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DEFINING AGGRESSION-- UNITED STATES POLICY



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INTRODUCTION

The purpose of this paper is to analyze the position of the United States in opposing the adoption by the United Nations of a definition of aggression.

Several related factors are considered germane to a discussion of the problem as it is stated. First, the position of the United States regarding the criminality of aggressive war is examined in order that the moral position of the United States can be determined. It is not considered within the scope of this treatment to address the question of the legality of aggressive war, but merely to

consider the policy espoused by the United States on the subject.

In an attempt to provide an overview of the multitudinous definitions extant in the world community, a short resume of the early definitions is presented together with representative examples of the two major types of definition. No attempt is made to deal extensively with the vagaries of the many definitions promoted by the individual nations of the world.

The Soviet definition presents the greatest departure from the norms of current practice in the United Nations and appears to be currently favored by a rather large percentage of the United

Nations membership. In order to appreciate the potential effect upon U.S. policies, past and present, the substance of the definition is considered in juxtaposition to both the general nature of U.S. foreign policy actions and to specific examples of past episodes involving the international use of force by the United States.

Finally, an attempt is made to illustrate how the application of the elements of the Soviet definition in cases of suspected aggression may operate against the interests of the United States within the United Nations.

I-AN OLD ISSUE REVISITED

The Soviet Resolution. In December 1967 the 22d United Nations General Assembly considered a resolution, submitted by the Soviet Union, which again placed the question of defining aggression before the United Nations:

Convinced that a primary problem confronting the United Nations in the maintenance of international peace remains the strengthening of the will of States to respect all obligations under the Charter,

Considering that there is a widespread conviction that a definition of aggression would have considerable importance for the maintenance of international peace and for the adoption of effective measures under the Charter for preventing acts of aggression,

Noting that there is still no generally recognized definition of aggression,

1. *Recognizes* that there is a widespread conviction of the need to expedite the definition of aggression;

2. *Establishes* a Special Committee on the Question of Defining Aggression, composed of thirty-five Member States to be appointed by the President of the General Assembly, taking into consideration the principles of equitable geographical representation and the necessity that the principal legal systems of the world should be represented;

4. *Requests* the Secretary-General to provide the Special Committee with the necessary facilities and services;

5. *Decides* to include in the provisional agenda of its twenty-third ses-

sion the item entitled "Report of the Special Committee on the Question of Defining Aggression."¹

A letter from the Minister for Foreign Affairs of the U.S.S.R. had proposed inclusion of the resolution on the agenda. This letter contained a series of statements that smacked of the usual Soviet propaganda, but to many nations of the world community the proposals seemed to reflect an accurate exposition of the problems weighing upon the conscience of the "law-abiding" nation-states. The Soviets proclaimed "... of late, there have been increasing instances of the use of armed force to commit acts of aggression against sovereign States and to crush peoples struggling against colonialism and for freedom and independence." The Russians continued by stating that acts of aggression were undermining peace and security and increasing the danger of the outbreak of a new world conflict. "In conjunction with the vigorous condemnation of aggression and the adoption of measures preventing it, the formulation of a definition of aggression could, particularly in the present international situation, make an important contribution to the cause of peace." The proposed definition would be "a stern reminder to the forces of aggression and war that they bear responsibility for violating international peace."²

In the debate that followed, the Soviet delegate noted with regret that in previous United Nations sessions the adoption of the Soviet draft definition of aggression had been blocked by the United States and added, "Had there been a universally recognized definition of aggression, the American interventionists would find it far more difficult to mask their crimes in Viet Nam..." since Vietnam was in no position to pose a threat to the security of the United States. The Soviet representative pointed out that his country had been a champion of a clear-cut definition of aggression since the Dumbarton Oaks

Conference. Several countries, he continued, had thwarted the good intentions of the Soviet Union in order to further their own selfish interests of intervention in the affairs of other countries and trying to suppress the people's wars of liberation.³

A total of 28 nations entered the subsequent debate on the subject. The Soviet satellites added their usual iteration of the party line, but, in addition, many other delegates to the assembly spoke out in favor of the Soviet resolution. A brief summary of some aspects of the debate illustrating typical arguments is presented below.

Africa. Algeria argued that it was essential to define the general principles of the Charter more closely and added that international tension had been artificially created to block the advance of colonial peoples to independence. This situation had led to major conflicts such as in the Dominican Republic, Vietnam, and the Middle East. Any policy which rewarded the aggressor, according to the Algerian delegate, would spell the suicide of the United Nations. The Algerian argument ended by pointing out that the definition of aggression would complete the listing of principles of international law dealing with and governing friendly relations and cooperation.⁴

The Democratic Republic of the Congo also favored definition, but they felt that any attempt would be inadequate unless it included prohibition of forms of aggression such as propaganda and assistance to armed rebel bands operating against another State, as well as pressure on the State and passive or active assistance to armed rebel bands operating against the political or economic institutions of the State or against its natural resources.⁵ The Soviet definition, discussed in Chapter III, provides criteria referred to by the Congolese delegation.

Liberia, too, favored a definition,

even though past efforts had proved fruitless. The delegate added that since the last attempt was made, in 1957, the membership of the United Nations had increased appreciably and should provide a better environment for defining aggression.⁶

The Middle East. The representative of Iran argued for the definition and enumerated two principles that had prompted the earlier quests for definition: first, to universalize the principles of the Nuremberg trials; and second, to strengthen the basis of judgment employed by the organization for the maintenance and restoration of international peace and security. He continued by noting that although the search for definition had lain dormant for several years, the General Assembly and Security Council had both entered upon paths which were more likely to lead to an acceptable and feasible definition.⁷ The Iraqi delegation adopted a policy of wholehearted endorsement of the Soviet resolution which could provide a key to preventing the erosion and collapse of international order, if it might lead to an acceptable and precise definition of aggression. The Syrian Arab Republic voiced similar sentiments, adding that arguments against the proposal were a reflection of the desire for certain powers to safeguard their selfish interests and to ensure that force would prevail over law.⁸

The representative of Afghanistan said that a definition would help the Security Council in its deliberations.

Asia. India welcomed the initiative of the Soviet Union in bringing the matter before the United Nations, pointing out that collective security was vital to the smaller nations, and everything possible must be done to strengthen the system. The definition of aggression would be, according to the Indian delegate, a worthwhile step in that direction. The Indians felt that the reason the 1957 definition was not adopted was to pro-

vide the many new members of the organization an opportunity to consider the matter and offer their views. The time had now come for resuming work on a definition of aggression.⁹

Cambodia presented an argument similar to that of India, but noted that the lack of a definition enabled the United States to perpetrate crimes all over the world against those who dared to reject its domination.¹⁰ The Philippines favored adoption of an objective definition and urged the Assembly to move ahead with the task. Thailand indicated that a definition would be beneficial but doubted that the time was right for an attempt, and China also spoke out against definition.

Western Hemisphere. The representative of Mexico said his government had always held that a definition of aggression was legally and technically feasible, and the result would be useful and appropriate. The delegation announced that a definite decision on the question could be taken up at the 24th Session.¹¹ Cuba echoed the Soviet contention that a definition was being blocked by states engaged in aggression and who were not interested in anything which might contribute to its condemnation.

The United States Stands Alone. The U.S. representative argued that since his delegation surmised that the Soviet item was pure propaganda, he had opposed the proposal. The delegate then pointed out that our involvement in Vietnam was in the role of a defender against aggression and that the United States had proposed that the matter be debated in the Security Council. In contrast to its stated benevolent concern for world order, the U.S.S.R. had embarked on a program of aggression commencing in 1933 with the incorporation of Estonia, Lithuania, and Latvia into the Soviet Union. This was followed by the subversion of Czechoslovakia in 1948, the aiding and abetting

of the Korean invasion of 1950, and the suppression of a free government of Hungary in 1956. All of these aggressive actions were perpetrated by a nation which had since 1933 favored an international definition of aggression. The United States closed its argument by stating that it would be glad to discuss the Soviet proposal in the proper forum, which was not the General Assembly, but in the Sixth Committee.

Considering the entire debate, a total of 22 nations spoke out in favor of the Soviet proposal to pursue the quest for defining aggression and were generally in favor of the Soviet draft definition. Of those who entered the debate, an additional eight favored definition but preferred a broader abstract definition, and one preferred a more comprehensive version of the Russian proposal. A total of only six nations, the United States, United Kingdom, China, Norway, Canada, and Australia spoke out against definition.

In the General Assembly vote on the Soviet proposal an overwhelming majority of 90 nations voted for the resolution—18 abstained from voting—and a single nation, the United States, voted against adoption of the measure.

The implications of this vote, although dramatic, do not necessarily suggest that the United States is unequivocally opposed to discussions of the definition of aggression, but emphasize the fact that the U.S. policy has generally been oriented against the Soviet policy of pressing for a definition of aggression.

This latest incident in the General Assembly does serve to revivify the continuing clash of Soviet and United States interests in the political and legal aspects of defining aggression and again opens the question of whether the U.S. policy, in the context of the current world situation, is valid in opposing, almost singlehandedly, the proposed Soviet definition of aggression.

