

Radio Free Europe/Munich

Non-Target Communist Area Analysis Department

Background Information USSR

22 March 1963

A MORE "DEMOCRATIC" CONSTITUTION?

Appendix:

A Khrushchev Constitution for the Soviet Union:
Projects and Prospects
(Ost Europa Recht, No. 3, 1962,
by George Ginsburgs)

Introduction

The vague hints of impending constitutional reform in Kadar's speech yesterday immediately raise the question of the probable shape of the Khrushchev Constitution which is expected to emerge in the USSR in the next few years.

At present five communist states are busy drafting constitutional laws, the others being North Korea, Bulgaria and Rumania. There is perhaps a decreasing likelihood that the North Korean document will be extensively influenced by the nature of the impending changes in the USSR, but Hungary, Bulgaria and Rumania are all apt to follow Khrushchev's "baton" at least to some extent.

On the basis of the press discussion in the USSR of constitutional reform, it may be expected that change can be anticipated in the Soviet case in the following directions:

- a. Lengthening of the working sessions of the Supreme Court.
- b. An attempt to encourage its legislative commission to show more initiative.
- c. As a corollary of (a) and (b) above, there may be some slight restriction of the present practice whereby the Presidium of the Supreme Soviet issues laws on its own authority.
- d. A statement may be expected legalizing the minor expansion of the rights of Union Republics, trade unions, and other social organizations which has taken place in the past few years.

- e. As a corollary to (d) above, there may be some optimistic references to the declining powers of the state apparatus, though it is clear that the local Soviets themselves are likely to remain in being, probably under the name "Soviets of People's Deputies".
- f. It is virtually certain that there will be explicit recognition, probably in a general Preamble to the Constitution, of the supreme authority of the CPSU.
- g. The completion of the "building of socialism" is likely to be proclaimed, together with the inauguration of the "active building of communism". This move is certain to infuriate the Chinese communists, since it implies the deemphasis of the "dictatorship of the proletariat" and therefore the end of "intensification of the class struggle."
- h. In the same context of the Sino-Soviet dispute, the new constitution is likely to affirm "peaceful coexistence" and the Khrushchev theory that "war is not fatally inevitable."
- i. In the general field of Comecon, there may well be a statement stressing "proletarian internationalism" and hence the importance of mutual aid between the "socialist" countries. Economic planning will probably be referred to as extending beyond the USSR's borders, to the other nations of the "commonwealth".
- j. On the domestic scene, the right to complain against bureaucratic, negligent, arbitrary or criminal officialdom is likely to be stated explicitly.
- k. "Democratic centralism" will probably be stressed de jure, although the centralism will remain far more important than the democratic label.

Nevertheless when seen as a whole, the Khrushchev Constitution is in all likelihood going to represent a considerable advance, as regards its outward "democratic" appearance, over the Stalin document which is still theoretically in use. In the appendix below, Mr. George Ginsburgs, the American expert on Soviet law, discusses all these points, and many others, in exhaustive detail. His analysis is a valuable frame of reference for judging the future trend of the Soviet constitutional debate, and will perhaps be of interest to observers of the E. European scene as well.

r.r.g.

NOT TO BE MICROFICED

A KHRUSHCHEV CONSTITUTION FOR THE SOVIET UNION:

PROJECTS AND PROSPECTS

Ost Europa Recht, No. 3, 1962, by George Ginsburgs

Three new Constitutions went into effect behind the Iron Curtain in 1960, in Czechoslovakia, Mongolia and North Vietnam, and North Korea, Bulgaria and Rumania reportedly are in the process of drafting new Basic Laws. In the Soviet Union itself, the current leadership indicated some time ago the pressing need for extensive revisions in the 1936 Stalin Constitution, if not for a completely new instrument, and learned conferences have already convened to discuss the probable contents of such a document. A new age of Khrushchev constitutionalism, then, is clearly in the making, designed to displace Stalinist doctrines in this sphere too and further to underscore the personal politico-enactments logically serving both as theoretical forerunners of and pragmatic test-cases for the coming era.

Both of Khrushchev's illustrious predecessors at the helm of the Soviet State, (Malenkov being excluded here due to the brevity of his tenure in office), were associated with the elaboration of new constitutional blueprints: Lenin twice, in 1918 and 1924, Stalin in 1936. In addition, of course, Lenin's name is also identified with the Programme of the Russian Communist Party of 1919, while Stalin, despite oft-repeated pledges, never did succeed in producing such a document in his lifetime. Today, it would seem that Khrushchev, with a new Party Programme already to his credit, further aspires to emulate Lenin's double feat and surpass Stalin's single achievement by also authoring a new State Constitution for the Soviet Union, thereby, like Stalin too, setting a pattern in this area for most of the other member nations of the bloc as well.

From both a practical and doctrinal point of view, therefore, Khrushchev's latest venture is pregnant with far-reaching consequences for the future of the Soviet orbit and well deserves the most careful scrutiny.

FIRST THOUGHTS ON CONSTITUTIONAL AMENDMENT

Little was said of the Constitution of the Soviet Union by Stalin's heirs in the first years following their assumption of power in the country. It was only at the 20th Party Congress in February, 1956, following Khrushchev's de-Stalinization revelations, the denunciation of the "cult of the personality" and the anathematizing of Beria and his associates, that the Constitution was invoked and cited as the necessary and proper basis for assuring "socialist legality" in the land.(1) Even then, no mention was made of a possible need to revise the existing constitutional order so as to ensure that the successor regime would not revert to the abuses of the past nor were any concrete reforms in the sphere of public law proposed by the leadership at this time. Instead, the Khrushchev-Bulganin coalition simply confined itself to reasserting in formal terms the continuing validity of the main propositions of the 1936 organic act and to endorsing anew, expressis verbis, the theory that the Constitution embodied higher law, always superior to and binding on ordinary legislative enactments and executive directives of the government and administration.(2)

True, these rather cryptic remarks by authoritative spokesmen for the State and Party on the urgent need for reinstating the dominant position of the constitutional document within the hierarchy of Soviet juridical norms and refurbishing its determinant role in defining the modalities of exercise of public power in the community did serve to encourage the formulation of a few practical plans designed to enhance the status and authority of the Basic Law of the USSR. However, the underlying assumption in all these instances too was, of course, that "no matter what distortions of and departures from the Constitution of the USSR took place in practice, this does not affect its substance. The basic principles of the USSR Constitution have remained unshakable for these last 20 years, they have stood the test of time and are as solid and stable as those socio-economic bases of the Soviet State which are legislatively confirmed in the USSR Constitution".(3)

Given, then this explicit reaffirmation of absolute belief in the viability and, indeed, desirability, of the substantive contents of the 1936 Constitution, regardless of past vicissitudes, all further suggestions on this score simply amounted to limited, practical projects for improving operative formulas, but always within the framework of reference established by precedent. Thus, it was postulated from the very start that the Constitution as such did not require replacement, even though some of its individual provisions might well be in need of partial revision or redefinition so as to facilitate the new regime's purported task of effecting the

democratization of public processes and guaranteeing "socialist legality" in social and political relations. Since many of these earlier proposals of amendments are being echoed by the participants in today's official discussions, they merit detailed examination.

One commonly heard criticism of a then current constitutional phenomenon centered simply on the physical instability of the document's textual contents. It was noted, for instance, that, beginning in 1939, constitutional provisions were re-written at almost every session of the USSR Supreme Soviet and that, "as a result, outwardly the impression was created that the Soviet Constitution is not a firm, stable legislative act". As against this, it was now forcefully argued that an appearance of greater permanence was badly needed to give meaning to the thesis that "even separate, insignificant changes in the Constitution of the USSR must be not the rule, but the exception", whereas in the past the document had constantly been modified, often without any real justification, to conform with even the most transitory adjustments in policy, including experimental improvisations often of but very brief duration.

In this connection, strong doubts were repeatedly voiced as to the advisability of retaining in the federal Constitution the detailed listing of the oblast (krai) territorial subdivisions of the Union republics, a provision conducive, almost inevitably, to periodic revision. It was advocated, instead, that this elaborate enumeration of subordinate administrative units be excluded from Articles 22-29(b) of the organic act, to be replaced with the rule that the Supreme Soviets of the Union republics would henceforth be fully authorized to institute on their own internal changes in their administrative-territorial apportionment, including the right to create new and liquidate existing regions. Effectively, a solution along these lines was adopted shortly thereafter when by the law of 11 February 1957(4), the federal government amended the relevant portions of the Constitution, reserving for itself only the right of final approval of territorial cessions between republics and re-districting within republics when it affected their autonomous republics and autonomous areas.

It was also observed at the time that the reorganization of ministries had always been, and in fact still was, the cause of unduly frequent re-writing of the corresponding clauses of the Basic Law. However, this entirely justified conclusion did not, as yet, lead to the adoption of any remedial measures.

