibet. It provided delimitation of Russian and British territorial interests in Persia concerning political and commercial concessions.⁷⁸ Subsequently, Soviet Russia declared this convention terminated.⁷⁹

The fact that references to equality of equal rights of states are reiterated in the soviet documents all over again, evidences, first, that the principle of equality was important brick in the structure of soviet international law (1), and, second, that Soviet Russia attached great significance to its spreading into international relations during the early years of its existence (2). In the next section we will examine, how effective these attempts to export soviet understanding of equality into international law were, by analyzing soviet treaty practice.

⁷⁶ For details see Тайна дипломатии и тайные договоры: справка по малоазиатскому вопросу: 21 февраля 1917 г., Известия Центрального исполнительного комитета и Петроградского совета рабочих и солдатских депутатов, 11 ноября 1917 г., № 222 [*The Secret Diplomacy and Secret Treaties: An Inquiry Concerning the Asia Minor Question: 21 February 1917*, Bulletin of the All-Russian Central Executive Committee of the Councils of Workers, Soldiers, and Peasants Deputies, 11 November 1917, No. 222], at 4.

⁷⁷ [Обращение] ко всем трудящимся мусульманам России и Востока, Газета Временного Рабочего и Крестьянского правительства, 24 ноября (7 декабря) 1917 г. [*Appeal to the Moslems of Russia and the East, Workers' and Peasants' Government Gazette*, 24 November (7 December) 1917]. For English translation see <https://www.marxists.org/history/ussr/government/foreign-relations/1917/December/3.htm>.

⁷⁸ Конвенция между Россией и Англией по делам Персии, Афганистана и Тибета от 18(31) августа 1907 г. [*Convention Between Russia and the United Kingdom Relating to Persia, Afghanistan and Tibet of 18(31) August 1907*] in Сборник договоров России с другими государствами: 1856–1917 [*Collection of Treaties of Russia with Other States: 1856–1917*] 387–388 (E.A. Adamov (ed.), Moscow: Gospolitizdat, 1952).

⁷⁹ Нота Народного Комиссара Иностранных Дел Посланнику Персии от 14(27) января 1918 г. № 137 [*Note by People's Commissar for Foreign Affairs to Persian Envoy No. 137 of 14(27) January 1918*] in *Documents on the Foreign Policy of the USSR. Vol. 1*, at 91.

5. The Principle of Equality in the Soviet Treaty Practice

The treaty practice of the Soviet Russian in the examined period – starting from 21 October (7 November) 1917 and ending on 31 December 1926 as well as some later treaties – proves that soviet views to certain extent have influenced international treaties.

The Treaty on Friendship and Brotherhood between Russia and Turkey signed on 16 March 1921 illustrates this point: it contains such terms as “the principle of nations’ brotherhood,” “solidarity in fight against imperialism” (in the preamble) and condemns capitulations as incompatible “with free development of every country” (Art. VII).⁸⁰ These phrases are certainly of “Soviet” origin.

Soviet Russia used both direct and indirect means to advance the principle of equality idea in international law. It was way more flexible in introducing Marxist-Leninist ideas into the treaties with dependent or smaller states – states that did not enjoy rights inherent to full sovereignty. In such treaties, Soviet Russia, usually without explicitly referring to the principle of equality, abrogated unequal terms forced upon those states by the former Russian Empire. For instance, Art. VII of the 1921 Moscow Treaty between Russia and Turkey condemned and abrogated capitulations. This can be seen in the historical context as an indirect advancement of the Soviet understanding of equality.⁸¹

Another example is the Agreement on General Principles for Settling Questions between the USSR and the Republic of China of 31 May 1924. Article III of the Agreement provided that

Governments of both Contracting Parties agree to annul all conventions, treaties, agreements, protocols, contracts etc. concluded between the Government of China and Tsarist government at the conference mentioned in previous Article and replace them with new treaties, agreements etc. on the basis of equality, reciprocity, and justice...⁸²

At the same time, Art. IV declared “null and void all treaties, agreements, etc. affected sovereign rights or interests of China, concluded between the former Tsarist

⁸⁰ Договор о дружбе и братстве между Россией и Турцией [от 16 марта 1921 г.] [*Treaty of Friendship and Brotherhood Between Russia and Turkey of 16 March 1921*] in Korovin, *Treaties and Acts of a New Time*, at 293, 296.

