

LAWFARE: USE OF THE DEFINITION OF
AGGRESSIVE WAR BY THE SOVIET AND RUSSIAN GOVERNMENTS

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ABSTRACT

Don K. Rowney, Advisor

This dissertation seeks to contribute to the understanding of the definition of the terms “aggression” and “aggressive war” by tracing the political, legal and military use of the terms by the Soviet Union from that posed at the 1933 Convention for the Definition of Aggression to the definition posed by the Russian Federation to the International Criminal Court in 1999. One might ask why the Soviet Union so adamantly promoted a definition of aggression and aggressive war while, as many have noted, conducting military actions that appeared to violate the very definition they espoused in international treaties and conventions. This dissertation demonstrates that through the use of treaties the Soviet Union and Russian Federation practiced a program of “lawfare” long before the term became known. Lawfare, as used by the Soviet Union and Russian Federation, is the manipulation or exploitation of the international legal system to supplement military and political objectives. The Soviet Union and Russian Federation used these legal restrictions to supplement military strategy in an attempt, not to limit themselves, but to control other states legally, politically, and equally as important, publicly, through the use of propaganda.

This work is dedicated to my daughter Ashley. Never stop learning.

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INTRODUCTION

With fighting going on all over the globe – including in India, Pakistan, Cyprus, the Congo, Cambodia, Vietnam and the Middle East – it was clear that it was easier to commit aggression than to define it.

Benjamin Ferencz¹

In 1933, E.A. Jelf, in “What is ‘War’? And What is ‘Aggressive War’?” prophetically concluded that “the aggressor is the party who in the particular case has international law or the rules of morality against him. An aggressive war is a war waged by that party in pursuit of his aims.”² Since that time, many have espoused the definition of aggression and aggressive war. None more so, however, than the Soviet Union and subsequently the Russian Federation.³

One might ask why the Soviet Union so adamantly promoted a definition of aggression and aggressive war while, as many have noted, conducting military actions that appeared to violate the very definition they espoused in international treaties and conventions.⁴ This dissertation proposes that through the use of treaties to supplement military strategy, the Soviet Union and Russian Federation practiced a program of “lawfare” long before the term became known. Lawfare is the manipulation or exploitation of the international legal system to supplement military and political objectives.

¹ Benjamin Ferencz, “The United Nations Consensus Definition Of Aggression: Sieve Or Substance?” Presented at the Washington Conference on Law and the World, October 1955.

www.benferencz.org/arts/13.html. (accessed 30 July 2008).

² E.A. Jelf, “What is ‘War’? And What is ‘Aggressive War’?” *Transactions of the Grotius Society* 19, Problems of Peace and War, Papers Read before the Society in the Year 1933. (1933):112.

³ The term “Soviet Union” is used throughout this dissertation to mean the Union of Soviet Socialist Republics (USSR), a constitutional socialist state existing from 1922-1991. The Russian Soviet Federated Socialist Republic (RSFSR) was the largest of the Soviet republics of the Soviet Union. After the dissolution of the Soviet Union in 1991, the RSFSR became the Russian Federation.

⁴ For the purposes of this paper, the generic term “treaty” will be used from hereon as defined by the United Nations as a generic term encompassing all instruments binding at international law between international entities intended to create legal rights and duties in written form. United Nations Treaty Collection Reference Guide. <http://untreaty.un.org/English/guide.asp>.

The first use of the term lawfare is attributed to John Carlson and Neville Yeomans in “Whither Goeth the Law - Humanity or Barbary.” While examining the demise and re-emergence of humanitarian law, they concluded, “[L]awfare replaces warfare and the duel is with words rather than swords.”⁵ The concept was recently picked up by the US military as one of the greatest potential threats against the United States.⁶ Colonel Charles J. Dunlap Jr. clarified the term as the use of law as a weapon of war.⁷ Dunlap placed the argument in the context of the use of humanitarian law, or his preference, the law of armed conflict, against the United States. This angle has been pursued further by the Council on Foreign Relations, which defined lawfare, and specifically its use as an asymmetrical weapon, as “a strategy of using or misusing law as a substitute for traditional military means to achieve military objectives.”⁸ This definition was generated from an 18 March 2003 Roundtable on National Security convened by the Council on Foreign Relations, at which lawfare was presented as a tool used against the United States.

Chadwick Austin and Antony Barone Kolenc examined this concept further, applying it directly to the International Criminal Court (ICC). For their purposes, they defined lawfare as

⁵ John Carlson and Neville Yeomans, “Whither Goeth the Law - Humanity or Barbary,” in M. Smith and D. Crossley, eds. *The Way Out - Radical Alternatives in Australia* (Melbourne: Lansdowne Press, 1975). Paper at <http://www.laceweb.org.au/whi.htm>. (accessed 5 January 2009).