Another de facto development in Soviet public law which also drew adverse comment lay in the obvious discrepancy between the theoretical prerogatives of the Supreme Soviets

according to the letter of the Constitution and their practical performance in political reality. Indeed, under the express terms of the organic act, the federal and republican legislatures were formally endowed with a monopoly of law-making powers within their respective jurisdictions; yet, as at least one Soviet source admitted, throughout its entire existence, (twenty years at the time of writing), the USSR Supreme Soviet had adopted only 120 laws and even then the majority of these were acts mechanically confirming prior decrees of its Presidium. Throughout this period, it was now openly conceded, "the area of questions examined at sessions of the USSR Supreme Soviet and the Supreme Soviets of the union republics constantly shrunk", procedures degenerated largely into formalities and most of the meetings were devoted exclusively to the reading of the budget, allegedly all as a consequence of Stalin's personal idiosyncrasies.

In effect, then, most of the criticism directed at the constitutional precedents enunciated under the previous regime focused first on this central problem of the proper exercise of legislative functions in the Soviet federation and the relative rights and duties of the various bodies sharing in these powers. Accordingly, a number of practical plans were privately drafted in the hope of helping resolve the difficulties and confusion still prevailing in this field.

Thus, it was proposed that the status of the federal and republican Supreme Soviets as the prime law-making organs in the country be enhanced by appreciably prolonging the required duration of their annual working sessions, since the existing policy of their meeting for 10-15 days in the year, or even less, obviously did not allow for a substantive agenda. For the very same reasons, it was advocated that Art. 46 of the Constitution of the USSR and corresponding provisions of the republican documents be supplemented with a clause establishing regular dates for the convening of legislative sessions, an amendment which, inter alia, would also serve to eliminate the admittedly abnormal situation, quite frequent in the past, where the Supreme Soviet ratified the draft annual national budget many months after it had been "provisionally" put into effect by the administration and sometimes barely before the budget year in question actually ran out.

In order further to raise the authority of the USSR, Supreme Soviet and its deputies it was suggested that since one of the ways of convoking extra-ordinary sessions of Supreme Soviets of the Union and autonomous republics, under the terms of their Constitutions, was at the demand of one third of their membership, a similar provision should be inserted in the USSR Basic Law, which, unaccountably, did not provide for such a mechanism. An attempt was also made to encourage the expansion of the principle of "collegial leadership" in the

legislature by arguing that the single chairmen of the Soviet of Nationalities and Soviet of the Union each be replaced by a multi-member presidium more capable, among other things, of discharging the constitutional duties of supervision over the work of the permanent commissions of the two chambers between sessions of the Supreme Soviet than two individual officers. As for the permanent commissions themselves, it was critically noted that though they were in fact vested with the right of legislative initiative, hitherto as a rule they had simply confined themselves to giving, when requested, their conclusion on various legislative projects, while the commission on legislative proposals of the USSR Supreme Soviet, in particular, had during its entire existence submitted on its own only one draft and that concerned a State tax on horses owned by private peasant households. Another view widely shared at the time that the structure of permanent legislative bodies stood in dire need of expansion through the addition of a separate agency charged with economic-cultural matters was at least partially satisfied soon after by the creation on February 11, 1957, of an economic commission attached to the Soviet of Nationalities(5).

More crucial, however, as well as more troublesome, was the basic question itself of the effective constitutional locus of legislative authority in the Soviet public system, since even Russian sources now conceded that "the rule of the USSR Constitution of 1936 that only the USSR Supreme Soviet must make law in the land was not in practice applied in the activity of the higher organs of power". Admittedly, legislative rights in the Soviet Union over the preceding twenty years were in fact also exercised by the Presidium of the USSR Supreme Soviet and, in many instances, by the USSR Council of Ministers. Indeed, on more than one occasion the decrees of the Presidium even affected the substance of the Constitution, in flagrant violation of the express provisions of the latter. While the undesirability of such a situation was presently recognized by all, there was little agreement on how actually to solve the problem.

On the one hand, there were those, apparently in the minority, who defended the thesis that legislative activity by the Presidium of the USSR Supreme Soviet and, a fortiori, by various administrative organs, should be entirely forbidden and the privilege in question be concentrated exclusively in the constitutionally designated legislature, suitable reorganized in order effectively to discharge its official responsibilities. On the other hand, the majority opinion held instead that the Presidium of the USSR Supreme Soviet should legally be vested with formal, and explicit, law-making powers to be exercised in the periods between sessions of the assembly, that, nevertheless, these prerogatives be kept at a minimum through the lengthening of the duration of the sessions of parliament, and that, in any case, their scope and nature be expressly defined in the body of the Constitution to avoid abuses so frequent in the past.(6)

As for the formal aspects of the federal legislature's operations, the established practice was in general recognized as equally unsatisfactory. No written rules existed on the procedure for passing or voting on different types of bills: occasionally, a measure was adopted by both chambers in a joint motion, more often the statutes were approved by each of them separately; an act was sometimes voted on as a whole, or article by article, or chapter by chapter, with no regard for a consistent pattern. The Constitution also failed to specify who had the right of legislative initiative, but, in actuality, beside the two houses of the legislature, the privilege was at various times invoked by the Presidium of the USSR Supreme Soviet, the USSR Council of Ministers, the permanent commissions of the two assemblies, the deputies of the Supreme Soviet and even certain social organizations in the person of their central organs, all quite informally.

At the lower echelons, according to some analysts, the federal and republican Constitutions again failed to ensure proper control by the local Soviets over the activities of their executive organs in the interim between plenary sessions, in spite of the regime's ostensible desire for, and the Constitution's formal endorsement of, the principle of legislative supremacy at all levels of the governmental hierarchy. Here, too, the permanent commissions were directed not by the Soviets themselves, but by their executive committees and sometimes simply by the director of the latter's organizational department. In order to reassert the supposedly much sought after authority of the local elective bodies over their executive bureaus, one suggestion was made that small presidia consisting of rank-and-file deputies be organized in the local Soviets in order to enforce legislative control over their executive and administrative branches between sessions of the plenary assemblies.

In spite of the timeliness and, indeed, the urgent need for the introduction of many of these amendments, almost nothing was done on that score at the time. Only recently has the subject again been revived and then in an entirely different context.

CURRENT PLANS FOR CONSTITUTIONAL REFORM

Just as the 1956 critique of Soviet constitutional law was started by some of the leadership's comments at the 20th Party Congress, so, too, the present debate was sparked by certain remarks by prominent spokesmen for the regime, this time made at the 21st Congress. However, now official thinking appears clearer and more purposeful and, as a result, the ensuing academic discussion is better focused.

Thus, speaking before the Party gathering on January 27, 1959, on the target figures for the development of the national economy of the USSR in 1959-1965, Khrushchev suddenly chose to digress from his main theme to announced to his audience:

Comrades! In contemporary conditions, when our country is entering a new and very important period of its development, the question has become ripe of the need to introduce some changes in and additions to the USSR Constitution. From the time of the adoption of the Constitution more than twenty years have elapsed, filled with events of universal historical significance. Socialism has grown beyond the framework of one country and has become a mighty world system. Important transformations have taken place in the political and economic life of the Soviet Union. The building of a Communist society has become the immediate practical task of the Party and the people. All these profound transformations in the internal life and the international situation should be reflected and legislatively confirmed in the Constitution of the Soviet Union - the Basic Law of our state.(7)

While Khrushchev failed to elaborate further, the same topic was again brought up by Voroshilov in his speech of February 4, in somewhat greater detail. In particular, the latter, in endorsing the need for undertaking revisions of and supplements to the existing organic act, specifically mentioned the changes which had taken place in the meantime in the "social and state organization, in the relationship between the state and the kolkhozes", "in the system of federal organs of administration", the expansion of the "rights of the union republics,... the rights... and role of the trade unions and other social organizations." Moreover, the speaker noted,

the Soviet state is no longer the sole socialist state in the world, but is building Communism in fraternal alliance with numerous countries confidently marching on the path to socialism. This proposition also is not reflected in our Constitution, although such an important fact is recognized in the constitutions of a majority of the countries of people's democracy.(8)

The present re-evaluation, then, has proceeded within this authoritatively defined frame of reference occasionally supplemented with further insights supplied in Khrushchev's subsequent pronouncements on both internal and international

affairs and, particularly, his ideological contributions on the crucial issue of the modalities of transition from socialism to Communism in the Soviet Union. On the whole, in the exchange of opinion which has thus far taken place on this subject, three main areas of interest may be distinguished, according to whether the different projects are concerned with: 1) general principles of Soviet constitutionalism; 2) doctrinal concepts bearing on the social structure of the Soviet society as it ought to be outlined in the basic law; 3) proposed revisions in the formal State structure of the U.S.S.R.

