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Memorandum submitted by Mr. Ricardo J. Alfaro

Topic:
Question of defining aggression

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Aucune considération d'ordre politique, économique, militaire ou autre ne pourra servir d'excuse ou de justification pour les actes d'agression ci-dessus énumérés. Mais, par contre, l'exercice du droit de légitime défense, individuelle ou collective, au sens de l'Article 51 de la Charte des Nations Unies, c'est-à-dire la résistance à un acte d'agression ou l'action d'un État tendant à assister

un autre État victime d'une attaque armée, ne constituera pas une agression.

Article deuxième

Les dispositions de l'article précédent n'excluent pas le droit de l'Autorité internationale compétente de faire appel, dans des cas exceptionnels, à d'autres éléments ou critères objectifs pour déterminer l'agresseur.

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1. In consequence of a proposal of the delegation of Yugoslavia in the Fifth Session of the General Assembly of the United Nations on the subject of *Duties of States in the event of the outbreak of hostilities*, the delegation of the Soviet Union introduced a draft resolution aimed at the purpose of defining the concept of aggression.

2. After both proposals were fully discussed in the First Committee of the General Assembly resolution 278 B (V) was passed on 17 November 1950, the second part of which decided "to refer the proposal of the Union of Soviet Socialist Republics and all the records of the First Committee dealing with the question to the International Law Commission, so that the latter may take them into consideration in formulating its conclusions as soon as possible".

3. Inasmuch as the above-mentioned resolution contains in its first part the recommendations and directives adopted by the General Assembly as the result of the Yugoslavian initiative, the only question on which the Commission is expected to formulate conclusions is the problem of defining aggression. On this problem I desire to submit some remarks and a proposal to the learned consideration of the Commission.

4. Determination of the aggressor in international conflicts is a problem which has occupied the minds of jurists, statesmen and diplomats for over a quarter of a century. A satisfactory solution of that problem has always been considered as a factor of primary importance for the maintenance of peace and security in international life. Such a solution has not yet been found and the opinion seems to be almost unanimous that finding it is extremely difficult, if not altogether impossible. Referring to the work of the Committee on Arbitration of the League of Nations in 1924, Mr. Adatci asserted: "The most difficult and most delicate task was that of defining the aggressor and of determining how to apply adequate sanctions." And 26 years later, in the debates of the Fifth General Assembly a distinguished delegate from Australia, among many others who made similar statements, expressed

doubts as to "whether it would ever be possible to set out completely all the ways in which aggression could be committed".

5. In my opinion, the failure to find a satisfactory formula for the determination of the aggressor in international conflicts is due to the fact that the efforts to achieve such a result have concentrated on the idea of an enumeration of the different acts constituting aggression. It seems to me that it is high time to undertake the formulation of a norm, a general principle by the application of which the competent organs of the United Nations be enabled to determine who has been the aggressor in a given conflict.

6. All persons familiar with drafting legislative or contractual texts know very well how dangerous enumerations are. It is impossible for the human mind, in a constantly changing world, to foresee all the cases, forms, ways, eventualities and modalities which may be present in a given situation. For this reason enumerations of prohibited or punishable acts are always likely to be incomplete, and hence to leave loopholes through which transgressors may find escape and impunity may result.

7. In 1923 the League of Nations undertook the preparation of a Treaty of Mutual Assistance and during these labours the League's Permanent Advisory Commission discussed at length the problem of defining the aggressor in a Report which dealt with many important aspects of the question, but without making any concrete proposal. (League of Nations, 4th Assembly, A/35/1923, IX.)

8. The Report contained remarks of manifest interest on the subjects of mobilization and invasion as acts of aggression, as well as on the points of "*Signs which betoken an impending aggression*" and "*Universal recognition of impending aggression*". Under the former heading the following factors were listed:

- (1) Organization on paper of industrial mobilization;
- (2) Actual organization of industrial mobilization;
- (3) Collection of stocks of raw materials;
- (4) Setting on foot of war industries;

- (5) Preparation for military mobilization;
- (6) Actual military mobilization;
- (7) Hostilities.