⁶ Charles J. Dunlap, Jr., Colonel, USAF, “Law and Military Interventions: Preserving Humanitarian Values in 21st Conflicts,” Prepared for the Humanitarian Challenges in Military Intervention Conference Carr Center for Human Rights Policy Kennedy School of Government, Harvard University. Washington, D.C., November 29, 2001. <http://www.duke.edu/~pfeaver/dunlap.pdf>. (accessed 26 December 2008). He looked at it from the perspective of a weapon that can be employed against the United States by a weaker power. See also his more recent article “Lawfare amid Warfare,” *Washington Times*, 3 August 2007. <http://www.washingtontimes.com/news/2007/aug/03/lawfare-amid-warfare/>. His focus was on the use of lawfare by international groups claiming violations of humanitarian law by the United States.

⁷ Ibid.

⁸ “Lawfare, the Latest in Asymmetries,” Council on Foreign Relations, March 18, 2003. http://www.cfr.org/publication/5772/lawfare_the_latest_in_asymmetries.html. (accessed 26 December 2008). Also see Radhika Withana, *Power, Politics, Law: International Law and State Behaviour During International Crises* (Leiden; Boston: Martinus Nijhoff Publishers, 2008). Withana suggested the influence of international law on state behavior involving the possibility of the use of force plays a decisive role. Her work looked at the relationship between international law and state behavior when an international crisis involves the threat or use of force.

“exploiting judicial processes to achieve political or military objectives.”⁹ They focused on asymmetric methods used by others to exploit the ICC in relation to the United States, specifically, misusing the investigative process, filing questionable or fraudulent complaints and manipulating the mass media.¹⁰

The media was often used (either legitimately or illegitimately) to propose to the public that a state was fighting illegally or immorally and to damage the public support needed to wage war. Although called “media warfare” by Austin and Kolenc as well as the Chinese People’s Liberation Army colonels in *Unrestricted Warfare* described below, use of the media is simply a prominent part of old-fashioned propaganda, which arguably was perfected by the Soviet Union.

Propaganda, for our purposes, is “the attempt to transmit social and political values in the hope of affecting people’s thinking, emotions, and thereby behavior.”¹¹ Austin and Kolenc noted that “The practice of “media warfare” works hand-in-hand with the type of asymmetric exploitation of the ICC that could occur in the future.”¹² For the purposes of this paper our discussion of propaganda is limited to its use by the Soviet Union and the Russian Federation to proliferate the concept of lawfare as it relates to aggression and aggressive war.

Media warfare was also mentioned in the Chinese book *Unrestricted Warfare*.¹³ Two Chinese People’s Liberation Army colonels developed the concept of lawfare to the point that it created enough interest to catch the eye of the United States Military. Though not utilizing the term lawfare, they concluded that warfare with military forces is no longer the way to achieve national security or

⁹ W. Chadwick Austin and Antony Barone Kolenc, “Who’s Afraid of the Big Bad Wolf? The International Criminal Court as a weapon of asymmetric warfare,” 39 *Vanderbilt Journal of Transnational Law*, no. 2, 291 (1 March 2006).

¹⁰ Ibid.

¹¹ Peter Kenez, *The Birth of the Propaganda State: Soviet Methods of Mass Mobilization, 1917-1929* (Cambridge [Cambridgeshire]; New York: Cambridge University Press, 1985).

¹² Austin and Kolenc.

¹³ Qiao Liang and Wang Xiangsui, *Unrestricted Warfare*, (Beijing: PLA Literature and Arts Publishing House, 1999). <http://www.terrorism.com/documents/TRC-Analysis/unrestricted.pdf>. (accessed 20 February 2009).

protect national interests. They claimed warfare transcends the military domain and increasingly falls into the realm of politicians and other non-military.¹⁴ They looked at warfare as it is reintroduced in many forms today, in fact, they called it “non-military war” and listed many examples besides media warfare: psychological warfare, network warfare, technological warfare, fabrication warfare, economic aid warfare, cultural warfare and international law warfare. They described international law warfare as “seizing the earliest opportunity to set up regulations.”¹⁵ They explained that use of the forms of warfare by a weaker country against a stronger one amounted to asymmetric warfare. They concluded about asymmetry, “of all rules, this is the only one which encourages people to break rules so as to use rules.”¹⁶ Austin and Kolenc said it another way, “misuse of the ICC could provide asymmetric warriors the sling with which David can slay Goliath. A nation built on law can be undone by law.”¹⁷

After applying these various definitions to the scenarios presented in this dissertation, it became evident that lawfare, at least as deployed by the Soviet Union, was primarily a supplement to military strategy and was used with a strategic intent and political motivation to manipulate the legal system, international bodies and other states. Since Clausewitz reminded us that military and political objectives are inextricably intertwined, for the purposes of supplementing the concept of lawfare, the definition supported by the evidence in this dissertation is manipulation or exploitation of the international legal system to supplement military and political objectives.