General Principles

As regards the first of these, the most intriguing suggestion offered until now involves the idea of reintroducing into a revised Soviet organic act propositions of a frankly programmatic nature primarily, it would seem, in the form of a regular preamble. At one time, of course, such condensed blueprints of political philosophy and ideological beliefs had been universal in early Communist constitutional practice. Thus, a Declaration of the Rights of the Working and Exploited People from the pen of Lenin himself had constituted the first section of the RSFSR Basic Law of 1918 and the first federal Constitution of the USSR adopted in 1924 opened with a protracted statement on the background of, and the political events leading to, the formation of the Union. Subsequently, however, this approach fell into disfavor and, following the passage of the Stalin Constitution of 1936 in the USSR, it was supplanted by the official doctrine holding that the constitutional documents of socialist nations should confine themselves exclusively to recognizing and regulating what had in fact already been accomplished and omit prophetic pronouncements regarding desired aims, prospective developments and probable plans.

the Mongolian People's Republic(10), and the Czechoslovak Socialist Republic(11), and the suggestions lately being voiced in the Soviet Union itself for the inclusion of a similar exposé of general principles in the proposed new Constitution of the USSR seem to indicate an official reversion to the earlier practice(12). Indeed, in connection with the new Czechoslovak enactment, for instance, it has been authoritatively claimed that:

The experience of socialist construction and its generalization on the basis of Marxist-Leninist theory have made it advisable to record in the constitution not what has already been achieved, -- that is, the triumph of socialism in all spheres of life -- but also the prevailing tendencies in the gradual transition of socialist society to Communism. These programmatic elements of the new constitution are its specific feature(13).

It is very likely, therefore, that the revised, or the completely new, future Constitution of the USSR will in fact give expression to programmatic moments, in the probable form of both a bona fide preamble and individual propositions included in the body of the text itself. Even an interesting doctrinal explanation has already been advanced to justify this abandonment of a more explanation has already been advanced to justify this abandonment of a more than twenty year old precedent. It claims that while the break between the stage of socialism and the previous historical era was "revolutionary", in the sense of an explosive resolution through dialectical synthesis of opposing antagonistic contradictions, the rule of violent progression no longer applied to the revolutionary process of transition from socialism to Communism and thus no objective line of separation could be clearly drawn between the latter two phases such as the one which definitely characterized the earlier situation. Consequently, so the argument runs, "the Constitution of a society which has entered the period of active building of Communism in no way can, and must not, restrict itself only to registering what has already been achieved(14)", since

the very character of the development of socialism into Communism is such that the new, as a rule, is constantly growing out of the old, not repealing, but supplementing the latter, and only with time, when it has become firm and mature, does it make the old unnecessary and obsolete. This intertwining of new Communisting principles with the securely won and established socialistic principles makes it impossible to leave the Constitution solely within the framework of what has already been realized(15).

REF ID: A66000

- 10 -

NOT TO BE MICROFICHED

On the basis of the various theses thus far adumbrated and by consulting the recently promulgated constitutions of some of the "people's democracies" it is already possible to predict, with a considerable degree of accuracy, much of the presumable content of a preamble to a new Soviet Constitution. It is quite certain, for instance, that the potential introduction will dwell on all, or most, of the following points.

There will quite certainly be a clause formalizing the notion that the building of socialism has been finally consummated in the Soviet Union, especially since Khrushchev personally is credited with having enunciated the concept of the possibility of accomplishing that task in one country and, indeed, has announced the completion of that very endeavor in the USSR. Heretofore, Stalin's view had officially prevailed to the effect that socialism could never be entirely achieved in one country as long as external contradictions persisted, namely, the so-called "imperialist camp" remained. A corollary of this conclusion, also recently stated by Khrushchev, is that "the new social system in the camp of socialism has become so strong that there is no longer any force in the world capable of overthrowing it"(16).

A provision will most probably be included in the preamble declaring that the USSR is present engaged in actively building Communism and that Soviet society today is actually in the process of transition from socialism to Communism. This is another contribution by Khrushchev to the theory of Marxism-Leninism and its essence is embodied in the general formula of the eventual "transformation of the socialist State into Communist social self-administration" through the gradual and accelerated devolution of functions presently exercised by organs of the governmental apparatus to voluntary, mass associations of the workers(17). Presumably, the metamorphosis will be accomplished through "change in the content of the activity of existing organizations, their improvement and development, as well as through the emergence of new forms(18)". With regard to the Constitution, this surely means that it will prominently endorse the public importance of social bodies, their increased role and wider participation in the governance of the Soviet society and their ostensible ultimate destiny as the successor to the State machine. A tentative, and typical, suggestion of a wording for the passage of the preamble designed to deal with this particular matter would have it mention, "the further development of Soviet democracy, the activity and initiative of the broad popular masses in the construction of a Communist society, as well as the task of comprehensively developing science for the development of productive forces, for the welfare of Soviet society and all mankind".(19)

Along with the notion of the gradual withering away of the State or rather, as it is now put, its slow dissolution into organized society, Soviet theoreticians have enunciated the

companion principle of the parallel rise in the importance and authority of the Communist Party at this stage of political evolution. Accordingly, it has been proposed that this public acknowledgement of the supreme status of the Party be formally sanctioned by the Constitution, preferably in the preamble, or, as some would have it, by mention in at least three different sections of the document: the preamble, the chapter on the social structure of the USSR and the chapter on the basic rights and duties of citizens, the only in which it presently appears. In 1960, both the Mongolian People's Republic and the Czechoslovak Socialist Republic chose openly to display the dominant role of their Communist Parties within the State structure by appropriate endorsement in the preambles to their latest organic acts(20).

Still in connection with the so-called current progression to Communism, a constitutional recognition of the continuing function of the local Soviets in the period of transition, and possibly even after that, has been advocated. This, too, stems from an obiter by Khrushchev to the effect that the Soviets, while elective organs of State power, at the same time represent agencies of social self-administration, a concept generally interpreted to mean that:

The Soviets are the most widely representative organizations of workers, exclusively executing their will. They are state organizations insofar as they exercise popular power, as well as the broadest mass and all-embracing social organization. ...That is why the transfer of a number of functions of the state apparatus to social organizations also means the strengthening of the role of the Soviets, the exercise by the deputies of Soviets of certain functions formerly executed by employees of the state apparatus.(21)

In principle, then, whatever drastic changes the future may hold in store for the powers of the upper and intermediate echelons of the governmental and administrative bureaucracy, the local Soviets have, in the main, been ideologically exempted from this process of gradual atrophy. On the contrary, official doctrine now prescribes their effective survival with greatly expanded public powers to be directly shared with and mostly exercised through the organized body of local citizenry.

Another point which will very likely appear in the proposed preamble to the Constitution would underscore the federal nature of the Soviet State, the heightened role and authority of the component republics, underline the concept of their sovereign equality and emphasize the current trend toward expanding their rights. Concomitantly, it has been suggested that the revised organic act should specify that

the allied Soviet multinational state poses as its goal the further development of friendship and mutual aid of Soviet nations in the name of a joint struggle for the full victory of Communism, that its task is the systematic education of workers of all nations of the Soviet Union in the spirit of socialist internationalism and Soviet patriotism, the encouragement of the process of reciprocal enrichment and interrelationship of national cultures of the nations of the USSR, the general solidarity of nations.(22)

In short, because of the considerable decentralization effected in the Soviet system since Stalin's death, the extensive delegation of political and economic functions from the federal to the republican regimes and the continued search for a more viable equilibrium between the central and subordinate authorities, Khrushchev's Basic Law will in all probability elect further to stress his personal views favoring a somewhat more localized exercise of certain administrative responsibilities. It has even been suggested, in this connection, that the prospective Constitution formally stipulate that the "union republics, being sovereign states, entrust the USSR with the execution of those functions which have voluntarily been transferred to it, and outside of these limitations exercise state authority independently, and that the USSR safeguards the sovereign rights of the union republics." (23) Although the 1936 Constitution does, in theory, adhere to this concept by recognizing the general residual rights of the federal units as against the express powers reserved for the central government, nevertheless so positive a clause would be much more reminiscent of the 1924 Basic Law than of Stalin's brain-child.

Of the same order are two other recent suggestions addressed to this question, both of which are directly inspired by and advocated with reference to the example of the earlier law. The first of these, drawing on Article 13 of the RSFSR Constitution of 1925 (as amended in 1929), calls for the coupling in the proposed enactment, within the context of a single provision, of the present formula recognizing the theoretical right of Union republics to secession together with a proposition purporting to represent "a crystallization of the in fact existing order of national-State relations" whereby "all nations and races of the Soviet Union have already long ago expressed their sovereign will to live jointly in the framework of a single federative State". The net effect of such a qualification would actually be to negate now the concept of self-determination even in principle as effectively as it has all along been repudiated in practice.(24) The second proposal would have the new document formally acknowledge, on the pattern of the USSR 1924 Constitution, the immunity from revision by the national legislators through the ordinary amendment process of the article guaranteeing the right of a republic to secede from the federation, on the

grounds that "the source of this right does not lie in its enunciation proper by the Union of SSRs", (25) but apparently constitutes a "higher" "natural" attribute pre-dating and allegedly surviving the act of incorporation.