Under the second heading are mentioned:

The political attitude of the possible aggressor;
His propaganda;
The attitude of his press and population;
His policy on the international market, etc.

9. A Temporary Mixed Commission for the Reduction of Armaments was also set up by the League, which presented another learned Report but failed to offer any definite solution to the problem. This Commission prepared a Draft Treaty of Mutual Assistance, which replaced previous drafts submitted by Lord Cecil and by Colonel Réquin.

10. Article I of that Treaty, as adopted by the League, declared war an international crime. Article 2 mentioned "aggression" and articles IV and VIII used the phrase "in case of aggression", but no definition appeared anywhere. The Treaty did not meet with the approval of Governments and never came into force.

11. The first attempt at directly defining the aggressor was made in 1924 before the Committee on Arbitration of the League of Nations during the elaboration of the Geneva Protocol for the Pacific Settlement of International Disputes. The results of the efforts made at that time are represented by article 10 of the Protocol.

12. The first paragraph of article 10 provided:

"Every State which resorts to war in violation of the undertakings contained in the Covenant or in the present protocol, is an aggressor."

If the article had stopped there, we would have had a flexible criterium for the determination of the aggressor. However, the paragraph entered into the specification of acts of aggression or concrete cases, which restricted, within narrow limits, the scope of the clause, thereby failing to give pre-eminence to a general rule constituting by itself an essential definition.

13. With a view to the concrete determination of the aggressor, article 10 provided in the same paragraph 1, as a second sentence thereof, that violation of the statute of a demilitarized zone would be considered as resort to war. It further provided that in case of hostilities, a State would be presumed to be the aggressor if it had refused to submit the controversy to pacific settlement or to comply with a judicial sentence or arbitral award or with a unanimous decision or recommendation of the League's Council or a judicial or arbitral decision on the question whether a given affair was within the domestic jurisdiction of a State. The article further provided that any belligerent which had refused to accept an armistice prescribed by the Council or had violated its terms should be deemed an aggressor.

14. As may be seen, so far as a definition of aggression was concerned, these provisions were extremely deficient. They left out the chief and most obvious

forms of aggression, namely invasion, armed attack and blockade.

15. A more ambitious effort was made in 1933 during the Conference for the Reduction and Limitation of Armaments, before the Committee on Security Questions, when the Soviet Foreign Minister, Mr. Maxim Litvinov, formulated his well known proposals on definition of the aggressor which were the subject of a luminous report by the Chairman of that Committee, Mr. Nicolas Politis. (League of Nations document Conf. D/C.G.108.)

16. The formulas of the Politis Report were later embodied in the Convention on Definition of the Aggressor signed in London on 3 July, 1933 by the Soviet Union, and Afghanistan, Estonia, Latvia, Persia, Poland, Roumania and Turkey, followed by another Convention between the Soviet Union and Czechoslovakia, Roumania, Turkey and Yugoslavia, and a third one between the Soviet Union and Lithuania. The substantive provisions of these treaties are the following:

Article I

"Each of the High Contracting Parties undertakes to accept in its relations with each of the other Parties, from the date of the entry into force of the present Convention, the definition of aggression as explained in the report dated May 24th, 1933, of the Committee on Security Questions (Politis report) to the Conference for the Reduction and Limitation of Armaments, which report was made in consequence of the proposal of the Soviet delegation."

Article II

"Accordingly, the aggressor in an international conflict shall, subject to the agreements in force between the parties to the dispute, be considered to be 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 on its territory, which have invaded the territory of another State, or refusal to take, in its own territory, notwithstanding the request of the invaded State, all the measures in its power to deprive those bands of all assistance or protection."

Article III

"No political, military, economic or other consideration may serve as an excuse or justification for the aggression referred to in article II".¹

¹ See *League of Nations Treaty Series*, vol. 147, No. 3391.