II-CRIMINALITY OF AGGRESSIVE WAR-- THE UNITED STATES POLICY

In addressing the question of formally defining aggression in the context of the larger foreign policy of the United States, it is first necessary to examine the question of aggressive war and the U.S. policy on that subject. In general, United Nations actions are recommendatory in nature and not binding on the parties involved. This is particularly true in the case of permanent members of the Security Council, since the only action that could be taken against them, assuming the use of the veto power, would be by the General Assembly under the Uniting for Peace Resolution:

[The United Nations] provides for the organization of collective force to frustrate aggression whenever the great powers are unanimously disposed to support such action; but it does not create an enforcement mechanism capable of being used to control great powers or states backed by great powers.¹

Even though sanctions could not be forced on the United States by the Assembly, the U.S. Government has consistently maintained the position, at least on the surface, that it must be "morally" correct in international dealings. As the principal driving force in the founding and nurturing of the organization, the United States must maintain an appearance of allegiance to the principles and goals of its Charter. Secretary of State Rusk defined our concepts of U.S. policy in the United Nations by stating that our goals, in part, were "Security through Strength: to deter or defeat *aggression* at any level, whether of nuclear attack or limited war or subversion and guerrilla tactics," and "Community under Law: to assist in the gradual emergence of a genuine world community, based on cooperation and law . . ."²

President Johnson enunciated the

official view of the United States when he stated, "We support the United Nations as the best instrument yet devised to promote the peace of the world . . ."³

Since the United States is firmly committed to upholding the purposes of the United Nations, a definition of aggression could have serious implications in the conduct of its foreign policy if, in fact, the United States has established a firm policy on the outlawing of wars of aggression. Although many individual statements of Government officials have alluded to a denunciation of aggressive war, a brief examination of the background and chronology of events germane to the matter will establish a more definite determination of U.S. policy. The criminality of aggressive war is a subject of continuing discussion by the world legal community, and the legal aspects of a definition are not within the scope of this treatment. The subject can be approached, however, from a discussion of the record of the United States in matters involving aggressive war and as evidenced by policy pronouncements.

Prior to the 20th century, the United States maintained a relatively dormant posture on the consideration of the criminality of aggressive war. The lack of early interest was not founded on a lack of experience in warfare. As pointed out by Quincy Wright, "The United States, which has, perhaps somewhat unjustifiably, prided itself on its peacefulness, has had only twenty years during its entire history when its army or navy has not been in active operation during some days, somewhere."⁴

Perhaps the first steps in the manifestation of official U.S. policy on the subject were the Hague Conventions of 1899 and 1907 and the Geneva Conventions of 1929. These conventions made no attempts at delimitation of the legal aspects of war itself. But the nations did agree "before an appeal to arms . . . to

have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly powers."⁵ The humanitarian principles set forth in the treaties were definite first steps toward the eventual prohibition of aggressive war as an element of U.S. policy.

In 1928 the United States made two significant moves toward the denunciation of aggressive war. In February a resolution of 21 American Republics, including the United States, resolved at the Sixth (Havana) Pan-American Conference that "... war of aggression constitutes an international crime against the human species."⁶ More importantly, the Pact of Paris, better known as the Kellogg-Briand Pact, signed on 27 August 1928 by the United States, Great Britain, Germany, France, Japan, Italy, Poland, Belgium, and later by a total of 63 nations, provided a seemingly definitive concrete condemnation to war and called upon all parties to "renounce it as an instrument of national policy in their relations to one another."⁷

Henry L. Stimson, U.S. Secretary of State and an internationally respected lawyer, in 1932 enunciated the American interpretation of the Kellogg-Briand Pact:

War between nations was renounced by the signatories of the Briand-Kellogg Treaty. This means that it has become illegal throughout practically the entire world. It is no longer to be the source and subject of rights. It is no longer to be the principle around which the duties, the conduct, and the rights of nations revolve. It is an illegal thing. Hereafter when two nations engage in armed conflict either one or both of them must be wrong-doers-violators of this general treaty law. We no longer draw a circle about them and treat them with the punctilios of the duelist's code. Instead, we denounce them as law-breakers. By that very act, we have made obsolete many legal precedents and have given the legal profession the task of reexamining many of its codes and treaties.⁸

The legislative branch of the United

States had previously committed itself to the outlawry of war when on 12 December 1927 the Senate adopted a resolution introduced by Senator William E. Borah which contained the dictum, "that is the view of the Senate of the United States that war between nations should be outlawed as an institution or means of settlement of international controversies by making it a public crime under the law of nations."⁹

The interpretation of Secretary Stimson and Senator Borah was by no means universal. The world legal community did not unanimously consider the pact as an international criminal code. Mr. Kellogg implies that the treaty bearing his name gives the nations involved the right to determine their own guilt or innocence in matters involving a violation of the treaty: "Every nation is free at all times and regardless of treaty provisions to defend its territory from attack or invasion, and it alone is competent to decide whether circumstances require recourse to war in self-defense."¹⁰

The general disagreement over the viability of the pact as a source of law centered on the lack of sanctions in the system to deal with violators of the pact. The sanction of world opinion was not considered adequate in giving the pact the characteristics requisite of a substantive element of the law of nations. Lauterpacht held that "This 'epoch-making' document [the Kellogg-Briand Pact] thus could not really be of any legal significance for the future validity of the law of neutrality; there were not even any technical difficulties arising from it in this connection."¹¹

The International Law Association, in recognition of the divergent opinions of international legal scholars and, in particular, the concern of the United States over the lack of definitive enforcement measures intrinsic to the pact, adopted a series of resolutions at its conference in Budapest on 10 Sep-

tember 1934. These resolutions are known as the "Budapest Articles of Interpretation." They read in part:

(2) A signatory State which threatens to resort to armed force for the solution of an international dispute or conflict is guilty of a violation of the Pact.

(4) In the event of a violation of the Pact by a resort to armed force or war by one signatory State against another, the other States may, without thereby committing a breach of the Pact or of any rule of International Law, do all or any of the following things:--

(a) Refuse to admit the exercise by the State violating the pact of belligerent rights, such as visit and search, blockade, etc.

(b) Decline to observe towards the State violating the pact the duties prescribed by International Law, apart from the pact, for a neutral in relation to a belligerent;

(c) Supply the State attacked with financial or material assistance, including munitions of war;

(d) Assist with armed forces the State attacked.¹²

These interpretations tended to solidify the substance of the pact and enforced the U.S. policy proscribing international use of force.

Prior to the advent of World War II, the policy of the United States regarding the criminality of war was well established, and the legal content of the policy was extended to the addressing of the legal ramifications of aid to victims of aggression. Naturally, the United States adopted the philosophy that since wars of aggression were repugnant to the international community, aid to the victims was a logical reaction of the government. The general policy as stated by Robert H. Jackson, then Attorney General of the United States, was:

Present aggressive wars are civil wars against the international community. Accordingly, as responsible members of that community, we can treat victims of aggression in the same way we treat legitimate governments when there is civil strife and a state of

insurgency--that is to say, we are permitted to give to defending governments all the aid we choose.¹³

Mr. Stimson, Secretary of War at that time, testifying before the House Committee on Foreign Affairs with respect to the proposed lend-lease bill, pointed out that the United States was primarily responsible for the increasing recognition of the criminality of aggressive war, but added that "... It has not been recognized... by these Houses of Congress here that were the parents of it, what a vital change was made in the system of international law by that action." The significance of the U.S. leadership against aggressive war was not largely appreciated by Congress or the public.¹⁴

World War II and its widespread destruction gave renewed impetus to the need for a true international world legal system with potent international organization to maintain the force of law over the law of force. The loss of life from all sources during World War II was estimated to be over 60 million.¹⁵ Certainly the advent of nuclear weapons assured a potential population destruction increase of at least an order of magnitude in the "next" general war.

The legal aftermath of the Second World War was initiated by the precedent-setting Nuremberg trials. It should be noted, however, that the punishment of defeated leaders was not "illegal" or without precedent. In 405 B.C. the Lacedaemonian Admiral Lysander, after the destruction of the Athenian Fleet, called his allies together to determine the fate of his prisoners. The council of allies was similar to a court which heard witnesses and examined the evidence before arriving at a judgment and sentence. All prisoners, except one, were sentenced to death.