A somewhat similar tendency to stress local national elements and internal ethnic solidarity has also been strongly evident, as of late, in the constitutionalism of the people's democracies. Thus, the 1960 basic law of the Mongolian People's Republic empowers the legislature to institute a permanent commission for nationalities' affairs -- apparently to compensate to some extent for the lack of formal representation of ethnic minorities in the governmental structure. (26) Unlike its predecessor, the new Constitution of Czechoslovakia devoted considerable attention to the problem of national minorities and ethnic rights. And, of course, the new basic law of the Democratic Republic of Vietnam ratified the previously instituted system of separate administration in the autonomous regions. (27)

In addition to the above tentative propositions focused entirely on domestic aspects of the evolution of the Soviet State and society, one can also safely predict the incorporation into any new Basic Law of certain now standard formulas reflecting the changed international situation of the USSR since 1936. Almost inevitably there should be a paragraph sanctifying the notion of proletarian internationalism and mutual aid of the countries of the socialist camp in their struggle for the construction of Communism and for peace in the world,.... with an elaboration and definition of the basic principles of unity and fraternal mutual aid of the countries of socialism. (28) Though absent from the Soviet Constitution, such slogans have long been an established feature of the Constitutions of most of the satellites and are prominently displayed in the latest constitutional enactments of Mongolia (29), Czechoslovakia and North Vietnam.

Finally, a widely shared view seeks the inclusion in the eventual preamble of a provision setting forth the "idea of the defense, the protection of peace in the struggle against imperialistic aggression and war-mongers in the spirit of the ideas of the laws on the protection of peace adopted by the countries of the socialist camp... the principle of peaceful co-existence of countries with different social systems, which lies at the basis of the foreign policy of the USSR", as well as Moscow's current tenet on the non-inevitability of war. (30) All of these maxims have, in one form or another, already found expression in the most recent constitutional documents of member-States of the bloc.

As regards the outward structure of the proposed Constitution of the USSR as a whole, there seems to be a strong consensus in favor of two particular amendments. First, it is urged that "it would be advisable and politically desirable

to place the chapter on the basic rights and duties of citizens at the beginning of the Constitution, after the chapter on the social structure". Allegedly, "this would fully correspond to that decisive role of the popular masses in the building of Communism which had been underlined in the decisions of the XX and XXI congress of the CPSU and, to a great extent, would reflect the incessant concern of the Party and the Soviet State for the welfare of the people". In short, the present position of the section devoted to the rights of the individual in the 1936 law in which it occupies tenth place out of thirteen, is no longer deemed correctly indicative of the respective importance of these principles within the hierarchy of constitutional norms. Czechoslovakia, where this improved sequence already obtained under the 1948 Constitution, retained in the 1960 enactment and North Vietnam, too, has now decided to test this new approach.(31) However, Mongolia has not seen fit to effect such a promotion in its latest organic act where the privileges of the individual continue to be found toward the end of the list of contents.

Second, most Soviet sources argue that "it would be more justified and logical to place the chapter on the electoral system not after the section on the organs of government, but before the articles on the higher representative organs of State power of the USSR and union republics". Presumably, "this proposal is motivated by the fact that the representative organs constituting the basis of the entire Soviet governmental apparatus and creating all other organs of the state, receive their powers from the hands of the people and are elected by the citizens on the basis of a democratic electoral system".(32) On the other hand, none of the new satellite constitutions feature special sections on the electoral system, North Vietnam and Czechoslovakia not having had them in their previous laws either and Mongolia now following suit by omitting the chapter which it did have in the 1940 act from its 1960 successor.

This, then, represents the sum total of views expounded thus far in the Soviet press with regard to the underlying principles and the general structure of the projected Constitution of the USSR and the proposed substance and contents of its preamble. In addition, of course, numerous plans have been advanced regarding desired amendments and innovations in the other portions of the Basic Law as well. Most of these revolve around various projects for re-writing the ideologically crucial section dealing with the social structure of the Soviet Union.

Social-Economic Provisions

In that connection, particular attention has been lavished in Soviet publications, quite understandably, on the question of the economic fundamentals of Soviet society today and in the future. Proceeding from the postulate that "the

consolidation of socialist principles is accompanied by the development of Communist bases"(33), the conclusion has generally been reached that "the consolidation of kolkhoz property goes hand in hand with its evolution toward national property, which prepares for their future fusion into a single Communist national property". Thus, it is suggested that the prospective Basic Law expressly formulate this supposedly already operative process of synthesis of the existing two types of property, State and cooperative by recognizing the effective existence today of a transitional form of property, namely, a higher type of inter-kolkhoz ownership of enterprises and mixed cooperative-State undertakings. As evidence of the former, data is adduced indicating a growing practice of joint ventures by two or more collective farms in various schemes, such as power stations, irrigation systems, etc., then owned and operated by them in common. By the middle of 1959, 11,000 collective farms reportedly shared, inter alia, in 748 inter-kolkhoz electric plants, and 830 construction organizations. In some areas, it was claimed, such construction associations, first formed in 1956, already comprised 92 per cent of the farms in the region.(34) And, proof for the latter phenomenon is seen in the purportedly appreciable expansion of services jointly financed by the State and the farms, especially with respect to additional construction and the electrification of agricultural techniques.

Even within the framework of the present definition of State and collective property, it is felt that the terms of the 1936 Constitution stand in serious need of revision. Soviet sources note, for example, that the existing enumeration of objects of State ownership, i.e., land, factories, enterprises, etc., should be further supplemented with power-stations, State constructions, the output of State works and others. Similarly, as a result of the liquidation of the MTS's, the scope of collective property should, according to the same opinion, now include also the tractors, combines and other large agricultural machinery inherited from the former.

A more controversial proposal, which generated considerable opposition, sought to include in the category of socialist property not only the above, generally accepted, forms of ownership but the property of social organizations, such as trade unions, voluntary mass associations, etc., as well. No agreement in principle has, as yet, been reached by the participants in the current discussions on this particular issue.(35)

On the other hand, full unanimity of opinion seems to prevail on the requirement to insert in any new or revised chapter of the Constitution on the social structure of the USSR, a special clause officially underscoring the leading role of the Communist Party as the moving force behind Soviet society's progress toward ultimate Communism. Motions for constitutional provisions in this section of the Basic Law

endorsing "the principle of proletarian internationalism on the basis of which has evolved and consolidated itself the friendship of Soviet peoples" and the fundamental concept of the alliance of the working class and the collectivized peasantry, have met with no opposition either.(36) Finally, the need for constitutionally redefining the status of local Soviet as organs of both State authority and social self-administration is generally acknowledged and it is most likely that a move to change their name from "Soviets of workers' deputies" to "Soviets of people's deputies", presumably in order to "emphasize even more the historical fact that... the nation is welded into an indestructible moral-political unity, that it creates its representative organs embodying the will of the entire nation"(37), will be successful, since the formula in question has already found its way into the Basic Law of Mongolia.

Other probable features of a Khrushchev Constitution should include a clause to the effect that popular sovereignty in the Soviet Union is exercised not only through the local Soviets and popular referenda, as heretofore stated, but also through frequent mass national discussions of drafts of important legislation, a device to which the present regime has resorted with increasing frequency(38), and articles setting forth a program of increased popular participation in the administrative process. In line with some steps already taken by the Party, the future Basic Law ought to proclaim the goal of an impending repeal of all taxes from the population, a policy which Soviet sources characterize as a major doctrinal contribution on the grounds that it "further underlines the fundamental difference between a socialist state and all states of the exploiting type".(39) There should also be a statement noting that economic planning is no longer confined to domestic production, but now extends to coordination and cooperation with the State plans of the other members of the socialist Commonwealth as well.

Lastly, with the acceptance, in principle, of the validity of programmatic elements in Soviet constitutionalism, Soviet jurists have unanimously pressed for the introduction into a revised organic act of the famous Marxian formula for Communism "from each according to his abilities, to each according to his needs". This, according to them, would not only emphasize the practical significance of the slogan for the immediate future but would, moreover, reflect the fact that to some degree the maxim reportedly is already being realized in the USSR since even today many social services are said to be furnished the population strictly on the basis of demand and independently of individual earnings -- free education, free medical care, pension guarantees, aid to large families, maintenance of clubs, libraries, etc.

Closely related to the provisions on the basic social order of the USSR are the clauses defining the rights and

duties of the citizens, except that proposals for reform in this area have thus far been both few and rather inconsequential. Thus, on various occasions it has been suggested that this chapter, as re-written, should concentrate in one place all the basic rights and duties of the citizen, some of which have hitherto been scattered throughout the Constitution, for example, the right to private property, the right to elect and be elected to public office. Other projects phrase new paragraphs confirming that the Soviet nation already enjoys a seven and six-hour working day and is on the way to the shortest working day in history, showing the right of the individual to individual to health protection, free medical care, the right to comfortable living quarters, free care for children in children's homes and creches, schools and boarding schools, the right to leisure.