17. An Annex to the Treaty, signed jointly with it, declared that

"No act of aggression within the meaning of Article II of that Convention can be justified on either of the following grounds, among others:

"A. The internal condition of a State:

"E.g. its political, economic or social structure; alleged defects in its administration; disturbances due to strikes, revolutions, counter-revolutions, or civil war.

"B. The international conduct of a State:

"E.g. the violation or threatened violation of the material or moral rights or interests of a foreign State or its nationals; the rupture of diplomatic relations; economic or financial boycotts; disputes relating to economic, financial or other obligations towards foreign States; frontier incidents not forming any of the cases of aggression specified in Article II."

18. The nations of the Western Hemisphere showed a deep interest in the question of definition of the aggressor. In the Seventh Pan American Conference held in Montevideo in 1933, Mexico submitted a Draft Code of Peace, the first article of which condemned wars of aggression and the second provided:

"For the purpose of the preceding article that State shall be recognized as aggressor which shall have first committed any of the following acts, whatever may have been their purpose:

"(a) To declare war upon another State;

"(b) To start an invasion with land, naval or air forces — even without a declaration of war — against the territory, the ships or the aircraft of another country;

"(c) To start a blockade of the coast or of a port of another country;

"(d) To give aid to elements, which, having formed within its territory, should attack the territory of another country, or to reject the demands of the attacked country, that measures be taken to deprive those elements of support or defence;

"No consideration of a political, military or economic character can justify the aggression referred to in this article."

The influence of the Litvinov-Politis conception is clearly discernible here.

19. Other proposals were introduced in the Peace Conference of Buenos Aires in 1936 and in the Eighth Pan American Conference held in Lima in 1938. However, all these proposals met with the ever present objection that the enumerations formulated were incomplete and the delegations did not come to any agreement. The different drafts were referred to the Inter-American Committee of Jurists for study and consideration.

20. In the London Conference of 1945 the United States proposed that aggression be defined in these terms:

"An aggressor, for the purposes of this article, is the 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 the measures in its power to deprive those bands of all assistance and 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-defence, 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."

21. While the above enumeration was clearly patterned after the Litvinov-Politis formula, the American proposal had the merit of being the first to introduce the element of individual or collective self-defence for the determination of the aggressor. For the rest, the proposal did not crystallize in any agreement.

22. The Act of Chapultepec, agreed upon in the Conference on Problems of Peace and War held in Mexico City in 1945, deals with the subject of aggression but it confines itself to setting forth a criterium with regard to invasion, in these terms:

"In any case, invasion by armed forces of one State into the territory of another, trespassing boundaries established by treaty and demarcated in accordance therewith, shall constitute an act of aggression."

23. In the Conference on the Consolidation of Peace and Security on the American Continent, held in Rio de Janeiro in 1947, the problem of defining the aggressor was again taken up, this time with a strong determination to attain positive results. The Inter-American Treaty of Reciprocal Assistance incorporates a definition of aggression. The enumeration of cases it contains is not as large as the one embodied in the Litvinov treaties, but on the other hand, it has the advantage of not being limitative. Hence, it makes possible the determination of the aggressor in cases not specifically defined or set forth in the treaty. Article 9 thereof reads as follows:

"In addition to other acts which the Organ of Consultation may characterize as aggression, the following shall be considered as such:

"(a) Unprovoked armed attack by a State against the territory, the people or the land, sea and air forces of another State;

"(b) Invasion by the armed forces of a State, of the territory of an American State, through the trespassing of the boundaries demarcated in accordance with a treaty, judicial decision or arbitral award, or, in the absence of frontiers thus demarcated, invasion affecting a region which is under the effective jurisdiction of another State."

24. Each of the formulas agreed upon in London (1933) and in Rio de Janeiro (1947) has merits as well as defects. Both can be criticized as incomplete and imperfect. None of the two furnishes a fully satisfactory solution of the problem of defining aggression.

