or minimize the conflicts. Similar developments are needed here, especially with respect to justice for the person or private entity caught between the competing sovereign wills. But before this needed work can be done it will be necessary for us to clear away some underbrush and to point up our thinking on issues such as these:

(a) Precisely what "international law," public or private or both, are we talking about when we argue that the application of the antitrust laws to conduct abroad is forbidden by international law?[18]

(b) If we are talking about international public law, are we talking about the necessity of the United States having an internationally recognized basis of legislative jurisdiction, as under the territoriality principle, the protective principle, the nationality principle, etc.? Or are we urging that all national law is required by international law to be confined to territory or nationality?

(c) Is there possibly a problem of denial of justice or violation of the minimum standard for the treatment of aliens should the United States under its laws compel the alien present before its courts to act or to refrain from acting outside the United States in circumstances where obedience to the American command will subject him to civil or penal liability under the laws of the country of his nationality or of another country having a basis of jurisdiction which international law recognizes?

It is these issues, primarily, which have been avoided in much of the literature and in many of the judicial decisions, such as those cases which have directed attention to presence, *vel non*, of the defendant, to the exclusion of the basis or bases of legislative jurisdiction over him.

The listed issues ought to be faced, not only by courts from case to case, but by international lawyers, legislators and administrators.

COVEY T. OLIVER

PASHUKANIS IS NO TRAITOR

Eugene B. Pashukanis is no longer an "enemy of the people." For the Soviet legal scholar this announcement is as exciting as it would be for the American if the National Archives were to state that new evidence had disclosed that Benedict Arnold was not a traitor. For nearly twenty years the very name Pashukanis had been so besmirched as to blacken also the reputation of any Soviet lawyer who had been closely associated with him or who had expressed ideas identifiable as similar to his.

Pashukanis' case had been something of a mystery since that morning of January 20, 1937, when an article in *Pravda* announced that the man who only two months before had been named to supervise the revision of the whole pattern of Soviet codes of law had been found to be an "enemy of the people."[1] No overt act of treachery was disclosed. He was criticized primarily for having preached a philosophy of law which, had it been followed to its conclusions, would have undermined the foundations of the

[18] *Cf.* Jessup, Transnational Law (1956), reviewed below, p. 444.

[1] For a record of the denunciation and the texts of the principal works of Pashukanis and his denouncers, see V. I. Lenin *et al.*, Soviet Legal Philosophy (20th Century Legal Philosophy Series, 1951).

Soviet state, and it was hinted that his theory had been developed for the purpose of bringing about the end of the Soviet system of government. His principal accuser, Andrei Vyshinsky, later became specific and said that Pashukanis had violated an article of the criminal code which required that a person accused under its provisions be found guilty of criminal intent to overthrow the Soviet regime. No public trial was held, however, so that no outsider could tell what, if any, the actual charges were and what, if any, proof other than Pashukanis' own writings had been introduced against him.

Vyshinsky is now dead, and his master, Joseph Stalin, has also died. Both have since been denounced for their misdeeds, and new policies have been introduced by their surviving colleagues to serve as the basis for what has been heralded as a new attitude toward the rôle of the Soviet state, both in relation to its own citizens and in relation to the foreign states with which it must conduct its international relations. The rehabilitation of Pashukanis, albeit posthumously, seems to be a part of the reappraisal of Soviet policies which has been developing within the Kremlin since Stalin's death in March, 1953.

Only scanty comment has yet appeared to explain the momentous reversal of policy on Pashukanis. In an unsigned leading article in the law review published by the Institute of Law of the Academy of Sciences of the U.S.S.R. in September, 1956,[2] the editorial board takes to task the one-time editor of the review and leading lawyer of the Academy of Sciences, namely, Andrei Vyshinsky, for writing in 1938 that "for an unfortunately long period the direction of our legal science did not correspond to the interest of the building of socialism" and for laying this failure to the consequences of "wrecking" in the field of legal philosophy. The editors of the law review now ask the legal scholars of the U.S.S.R. to restudy the era of the 1920's and early 1930's without the handicap that has existed up to the present of having to avoid any interpretation which would have cast Pashukanis in the position of one who was not a "wrecker." The editors now say that Vyshinsky's criticism was incorrectly linked with the activities of "such notable former representatives of Soviet legal science as P. I. Stuchka, N. V. Krylenko, E. B. Pashukanis, N. I. Chelyapov and others."

Pashukanis is not being given a completely clean bill of health. The editors now say that he committed a large number of serious errors, but that this fact should not be permitted to conceal his "not insignificant positive role in the development of Soviet legal science and Soviet legislation." The charges of harmful anti-Soviet activity which Vyshinsky had leveled are specifically declared to have been unfounded. The door has been opened, so the editors now say, to scholarly criticism of the views of Pashukanis and his colleagues without the hindrance previously created by the labels of "wreckers" hung around their necks.