One potentially meaningful innovation in this sphere stems from a motion that the Constitution should formally recognize that the "citizens of the USSR have the right to address complaints and demands to State organs against officials who by their action or inaction violate or fail to abide by the requirements of socialist legality". In the past, "only practice has assured the right of complaint against maladministration" in the USSR(40). Even then, the novel proposition still does not match its counterpart in the most recent Mongolian enactment which not only reaffirms the right granted the citizenry as early as 1940 to petition any agency of government or administration for redress against an unlawful act of a public body or official, but now extends this general right of appeal to all "occurrences of bureaucratism and red tape". Equally, if not more, significant is a companion suggestion urging that a clause be inserted in the future Basic Law to the effect that "no one can be recognized as guilty of having committed a crime and subjected to criminal punishment except by verdict of a court, based on the law", (41) a formula intended to extend constitutional endorsement to the regime's current emphasis on "socialist legality" and, in fact, to elevate it from mere policy to basic principle.

As for the future duties of the citizens, the sole novel suggestion here, so far, has been to require citizens "to educate the coming generation in the spirit of Communist morality and consciousness of its civil duties", an ephemeral voeu also to be found in Mongolia's latest enactment.

Compared to the relative abundance of original proposals regarding innovations in the section of the Basic Law devoted to the doctrinal problems of the social fundamentals of the Soviet State and nation, the projects outlined thus far of reforms in the State structure of the USSR have been both fewer and more cautious, as well as more vague and elusive.

Issues of State Structure

With respect to the basic principles underlying the public organization of authority in the Soviet Union and the possibility of their proximate revision, some revolutionary, albeit still quite indefinite, indications of Khrushchev's current way of thinking may be gathered from the Programme of the CPSU(42), which dictated inter alia, that:

The role of the Soviets, which are an all-inclusive organization of the people embodying their unity, will grow as Communist construction progresses. The Soviets, which combine the features of a government body and a social organization, function more and more like social organizations, with the masses participating in their work extensively and directly.

The Party considers it essential to perfect the forms of popular representation and promote the democratic principles of the Soviet electoral system.

In nominating candidates for election to the Soviets, it is necessary to guarantee the widest and fullest discussion of the moral qualities and the activities of the candidates at meetings and in the press to ensure the election of the worthiest and most authoritative of them.

To improve the work of the Soviets and bring fresh forces into them, it is desirable that at least one-third of the total number of deputies to a Soviet should be elected anew each time so that new millions of working people may learn to govern the state.

In addition, this draft blueprint of the Soviet society's purported path to Communism declared that:

The Party considers systematic renewal of the leading bodies necessary to bring a wider range of able persons into them and rule out abuses of authority by individual Government officials. It is advisable to introduce the principle that the leading officials of the union, republican and local bodies should be elected to their offices, as a rule, for not more than three consecutive terms. In those cases when the personal gifts of the official in question are generally believed to make his further activity within a leading body useful and necessary, his re-election may be allowed. His election shall be considered valid, not if he wins by simple majority, but if not less than three-quarters of the votes are cast in his favor.

In line with the above, the document continued,

it is necessary to develop more and more fully regular accountability of Soviets and deputies to their constituents and the right of the electorate to recall ahead of term deputies who have not justified the confidence placed in them, publicity and the free and full discussion of all the important questions of Government and of economic and cultural development at the meetings of Soviets, regular accountability of executive Government bodies to meetings of Soviets -- from top to bottom, checking the work of these bodies and control over their activity, systematic discussions by the Soviets of questions raised by deputies, criticism of shortcomings in the work of government, economic and other organizations.

From these general maxims, the leadership then proceeded to deduce certain practical consequences for the future administration of the country. Thus, it was said, the role of the standing committees of the Soviets would become greater and the standing committees of the Supreme Soviets, hitherto largely dormant, (43) would shortly assume systematic control over the activities of ministries, departments and economic councils, while legislative representatives would periodically be released from their official duties for full-time committee work. Moreover, it was envisaged that "an increasing number of questions which now come under the jurisdiction of the departments and sections of executive bodies must gradually be referred to the standing committees of the local Soviets for decision". Concurrently, the rights of the local Soviets would be expanded and they would be charged with making final decisions on all questions of local significance. According to the Party Programme, "special attention should be paid to the strengthening of the district bodies" and "as kolkhoz-cooperative and public property draw closer together, a single democratic body administering all enterprises, organizations and institutions at district level will gradually take shape".

In line with the current emphasis on the enhanced role of society at large in the governance of the nation during the period of transition to Communism, Khrushchev's doctrinal plans provide that "the participation of social organizations and associations of the people in the legislative activity of the representative bodies of the Soviet state will be extended". Accordingly, it was suggested that the trade unions, the Komsomol and other mass organizations in the person of their all-union and republican organs be formally entitled to take legislative initiative. Finally, the document promised that "the principle of electivity and accountability to representative bodies and to the electorate

will be gradually extended to all the leading officials of government bodies."

Novel and portentous though these policy declarations may be for the future, as yet they grievously lack both solid substance and specific meaning. In short, for the present at least, they remain mere theoretical programmatic formulas the potential value of which suffers markedly, among other things, from the fact that they consistently fail to indicate the concrete methods and techniques for their practical realization. Thus, their immediate effect is very likely to be confined to an ideological commitment to these concepts, in broad and indefinite terms, at the appropriate place in the proposed new Soviet Constitution under the guise, conceivably, of a series of basic precepts toward the achievement of which the Soviet Government is allegedly striving in its official policy. Apart from that, it is doubtful whether these plans will have an actual impact on the constitutional document now under study and, indeed, so far the learned discussions taking place in informed Soviet circles on this topic have concentrated almost exclusively on the more orthodox, and more routine and common, questions of governmental reorganization to meet present conditions.

Largely disregarding, or perhaps just judiciously refusing to commit themselves at this early date to detailed comment on, the leadership's long-range views, Soviet constitutional lawyers have in effect, when discussing desirable general principles of State structure, quite uniformly focused on rather less radical revisions. Textual modifications have, for example, been suggested that would grant formal recognition to some of the new patterns but recently evolved through actual practice and as yet not explicitly ratified de jure: revival of the activities of the local Soviets and expansion of their rights in directing economic and cultural development, growing significance of the sessions of the Supreme Soviets and their Presidia, the practice of regular reports by the Government of the USSR in the sphere of domestic and foreign policy before the USSR Supreme Soviet, etc. In addition, it is generally agreed that a revised Constitution should seek further to emphasize the sovereignty of the union republics and avoid the existing excessive and inexpedient federal regulation of republican matters by allowing these States, for instance, to define on their own the competence of their respective Supreme Soviets, their composition and the staff of their Council of Ministers.(44) Finally, it is very likely that a new organic act would, for the first time in Soviet history, acknowledge de jure the concept of "democratic centralism" as a fundamental principle of political organization in the USSR, just as has recently been done in Mongolia, North Vietnam and Czechoslovakia,(45) thereby at last regularizing an ambiguous situation where this canon of decision-making had officially been enforced in Russia for every forty years, an in the satellities ever since their inception,(46) but always without any regular legal sanction.

Not unexpectedly, then, the various projects for concrete administrative reforms outlined thus far tend as a rule to focus on long familiar problems. Still far in the forefront stands the perennial dilemma of the proper exercise of the legislative function within the Soviet public system, as controversial and troublesome a question as ever. Most of the participants in today's discussions again seem to have come out in favor of giving formal constitutional endorsement to the right of the Presidium of the USSR Supreme Soviet to issue laws, a solution which, according to partisans of this viewpoint, would be both juridically more correct and practically more expedient than the present indeterminate situation, provided the official legislative function of the Presidium still be secondary to that of the Supreme Soviet itself, be explicitly regulated and circumscribed and, ultima ratio, remain subject to either mandatory or discretionary confirmation by the house. Concurrently, it has been emphasized that "the development of Soviet legislation must proceed primarily by means of the legislative activity of the Supreme Soviet" and that "it is indispensable to determine the category of questions exclusively within the jurisdiction of the Supreme Soviet to which cannot extend the legislative competence of its Presidium".(47) In short, Soviet jurists now seem to be resigned to the idea of two official law-making bodies with largely concurrent authority operating both at the center and in each republic.

It is interesting, however, to note the true magnitude of the actual problem and, furthermore, to find that even today Soviet lawyers still refuse to face its chief implications by arbitrarily limiting the scope of their inquiry to the relatively prolificacy of the Supreme Soviet and its Presidium and unjustifiably excluding from their analysis other leading administrative bodies, particularly the USSR Council of Ministers. Yet, the real extent of the discrepancy in the comparative output of rule-making bills may better be gauged not so much, in fact not even primarily, from contrasting the performance of the Supreme Soviet with that of its Presidium, though even here a notable gap manifests itself in that respect between dogma and practice, but rather from juxtaposing their joint legislative record with that of the Cabinet alone.