25. The Litvinov-Politis formula contains what has been called "the five capital sins" of aggression, namely: a declaration of war, invasion, armed attack, naval blockade and support to armed bands. But it may be averred that many sins are not found among these five and that not all of the five are sins. For instance, it is a manifest error to lay down the rule that a declaration of war constitutes by itself an act of aggression. The declaration of a state of war may come about precisely as the consequence of an aggression committed by the power against which the declaration is made, which power in turn, may have attacked without declaring war. On the basis of that formula, in the war resulting from the attack of Japan on Pearl Harbour, the United States would have been the aggressor, because it declared war; and in the conflagration of 1939, France and England would have been guilty of aggression because in exercise of the collective right of self-defence they declared war on Germany after this nation had attacked Poland. Another objection: Naval blockade is branded as aggression, but nothing is said about a land blockade, which produces equal effects. Still another: The clause relative to irregular bands fails to foresee the possibility that they be not only assisted but actually organized by the aggressor State.

26. The Inter-American Treaty of Mutual Assistance, in classifying as aggression an "unprovoked attack", seems to justify attack when it has been "provoked". Introducing the vague, imprecise and uncertain element of "provocation" in the determination of the aggressor, may lead to most disturbing and dangerous consequences. Another serious objection is that attack on the sea and air forces of a State is specifically mentioned as aggression, wherefore attack on merchant vessels and civil aircraft would seem to be permissible.

27. The foregoing remarks demonstrate the many errors and omissions that can be incurred when determination of the aggressor is attempted by way of an enumeration.

28. In the present state of the world we find certain international factors, conditions or elements which we

can utilize in our quest for an adequate definition of aggression. Such elements are:

(1) The fact that war is a crime under international law;

(2) The fact that the great majority of the States have established a new international order under the Charter of the United Nations and most of the other States have declared their disposition to live under that order;

(3) The fact that the supreme purpose of the United Nations 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 (Art. 1, para. 1, Charter of the United Nations);

(4) The fact that the United Nations is committed to ensure that States which are not Members act in accordance with the Charter so far as may be necessary for the maintenance of international peace and security (Art. 2, para. 6);

(5) The fact that States are bound to submit all their differences to peaceful settlement (Art. 2, para. 3);

(6) The fact that States are bound to refrain from the threat or use of force in any manner inconsistent with the purposes of the United Nations (Art. 2, para. 4);

(7) The fact that the Charter authorizes a competent organ of the United Nations to employ armed force to stop aggression and to maintain or restore international peace and security, if other measures have proved to be inadequate (Art. 42);

(8) The fact that States Members are bound to give the United Nations every assistance in any action it takes in accordance with the Charter (Art. 2, para. 5; Arts. 43, 44);

(9) The fact that the Charter recognizes the inherent right of individual or collective self-defence if an armed attack occurs against a member of the United Nations (Art. 51).

29. The above-stated facts demonstrate that in the present international order, as a basic rule, war, i.e., the use of force in interstate relations, is illegal. It has been renounced too, pronounced an international crime, and is expressly prohibited. There is no distinction between *just* and *unjust* wars. Save two exceptions, all war is aggression, even if started on account of a wrong suffered by a State. Violations of rights under international law give rise to controversies which can only be decided by pacific methods and not by States taking the law in their own hands, assuming the role of party, accuser and judge, and deciding the issue by force of arms.

30. We are today very far from the days when the last traces of influence of XIXth century notions about the sovereign right to declare and wage war were still discernible in international thought.

31. The Covenant of the League of Nations did, in fact, divide wars into two classes, namely: just, legal or defensive wars, and unjust, illegal or aggressive wars. To the first class belonged wars waged after exhaustion of the pacific procedures established by the Covenant.

The second class comprised wars started in violation of such procedures.

32. As a manifestation of the system, article 12 of the Covenant envisaged the possibility of a "just" or "legal" war by providing that States Members of the League "shall in no case resort to war before the expiration of a term of three months after an arbitral or judicial decision or a report by the Council".