⁸¹ *Id.* at 295–296.

⁸² Соглашение об общих принципах для урегулирования вопросов между Союзом Советских Социалистических Республик и Китайской Республикой от 31 мая 1924 г. [*Agreement Concerning General Principles for Settling Issues Between the Union of Soviet Socialist Republic and the Republic of China of 31 May 1924*] in Документы внешней политики СССР. Т. 7 [*Documents on the Foreign Policy of the USSR. Vol. 7*] 332 (G.K. Deev et al. (eds.), Moscow: Gospolitizdat, 1963).

government and any third party or parties," whereas Art. XII provided for the USSR Government's renunciation of consular jurisdiction.⁸³

The texts of the treaties concluded by Soviet Russia with independent and fully sovereign states, do not clearly evidence that their drafters draw inspiration from the Soviet approach to the principle of equality. As a rule, these treaties did not explicitly uphold any specific dimensions of the Soviet approach to the principle of equality: state-parties seem to construe such agreements in the context of their own understandings of the principle of equality.⁸⁴

To the greatest extent, Soviet understanding of the principle of equality had influenced the USSR treaties with the other socialist states. The following treaties serve as good examples of how the treaty text was used for clear and express promotion of the idea: they contain phrases, that confirm adherence to the Soviet understanding of the principle of equality.

For instance, the Charter of the Council for Mutual Economic Assistance of 14 December 1959 stipulated (Art. I(2)) that

economic, scientific and technical cooperation of state members of the Council shall be performed in accordance with the principles of complete equality, respect for sovereignty and national interests, mutual benefit and comradely mutual assistance...⁸⁵

⁸³ *Agreement Concerning General Principles*, *supra* note 82, at 332, 335.

⁸⁴ Since the Soviet treaty practice was abundant, we will give just a few examples: Treaty between Russian Socialist Federative Soviet Republic and Germany of 16 April 1922 (Treaty of Rapallo) (see in *Documents on the Foreign Policy of the USSR. Vol. 5*, at 223–224); Convention embodying Basic Rules of the Relations between Japan and the Union of Soviet Socialist Republics of 20 January 1925 (with Protocols A and B) (see in *Documents on the Foreign Policy of the USSR. Vol. 8*, at 70–77). Further, on the Soviet treaty practice see Triska & Slusser 1962. Some provisions of the treaties between Soviet Russia and fully sovereign states on the first reading can be viewed as reflecting some element of the Soviet understanding of equal rights. For instance, according to para. IX of Trade Agreement Between His Britannic Majesty's Government and the Government of the Russian Socialist Federative Soviet Republic of 16 March 1921 the British Government declared that "it will not initiate any steps with a view to attach or to take possession of... any movable or immovable property which may be acquired by the Russian Soviet Government within the United Kingdom" (see the text of the Agreement in *Documents on the Foreign Policy of the USSR. Vol. 3*, at 607–614). On the one hand, this treaty could be interpreted as encompassing the Soviet understanding of equality in the sense that it provided for equality between socialist and bourgeois countries: socialist and bourgeois countries were parties to it. On the other hand, though, nothing in the treaty evidences that this provision implying equality was enshrined notwithstanding economic and social differences between the parties. Thus, it can be viewed (and most likely was viewed by the British Government) as a special case of the principle of equality in its traditional meaning. For this reason, we do not consider that the Soviet understanding of equality has left any mark on such provisions.

⁸⁵ Ведомости Верховного Совета СССР, 1950, № 15, ст. 107 [Bulletin of the USSR Supreme Council, 1960, No. 15, Art. 107] (no longer in force).