Indeed, even according to purely Soviet statistics, for the period since the creation of the USSR and until January, 1959, 400,000 federal legislative acts and ministerial decisions were issued. Until 1936, inclusively, the law-making power in the USSR was shared by the All-Union Congress of Soviets, the USSR Central Executive Committee, its Presidium the USSR Council of People's Commissars and the Council of Labor and Defense. During 1923-1936, 23,115 pieces of legislation were passed. From 1937 to December 1, 1958, the USSR Council of Ministers alone adopted over 60,000 resolutions. Beginning in 1941, when directives of the federal Cabinet first appeared, over 300,000 of these bills

have been promulgated. Thus, during 1937-1958, just the Government passed not less than 390,000 resolutions and directives, whereas for the same period can be counted but some 7,000 laws and resolutions of the USSR Supreme Soviet and decrees and resolutions of its Presidium, (48) hardly a normal ratio. True, there has, as of late, been a certain revitalization of the Supreme Soviet as a legislative body. Compared to the sum total of 120 laws (including formal bills confirming earlier Presidium enactments) passed by the assemblies in the two decades 1936-1956, they are currently credited with having promulgated, as of January 1, 1961, an over-all total of 400 acts, of which 200 ratifying previous Presidium edicts) (49), for a modest, but notable, increase in three years of approximately 140 statutes originating from the legislature proper. This gain is effectively countered, however, by a proportionate concurrent rise in the normative activity of the other public bodies as well, the Presidium again and, still in first place, the Council of Ministers.

In spite of their professed anxiety to settle the legislative question, therefore, the Soviet authorities still seem bent on not approaching it realistically, thereby in fact precluding, official contentions to the contrary notwithstanding, any effective solution of the dilemma and tacitly perpetuating the present anomalous situation.

Participants in the current exchange of opinion have also returned to another, earlier theme, namely the constitutional mechanics of legislative initiative. Conceding that in the past that right, formally vested in the two legislative chambers, had actually been exercised for the most part by the Council of Ministers of the USSR, and occasionally also by the USSR Presidium and, more rarely, by groups of deputies, it is now advocated that the privilege in the future also be extended, *expressis verbis*, to the commissions of the USSR Supreme Soviet and of its two chambers, the deputies of the Supreme Soviet, the USSR Supreme Court and Procurator General, the Union republics in the person of their supreme organs of State power, as well as the central organs of national social organizations, particularly the All-Union Central Council of Trade Union. (50) Effectively, such a provisions will very likely appear in a Khrushchev Constitution, since a similarly expanded right was recently conferred on various administrative bodies in the latest enactments of Czechoslovakia and Mongolia, but, significantly, without including social associations in this category.

In order further to underscore the increased authority of the union republics, a motion has been made to

of the autonomous regions and national areas. Finally, because of the already very appreciable dismantlement of the ministerial apparatus and the emergence instead of other administrative channels, it is strongly felt that, due to the increased relative weight and importance of departments in today's public system, an official determination of their role and functions is urgently required.

In closing, it was suggested that the overall stability of the text of the Constitution, allegedly a point of great interest to the regime, could readily be improved if the listing therein of the component units of the federation would be based on the date of their entry into the union instead of, as now, on the magnitude of their population, an admittedly fluctuating index. Considerable progress on this count, it was said, had already been registered through the "drastic reduction over the last few years of the number of ministries in the USSR".(52) The same general phenomenon can also be observed, for instance, in the 1960 Constitution of Mongolia which no longer enumerates the ministries and the administrative departments attached to the Council of Ministers, ostensibly in order to give its text greater durability, omits a recital of the provincial units into which the country is apportioned and, at a lower level, now fails to specify what administrative offices the local Councils are authorized to organize to assist them in their duties, leaving this question entirely to local discretion.

CONCLUSIONS

Two separate, though of course closely related, sets of conclusions may be drawn from the above analysis, one bearing primarily on the specific question of the future of constitutionalism in the Soviet Union, the other addressed to certain broader policy problems faced by the USSR and the Communist bloc today.

With respect to the former, the current authoritative doctrinal pronouncements by the Soviet leadership, the reforms already implemented in Soviet administrative techniques since 1953 and the recent substantial constitutional revisions in some of the satellite nations, text cases obviously, all seem to indicate a growing awareness on Khrushchev's part of an urgent need to democratize, outwardly at least, the governmental system inherited from his predecessor. An immediate consequence of this drastic re-appraisal of precedent has been the appearance in Soviet constitutional theory, and to a lesser extent in practice too, of certain concepts and rules suspiciously reminiscent of some well-known constitutional principles long proscribed in the USSR as "bourgeois subterfuges". This "liberalization" trend has recently been strongly accentuated by Khrushchev's personal pronouncements and even more by the

contents of by Khrushchev's personal pronouncements and even more by the contents of the latest Party Programme which he authored. Shorter tenure in public office quase-responsiveness of the leaders to popular candidacies, periodic renovation of political and administrative personnel, all these pledges by the regime imitate to a degree democratic legal propositions common and widely accepted in the outside world. Even though, for instance, Moscow has not as yet endorsed the Western idea of separation of powers, its current preoccupation with legislative processes within the Soviet public system seems to betray a desire for an eventual genuine differentiation of functions in government which, conceivably, would formally operate in a manner outwardly quite similar to that of a bona fide checks-and-balances model, except, of course, for the continued and oppressive presence in the background of an omnipotent Communist Party.

Thus, for the moment at least, it would appear that the Khrushchev leadership is actively seeking to give the rest of the international community the impression of effectively liberalized political processes in the "socialist Commonwealth" through the domestic adoption, restatement and theoretical endorsement of certain constitutional principles usually associated with modern representative democracy. In part, this would seem to be a way chosen by the regime to demonstrate both internally and within the bloc the improvements achieved in the USSR and the satellites since Stalin's death and forever to drive home the notion of the total irreversibility of the course of progression away from Stalinism now being pursued by the Kremlin. In part, too, this official change of attitude certainly represents a deliberate tactic designed to help convince the outside world of the alleged democratic character of the Soviet system today and thereby to maximize its global appeal in "peaceful competition" with the West.

Seen in this light, there seems nothing fortuitous in the selection of Mongolia and Czechoslovakia to pioneer in the new constitutionalism. Rather, the choice has all the earmarks of a carefully planned move, the implications of which go well beyond the consideration that both these nations seem to be Moscow's most loyal satellites, at least so far. Indeed, Mongolia has recently enjoyed considerable publicity as a historical model for transition to socialism in an under-developed community and, therefore, as a valid example for economically backward nations everywhere.(53) In the process, of course, this also allows Moscow subtly to elevate Mongolia's ideological status above that of Communist China which has repeatedly claimed that role for herself. On the other hand, Czechoslovakia's promotion to the ranks of "socialist" States furnishes the Kremlin with a powerful symbol at the other end of the economic spectrum -- a technically highly advanced "spcialist" polity whose alleged achievements in the last twelve years will entice the industrialized communities of the "bourgeois" world into following its example.

In another sense, however, the tone and terms of the present constitutional debate carry much wider implications. This is particularly true of the phenomenon of the Soviet decision favoring a return to the earlier practice of featuring programmatic elements in any future Basic Law of the USSR, a major break with Stalinist precedent already consummated in the legislation of three satellites and further reenforced by the drafting of a new Party platform in Russia. Actually, this revised approach is a vivid symptom of the drastically changed conditions in world Communism today and the altered status of the USSR and the Kremlin within the Communist international, and, moreover, graphically underlines the strong affinity between Khrushchev's present and Lenin's past position and role in the movement and clearly differentiates it from Stalin's.

Indeed, Khrushchev's recent official assumption by virtue of the Programme and his views on a new Constitution of the role of a "prophetic" leader, so akin to Lenin's in his time and so opposed to Stalin's, was forced on him by precisely the same type of considerations which motivated Lenin and did not enter Stalin's later life, namely, the lack of sufficient brute force vis-a-vis the world Communist hierarchy, such as had been enjoyed by Stalin, or enough recognized authority to enforce at any time a personal point of view by simple Party fiat. Instead, much like Lenin's once, Khrushchev's ascendancy even within the organization now hinges to a great extent on his ability to persuade the leaders of the ruling and non-ruling Communist Parties of his superior political insight, his higher grasp of the intricacies of the Marxist-Leninist ideology, his astuteness in developing it further as a useful weapon in the world power struggle and, ultimately, of the movement's continued dependence on the economic and military might of the Soviet State. Therefore, Khrushchev's, like Lenin's, supremacy as the acknowledged spokesman for the Communist camp rests to a considerable, and certainly an ever increasing, degree on his continued capacity to demonstrate convincing doctrinal orthodoxy coupled with a record of satisfactory domestic and diplomatic success. Clearly, Khrushchev's leadership of international Communism is no longer unchallenged and must constantly be ideologically reasserted, defended and secured, as Lenin was forever forced to do, whereas after 1927 Stalin never really faced this problem and could safely disregard the luxury of theoretical programmes and long-term strategic blueprints for the actual enjoyment of undisputed authority in the Party's domestic and foreign apparatus. In short, their relative positions can, perhaps, best be described today by the Shavian quip that "he who can, does. He who cannot, teaches".