33. In the same spirit, article I of the Treaty of Mutual Assistance of 1923 provided that "a war shall not be considered a war of aggression if waged by a State which is a party to a dispute and has accepted the unanimous recommendation of the Council, the verdict of the Permanent Court of International Justice, or an arbitral award against a Contracting Party which has not accepted it, provided, however, that the first State does not intend to violate the political independence or the territorial integrity of the High Contracting Party".

34. Likewise, the Locarno Treaties of 1925 (art. 2, para. 1) authorized recourse to force in case of violation of the Versailles Treaty, such recourse in that case being held to be self-defence.

35. Self-defence in our day can only be the outcome of *armed attack*. Violation of treaties, unless the violation should consist in an armed attack, does not justify any State's declaring or waging war. Neither is it legal for any State to enforce by resort to arms an arbitral or judicial decision rendered in its favour. The basic rule, with the only two exceptions hereafter referred to, is that States "shall refrain in their international relations from the threat or use of force" against other States.

36. Exceptions to the rule that the use of force is illegal are only two circumstances under which it is permissible: 1, individual or collective self-defence against armed attack, and 2, coercive action undertaken by the United Nations. Consequently, unless any one of these two circumstances is present, the use of force is unauthorized and illegal: it constitutes a violation of the Charter, a breach of the peace, an act of war, and hence, aggression. On the basis of this reasoning I have formulated and I respectfully submit to the Commission, the following definition:

"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-defence against armed attack or coercive action by the United Nations."

37. It is worthy of note that this definition is in full harmony with the definition of the crime of war which has just been adopted by the Commission for the Code of Offences against the Peace and Security of Mankind. Here is how such crime is defined:

"The employment or threat of employment, by the authorities of a State, of armed force against another

State, for any purpose other than national or collective self-defence or execution of a decision by a competent organ of the United Nations."

38. And it is particularly gratifying to me to quote in this connexion a prophetic statement made by our eminent colleague, Professor Scelle, in a notable study on the subject of aggression which he wrote in 1936. Here are his words:

*"Il est donc nécessaire tout à la fois d'adopter de la guerre un critère purement objectif et d'assimiler tout emploi de la force à l'agression. C'est bien d'ailleurs, nous le verrons, le sens de l'évolution. Elle aboutit à cette double équation: 'tout recours à la violence = guerre; toute guerre = aggression'."*²

("It is therefore necessary simultaneously to adopt a purely objective criterion regarding war and to assimilate all employment of force to aggression. Besides, this is clearly, as we shall see, the trend of evolution. The latter culminates in this double equation: 'all resort to violence = war; all war = aggression'.")

39. In order to establish in a precise manner the scope of the proposed definition of aggression, I deem advisable to offer a comment on each one of the phrases and terms I have used, viz:

"Aggression is the use of force"

40. The initial phrase contains the chief element of the definition, as per the general rule of Art. 2, para. 4, of the San Francisco Charter that States must refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the United Nations, among which the principal one is the maintenance of peace.

41. The term *force* is used in a broad sense to signify any elements at the disposal of States which are capable of destroying life and property, or of inflicting serious damage. It comprises land, sea and air forces, regular armies as well as irregular bands and any and all kinds of weapons, contrivances, explosives, toxic or asphyxiating gases, employed for the destruction of life and property in land, naval, air, chemical or bacteriological warfare.

42. I have refrained in my definition from making any reference to the aggressor as the one who is *the first to commit a certain act of force*.

43. The circumstance of being the first to use force in a given manner is no sure criterion for the determination of the aggressor in an international conflict. After aggression has been consummated, the State victim of the aggression might be the first to commit a certain act of force in exercise of the right of self-defence. For instance, State A is invaded by State B. State A, thereupon, in order to counteract the invasion, is the first to bombard parts of the territory of State B with an aim to put its supply bases out of action.