Article IV of the Agreement Concerning Multilateral Settlements in Transferable Rubles and Organization of the International Bank for Economic Cooperation of 22 October 1963 provided the following:

The activities of the International Bank for Economic Cooperation shall be conducted in conformity with the principles of full equality of rights of member-countries and respect for their sovereignty. The members of the Bank shall enjoy equal rights in the consideration and determination of questions connected with the Bank's activities.⁸⁶

Article I of the Agreement Concerning the Establishment of the International Investment Bank of 10 July 1970 stipulates that

the activities of the Bank shall be conducted based on full equality and respect for the sovereignty of all the Bank's member-countries.⁸⁷

The influence of the Soviet idea of equality can also be traced in the multilateral treaties of the USSR. The preambles of 1933 London Conventions for the definition of aggression noted that all States have an equal right to independence, security, the defense of their territories, and the free development of their institutions.⁸⁸ On 6 February 1933, M. Litvinov introduced draft declaration to the General Commission of Disarmament Conference. Its preamble stated that

[the declaration] recognizes the equal right of every state to independence, security and self-defense.⁸⁹

⁸⁶ Ведомости Верховного Совета СССР, 1964, № 7, ст. 83 [Bulletin of the USSR Supreme Council, 1964, No. 7, Art. 83]. It was later amended by protocols of 18 December 1970, 23 November 1977, and 18 December 1990; the cited provision became a part of slightly amended Art. III. The treaty name was also changed. The latest consolidated version of the treaty is available at <http://ibec.int/files/Statutes.pdf>.

⁸⁷ Сборник действующих договоров, соглашений и конвенций, заключенных СССР с иностранными государствами. Т. XXVII [Collection of Treaties, Agreements, and Conventions Concluded by the USSR with Foreign States. Vol. XXVII] 201 (Moscow: Mezhdunarodnye otnosheniya, 1974). In the current version of the treaty as of 20 December 1990, Art. I reads as follows: "The activities of the Bank are performed on the basis of equality of its members and respect of sovereignty of the countries" (see agreement with the latest amendment here: https://www.iib.int/files/agreement_on_the_establishment.pdf).

⁸⁸ Конвенция об определении агрессии между Союзом Советских Социалистических Республик и Литовской Республикой от 5 июля 1933 г. [Convention for the Definition of Aggression Between the Union of Soviet Socialist Republics and the Republic of Lithuania of 5 July 1933] in Сборник действующих договоров, соглашений и конвенций, заключенных с иностранными государствами. Вып. VIII [Collection of Treaties, Agreements, and Conventions Concluded with Foreign States. Issue VIII] 12 (V.O. Broun (ed.), Moscow: Litizdat NKID, 1935); Конвенция об определении агрессии от 3 июля 1933 г. [Convention for the Definition of Aggression of 3 July 1933] in *Id.* at 27; Конвенция об определении агрессии от 4 июля 1933 г. [Convention for the Definition of Aggression of 4 July 1933] in *Id.* at 31.

⁸⁹ Проект Декларации, внесенный тов. М.М. Литвиновым в генеральную комиссию конференции по разоружению 6 февраля 1933 г. [Draft Declaration Introduced by Comrade M.M. Litvinov to the General

Hence, the preambles of the London Conventions were phrased based on the soviet draft. Several components of the Lenin's understanding of equal rights of states are embodied in it. First, the idea that states should treat each other as fully independent entities. Second, the equality between socialist and capitalist states, because the preamble does not specify the socio-economic structure of the states-parties. At the same time, its scope is limited to dependence, security, the defense of their territories, and the free development of their institutions and does not provide the principle of equal rights as such.

The UN Charter can serve as another example of direct introduction of the Soviet concept of equality. Article 1(2) lists among UN purposes

to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.⁹⁰

This wording came into being *inter alia* as the result of USSR's suggestion – to add to the draft Charter a provision according to which,

development of friendly relations between states should be based on respect for the principle of equal rights and self-determination of peoples.⁹¹

The very existence of such interpretation allows to assume that when suggesting the amendment, Soviet diplomats articulated – consciously or not – one of the components of the Soviet concept of equality – the equality in relations between states and nations.

To sum up, first, the fourfold Soviet idea of equality has not been introduced into international law in a single package by Soviet Russia. Instead, its elements have been inserted in various treaties with Soviet Russia. The element introduced in the UN Charter was the idea of equal rights of states and nations, whereas other treaties with the socialist states contain traces of, for instance, such elements as the right of a state to disagree when a question affects its interests.

Commission of the Disarmament Conference on 6 February 1933] in Иванов Л.Н. Крах конференции по разоружению [Leo N. Ivanov, *Failure of the Conference on Disarmament*] 245 (Kharkov: Ukrainsky robotnik, 1934).