The precedent of the Nuremberg trials was the attempt to establish a substantive rule of law, making aggressive war a crime for which individuals could be held accountable and pun-

ished. This had the effect of establishing in world opinion the principle that justice and law had triumphed over the law of force. The promise of Winston Churchill, made on 8 September 1942, was destined to be consummated by the Nuremberg trials:

... Those who are *guilty* of Nazi crimes will have to stand up before *tribunals* in every land where the atrocities have been committed, in order that an indelible warning may be given to future ages and that successive generations of men may say, "So perish all who do the like again."¹⁶ [Emphasis supplied]

The Nuremberg tribunal and its charter provided the United States with an impressive step forward in its quest to codify the criminality of war. The United States chose as its chief representative Robert H. Jackson, Associate Justice of the Supreme Court and former Attorney General, who had long been a proponent of increased emphasis on codification of the criminal aspects of war. In an address to the Inter-American Bar Association at Havana on 27 March 1947, Mr. Jackson as Attorney General said:

... No longer can it be argued that the civilized world must behave with rigid impartiality toward both an aggressor in violation of the treaty and the victims of unprovoked attack. We need not now be indifferent as between the worse and the better cause, nor deal with the just and the unjust alike.¹⁷

Mr. Jackson had rather broad official guidelines for his task as U.S. Representative to the International Conference on Military Trials which commenced in June 1945. The guidelines included (1) The Moscow Declaration, which formed the immediate basis for the establishment of the International Military Tribunal, and the charter. This declaration established the general guidelines for the trials and made provisions to try major war criminals, not in national courts, but by "joint decision" of allied governments; and (2) the Yalta Memo-

randum, addressed to the President of the United States, which established U.S. overall policies and guidelines in the conduct of war crimes trials. It included delineation of the crime to be considered by the tribunal and provided a base date of 1933 as the beginning of German criminal actions. The memorandum also included guidelines for selecting and identifying those to be punished and the difficulties that might be encountered in identification. The document ended with a recommended program for trying the criminals. Of particular importance is the emphasis on the aspect of making an authentic record of German crimes.

In the proceedings of the conference the U.S. representative adopted a singular policy: to make the charter of the International Military Tribunal and the proceedings of the trials themselves stand as a massive framework for the development and codification of substantive international criminal law. The Russian delegate, Gen. I.T. Nikitchenko, adopted the philosophy that trials were of a purely ephemeral nature, designed to inflict summary punishment on the beaten Nazis. In the deliberations on the language of the charter, Nikitchenko made the following pronouncement regarding the U.S. proposal for the definition of war criminals: "In my opinion we should not try to draw up this definition for the future . . ." ¹⁸

His general opinion regarding the legal substance of the charter, so important to Justice Jackson, is indicated in this statement of the Russian: "The fact that the Nazi leaders are criminals has already been established. The task of the Tribunal is only to determine the measure of guilt of each particular person and mete out the necessary punishment--the sentences."¹⁹

Professor A.N. Trainin, of the Soviet delegation, also believed that the consideration of the conference should be limited to the task at hand and not be concerned with providing future guid-

ance for international lawyers: "There might come a time when there will be a permanent international tribunal of the United Nations organization, but this tribunal has a definite purpose in view, that is, to try criminals of the European Axis powers . . ."20

The French delegation, headed by Judge Robert Falco, generally adopted a policy of not accepting the principle of law that aggressive war constituted a defined criminal action. Professor Andre Gros, the assistant representative of France, set forth the basis of the French position when he said, "We do not consider as a criminal violation the launching of a war of aggression."²¹ In contrast to the United States, the Frenchmen did not desire to be associated with an attempt to formulate international law. The French representative pointed out that "We are not declaring a new principle of international law. We are just declaring we are going to punish those responsible for criminal acts."²²

The British representative, Sir David Maxwell Fyfe, succinctly stated the position of his government in this statement,

The question comes to this: whether it is right or desirable to accept the position that a war of aggression is a crime. It seems to be agreed that it is. The fundamental difficulty is the lack of sanction. More strictly it may be said that it is accepted as a crime without declared punishment or any declared sanction against it.²³

This position was essentially parallel to that of the United States, and this parallelism was generally observed throughout the whole of the deliberations.

Mr. Justice Jackson, during the forming of the charter, maintained his insistence that the results of their efforts would fulfill the dual role of establishing the guilt and setting the punishment of the Nazi hierarchy and of providing future legalists with a carefully prepared source of law reflecting the policy of

the United States. He further emphasized the orientation of the United States by noting, "Our attitude as a nation, in a number of transactions, was based on the proposition that this [war] was an illegal war from the moment that it was started . . ."24

In his report to President Truman, Justice Jackson summarized his position concerning the development of law using the charter as a vehicle for establishing the criminality of aggressive war:

This Pact constitutes only one in a series of acts which have reversed the viewpoint that all war is legal and have brought international law into harmony with the common sense of mankind, that unjustifiable war is a crime . . . Any legal position asserted on behalf of the United States will have considerable significance in the future evolution of international law.²⁵

The United States, a major participant in the drafting of the United Nations Charter, continued its position as a salient force in the quest for establishing a legal basis for the outlawing of aggressive war. The provisions of the charter very nearly approach, at least theoretically, the complete subjugation of aggressive war to the international community. Signatories to the charter are bound to "settle their international disputes by peaceful means" and to "refrain in their international relations from the threat of use of force . . ."26

The Security Council was entrusted with the power to react, with the use of force if necessary, to "any threat to the peace, breach of peace or acts of aggression."²⁷

In summary, the policy of the United States during the 20th century has been one of continuing to press for recognition of the initiation of wars of aggression as an international crime. Our position was particularly strong during the deliberations for the development of the charter for the International Military Tribunal, even though other partici-

pants in the negotiations--Russia and France--adopted a philosophy that the universal denunciation of aggressive war as an international crime was not in consonance with the "facts of life" extant in the world political community.

III-DEFINITIONS OF AGGRESSION

In Chapter II the policy of the United States regarding the illegality of aggressive war was surveyed, disclosing a continuing effort to preclude the legal use of force in the cause of aggression. The difficulties in characterizing the concept of aggression and in defining exactly *who* is the aggressor in a singular episode have paralleled the development of the concept of outlawing aggressive war.

The paradoxical nature of the problem can be illustrated by considering that in spite of apparent agreement among world leaders on the principle that aggressive war is a crime to be condemned by international law, the buildup of arms throughout the world has continued at an unprecedented pace, and an almost continuous parade of armed conflicts have transited the pages of history in recent decades. The imbroglio has arisen from the fact that the effects of agreement on the principle have been negated by a widespread disagreement as to the meaning of "aggression." No definition of the term has ever been accepted by the policymakers of the international community, and each "side" believes the other will couch its aggressive overtures in terms of repelling the aggressive designs of the "other side."

It is not a case of failing to attempt to arrive at a universal agreement on the exact definition of aggression, but is rather that the continuing process has met with frustration because of the wide divergence of opinion on the avenues of approach to the final product. Generally speaking, the world com-

munity is polarized on the subject, one camp being the "definers," the other the "nondefiners." The "definers" are further divided within their own group, as will be discussed in Chapter IV. In the critical matter of defining aggression, the policy of the United States has been of an ambivalent nature, initially on the side of the "definers" during the pre-United Nations period, then leading the "nondefiners" in the United Nations deliberations. A review of the development of the circumstances leading to the current stalemate among diplomats and jurists must necessarily precede an attempt to establish the desirability of a definition of aggression in the context of the U.S. position as a world "super-power."

Early Views on War and Aggression. War and the use of force have been an integral part of life on this planet since before the appearance of man and have only recently been considered to be violations of legal order. Animal warfare probably began well before the Paleozoic Era as competition between the cytoplasmic cells for the necessities of survival. As the sophistication of life forms rose to the higher levels of true animal life, so did the methods and techniques of warfare. The use of force in the animal world can generally be considered to arise from rivalry for possession of some external object, from intrusion of a stranger in the group, or from frustration of activity.¹ These basic causes of "war" among animals remain in the legacy of man, but the arrival of man and his amazing intellectual capacity have added to the causative factors leading to the use of violence. Primitive man generally fell into four degrees of militancy:

... [1] the most unwarlike peoples who fight only in defense; [2] the moderately warlike who fight for sport, ritual, revenge, personal prestige, or other social purpose; [3] the more warlike who fight for economic purposes (raids on herds, extension of

grazing lands, booty, slaves); and [4] the most warlike of all who, in addition, fight for political purposes (extension of empire, political prestige, maintenance of authority of rulers).²

As man became more civilized, the causes of war remained rather stable, but the techniques improved, and the impact of war became more universal in nature. In addition, war became the subject of intellectual exercises peculiar to the human race, which leads to the consideration of the problem of defining aggressive war and formulating rules for the identification of the aggressor in a particular conflict.