² G. Scelle, "L'agression et la légitime défense dans les rapports internationaux", in *L'Esprit International*, 1936, pp. 372 et seq.

According to the letter of the oft-copied Litvinov-Politis formula, State B, for being the first to bombard, in the ensuing conflict, would be the aggressor, which, of course, is preposterous.

44. The fact of the aggression does not really consist in being the first to execute one of the different acts described as aggressive. *It consists in the fact of being the first to resort to violence in any way, shape or form. It consists in the fact of unleashing hostilities through the commission of any act of force amidst a condition of peace.* Here I use the term "peace" in its strictest sense, i.e., meaning an absence of hostilities or a situation of material peace, even where moral peace does not exist. Once hostilities have been unleashed through the fault of the attacking State, the State defending itself may be the first to bombard, the first to effect a landing or the first to impose a blockade. Yet, he would not be the aggressor. Furthermore, other States, exercising the right of collective defence in running to the assistance of the State attacked, will surely be the first to use force in any of the different ways described in the several enumerations. Yet, they will not be aggressors.

45. The true test, therefore, is not a question of priority in the commission of a particular act of a certain list of acts. The true test is to determine whether the peace and the public order of the community of States has been disturbed by means of an illegal or unauthorized use of force.

"By any State or group of States or by any Government or group of Governments"

46. This language is used in order to avoid any interpretation in the sense that only States can commit aggression and are capable of disturbing the peace of the world. There may be governments of nations or people not organized or recognized as States, which may have at their disposal the armies, weapons and other means of committing aggression.

"Against the territory and the people of other States or Governments"

47. Aggression is bound to be conceived as perpetrated against the territory and against the people under the jurisdiction of the State victim, and aimed at the submission or destruction of any forces opposing resistance to the aggression. This aim implies the possibility of destroying life and property, a destruction of which the victim is the people of the State attacked. Aggression against the territory and the people of a State or Government must comprise any acts of violence perpetrated against its land, sea or air forces; or against its vessels or aircraft, whatever their character; or against structures vital to public life and health, as for instance, water works and protective dams; or against the whole of the population, through the use of any weapons or the commission of any acts likely to endanger combatants and non-combatants.

"In any manner"

48. This phrase refers to the different manners in which aggression may be committed, i.e., invasion,

crossing of frontiers, open armed attack, naval or land blockade, etc.

"By any methods"

49. This expression indicates the different methods by which an attack may be carried out, such as military occupation; infantry, cavalry or artillery operations of land troops; bombardment by sea or air forces; incursion by irregular bands; destruction of dams, reservoirs or other water works; artificial inundation of lands; bacteriological or chemical warfare, in short, the use of any element or method capable of destroying life and property, or of inflicting serious damage or of paralyzing any defence action of the State attacked.

"For any reasons"

50. As stated before, there can be no reason for the use of force by any State, except the two circumstances specifically mentioned by the Charter, and by the definition, namely: self-defence and enforcement action. For even in case of a violation of the rights of a State, the wronged State is bound to submit the resulting controversy to peaceful methods. The right of self-defence cannot be invoked as meaning defence against wrongs, but defence against armed attack.

51. The expression "for any reason" in the proposed definition has the same scope and effect of Article II of the Litvinov-Politis formula, reproduced in several treaties and proposals, which reads as follows:

"No political, military, economic or other considerations may serve as an excuse or justification for aggression."

"For any purposes"

52. In the same manner as no reason can justify the use of force, no purpose can be invoked for justification. Art. 2, para. 4, of the Charter forbids "the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations". The only cases in which the use of force is consistent with such purposes are the two mentioned in the preceding paragraph. Moreover, the use of force constitutes a breach of the peace, maintenance of which is the supreme purpose of the Organization. Therefore, even if the aim is legitimate *per se*, as for instance, to redress a real wrong, such an aim would run counter to the purposes of the United Nations, because the Charter prescribes that international disputes be settled by peaceful methods and not by force.