Only Pashukanis of the group of four men specifically named as im-

[2] "For an authoritative scientific reworking of the root questions of the science of the history of the Soviet state and law" (in Russian), Sovetskoe Gosudarstvo i Pravo, No. 6 (1956), p. 3 at p. 10.

properly associated with charges of treason by Vyshinsky had concerned himself in detail with international law. Krylenko had been known first as an architect of the Soviet system of legal institutions as they were established to meet the needs of the New Economic Policy in 1922, and then he had gained wide recognition as State Prosecutor and finally as Peoples' Commissar of Justice. Stuchka had achieved his reputation as the Peoples' Commissar of Justice in 1918, when the first Soviet courts were beginning to function, and later as theoretician for Soviet lawyers generally. Chelyapov as a professor of law had been one of the principal legal authorities chosen to explain the meaning of the Constitution of the U.S.S.R. adopted in 1936. The rôles played by these three men were in the domestic field, and their acquittal posthumously of the crimes charged against them will probably have little influence upon Soviet writing in international law over the coming year. Pashukanis' position was different, and his posthumous acquittal may result in a series of Soviet legal studies which will attract attention from international lawyers outside the U.S.S.R. as a departure from what has been written since 1938 by Soviet authors about international law.

Pashukanis' major work on international law,[3] which has become a bibliographical rarity because of the destruction of most copies subject to Soviet control after his denunciation in 1937, declared scholastic any attempt to define the "nature of international law."[4] Pashukanis thought that prior discussions of the subject had been the result of the continuing influence of bourgeois legal methodology, which he said rested upon an association of law with substance developing in accordance with its own internal principles. Pashukanis urged his readers to see that international law was a means of formulating and strengthening in custom and treaties various political and economic relationships between states, and that the U.S.S.R. could use international law to further Soviet interests in a struggle with capitalist states. Pashukanis saw no reason to suppose that in utilizing principles of international law for its own purposes the U.S.S.R. was thereby compromising its principles in an effort to live in a world which held states defending the conflicting interests of different classes. Pashukanis would have frowned upon the lengthy discussions among Soviet authors after his death regarding the nature of international law as reflected in the books and articles which tried to determine whether international law was by nature "bourgeois" or "socialist" or something in between. This discussion would have seemed to him "scholastic" and of no real help in conducting Soviet foreign policy.[5]

The road was already being cleared for a new approach to international law by Soviet authors before the editors of the article of September, 1956, told their readers to take a fresh look at Pashukanis' idea. Readers of this JOURNAL are familiar with the series of Soviet articles which Professor

[3] E. Pashukanis, Ocherki po Mezhdunarodnomu Pravu [Essays in International Law] (Moscow, 1935).

[4] *Idem* at 16.

[5] For a more detailed analysis of Pashukanis' position, see Kelsen, The Communist Theory of Law 152–156 (1955).

W. W. Kulski has summarized for American scholars.[6] The series began with Eugene A. Korovin's renewed effort after the war to bring about a reconsideration of the nature of international law and of the problem presented in his view that law must to a Marxist be class law, and that international law must therefore be classifiable either as "bourgeois" or "socialist" or something in between, since it is espoused by bourgeois and socialist states in their relationships. This series of articles had ended with an editorial discarding the attempt to find the true nature of international law and a recommendation that Soviet writers settle down to the more practical work of exploring the function of the various rules of international law so that the U.S.S.R. might apply them to its advantage.

If Pashukanis' view is again to receive favor, there will be less philosophical writing about the nature of international law and more attention to its practical details and their application to the specific problems with which Soviet foreign policy-makers have to deal. Soviet authors may become pragmatists in their attitude toward international law and retreat from the spinning of fine theories. Such a position would facilitate the Soviet campaign for "co-existence" between the "socialist" and other camps, for attention could be centered on single problems and there would be no need to talk about the fundamental problem of the conflict between states of differing economic systems. This policy would be in accord with Nikita Khrushchev's declaration at the 20th Communist Party Congress in 1956 that there need no longer be consideration of the inevitability of war between the capitalist and socialist camps.

No one who has sampled the large body of Soviet literature since Lenin will conclude from the new approach that Soviet policy-makers have cast from their minds their hope and expectation eventually of spreading the Soviet system throughout the world, yet under the new policy there may be less said about the "conflict" than there has been in the years since Pashukanis' death.

JOHN N. HAZARD

THE NEW U. S. ARMY FIELD MANUAL ON THE LAW OF LAND WARFARE

The times of ignoring the laws of war are over: new treaties have been concluded concerning the laws of war, there is a considerable literature, and states are again issuing Instructions to their armed forces on the laws of war and neutrality. The United States has recently published new Instructions on the Law of Naval Warfare [1] and now a Field Manual on the Law of Land Warfare.[2]

The Manual is, generally speaking, restricted to the conduct of warfare on land and to relationships between belligerent and neutral states; but

[6] Kulski, "The Soviet Interpretation of International Law," 49 A.J.I.L. 518 (1955).

[1] U. S. Department of the Navy, Law of Naval Warfare (September, 1955).

[2] U. S. Department of the Army, Army Field Manual: The Law of Land Warfare (July 18, 1956, 236 pp.). It supersedes the Field Manual of Oct. 1, 1940, including C 1, Nov. 15, 1944. The new Manual consists of 552 paragraphs, arranged in nine chapters (further cited as Manual).