⁹⁰ Art. 1, para. 2 of the UN Charter.

⁹¹ Крылов С.Б. Материалы к истории Организации Объединенных Наций. Вып. I: Создание текста Устава Организации Объединенных Наций [Sergey B. Krylov, *Materials on the History of the United Nations. Issue I: Drafting the Charter of the United Nations*] 90 (Moscow; St. Petersburg: Academy of Sciences of the USSR, 1949). In the Oxford Commentary to the UN Charter the introduction of principle of equal rights is not discussed in detail. See Rüdiger Wolfrum, *Chapter I Purposes and Principles, Article 1 in The Charter of the United Nations: A Commentary. Vol. I* (B. Simma et al. (eds.), 3rd ed., Oxford: Oxford University Press, 2012).

Second, the fragmented introduction of different elements into international law resulted in them having different impact on it. Whereas the provision of Art. 1(2) of the UN Charter contributed to strengthening the people's right to self-determination and to removing "civilization test" from international law, the formula "complete equality" used in the certain treaties was eventually left in oblivion. This has partly happened because most of the treaties between Soviet states were of a regional rather than universal nature and due to the followed collapse of the USSR and the Soviet bloc failed to advance to the universal level. Additionally, if a treaty provides for equal status, any other qualifications of this principle with adjectives "actual" or "complete" are superfluous; rather its effective application depends on the political will and genuine behavior of states.

As a result, though one can hardly find a rule in international law that would have reflected all elements of the Soviet approach to the principle of equality, it is still partly rooted in international law, having contributed to its progressive development.

6. Re-reading the Principle of Equality: Expectations vs. Reality

Soviet Russia emerged at the time when the political interests of the Great Powers prevailed over the equal rights principle. However, was Soviet Russia consistent in promotion and application of the principle of equality or did it regularly retreat from it for the sake of political interests (as the "capitalist" states it has criticized)? The fact that Soviet Russia has published secret and abrogated unequal treaties, started concluded agreements on more equal terms, indicates that it followed its idea of states' equal rights.

One of the results of putting the idea of "equality of status" into practice was the resolution of co-called "Finland issue." On 18(31) December 1917 in response to the request by the Finnish Government concerning recognition of independence of the Republic of Finland, the Council of the People's Commissars adopted the regulation according to which the Council proposed to recognize the Republic of Finland as independent state to the Central Executive Committee⁹² of the RSFSR.⁹³ The latter did so on 22 December 1917 (on 4 January 1918).⁹⁴ Thus, in Soviet Russia's understanding, it treated Finland in accordance with the principle of equality.

⁹² The long title of the body is "The All-Russian Central Executive Committee of Councils of Workers' and Soldiers' Deputies."

⁹³ Постановление Совета Народных Комиссаров о признании независимости Финляндской Республики от 18(31) декабря 1917 г. [*Regulation of the Council of People's Commissars on Recognition of Independence of the Republic of Finland of 18(31) December 1917*] in *Documents on the Foreign Policy of the USSR. Vol. 1*, at 71.

⁹⁴ The Abstract of the Minutes of the CEC Meeting (in Russian) is available at <http://www.histdoc.net/history/ru/itsen.html>.

At the same time, history demonstrates examples to the contrary. Soon after Soviet Russia granted independence to Finland, the Finnish Civil War broke out between Reds and Whites. In this war, the Whites were supported by Germany, whereas the Reds – by Soviet Russia notwithstanding the fact that it has previously recognized Finland as an independent state.⁹⁵

There are other examples of Soviet Government support of revolutionary movements during that time. As Lenin wrote to general I. Vacietis on 29 November 1918:

While our troops progress to the West and to Ukraine, temporary regional Soviet governments are organized to strengthen Soviets in the field... Therefore, we ask to instruct the military command of respective units to support these temporary Soviet governments of Latvia, Estland, Ukraine and Lithuania, but, of course, only the Soviet governments.⁹⁶

In the course of the Civil war in Estonia (1918–1920) the Red Army supported Estonian communists in their struggle against Estonian temporary bourgeois government being in turn supported by the USA, the United Kingdom and Finland.⁹⁷ During the civil war in Latvia (1918–1920) though the United Kingdom, Germany, France and the USA supported Latvian bourgeois government,⁹⁸ the Soviet Government was established for short periods (November 1917 – February 1918; December 1918 – summer 1919⁹⁹) in Latvia with the help of Soviet Russia.¹⁰⁰