"Except individual or collective self-defence against armed attack or coercive action of the United Nations"

53. The preceding paragraphs lead us to the logical conclusion that the two circumstances mentioned above determine the only two cases in which the use of force by any State is permissible. The only two reasons for a State using force are: first, an armed attack affecting directly or immediately one or several States; and second, enforcement action taken by the United Nations.

Conversely, the only two *purposes* for which States can legitimately use force are: first, to exercise the inherent right of individual or collective defence; and second, to stop aggression and restore international peace and security.

54. The two factors or elements above commented upon constitute therefore a sure, unfailing, iron-clad test for the determination of aggression. Unless any of the two elements is present, the act of force is an act of aggression. The definition is formulated just by reversing the terms and stating in substance that aggression is any act of force committed for any reasons and purposes other than self-defence or enforcement action.

55. Actual application of the test will easily show that the definition provides a sure means of determining the aggressor in any conflict. Let us imagine any of the acts mentioned in the several enumerations proposed has occurred: invasion, incursion, violation of frontiers, blockade, bombardment, attack of any nature. Let us then make the questions: Was it in self-defence against armed attack? Was it to carry on or aid in enforcement action decided upon by the United Nations? If the answer in either case be *no*, the act constitutes aggression. If the answer be *yes*, it is not.

56. Here is a definition which does not consist in an enumeration of acts but in a co-ordination of the ideological elements of the concept of aggression in the international order of our day. We can have thus at the disposal of the competent organs of the United Nations, of Governments and of public opinion, a norm, a rule, a general principle applicable to all cases by the simple method of testing the character of the act of force.

57. The rule proposed is entirely and absolutely objective. It envisages an act of force and tests the circumstances attending it. These circumstances are also purely objective and determine the respective purpose. If the fact of an armed attack has occurred amidst a state of peace the circumstance of illegality is apparent and the purpose of exercising the right of self-defence makes the use of force legitimate. Likewise, if the fact has happened that the United Nations, through its competent organ, has decided to employ armed force in order to stop aggression and restore international peace, that fact legitimates the use of force against the State subjected to coercive action.

58. Therefore, it is not necessary for Governments or for organs of the United Nations to take into consideration any element of "feeling", or "impression" or "intention" or of "signs which betoken impending aggression". We are only concerned with the existence or non-existence of the fact that a State has used force against another State and with the lawful or unlawful character of the act of force. Thus, the factors of industrial mobilization, stocking of strategic materials, full-fledged functioning of war industries, scientific research in connexion with warfare, propaganda, an attitude of ill will in the press and the population of a State towards another State, espionage on the armaments

and activities of other countries, even military mobilization, do not by themselves alone constitute aggression. They are preparatory acts which may lead to aggression as well as to self-defence. Aggression itself is not perpetrated until and unless some form of attack or physical offensive has taken place.

59. On the question of "intention", it cannot be denied, of course, that it is a natural element of aggression. There can be no aggression unless there has been an intention to commit it. But the point is that the act of using force reveals the intention by itself. If a town is unexpectedly bombarded or a port is blockaded, there can be no doubt as to the intention accompanying the bombardment or blockade, because force has been used in a manner and for purposes contrary to the present international order.

60. Something different occurs in the case of other acts which may not constitute aggression because no force is actually employed by a State against another State. Let us take, for instance, the case where a frontier is crossed by the troops of a certain State. If the act is done with the consent of the other State, or in accordance with a treaty of alliance or of any other nature, the crossing of the frontier is not an act of force. Likewise, if one or several aviators fly over the air space of a State without permission, on account of a mistake or otherwise, the act might be a violation of international law, but it would not constitute aggression, because force has not been used by a State against another State with immediate telling consequences. For the same reasons it would not be possible to consider espionage as actual aggression, although it may be practised in preparation for it.