Whether Khrushchev has the requisite attributes to play the role of a Lenin adequately, only time will tell, but in the meantime he has definitely elected to make the attempt and, indeed, has even chosen the use of the same weapons that

Lenin once so effectively wielded, including a new Party platform and a programmatic State Constitution. Of course, intellectually, and intellect is fast becoming the decisive weapon in this contest, Khrushchev is no Lenin, but then neither are his rivals, with the possible, and vital, exception of Mao Tse-tung.

POSTSCRIPT:

In a speech before the USSR Supreme Soviet on April 25, 1962, Khrushchev officially announced at last that, instead of a revised Constitution, the Soviet Union would soon have a completely new Basic Law.(54) The decision to draft another document, rather than introduce piece-meal changes in the existing Organic Act, was presumably motivated by such weighty considerations as the marked historical and ideological obsolescence of the 1936 enactment, its failure to reflect and enunciate correctly current forces at home and abroad, and the absence in it of any recognition of today's projects and prospects for the future. Given all these factors, it would in Khrushchev's words, "be impossible to take care of all of them by making individual corrections in the basic text", since "these corrections would, so to speak, represent but extensions added to an old building."

No fresh information was furnished by Khrushchev as regards the substantive contents of the proposed statute. Indeed, he expressly declared that "at the present time it would be premature to predetermine in detail what the Constitution ought to be like." What few points he did mention concerning the document's possible orientation only echoed suggestions formulated earlier in the course of academic discussions and debates or political speeches and declarations, including his own numerous public addresses, all of which were examined above. The five seconding statements by deputies of the Supreme Soviet which accompanied Khrushchev's brief announcement were equally vague and non-committal.(55)

Following the speeches, the Supreme Soviet passed a Resolution creating a special commission to draft a new Constitution of the USSR and forthwith appointed its entire complement of 97 deputies, under Khrushchev's personal chairmanship.(56)

- 47 -

Footnotes **NOT TO BE MICROFICED**

1. See Ginsburgs, George 'Socialist Legality' in the USSR. Since the XXth Party Congress, "American Journal of International Law", 1957, No. 4, pp. 546-559.
2. Khrushchev, N.S. Report of the Central Committee of the Communist Party of the Soviet Union to the 20th Party Congress, Moscow, 1956, p. 109; Voroshilov, K.Y. Speech at the 20th Congress of the CPSU, Moscow 1956, p. 16; Resolutions of the 20th Congress of the Communist Party of the Soviet Union, Moscow, 1956, p. 21.
3. Mikhailov, M. Nekotorye voprosy sovetskoi konstitutsionnoi praktiki (Mikhailov, M. Some Questions of Soviet Constitutional Practice) "Sovetskoye gosudarstvo i pravo" ("Soviet State and Law") (hereafter abbreviated as: "SGiP") 1956, No. 9, pp. 3-4.
4. Izvestia, February 12, 1957; Istoria sovetskii konstitutsii (v dokumentakh) 1917-1956, obshchaya redaktsia S.S. Studenikina (Studenikin, S.S., (ed.) History of the Soviet Constitution in Documents, 1917-1956), Moscow, 1957, Supplement, pp. 5-6.
5. Sbornik zakonov SSSR i ukazov prezidiuma Verkhovnogo Soveta SSSR (1938g.-Noyabr 1958g.) (Collection of Laws of the USSR and Decrees of the Presidium of the Supreme Soviet of the USSR, 1938-November 1938), Moscow, 1959, p. 107.
6. E.g., Kechekyan, S.F. Sovetskii zakonov po Stalinskoi Konstitutsii (Kechekyan, S.F., "Soviet Law under the Stalin Constitution", "Vestnik Moskovskogo Universiteta" ("Courier of the Moscow University"), 1952, No. 4. "Seria obshchestvennykh nauk" ("Social Science Series"), No. 2, p. 135; Kerimov, D.A., Zakonodatel'naya deyatelnost' Sovetskogo gosudarstva (Kerimov, D.A. Legislative Function of the Soviet State), Moscow, 1955, p. 69; M. Mikhailov, op. cit., pp. 10-11.
7. Vneocherednoi XXI syezd Kommunisticheskoi partii Sovetskogo Soveta (Extraordinary XXI Congress of the Communist Party of the Soviet Union), Stenographic report, Moscow, 1959, Vol. 1, p. 117.
8. Ibid., Vol. 2, p. 305.
9. For text, see "Osteuropa-Recht", 1960, No. 2/3, pp. 222-238; Fall, B., Le Viet-Minh, 1945-1960, Paris, 1960, pp. 341-357. For an analysis of its provisions, see idem, Die neue Verfassung der Demokratischen Republik Vietnam, "Osteuropa-Recht", 1960, No. 2/3, pp. 145-153.
10. Text in "Osteuropa-Recht", 1960, No. 4, pp. 251-263; 40 let Narodnoi Mongolii (40 Years of People's Mongolia), Moscow, 1961, . For an analysis of its provisions, see Ginsburgs, George, Mongolia's "Socialist" Constitution, "Pacific Affairs", 1961, No. 2, pp. 141-156, and Schultz, Lothar, Die neue Verfassung der Mongolischen Volksrepubli, "Osteuropa-Recht", 1962, pp. 45-59.

NOT TO BE MICROFICED

11. Konstitutsia Chekhoslovatskoi Sotsialisticheskoi Respubliki, prinyata Natsionalnym Sobranyem 11 Iyulia 1960g. (Constitution of the Czechoslovak Socialist Republic, Adopted by the National Assembly on July 11, 1960), Moscow, 1961. For a critique see Kalovda, J., Czechoslovakia's Socialist Constitution, "American Slavic and East European Review" 1961, No. 2, pp. 220-236. For the Soviet viewpoint see Farberov, N.P., v: Gosudarstvennoye pravo stan narodnoi demokratii pod red. Kotoka, V.F. (Farberov, N.P. in V.F. Kotok (ed.), Public Law of the Countries of People's Democracy), Moscow, 1961, pp. 519-556.

12. Cf. Kotok, V. Gaidukov, D., Novy etap v razvitii Sovetskogo gosudarstva i Konstitutsii SSP (Kotok, V., Gaidukov, D., New Stage in the Development of the Soviet State and the Constitution of the USSR), "Sovety deputatov trudyashchikhsya" ("Councils of the Workers' Deputies"), 1959, No. 8, pp. 21-26.

13. Havlicek, F., New Constitution of Czechoslovakia - Constitution of Triumphant Socialism, "Problems of Peace and Socialism," 1960, No. 3, p. 26 (*italics in Original*).

14. Romashkin, P.S. Novy etap v razvitii Sovetskogo gosudarstva (Romashkin, P.S. New State in the Development of the Soviet State), "SGiP", 1960, No. 10, p. 36.

15. Romashkin, P.S. Novy etap razvitiia Sovetskogo gosudarstva i voprosy konstitutsionnogo zakonodatelstva (Romashkin, P.S., New Stage in the Development of the Soviet State and Questions of Constitutional Legislation), in Ot sotsialisticheskoi gosudarstvennosti k kommunisticheskomu samoupravleniyu (From Socialist State to Communist Social Self-Administration), Moscow 1961, p. 186.

16. Romashkin, P.S. op. cit. (note 14) p. 34.

17. Thus, on his interview with the leaders of American trade unions on September 21, 1959, Khrushchev declared: "With us - in the Soviet Union, there has already been completed a number of far-reaching measures in this sphere" we are reducing the armed forces, reducing the police, curtailing the personnel in organs of state security. More and more functions of maintaining order and administering the state are being transferred to the hands of social organizations", Pravda, September 25, 1959. Also, Khrushchev, N.S., Za novye pobedy mirovogo kommunisticheskogo dvizhenia (Khrushchev, N.S. For New Victories of the World Communist Movement) "Kommunist," (Communist), 1961, No. 1, p. 14.

18. Romashkin, P.S., op. cit. (Note 14), p. 34. The actual mechanics of the process are purposely left vague. Romashkin, P.S., op. cit. (Note 15), pp. 179-180, claims, for instance, that "...the economic-organizational function will grow, but it will lose its political character and ultimately will become a function of organization of social self-administration. The same may be said also of the cultural-educational function." On the other hand, for example, Chernogolovkin, N.V. Funktsii Sovetskogo gosudarstva v period razvernutoho stroitelstva kommunizma (Chernogolovkin, N.V. Functions of the Soviet State in the Period of Expanded Construction of Communism), Moscow, 1960, pp. 50-52, includes the function of control over the measure of labor and consumption as a component of the economic-organi-

zational function, a thesis which Romashkin rejects on the grounds that the function of control over the measure of labor and consumption is properly a State attribute which will eventually fade away, while the economic-organization task will always remain.