Early Definitions. The question of differentiating the "guilty" and the "innocent" parties in cases involving the use of international force has been considered by jurists of the world for centuries. Belli, in 1563, considered war illegal "unless there is need for defense."³ Grotius, in his definition, considered an aggressive attack one "... launched with criminal objectives, e.g. murder, pillage, robbery, etc."⁴

In 1650, 25 years after Grotius enunciated his definition, Richard Zouche said of war, "... a lawful contention, that is, a contention moved by legitimate authority and for a lawful cause."⁵ He then delineated the causes which he considered lawful, "A lawful cause is an injury which it is allowed both to avenge and to repel, whence a war is said to be either of offense, or of defense; as Camillus in a declaration to the Gauls said, 'All things which heaven allows us to defend, it allows us to reclaim and to avenge.'"⁶

Toward the end of the 18th century, Christian Wolff in his book *Jus Gentum Methodo Scientifica Pertractatum* considered the question of establishing a rule for making a distinction between a "just" and an "unjust" war. He described three basic situations, any one of which could provide the basis for a "just" war. They were "(1) The attainment of one's own or that which ought

to be one's own, (2) the establishing of security, (3) the preventing of threatened danger or the warding off of injury,"⁷ thus providing the perennial "loophole" for a potential aggressor to wage war in the guise of "preventing threatened danger." Bynkershoek, a contemporary of Wolff, wrote that in his view only two causes could be considered grounds for labeling a war nonaggressive, "... defense or the recovery of one's own."⁸

In the same period other writers considered that any attempt to define the "aggressor" or unjust party to a war was meaningless. In particular, Hobbes said "in a war of all against all it is logical that nothing can be called unjust,"⁹ and Hall contended that "... both parties to every war are regarded as being in identical legal positions, and consequently as being possessed of equal rights."¹⁰ The comments of Hall generally reflected the mien of the 19th century when war and aggression were generally considered to be outside the realm of justice and international law.

Modern Definitions. Contrasted to the early writers, who attempted to define the just party in a contention involving force, the 20th century legalists have approached the problem of determining the unjust party--or the "aggressor." Probably the earliest example of a large group of states agreeing upon restrictions to war was the Convention for the Pacific Settlement of International Conflicts at the First Hague Conference of 1899, where the signatories agreed to attempt mediation measures before recourse to arms.¹¹

League of Nations. Only one reference to "aggression" was made in the Covenant of the League of Nations, in article 10, which provided:

The members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence

of all members of the League. In case of any such aggression the council shall advise upon the means by which this obligation shall be fulfilled.¹²

The covenant, although calling upon its members to preserve the integrity of other members against aggression, did not specifically prohibit war if the correct "procedures" were followed. More specifically, war was allowed if certain delays, specified in article 12, had been observed; if the council could not attain unanimous agreement under article 15; or if the war were waged against an adversary who had not accepted the unanimous recommendation of the council.

Even though the League of Nations did not provide a blanket ban on aggressive war, member states were called upon to suppress aggression under the advice of the council. The interpretation of exactly what constituted the aggression of the covenant became the subject of concern in the international community. As professor Sohn has written, "No civilized system of law is satisfied with a general prohibition of 'acts violating the interests of other persons,' but tries to enumerate the prohibited acts [trespass, larceny, murder] and to define in more precise terms the aggravating and attenuating circumstances resulting in higher or lower punishment."¹³

The Pact of Paris (Briand-Kellogg Pact) for the Denunciation of War as an Instrument of Policy decisively outlawed, by implication, aggressive war and provided additional impetus to the moves toward defining aggression.

During the League's later years several attempts were made to formally define aggression, beginning with the Geneva Protocol of 1925 which in its definition of aggression included "a resort to war in violation of the undertakings contained in the Covenant." A different and more rigorous form of a definition was introduced by the Soviet Union at the Disarmament Conference

of 1933. This definition, with very minor variations and additions, survived the succeeding 35 years with neither complete rejection nor adoption by the world community. This Soviet definition of 1933 is almost identical to the one submitted to the General Assembly of the United Nations in 1953 and will not be quoted in detail at this point. It did, however, list five acts that would be considered as branding the first to commit as an aggressor--(1) Declaration of war against another State, (2) Invasion of another State without a declaration of war, (3) Bombardment of another State or attacking its land or sea forces, (4) Landing of forces within the territory of another State without permission or if permission was granted, failing to withdraw on request, and (5) Naval blockade of another State. This early definition failed to include the sixth act, which did appear in postwar Soviet definitions--the support of armed bands organized in its own territory which invade the territory of another State.

Following the listing of aggressive acts, a series of situations were listed which could not be used as an "excuse" for commission of the forbidden actions. This included attempts to protect either capital investments or a nation's own citizens in backward countries.¹⁴

The League of Nations did undertake the question of defining aggression during the preparation of the Treaty of Mutual Assistance by the Permanent Advisory Commission. The report did not directly address the problem of defining aggression but did contain remarks which characterized infiltration and invasion as acts of aggression and provided guidance on "signs which betoken an impending aggression" which were determined to be:

- (1) Organization on paper of industrial mobilization;
- (2) Actual organization of industrial mobilization;
- (3) Collection of stocks of raw materials;

- (4) Organizing of war industries;
- (5) Preparation for military mobilization;
- (6) Actual military mobilization;
- (7) Hostilities.¹⁵

In the prewar period the United States was a signatory to several treaties which alluded to a definition of aggression. Typical of these were the provisions of the Declaration of Principles of Inter-American Solidarity and Cooperation adopted at the Inter-American Conference for the Maintenance of Peace at Buenos Aires on 21 December 1936. In this declaration the following principles were adopted by the American Community of Nations:

- (a) Proscription of territorial conquest and that, in consequence, no acquisition made through violence shall be recognized;
- (b) Intervention by one State in the internal or external affairs of another State is condemned;
- (c) Forceful collection of pecuniary debts is illegal; and
- (d) Any difference or dispute between the American nations, whatever its nature or origin, shall be settled by the methods of conciliation, or unrestricted arbitration, or through operation of international justice.¹⁶

Post War Policy. The U.S. delegation proposed that a definition of aggression be included in the text of the Charter for the International Military Tribunals. This definition closely paralleled the Soviet 1933 version:

An aggressor, for the purposes of this Article, is that state which is the first to commit any of the following actions:

- (1) Declaration of war upon another state;
- (2) Invasion by its armed forces, with or without a declaration of war, of the territory of another state;
- (3) Attack by its land, naval, or air forces, with or without a declaration of war, on the territory, vessels, or aircraft of another state;
- (4) Naval blockade of the coasts or ports of another state;
- (5) Provision of support to armed bands formed in its territory which have invaded the territory of another

state, or refusal, notwithstanding the request of the invaded state, to take in its own territory, all measures in its power to deprive those bands of all assistance or protection.

No political, military, economic or other considerations shall serve as an excuse or justification for such actions; but exercise of the right of legitimate self-defense, that is to say, resistance to an act of aggression, or action to assist a state which has been subjected to aggression, shall not constitute a war of aggression.¹⁷

An intriguing interlude in an international paradox was the insistence of the United States delegation on the inclusion of the Soviet definition and the insistence by the Russian delegation *not* to provide a definition of aggression in the charter of the tribunal, albeit their own!

Definitions in the United Nations. The Charter of the United Nations includes such terms as "threats to the peace," "breach of the peace," and "act of aggression," but does not attempt to further define or amplify these ambiguous and comprehensive terms. This was not an oversight, but the result of a deliberate action by the drafters, in spite of intensive pressure to define aggression. The primary proponent of this move to include a definition in the charter was Bolivia. This delegation submitted a proposal which would have required the Security Council to apply sanctions "immediately by collective action" when it found a state to be an aggressor in accordance with the following terms:

A state shall be designated an aggressor if it has committed any of the following acts to the detriment of another state;

- (a) Invasion of another state's territory by armed forces.
- (b) Declaration of war.
- (c) Attack by land, sea or air forces, with or without declaration of war.
- (d) Support given to armed bands for the purpose of invasion.
- (e) Intervention in another state's internal foreign affairs.

(f) Refusal to submit the matter which has caused a dispute to the peaceful means provided for its settlement.

(g) Refusal to comply with a judicial decision lawfully pronounced by an international court.¹⁸

Similar amendments were submitted by Czechoslovakia and the Philippines.

The Bolivian proposal was supported by Colombia, Guatemala, Honduras, Mexico, Uruguay, Egypt, Iran, New Zealand, and the Philippines. All permanent members of the Council, except China, were opposed to the proposal and were supported by Czechoslovakia, the Netherlands, Norway, South Africa, White Russia, Chile, and Paraguay.¹⁹ The general argument against the proposal was that while a definition of aggression was complex and difficult, "recognition of an act after it had been committed would be simple."²⁰

The final debate on the subject ended when a clear majority of the committee decided that a definition "... went beyond the possibilities of this conference and the purpose of the Charter." The original text was retained, *sans* definition, and the Council was left with "the entire decision as to what constitutes a threat to peace, a breach of peace or an act of aggression."²¹

The question of defining aggression lay dormant in the United Nations for several years, primarily since the "super-powers" both had opposed the inclusion of a definition in the charter. The break in the definitional silence occurred in 1950 following the paralysis of the Security Council and the subsequent "Uniting for Peace" resolution. Since the Assembly had no power to compel measures against a convicted aggressor, but depended upon the consent of the United Nations membership, an easily applied, clear-cut definition of aggression was considered by some of the members to be necessary to assure unanimity in the Assembly decisions. The Soviet Union revitalized the subject

of definition by submitting the substance of its draft definition of 1933 for consideration by the International Law Commission.²²

The Assembly, responsive to the widening demand for a formal approach to the problem of definition, appointed a special committee of 115 members on the "Question of Defining Aggression" and instructed the committee to produce "draft definitions or draft statements of the notion of aggression."²³

The report of this committee established the existence of two basic approaches among those who favored definition—the "general" definition and the "enumerative" definition.