However, the Soviet internal understanding of equality could not be reasonably reconciled with the Soviet practice of aiding revolutionary movements abroad. The *prima facie* answer is negative, since the “export” of revolution subjects the importing state to the political interests of the exporting state and thus establishes unequal

⁹⁵ For details see, for instance, Мейнандер Х. История Финляндии: линии, структуры, переломные моменты [Henrik Meinander, *The History of Finland: Lines, Structures, Turning-Points*] 133–139 (2nd ed., Moscow: Ves mir, 2016); Расила В. История Финляндии [Viljo Rasila, *The History of Finland*] 190–194 (L.V. Suni (trans.), 2nd ed., Petrozavodsk: PetrSU, 2006).

⁹⁶ Телеграмма главкому И.И. Вацетису от 29 ноября 1918 г. [*The Telegram to Commander-in-Chief I.I. Vacietis of 29 November 1918*] in Полное собрание сочинений. Т. 37: июль 1918 – март 1919 [Vladimir I. Lenin, *Collected Works. Vol. 37: July 1918 – March 1919*] 234 (5th ed., Moscow: Politizdat, 1969) (citation omitted).

⁹⁷ Тайгро Ю. Борьба трудящихся Эстонии за советскую власть и за мир в годы гражданской войны (1918–1920) [Ülo Taigro, *Struggle of Estonian Workers for Soviet Power and for Peace During the Civil War (1918–1920)*] 54–57, 63, 69, 87–90, 96–97 (Т. Danilova (trans.), Tallinn: Academy of Sciences of the Estonian SSR, 1959).

⁹⁸ Сиполс В.Я. За кулисами иностранной интервенции в Латвии (1918–1920) [Vilnis Ya. Sipols, *Backstage of Foreign Intervention in Latvia (1918–1920)*] 56–57, 64–69, 100–103, 109–119 (Moscow: Gospolitizdat, 1959).

⁹⁹ *Id.* at 3, 76, 81, 128.

¹⁰⁰ *Id.* at 11–12, 75–76.

treatment. In the view of Marxism-Leninism, the answer is however positive: Soviet Government was convinced that by doing so it facilitated the proletarian struggle against bourgeoisie and imperialism that, as a result, would pave the road for a better and more equal social structure – communism. In this context, Soviet understanding of equality receded into the background.

A further example of Soviet retreat from the principle of equality of status can be found in Art. VI of the Treaty of Friendship between Soviet Russia and Persia of 26 February 1921. According to it,

both High Contracting Parties agree that if a third Party attempts to carry out a policy of usurpation by means of armed intervention in Persia, or if such Power desires to use Persian territory as a base for military operations against Russia if, at the same time, a Foreign Power threatens the frontiers of Russian Soviet Federative Socialist Republic or those of its allied powers, and if the Persian Government is not able to put an end to such threat after having been once called upon to do so by Russian Soviet Government, Russian Soviet Government shall have the right to advance her troops into the Persian territory for the purpose of carrying out the military operations necessary for its self-defense. Russian Soviet Government undertakes to withdraw its troops from Persian territory as soon as the threat has been removed.¹⁰¹

One should recall the context, in which the treaty was signed: that year British troops entered Iran.¹⁰² Therefore, the Soviet Government feared that the United Kingdom could use Persia as a base area against it – and this was the reason for including Art. VI in the Treaty. Interestingly, when the Soviet Government used Art. VI of the Treaty, it was not because of the British threat: in 1941, the Soviet state involved it as a legal basis for advancing Soviet troops into Iran's territory fearing that Germany would occupy Iran.¹⁰³ Iran repudiated Art. VI later in 1979.¹⁰⁴

The Soviet doctrine argued that

¹⁰¹ Договор между Российской Социалистической Федеративной Советской Республикой и Персией [от 26 февраля 1921 г.] [*Treaty of Friendship Between Russian Socialist Federative Soviet Republic and Persia of 26 February 1921*] in Korovin, *Treaties and Acts of a New Time*, at 303.