19. Levin, I.D. v: O razvitii Konstitutsii SSSR v svete resheny XXI syezda KPCC (Levin, I.D. in: Concerning the Development of the Constitution of the USSR in the Light of the Decisions of the XXI Congress of the CPSU), "SGiP", 1959, No. 9, pp. 115, (report of a conference in the sector of the public law of the Institute of the Academy of Sciences of the USSR, May 18, 1959).

k 20. E.G., Havlicek, F., op. cit., p. 25. Taborsky, E., Communism in Czechoslovakia, 1948-1960, Princeton, 1961, p. 179.

21. Romashkin, P. S., op. cit., (Note 14), p. 34, basing his conclusions on a statement by Khrushchev in a speech before the voters of the Kalinin electoral district of Moscow, "Izvestia", Feb. 25, 1959.

On the other hand, a recent work, Osnovy teorii gosudarstva i prava, pod red. H.G. Aleksandrova (Aleksandrov, N.G., (ed.) Bases of Theory of State and Law), Moscow, 1960, pp. 10, 186, continues to define local Soviets purely as organs of state power.

22. Romashkin P.S., op.cit., (Note 15), p. 193.

23. Gaidukov, D.A., loc. cit. (Note 19) p. 113. Also Semenov, P.G., Programma KPSS o razvitii Sovetskikh natsionalno-gosudarstvennykh otnosheniy (Semenov, P.G. The Programme of the CPSU concerning the Development of Soviet National-State Relations), "SGiP", 1961, No. 12, pp. 24-25: "It would be opportune to give a new form to the proposition featured in the main part of Art. 15 of the USSR Constitution and corresponding articles in the Constitutions of the Union republics. The competence of the USSR is presented by these articles as a limitation of the sovereignties of the Union republics. In actuality, the Union republics retain their sovereignty even in matters entrusted to the management of the USSR since in the supreme organs of the USSR the Union republics are widely represented."

24. For an excellent discussion of this and related problems, see Aspaturian, V.V., The Union Republics in Soviet Diplomacy, Paris-Geneva, 1960, particularly pp. 124-129.

25. Semenov, P.G., op. cit., p. 19.

26. Thus, Tsedenbal, Yu., Novaya Konstitutsia Mongolskoi Narodnoi Respubliki, (Tsedenbal, Yu., New Constitution of the Mongolian People's Republic), SGiP, 1960, No. 10, p. 10.

27. Kalvoda, J. op. cit., p. 23; Fall, B., North Vietnam's New Draft Constitution, "Pacific Affairs", 1959, No. 2, pp. 184-185.

28. Romashkin, P.S., op. cit. (note 14), p. 36; Kotok, V.F., loc. cit. (note 19), p. 113.

29. In fact, according to Tsedenbal, Yu., op. cit., p. 9, "a most important trait of the new Constitution of the MPR is

its vividly expressed internationalistic character."

30. Romashkin, P.S., op. cit. (note 15), p. 135; idem, op. cit. (note 14), p. 36; Farberov, N.P., loc. cit. (note 19), p. 115.

31. A similar arrangement also obtains in the Constitutions of Albania, East Germany and North Korea.

32. O razvitii konstitutsii SSSR (note 19), p. 115.

33. Romashkin, P.S., op. cit. (note 14), p. 32.

34. Kotok, V.F. loc. cit. (note 19) p. 111, and Kotok, V. Gaidukov, D., op. cit. pp. 22-23. According to Romashkin, P.S. op. cit. (note 15), p. 189, at the beginning of 1959, there were in the USSR more than 1,200 inter-kolkhoz construction organizations, 624 inter-kolkhoz power plants, 425 enterprises for the production of building materials. For an analysis of this new trend, see Durgin, Jr., F.A., The Growth of Inter-Kolkhoz Cooperation, "Soviet Studies", 1960, No. 2, pp. 183-189.

35. Kotok, V.F. loc. cit. (note 19), pp. 112, 116. Contra, Levin, I.D., ibid., p. 115.

36. Kotok, V.F. loc. cit. (note 19), p. 113.

37. Romashkin, P.S., op. cit. (note 14), p. 37; idem, op. cit. (note 15), pp. 187-188.

38. In fact, the use of both referenda techniques and preliminary national draft discussions has recently been suggested specifically in connection with the proposed adoption of a new USSR Constitution. See, Piskotin, M.I., O razvitii Sovetskogo gosudarstva v period perekhoda ot sotsializma k kommunizmu (Piskotin, M.I., Concerning the Development of the Soviet State in the Period of Transition from Socialism to Communism), SGiP, 1961, No. 9, p. 23.

39. Romashkin, P.S., op. cit. (note 15), p. 190. For a similar approach in Mongolia, see Tsedenbal, Yu., op. cit. pp. 6-7.

40. Hazard, John N., The Constitution of the Mongol People's Republic and Soviet Influences, "Pacific Affairs", 1948, No. 2, p. 169. The motion was made by Romashkin, P.S., op. cit., (note 14), p. 39, and Gaidukov, D.A. loc. cit., (note 19), p. 114.

41. Kotok, V. Gaidukov, D., op. cit., p. 26.

42. For the text of the draft constitution, see Programma Kommunisticheskoi Partii Sovetskogo Soyuza, proyekt (Programme of the Communist Party of the Soviet Union, draft), Moscow, 1961; for English version, see "New York Times", August 1, 1961; German version of draft Programme and Programme in Meissner, Boris, Das Parteiprogramm der KPdSU, 1903-1961, Köln, 1961.

For final changes made at the XIInd Party Congress on October 31, 1961, see "Izvestia," November 2, 1961, and for a comparison of both texts and analysis, see Triska, J.F., (ed.), Soviet Communism: Programs and Rules, San Francisco 1962. For an excellent analysis of the contents and implications of the Programme, see Schlesinger, R., The CPSU Programme: Historical and International Aspects, "Soviet Studies," 1962 No. 3, pp. 303-320.

43. There has already been, since 1956, some revival in the work of the Commissions of the Supreme Soviet. See, for instance, Gedvilas, M.S., Novikov, S.G., O deyatel'nosti komissii zakonodatel'nykh predpolozheniy Verkhovnogo Soveta SSSR (Gedvilas, M.S., Novikov, S.G. On the Activity of the Commission on Legislative Proposals of the USSR Supreme Soviet), "SGiP", 1957, No. 9, pp. 12-24, and Osnovy Sovetskogo gosudarstvennogo stroitel'stva i prava, pod red., F.I. Kalinycheva i F.I. Kravtsova (Kalinychev, F.I., Kravtsov, B.P. (eds.), Bases of Soviet State Organization and Law), Moscow, 1961, pp. 183-187.

44. Romashkin, P.S., op. cit. (note 14), p. 40; Luzhin, A.V., loc. cit. (note 19) p. 115; Semenov, P.G., op. cit. p. 25.

45. See Ginsburgs, George, op. cit. (note 10), p. 147; Taborsky, E., op. cit., p. 179; Havlicek, F., op. cit. p. 30.

46. Cf. Borisov, B.L., Mestnye organy gosudarstvennoi vlasti yevropeiskikh stran narodnoi demokratii (Borisov, B.L. Local Organs of State Power of the European Countries of People's Democracy), Moscow, 1955, pp. 54-56.

47. I.N. Kuznetsov, loc. cit. (note 19), p. 115. Also, Gudoshnikov, L.M. ibid, p. 116.

48. Denisov, A.I., v: Vazhny etap razvitiia Sovetskogo prava (Denisov, A.I., in: Important Phase in the Development of Soviet Law), Moscow, 1960, p. 125 (report of a scientific session held in the All-Union Institute of Legal Sciences, January 19-31, 1959).

49. Kalinychev, F.I., Kravtsov, B.P. (eds.), (note 43), p. 204.

50. Gaidukov, D.A., loc. cit. (note 19), p. 114. Tsedenbal, Yu., op. cit., p. 7.

51. Ibid.

52. Levin, I.D., loc. cit. (note 19), p. 115; Gaidukov, D.A., loc. cit. (note 19), p. 114; Tsedenbal, Yu., op. cit. p. 7.

53. See, for example, Tsedenbal, Yu., From Feudalism to Socialism, What We Can Learn from the Non-Capitalist Development of Mongolia, "Problems of Peace and Socialism", 1961, No. 3, pp. 11-18.

For a comparative analysis of the 1960 Constitutions of the satellite nations from a Soviet point of view, see Farberov,

NOT TO BE MICROFICHED

N.P. O novykh sotsialisticheskikh konstitutsiakh (Farberov, N.P., On the New Socialist Constitutions), "SGiP", 1961, No. 4, pp. 47-59.

54. Izvestia, April 26, 1962, p. 1

55. Izvestia, April 26, 1962, p. 7, speeches by D.A. Kunaev, M.A. Lavrentiev, O.I. Ivashchenko, Yu. M. Vecherova, and V.S. Tolstikov. Kunaev, Lavrentiev and Tolstikov were also appointed to the Constitutional Commission.

56. Text in Vedomosti Verkhovnogo Soveta SSSR, 1962, No. 17, Item 182.