The Soviet draft of the enumerative definition is practically identical to the 1933 version espoused by the United States in 1945 during the IMT Charter negotiations. The Soviet delegate, noting that aggressors perennially utilized the concept of "preventive war" or "self defense" as an excuse, proposed a listing of examples of direct aggression:

The State which first commits one of the following acts:

(a) Declaration of war against another State;

(b) Invasion by its armed forces, even without a declaration of war, of the territory of another State;

(c) Bombardment by its land, sea, or air forces of the territory of another State or the carrying out of a deliberate attack on the ships or aircraft of the latter;

(d) The landing or leading of its land, sea or air forces inside the boundaries of another State without the permission of the government of the latter, or the violation of the conditions of such permission, particularly as regards the length of their stay or the extent of the area in which they may stay;

(e) Naval blockade of the coasts or ports of another State;

(f) Support of armed bands organized in its own territory which invade the territory of another State, or refusal, on being requested by the invaded State, to take in its own territory any action within its power to

deny such bands any aid or protection.²⁴

The Soviets then list a series of episodes which are considered to be forms of indirect aggression which would condemn a state which first:

- (a) Encourages subversive activity against another State (acts of terrorism, diversion, etc.);
- (b) Promotes the outbreak of civil war within another State;
- (c) Promotes an internal upheaval in another State or a reversal of policy in favor of the aggressor.²⁵

Economic aggression included the following acts:

- (a) Takes against another State measures of economic pressure violating its sovereignty and economic independence and threatening the basis of its economic life;
- (b) Takes against another State measures preventing it from exploiting or nationalizing its own natural riches;
- (c) Subjects another State to an economic blockade.²⁶

and ideological aggression:

- (a) Encourages war propaganda;
- (b) Encourages propaganda in favor of using atomic, bacterial, chemical and other weapons of mass destruction;
- (c) Promotes the propagation of fascist-nazi views, of racial and national exclusiveness, and of hatred and contempt for other peoples.²⁷

The U.S.S.R. also proposed acceptance of a series of common "excuses" used by aggressors in past incidences, but which would no longer be considered as justification of aggression. These criteria were divided into two categories. One was the internal position of the State under coercion and these included:

- (a) The backwardness of any nation politically, economically or culturally;
- (b) Alleged shortcomings of its administration;
- (c) Any danger which may threaten the life or property of aliens;
- (d) Any revolutionary or counter-revolutionary movement, civil war, disorders or strikes;

(c) The establishment or maintenance in any State of any political, economic or social system.²⁸

The acts or legislation within a State were also removed from possible consideration as justification for aggression. These acts included:

- (a) The violation of international treaties;
- (b) The violation of rights and interests in the sphere of trade, concessions or any other kind of economic activity acquired by another State or its citizens;
- (c) The rupture of diplomatic or economic relations;
- (d) Measures in connection with an economic or financial boycott;
- (e) Repudiation of debts;
- (f) Prohibition or restriction of immigration or modification of the status of foreigners;
- (g) The violation of privileges granted to the official representatives of another State;
- (h) Refusal to allow the passage of armed forces proceeding to the territory of a third State;
- (i) Measures of a religious or anti-religious nature;
- (j) Frontier incidents.²⁹

In conclusion the Soviet definition provided:

In the event of the mobilization or concentration by another State of considerable armed forces near its frontier, the State which is threatened by such action shall have the right of recourse to diplomatic or other means of securing a peaceful settlement of international disputes. It may also in the meantime adopt requisite measures of a military nature similar to those described above, without, however, crossing the frontier.³⁰

This Soviet definition is the archetype of the so-called "enumerative" definition which catalogs a wide range of aggressive situations. The Soviet format has remained stable since 1933, but the list has been expanded from the original five overt military acts to the current list of 15 which includes the indirect, economic, and ideological categories of aggression.

The second type of definition ap-

proaches the subject on a different tack. The abstract definition attempts to express the meaning of aggression in the broadest possible terms. An excellent example of the abstract definition is that submitted by Mr. Ricardo Alfaro to the International Law Commission:

Aggression is the use of force by one State or group of States, or by any Government or group of Governments, against the territory and people of other States or Governments, in any manner, by any methods, for any reasons and for any purposes, except individual or collective self-defense against armed attack or coercive action by the United Nations.³¹

In this definition the "first to commit" concept is absent, and it does little to provide decisionmakers with specific guidance.

A third variant is a "mixed" definition which includes an abstract interpretation of aggression, followed by an illustrative, but brief, list of specific instances of aggression.

IV--THE SOVIET DEFINITION VS. UNITED STATES POLICY

In debates on defining aggression a large proportion of the "definers" alluded to at least guarded approval of the Soviet draft definition. It is apparent that if a definition is adopted the substance of it will not operate automatically on the facts of a particular case, and, indeed, the "facts" are not usually known in early stages of any United Nations debate. It would nonetheless be useful to address the effect of an objective application of the definition to specific episodes of past U.S. foreign policy machinations. In addition, the broad implications of the definition to the larger policies will be briefly examined.

Broad Implications. The Charter of the United Nations states that the purpose of the organization is "to take effective *collective* measures for the

prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace." [Emphasis supplied.]¹ The charter further provides, under article 51, for collective or individual self-defense against an armed attack until the Security Council takes "measures necessary to maintain international peace and security."² The United States has frequently resorted to measures outside the framework of the United Nations through our "security" agreements. This trend in American policy was mentioned in a speech by Secretary of State Dean Rusk in 1966 when he pointed out that the trend in U.S. policy when the machinery of the United Nations proved inadequate was to reinforce it with other measures.³

In this context most of our involvements are concerned with episodes in which we have a direct interest in the outcome of action against a government in power, either in overthrowing a government unfriendly toward the West or retaining in power one oriented against communism. These operations generally involve "the landing or leading of its land, sea or air forces inside the boundaries of another state . . ." in order to promote "an internal upheaval in another State or a reversal of policy in favor of the aggressor."⁵

In contrast, the Soviet Union, which amassed the greatest territorial gains in the World War II period, has largely refrained from exporting her armed forces to areas of conflict. In areas where conflicts requiring force may occur, her armies are prepositioned and do not require the invasion denounced by her own definition. Instead, the resident Soviet forces can handle any internal difficulties which usually arise between the Soviet puppet government and a nonpuppet faction with dispatch, and the entire affair can be retained in the realm of an internal affair.

Following is a brief investigation of the consequences of applying the sub-

stance of the Soviet definition to a series of foreign policy incidents in which the U.S. involvement precipitated a charge of "aggression" being leveled at this country in the United Nations. In examining these cases the basic facts of the case will be considered objectively against the definition with no attempt to "legalize" the U.S. position by applying the rationale adopted by the United States in defending her actions.

Hungary. "That State shall be declared to have committed an act of indirect aggression which: (a) encourages subversive activity against another State; (b) promotes the outbreak of civil war within another State. The following may not be used as justification [for the acts listed]: alleged shortcomings of its administration; any revolutionary or counterrevolutionary movement."⁶ Although the Soviet Union could probably be found guilty under her own definition, clause (d) "landing or leading of forces inside the boundaries of another State without the permission of the government of the latter," the question of whether the Nagy regime was in actual fact the head of government in Hungary is beyond the scope of this treatment. In any event the Soviets claimed that their entry was in reaction to "indirect" aggression being committed in Hungary by the United States.

The campaign conducted by Radio Free Europe and the Voice of America had a decided effect on the revolution. For instance, Tibor Meray, a participant in the events, described the effect of the broadcasts as follows: On 24 October, Premier Nagy called for "order, calm, discipline" and immediately thereafter "... a vehement radio campaign was launched from abroad against Nagy—a campaign that had a fatal effect on all that followed." On 31 October, Radio Free Europe made the following pronouncement: "The Ministry of Defense and the Ministry of the Interior are still

in Communist hands. Do not let this continue, Freedom Fighters, do not hang your weapons on the wall."⁷ When considered in the context of the substance of the Soviet definition, the encouragement from the Voice of America and Radio Free Europe had considerable impact on the initiation and continuation of the revolt. The Radio Free Europe broadcasts verifying America's willingness to help, coupled with the U.S. inclination toward the liberation of Europe, undoubtedly raised false hopes and had at least a secondary effect on the events. Applying the Soviet definition in its most literal sense, the United States could be found guilty of "indirect" aggression.

China. The attacker is that state which "first commits the following act: Bombardment by its land, sea or air forces of the territory of another state . . ."⁸

The U.S.S.R. charged that the United States had committed aggression and violation of Chinese airspace by bombing Chinese territory. A total of 87 flights had been made over Red Chinese territory. The United States claimed that 61 of the flights were reconnaissance missions, and no bombs were dropped, and on other occasions bombs were dropped on Yalu River bridges that were not in Chinese territory. Two accidental attacks on the Chinese mainland were acknowledged by the United States. In the light of the Soviet definition, the United States would have been found guilty of aggression.