¹⁰² Beryozkin et al. 1980, at 136.

¹⁰³ Турдубекова Т.Ш. Советско-английские переговоры о проведении совместной акции в Иране (август-сентябрь 1941 г.), 86(1) Известия Уральского федерального университета. Серия 1: Проблемы образования, науки и культуры 122–123, 127 (2011) [Taligul Sh. Turdubekova, *Soviet-British Negotiations for a Joint Action in Iran (August-September 1941)*, 86(1) Bulletin of the Ural Federal University. Series 1: The Problems of Education, Science and Culture 122–123, 127 (2011)].

¹⁰⁴ Jon Jacobson, *When the Soviet Union Entered World Politics 66–67* (Berkeley: University of California Press, 1994) (Oct. 20, 2017), also available at <http://ark.cdlib.org/ark:/13030/ft009nb0bb/>.

Article VI was not a unilateral guarantee of security to Soviet frontiers, it also aimed at ensuring integrity and security of Iran: Soviet Russia undertook to prevent third parties from carrying out the “usurpation policy” on the Persian territory. Further, Soviet Russia also undertook not to use “annexationist policy” “on Persian territory.” In other words, it provided for mutual obligation of Russia and Iran to fight aggressors in the name of security.¹⁰⁵

This wording in a way resembles unequal treaties that Soviet Russia has opposed from the moment of its creation: no matter how one construes Art. VI, one thing remains unchanged: this treaty did not grant the same right to Persia with respect to Russia. It is unlikely, that this provision could at all be justified under the Soviet idea of equality as it imposed “limitations on the Persian sovereignty.”¹⁰⁶

These examples demonstrate that Soviet Russia has on numerous occasions retreated from its own understanding of the equality principle. Yet another well-known dramatic example of an act contradicting this principle is the Additional Secret Protocol to the Treaty of Non-Aggression between Germany and the Union of Soviet Socialist Republics of 23 August 1939, that has delimited German and Soviet spheres of interests in Poland and Baltic states.

All the above evidences that Soviet Russia easily prioritized the fight against bourgeoisie and, in a wider sense, the promotion of the main Marxist-Leninist ideas over the advancing of the principle of equality. It was ready to act contrary to the equality principle if the expected outcomes could contribute to the struggle against the “bourgeois world.”

However, Soviet Russia was not the only state putting its political interest above the principle of equality. In his address to the Senate of 22 January 1917, Woodrow Wilson, the President of the United States, explained that there was “a deeper thing involved than even equality of rights among organized nations”:¹⁰⁷

no peace can last, or ought to last, which does not recognize and accept the principle that *governments derive all their just powers from the consent of the governed*, and that no right anywhere exists to hand peoples about from sovereignty to sovereignty as if they were property.¹⁰⁸

¹⁰⁵ *Supra* note 102. The drafters of the Volume III of the Soviet Foreign Policy Documents viewed this treaty as equal (see *Documents on the Foreign Policy of the USSR. Vol. 3*, at 682, note 64).

¹⁰⁶ Miron Rezun, *The Soviet Union and Iran: Soviet Policy in Iran from the Beginnings of the Pahlavi Dynasty until the Soviet Invasion in 1941* 18 (Alphen aan den Rijn: Sijthoff & Noordhoff International; Geneva: Institut Universitaire de Hautes Etudes Internationales, 1981).

¹⁰⁷ *An Address to the Senate* (22 January 1917), at 536 (Oct. 20, 2017), available at <http://americainclass.org/wp-content/uploads/2012/02/wilson-senateaddressjan1917.pdf>.

¹⁰⁸ *Id.* at 536–537.

In W. Wilson's opinion, equality of status was of secondary importance as compared to such principle as democratic governance. Thus, the intervention for the sake of democratic governance could justify retreat from the principle of equality. The analogy can be drawn between W. Wilson's views and the United States policy at present. Indeed, as L. Ambrosius noticed that

when President George W Bush defined his response to those terrorist attacks [of 11 September 2001], he embraced Wilson's legacy, promising to make the world safe for freedom and democracy.¹⁰⁹

After World War I, the other Great Powers generally seem to share Wilsonian view on the proper balancing the right to "democratic governance" against "the principle of equal rights among organized nations." This is seen from the Joint Note of the Supreme War Council sent to Alexander Kolchak on 26 May 1919, according to which allied and united governments agreed to help "Kolchak's government and its allies" with ammunition, supplies and food for it "to fortify its position as all-Russian government," provided Kolchak as the leader of the Whites and his allies comply with the following conditions. First, when they entered Moscow they should have convened a

constituent assembly elected on the basis of freedom, secrecy and democratic principles, as the supreme legislator of Russia, to whom the Russian government must be accountable.