61. Having thus explained the intent and scope of my proposal, I desire to state that while an enumeration is an unsafe and deficient substitute for an essential definition, a list of clear-cut, precise and unmistakable cases might perhaps be useful by way of exemplification of the general principle, the former subordinated to the latter. Should it be found desirable to enumerate acts of aggression, it would be necessary to use a language similar to that of the Rio de Janeiro Treaty of 1947, and adopt a clause drafted more or less as follows:

"In addition to other acts which the competent organs of the United Nations may characterize as aggression by application of the rule contained in the preceding definition, the following shall be considered as such:"

62. It is not my intention to discuss here which acts could be listed as specific instances of aggression. The task would be too long and difficult. As a matter of fact, recent changes in juridical and political ideas, as well as the great transformations effected in the art and science of warfare and in general scientific knowledge, oblige us to review and occasionally to rectify many concepts heretofore accepted as indisputable. Moreover, the task would be premature at this time. Hence, my proposal is limited to the sole question of defining aggression.

63. I will say, in conclusion, that with reference to the question of the desirability or necessity of a definition of aggression, I am in full accord with the statements of those who for the last thirty years or so have been labouring for it. Nicholas Murray Butler, cited by Kormanicki in a lecture given at the Hague Academy in 1949, opined: "With the signing of the Pact of Paris, the need for a definition of aggression has become imperative."³ Commenting upon the Nürnberg Charter, Justice Jackson said: "It is perhaps a weakness in this Charter that it fails to define a war of aggression." And

³ *Recueil des cours de l'Académie de droit international*, 1949 (II).

way back in 1924, Politis had said in his report: "In the event of international bodies being called upon to determine in fact the aggressor in any given conflict, the existence of a precise definition of the notion which these bodies would have to apply, would render the determination of the aggressor much easier and there would be less risk of an attempt to shield or to excuse the aggressor for various political reasons without appearing to break the rule to be applied. It would considerably strengthen the authority of the prohibition to resort to force by enabling public opinion and other States to judge with greater certainty whether this prohibition had been respected or not."

DOCUMENT A/CN.4/L.10

Proposal by Mr. Roberto Córdova

[Original text: English]
[4 June 1951]

CRIME I

Aggression, that is, the direct or indirect employment by the authorities of a State of armed force against another State for any purpose other than national or

collective self-defence or execution of a decision by a competent organ of the United Nations.

The threat of aggression should also be deemed to be a crime under this article.

DOCUMENT A/CN.4/L.11*

Proposal by Mr. Shuhsi Hsu

[Original text: English]
[4 June 1951]

Aggression, which is a crime under international law, is the hostile act of a State against another State, committed by (a) the employment of armed force other than in self-defence or the implementation of United Nations

enforcement action; or (b) the arming of organized bands or of third States, hostile to the victim State, for offensive purposes; or (c) the fomenting of civil strife in the victim State in the interest of some foreign State; or (d) any other illegal resort to force, openly or otherwise.

* Incorporating document A/CN.4/L.11/Corr.1.

DOCUMENT A/CN.4/L.12

Proposition de M. J. M. Yepes

[Texte original en français]
[4 juin 1951]

Pour les effets de l'Article 39 de la Charte des Nations Unies, constitue un acte d'agression tout usage direct ou indirect de la violence* par un État ou groupe d'États contre l'intégrité territoriale ou l'indépendance politique d'un autre État ou groupes d'États.

La violence (force) exercée par des bandes irrégulières organisées dans le territoire d'un État ou à l'étranger avec la complicité active ou passive de cet État sera

considérée comme agression au sens du paragraphe précédent.

Ne constitue pas un acte d'agression l'emploi de la violence (force) en exercice du droit de légitime défense, individuelle ou collective, reconnu par l'Article 51 de la Charte ou en exécution de la décision régulièrement prise par un organe compétent des Nations Unies.

Aucune considération d'ordre politique, économique, militaire ou autre ne pourra servir d'excuse ou de justification pour un acte d'agression.

* On pourrait substituer le mot « violence » par le mot « force », qui est celui dont se sert la Charte des Nations Unies (Art. 2, par. 4).