Formosa. "... that State shall be declared the attacker [aggressor] which first commits one of the following acts: ... naval blockade of the coasts or ports of another State. The following may not be used as justification: Any ... civil war; or the establishment or maintenance in any State of any political, economic or social system."⁹

In 1950 the U.S.S.R. alleged that the United States was committing aggres-

sion in the blockade of ports belonging to Red China,¹⁰ and in 1954 charged us with committing acts of aggression by attacking Red Chinese vessels on the high seas.¹¹ Early U.S. policy enunciated by President Truman declared

The United States has no predatory designs on Formosa or any other Chinese territory . . . nor does it have any intention of utilizing its armed forces to interfere in the present situation. The United States government will not pursue a course which will lead to involvement in the *civil* [emphasis supplied] conflict in China.¹²

Our subsequent action in ordering the 7th Fleet to act in restricting Chinese naval operations and effectively "blockading" Chinese ports, in what we had previously acknowledged as a civil conflict, would have placed us in the position of a convicted "aggressor" when viewed in a strict interpretation of the Soviet definition. The United States contended that the blockade was not, *per se*, a blockade, since commercial ship traffic was not interfered with.¹³

Cuba: Quarantine. An aggressor is the State which first commits the following act: "Naval blockade of the coasts or ports of another State."

On 14 October a U.S. reconnaissance flight over Cuba detected the presence of medium-range ballistic missiles in Cuba.¹⁴ The President, in a radio address, accused the Soviet Union of deceiving the United States and announced plans to establish a naval quarantine of Cuba in order to prohibit the influx of additional offensive weapons.¹⁵ Prior to the speech a fleet of 98 ships, including eight aircraft carriers, was prepositioned for immediate implementation of the President's announced course of action.¹⁶ The first encounter with the incoming Soviet ships occurred on the second day of the quarantine. The ship entering the quarantine zone was a tanker, obviously not carrying weapons. All other Soviet ships reversed course or halted short of

the quarantine zone. The result of the naval action and political pressure was the promise of the Soviet Government to withdraw missiles from Cuba.¹⁷

Under the Soviet definition of aggression, the preemptive first-strike type of warfare is specifically prohibited, and our action, under this definition, would have easily qualified as an act of aggression.

Cuba: Bay of Pigs. The State which first commits the following is guilty of aggression: "Support of armed bands organized in its own territory which invade the territory of another State." The following may not be used as excuses for aggressive acts against another State: "Alleged shortcomings of its administration or any revolutionary movement."¹⁸

In 1960 the U.S. Government embarked on a plan to invade Cuba and overthrow the Communist government of Fidel Castro. A group of Cubans had been recruited by the CIA in Miami and trained by CIA and U.S. military personnel in Guatemala.¹⁹ The United States was charged by Cuba in the United Nations with bombing Cuba, organizing, financing, and arming bands of Cubans in order to commit aggression. An anti-United States resolution was introduced by Rumania and was adopted by the First Committee with a vote of 42 for, 31 against, and 25 abstentions. This resolution was rejected by the General Assembly by a very narrow margin—41 for, 35 against, and 20 abstentions.²⁰

On the morning of 17 April 1961, 1,400 men of the American-trained Cuban brigade landed at the Bay of Pigs in Cuba. Although the brigade consisted primarily of American-trained Cubans, the first man ashore in the landing was an American.

In this case our action was specifically listed as an element which could brand a nation the aggressor, and again the United States would have been

potentially guilty under the Soviet definition.

Iran. The State will be guilty of indirect aggression which first: "Promotes the outbreak of civil war within a state" or "Promotes a reversal of policy in favor of the aggressor." A State will be guilty of economic aggression who "Takes against another State measures of economic pressure violating its sovereignty and economic independence and threatening the bases of its economic life" or "takes against another State measures preventing it from exploiting or nationalizing its own natural riches."²¹

Iran, a destitute country struggling for survival, had a singular source of large-scale income: oil. Largely because of the unfavorable split of royalties between the Anglo-Iran Oil Company, which monopolized oil resources in the country, and the government, Mohammed Mossadegh, a newly elected Prime Minister, on 1 May 1951 nationalized the company. Iranian control of the company was frustrated by a Western boycott of Iranian oil products. As Fred Cook stated in his article "The CIA," "The international oil cartel held firm and Iran lost all its oil revenues."²² The loss of income had a severe effect on the regime of Prime Minister Mossadegh, and within 7 months he was overthrown by a coup d'état planned and executed by the CIA with rather wide public knowledge of its activities. Over and above the CIA involvement, much covert military assistance was provided the rebels. In congressional hearings conducted in 1954, a Defense Department official declared that:

When the crisis came on and the thing was about to collapse, we violated our normal criteria and among the other things we did, we provided the army immediately [with material] on an emergency basis . . . the guns that they had in their hands, the trucks they rode in, the armored cars that they drove through the streets, and the radio communications that permitted

their control, were all furnished [by the United States].²³

The result of the coup was a government favorable to the West and the internationalization of the Anglo-Iranian Oil Company. Again, viewing the U.S. involvement in retrospect and in relation to the Soviet definition, the United States would have been guilty of aggression on several counts.

Dominican Republic. The State which first commits the following acts is guilty of aggression: Invasion by its armed forces, even without the declaration of war, of the territory of another State. The following may not be used as justification for the aggressive acts: Any danger which may threaten the life or property of aliens or any revolutionary or counterrevolutionary movement.²⁴

On the afternoon of 24 April 1965, a radio station in Santo Domingo was seized by a group of revolutionaries attempting to overthrow the regime of Donald Cabral in favor of the pro-Communist Juan Bosch. The rebels were attempting to inspire a general uprising from the populace.²⁵ That same evening a task group of U.S. Navy ships, headed by the carrier U.S.S. *Boxer* with five support ships, was alerted for possible action in the revolt. As the fighting developed the tide seemed to be turning against the rebels, and the task group was ordered into position.²⁶ The U.S. officials proposed to evacuate civilians from the embattled city and were promised immunity by both sides, the rebels and loyalist government. By the evening of 27 April, about 1,200 evacuees, U.S. citizens, had been moved from the beach to units of the task force.²⁷ On that same day the rebel position improved by their capture of the Presidential palace and stiffening resistance in other parts of the city.²⁸

The next day Ambassador Bennett reported that there were "leftist forces" opposing a three-man military junta acceptable to both rebels and

loyalists.²⁹ This report also requested troop assistance prompted by a request from the junta for assistance in "preserving the peace." The President, after receiving reports of possible danger to U.S. citizens, gave an order to land troops in the Dominican Republic. The task group commander stated during a news conference that the Marines were sent ashore to protect American lives and "to keep this a non-Communist government."³⁰

Our troops, with a maximum strength of about 20,000, actively cooperated with the loyalist government in suppressing the rebel movement and effecting a cease-fire. The United States was subsequently accused of violating both the United Nations Charter and the OAS Charter. The resolution, introduced by Russia, would condemn the United States for its action and call for immediate withdrawal of troops.³¹

If the U.S. actions were considered, using the precepts of the Soviet definition, the United States would have been found guilty of aggression.

V--POTENTIAL DANGER FOR AMERICA IN THE UNITED NATIONS

The Danger of Definition. If a definition of aggression can exert any adverse effect on the goals of the United States and its posture in the world community, it will necessarily result from the definition being applied to our actions by a United Nations majority disenchanted with the U.S. machinations in world politics. In other words, because our policy is particularly susceptible to attack by an objective application of the Soviet definition, it will furnish a more easily identifiable mechanism for indictment of U.S. policies by a hostile United Nations membership. For example, it is possible that in an incident involving the American use of force, the United Nations membership could be

presented with the facts of the case, and an application of the Soviet definition to these facts might indicate a clearly identifiable case of aggression. It is obvious that this procedure would not affect the votes of nations solidly backing the U.S. position, but it could provide the impetus to push borderline cases to the anti-U.S. votes. The borderline nations are those that are becoming increasingly alarmed with the handling of world affairs by the United States and would welcome a bona fide excuse for voting against her. The ability to provide a prima facie case of aggression against the United States could well provide the necessary excuse.

Is the United States in a position to become a target of adverse reaction in the United Nations to acts of violence that are now conducted with impunity in a legal framework?

Early U.S. Dominance. The past history of the United Nations is replete with examples of the United States posting significant political victories over the Communist minority. As the major contributor to the United Nations budget and a primary source of the world's foreign aid supply to smaller nations, the United States has been able to exercise enough influence to assure a favorable vote, during the early years, in any matter of substance placed before the United Nations. In regard to the General Assembly, Ernest A. Gross has offered evidence in the record of the United States:

The American leadership record in this forum is a proud one. In the years 1946 through 1953 the General Assembly adopted over 800 resolutions. The United States was defeated in less than 3 per cent-and in no case where our important security interests were involved. In these eight years only two resolutions supported by us failed of adoption.¹

The early predominance of the United States did not escape note by the Soviet Union. Very early in the

United Nations existence they explained their defeats by pointing out that the imperialists were attempting to turn the United Nations into a branch of the American State Department to implement their plans for "Anglo-Saxon domination."² Many writers at that early stage warned of the steamroller tactics being developed by the United States.