Second, permit free and proper elections of all the free and legally constituted assemblies, such as dumas, zemstvos, etc. in all territories subject to the government of Kolchak and those who is allied with him. The Note was signed by J. Clemenceau, D. Lloyd George, V. Orlando, W. Wilson and C. Saionji – the representatives of the five Great Powers (France, United Kingdom, Italy, USA and Japan).¹¹⁰ Consequently, these countries acknowledged the priority of democratic governance over equality of rights, as the intervention in the Russian affaires not strictly compatible with the equality of states is conditioned on the democratic governance in Russia.

As a result, despite its somewhat naïve initial desire to make the world better and in idealistic pursuit of the principle of equality, Soviet Russia was ready to use the principle instrumentally and sacrifice it in the name of spreading the Marxist-Leninist ideology. In turn, Western powers were prepared to oscillate towards the narrative of democracy, leaving equality of nations aside. That left the principle of

¹⁰⁹ Lloyd E. Ambrosius, *Woodrow Wilson, Alliances, and the League of Nations*, 5(2) *Journal of the Gilded Age and Progressive Era* 139, 164 (2006).

¹¹⁰ See Klyuchnikov & Sabanin 1926, at 248–250.

equality in the wake of the Russian Revolution as nothing more than an old utopian aspiration detached from actual practices.

Conclusion

Soviet Russia has emerged when the principle of equality in international law had a limited scope of application and as a rule lacked effectiveness. The early Soviet idea of equality – as Soviet Russia was delisted from “civilized” states after the Revolution was a response to unequal treatment accorded by “civilized” to “uncivilized” and by Greater states to the weaker and smaller ones. The concept had four main interconnected dimensions. First, equality in terms of rights or status in the acquisition and exercise of rights (1). Second, elimination of “dual standards”: where a state treats one state as a dependent and the other – as an independent (2). Third, extrapolation of equal rights not only to states but also to nations and peoples (3). Fourth, the scope of Lenin’s equal rights concept was not confined to any group of states, as compared to international law at that time. To the contrary, it implied equality between any states, even in relations between socialist and capitalist states (4).

Soviet Russia translated it approaches to international law, including the Soviet understanding of equality its diplomatic practice and international treaties, putting it into practice by inserting “equality clauses.” As a result, the Soviet state contributed to eliminating, among others, such institutes as secret treaties, capitulations and consular jurisdiction. As a long-term effect, Soviet Russia contributed to the transparency and universalization of international law.

At the same time, in pursuit of Marxism-Leninism ideas – building communism through the class struggle, – the Soviet Government paid secondary importance to the principle of equality. The Soviet state used it as yet another instrument of struggle against bourgeoisie or as an instrument for inducing Western states to accord equal treatment to Soviet Russia. Soviet Russia on numerous occasions retreated from its understanding of the idea of equality, advancing its ultimate goal – communist world with no states or law needed (with its citizens living in a states of actual equality). Thus, it would be a great simplification to say that Soviet Russia’s understanding of equality (and view of international law) has always been completely extraneous to the international law. Indeed, there was an ideological conflict between the Soviets and the Western states that could not be resolved and cannot be denied. However, in certain areas Soviet Russia was in a quite traditional way participating in the development of international law.

Notwithstanding the Soviet effort to re-read equality and add new legal dimensions to its content, it has preserved its double structure as “formal rule and substantive aspiration, as torn between reality and utopia.”¹¹¹ Despite of “many deviations from

¹¹¹ Krisch 2003, at 135.

the ideal principle of equality in human history and bows to power in reality;¹¹² it has always aimed at preserving the independence of states and thus has played important role in regulating the world of states, being another legal obstacle to war.

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¹¹² Krisch 2003, at 135.

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