Hints of U.S. Decline. In recent years it has become increasingly apparent that the early dominance of the United States would probably not continue unchecked. The increase in membership of the United Nations has been progressing steadily, with new members consisting primarily of small ex-colonies with a latent hostility toward any colonial power--and the United States was branded a colonial power by association, if not in fact. In addition, U.S. policies in and out of the world organization seemed designed to antagonize the United Nations members and make the task of U.S. "lobbyists" in gathering favorable votes even more difficult. A harbinger of potential trouble for the United States was voiced by Richard Gardner, when he stated:

There is no ironclad guarantee for the United States in the present procedures of the United Nations. All one can say with assurance is that the procedures are extremely favorable to our country and that the authorization of a peace keeping action against our opposition is difficult to imagine, assuming always that the American position is reasonably founded in *justice* [emphasis supplied] and the United Nations Charter.³

Mr. Gardner's statement alludes to the necessity of maintaining a position based on justice, a key point in that a just position would easily become significantly more difficult to maintain under the mantle of the Soviet definition of aggression.

The United States seemed in many ways to earn its reputation as a cham-

pion of colonialism and, in so doing, alienate a large portion of the United Nations voting strength--for example, our support of colonialism during the 15th Session. In his report to Congress, Senator Wayne Morse pointed out that the United States either abstained or voted "no" on all the major colonial resolutions, and, in so doing, it had branded itself as a supporter of colonialism. He pointed out as an example of a typical *faux pas* the American support of Portugal in claiming that her overseas holdings were not territories but metropolitan provinces, thus exempting her from international interference since domestic law would apply. Senator Morse reported that he was confronted with many protests or criticisms of the U.S. vote by members who, although professing a strong desire to maintain friendship with the United States, found it increasingly difficult to do so. Senator Morse summed up our position as follows:

Yet, our vote on this resolution was so irreconcilable with the clear meaning of Articles 73 and 74 of the U.N. Charter and with our professed ideals about supporting indigenous people in their struggle for independence that many of our friends in the Fourth Committee were at a complete loss to understand our vote. They did not want to believe what they feared and suspected, but they didn't hesitate to tell me that they suspected that Pentagon influence, military bases, and the NATO alliance were the controlling factors that dictated the United States vote.⁴

In a similar vote on a resolution calling for South West Africa to permit a subcommittee to visit the country and report on conditions, the United States abstained rather than vote for the obviously anticolonial measure. As Senator Morse reported, "The United States vote of abstention on this resolution was very harmful because once again we appeared to be sustaining policies of a colonial power whose policy in South West Africa has aroused deep resent-

ment among many African Nations."⁵

The influx of new states, each with potentially hostile attitudes toward the United States, changed the complexion of the United Nations rather radically. When the organization was founded there was a total of 51 members, only two of which were from Black Africa: Ethiopia and Liberia. The membership now totals 117, with 33 African States who, combined with the Asian and Mid-East States, constitute over 50 percent of the membership. This "Afro-Asian" bloc, in combination with the Communist bloc, could theoretically command over 60 percent of the vote—close to the two-thirds majority required for substantive issues.

The effects of our policies in the United Nations are obvious. A commonly used indicator of the U.S. influence in the Assembly, principally because it recurs so often, is the vote on the perennial issue of seating the People's Republic of China. As reported in the *International Review Service*,

Until 1955, votes for a postponement of consideration were carried with ease, there being at least three times as many votes in favor of the moratorium as those against. This situation gradually changed with the admission of new Member States, especially from Asia and Africa, after 1953. In 1956, the vote favoring postponement was down to 2 to 1. This gap continued to narrow, and in 1960, the difference became a mere 8 votes. Equally significant was the fact that all newly admitted African States either abstained from or opposed the annual U.S. proposal. A move by Nepal for the inclusion in the agenda of the question of Chinese representation was defeated by the difference of only 4 votes.⁶

In the 20th General Assembly a resolution calling for seating of Red China resulted in a tie vote with 47 for and 47 against, indicating the significant weakening of the U.S. position from its previous position as the mold of United Nations voting patterns. An illus-

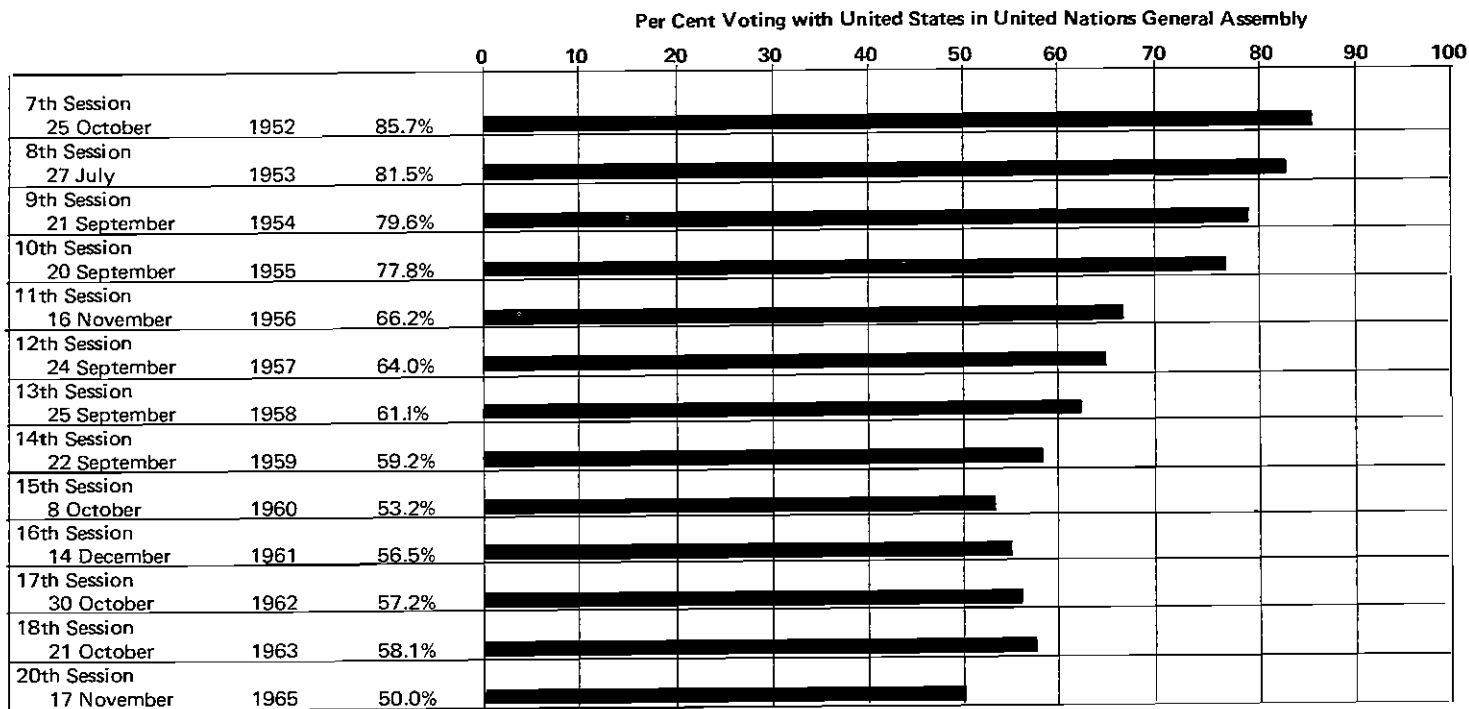
tration of this trend against the United States is provided in table I, which is a plot of the percentage of nations voting with the United States as compared to the total number voting.

During the framing of the United Nations Charter the American delegation, in concert with the other great powers, insisted on inclusion of the veto power in the Security Council in order to insure that no peacekeeping action could be initiated against the major world powers. The framers recognized that any such collective security action was not in interest of a stable world situation. In later years the United States, viewing with horror the Soviet use of the veto in the Security Council, introduced the Uniting for Peace Resolution to allow the General Assembly to act, under certain circumstances, in opposition to the veto of a permanent member. Although, at the time of its introduction, the action appeared sound, it was not universally applauded. Among those who professed concern was Ivis Claude, Jr., who stated that the United Nations "... should not challenge a recalcitrant great power."⁷

At the time the Uniting for Peace Resolution was adopted, it appeared certain that it could never be turned against its creators because of built-in safeguards. Not only did the United States have a distinct dominance in the General Assembly, but in the Security Council as well. One of the stipulations for implementing the Uniting for Peace Resolution is that the Security Council be paralyzed by a veto and "fails to exercise its primary responsibility" in cases involving threats to peace, breaches of the peace or acts of aggression. Since the United States has always been able to obtain the support of a majority of Security Council members, it has been able to refrain from using the veto power in cases inimical to U.S. interests, thereby preempting application of the provisions of Uniting for Peace.

An analysis of the voting record in

TABLE I-ISSUE OF SEATING RED CHINA



Source: *Yearbook of the United Nations, 1952-1963, 1965.*

Security Council cases involving charges of aggression against the United States indicates that although the United States has never been in jeopardy of having to veto a measure, an increasingly narrow margin of votes is cast in favor of the United States. A graph of the voting record in seven complaints against America is shown in table II. Although the voting record of the Council shows only a slight trend against U.S. interests, an analysis of Security Council debates provides an even greater insight into the decline of American influence. In the same seven cases, and in two others where no vote was taken, a tabulation of debating records was made, classifying countries as being in one of three categories: *Pro-United States*, meaning that they participated actively in defending the United States position; *Neutral*, meaning that they either did not participate in debate, or that they were noncommittal in defending U.S. actions; and *Anti-United States*, meaning they debated actively against the U.S. position. The graph, shown in table III, is a tabulation of these results. The pattern shows the marked decrease in active support garnered by the United States in the Security Council during recent years.

An inspection of the record indicates a trend away from the U.S. position in the Security Council. The indications are that in future instances of intervention the United States may well have to exercise its veto power in the Council to thwart action against its interests. In this case the Assembly will be in a position to act under the Uniting for Peace Resolution. Armed with the Soviet definition of aggression, the charge of aggression against the United States could well be sustained by an increasingly hostile United Nations membership.

Public Opinion in the World Arena. The strength of the United States in the United Nations is based primarily upon

the political posture of the member nations, but this political alignment is influenced profoundly by public opinion within each individual member. In a recent article in *U.S. News and World Report*, the shift of attitudes of people in representative nations of the world was found to be away from support of internationalism. As an example, in a public opinion poll only 28 percent of Britons favored helping the United States in a major crisis involving Russia, and only 21 percent favored support of the United States in Vietnam.⁸ Similar loss of enthusiasm for American leadership was reported in Italy. The growing tide of resentment against U.S. foreign policy can be expected to produce an even further decline of American influence in the United Nations during subsequent sessions.

VI-SUMMARY AND CONCLUSIONS

The United States has, in recent years, pursued a policy of opposition to the concept of defining aggression for use in determining the aggressor in cases under consideration by the United Nations. The Soviet Union, on the other hand, has been instrumental in leading the effort to adopt such a definition and repeatedly submitted its own draft definition enumerating various acts which could be considered elements of aggression. The clash of the two super-powers on this issue raises the question of whether or not the United States has accurately appraised the ramifications of adopting a definition by the Assembly, and if opposition to the Soviet proposal is in the best interest of the United States.

The United States has consistently maintained the position that aggressive war is totally outside its policy aims and has denounced any perpetrator of aggression as an international criminal. This policy was steadfastly maintained

TABLE II--SECURITY COUNCIL CASES OF UNITED STATES AGGRESSION--VOTES

	Number of Pro-United States Votes											
	1	2	3	4	5	6	7	8	9	10	11	
30 January 1955 Offshore Islands												
18 April 1958 Arctic Overflights												
15 July 1958 Lebanon Intervention												
18 May 1960 U.S.S.R.--Air Force Intervention												
11 July 1960 Cuba--Aggression Overflight												
8 March 1962 Cuba--OAS Enforcement Action												
28 April 1965 U.S.S.R.--Dominican Intervention												

Source: *Yearbook of the United Nations*, 1955, 1958, 1960, 1962, 1965.

TABLE III--SECURITY COUNCIL CASES OF UNITED STATES AGGRESSION--DEBATE

Members Debating Pro-United States

	1	2	3	4	5	6	7	8	9	10	11
30 January 1955 Offshore Islands											
18 April 1958 Arctic Overflights											
18 May 1960 U.S.S.R.--Air Force Aggression											
11 July 1960 Cuba--Aggression, Overflight											
21 November 1961 Dominican Republic (Rrt. by Cuba)											
8 March 1962 Cuba--OAS Enforcement Action											
10 January 1964 Panama											
16 April 1964 Cambodia--U.S. Aggression											
28 April 1965 U.S.S.R.--Dominican Intervention											

Source: Yearbook of the United Nations, 1955, 1958, 1960, 1961, 1962, 1964, 1965.

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in the face of opposition of many other nations in the world community. The Russian and French delegations at the conference for development of the charter for the Nuremberg trials adopted a position that a general outlawry of aggressive war should not necessarily be the subject of codification in the charter.

The United States has stood in the van of the movement for outlawing aggressive war but, in recent years, has generally opposed attempts to define aggression, particularly in the United Nations. The policy contrasts with early recognition of various definitions in treaties and conferences. Again, referring to the Nuremberg conferences, the U.S. delegate favored inclusion in the charter of a definition almost identical to an earlier Russian proposal, and, in this instance, the Russian delegate opposed inclusion of a definition that originated with his countrymen in 1933. In United Nations deliberations on the definition, the first of which occurred in 1957, the United States adopted a general policy of opposition to the subject on grounds that the definition was neither possible nor desirable.

This policy was taken even though a majority of the members considered definition both possible and desirable. There was rather widespread disagreement over the form of the definition. Those favoring defining were split into two basic camps: first, those who favored the Soviet definition, the "enumerative" type which categorized several acts that constituted aggression. This tabulation was subdivided into general, ideological, and economic aggression. The list of aggressive actions was followed by a series of situations which could not be used as excuses for aggression. The second group of "definers" favored a rather broad, abstract definition that embraced only general terminology which could be liberally interpreted.

The policy of the United States in

opposing the concept of definition must be considered in the context of how such a definition would affect American foreign policy, assuming that the position held by the United States was generated by valid causative factors, and not simply because the proposal was put forth by the Russians.

The basic tenet of the Soviet definition is that the first party to commit any of the various acts is the guilty one. These acts generally involve moving troops across borders, attacking by other means, establishing blockades, support of armed bands, or promotion of political upheaval in other States. The United States has traditionally intervened in cases where American interests were threatened by overthrow of a friendly government or where establishment of a favorable regime could be effected. In this instance it has generally been necessary to make either overt or covert movements of troops and to attack by sea or airpower, in direct violation of the conditions of the Russian definition.

The current problems besetting the United States in its overseas troop commitments have drastically reduced the in-country strength of her Armed Forces throughout the world and have produced a situation that will require

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even more obvious responses of the United States in crises involving her national interest. In contrast, the Soviet Union, being a major continental power, can maintain Soviet or Soviet-controlled troops in potential trouble areas that can adequately cope with any developing situation. Under such conditions it will be generally unnecessary for her to undertake the troop movements across international borders specifically prohibited in her definition. Russia has instead espoused the principle of waging war through ideological campaigns rather than furthering her national interests through direct military involvement.

In considering specific instances of United States foreign policy episodes against the Soviet definition, a large proportion of the events prove to be in direct conflict with the substance of this definition. A general review of incidents indicates that the U.S. actions could generally result in a finding of "guilty" against the United States.

The implications of the definition are unimportant if the United States maintains her position as mold of world opinion and leader of the majority of the United Nations. The adverse effects of the definition could become operative in cases where the United States stands in a situation where she is opposed in principle by a sufficient number of the member States. In these circumstances many of the borderline States normally amenable to American policies could be shaken from their traditional vote on the side of the United States by the clear violation of the criteria of aggression. This evidence in "black and white" could provide a suitable excuse for casting a vote for world order.

An analysis of the record of the United Nations indicates that circumstances could arise where the U.S. interests would indeed be influenced by declining power over member nations.

In the General Assembly the trend is definitely toward fewer nations voting with the United States on major issues.

During the early phases of United Nations development no action could be taken against the U.S. interests regardless of "guilt" or "innocence" in any particular crisis. The Security Council was the only United Nations body that could enforce sanctions against offending nations, and the United States consistently could muster a sufficient number of votes to defeat any adverse action, even without the use of the veto power given to the five permanent members. The Americans had provided a means for bypassing the Security Council when action was precluded through the application of a veto. This provision, the Uniting for Peace Resolution, was intended primarily to provide for United Nations actions in the face of a Soviet veto. The United States has never had to use a veto in the Security Council, since enough votes could be garnered to defeat any resolution adverse to United States interests. An investigation of the trends exhibited in the Security Council indicates that the leadership of the United States has declined in recent years.

The overall implication is that the United States, in the face of steadily declining popularity in the world community, could be confronted with condemnation by adverse world opinion in a situation involving the use of international force. Under these conditions the existence of a definition of aggression, particularly the enumerative espoused by the Soviet Union, could be used as a lever to swing the vote of the United Nations membership against the United States.

It is concluded that the policy of the United States in opposing the definition of aggression is in the best interests of her larger foreign policy, and that continued opposition in subsequent years will become increasingly important.

FOOTNOTES

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22. *Ibid.*, p. 295-296.
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