Lawfare was also not the sole domain of the Soviet Union or the Russian Federation. What makes the Soviet Union and the Russian Federation stand out is their use of lawfare earlier and with a greater degree of consistent strategic implementation than others. They also continued to operate

¹⁴ Ibid., 221.

¹⁵ Ibid., 55.

¹⁶ Ibid., 212.

¹⁷ Austin and Kolenc. V. Conclusion.

on a dual front, both legally in international bodies and through international law, and illegally or quasi-legally, when they manipulated the system to supplement their military agenda. With a consistent definition for aggression and aggressive war in place, a degree of predictability to future actions of other states and international bodies such as the UN could be achieved. Even when situations arose quickly, such as Hungary in 1956, there was a set strategy in place. Typically, high-level discussions were followed by insertion of advisors into the state. A subsequent “invitation” was issued to the Red Army to intervene against a counter-revolution. A public claim was made that the Soviet Union was supporting the government under the principle of self-determination, or some other exception to the definition set forth in treaties and the UN. And the media was employed to supplement the strategy.

The strategic implementation of non-aggression treaties to set the stage for future military action by the Red Army or to restrict action from other armies was practiced repeatedly by the Soviet Union with states such as Finland, Latvia, Estonia, Poland and others. The preconceived binding of other countries, such as those of the Warsaw Pact, to enable the Soviet Union to intervene militarily and at least auspiciously claim it was in adherence to international law and treaty obligations demonstrated the dominion the Soviet Union had over the use of lawfare as a true supplement to military action. Scenarios such as the use of the definition of aggression and aggressive war by the jurists at Nuremberg and continuing propagation before international bodies such as the UN were not, taken by themselves, uses of lawfare. They were an example of strategic employment, within a legal context, to set the stage of their use later to supplement military strategy. This is what set the Soviet Union apart from many other states that also employed the strategy at one time or many times over the last sixty years. The combination of lawfare with propaganda or media manipulation was also perfected by the Soviet Union as evidenced in both the Korean and Vietnam

Wars. Strategically, the Soviet military was employed but this time it supplemented the greater role of lawfare and propaganda. Since the definition includes manipulation of the system for both political and military objectives, it is possible to utilize the international legal system for political purposes not associated with imminent or future deployment of troops. Though others define lawfare as a strictly political weapon, or even the valid use of international law, this does not reach the level of its use by the Soviet Union, and we will not define it as such.

Key to lawfare is its use in a manipulative or exploitative fashion. Simply utilizing the international legal system to enforce valid laws would not be considered lawfare for our purposes. The article by Dunlap and the transcript from the Council on Foreign Relations both seem to express the greatest concern for valid legal claims of a humanitarian nature brought by a state or even a few individuals that could undercut American objectives. Therefore the state (for our purposes) that claims the United States violated international law under a given valid circumstance would be making a legal claim, therefore not manipulating the system, but simply seeking redress for a legal wrong.¹⁸ Motives may be political at the same time, however. Two examples demonstrate the legitimate use of the international judicial system, and although they also served to make a political statement and sway international opinion, they do not reach the level of lawfare used by the Soviet Union and Russian Federation. They do not demonstrate the preemptive strategic use of the international law system but the reactive use after a wrong, which sets them apart.

¹⁸ For another use of lawfare as a legitimate claim, see Craig H. Allen, “Command of the Commons Boasts: An Invitation to Lawfare.” in Michael D. Carsten, ed. “Global Legal Challenges: Command of the Commons, Strategic Communications, and Natural Disasters,” *International Law Studies*, vol. 83. (Newport, Rhode Island: Naval War College, 2007). At the 2006 Naval War College International Law Department conference on “Global Legal Challenges: Command of the Commons, Strategic Communications, and Natural Disasters,” Allen offered his perspective in “Command of the Commons Boasts: An Invitation to Lawfare.” After noting that concern for lawfare had found its way into US National Defense Strategy, he laid out a possible asymmetric scenario where a much less powerful state utilized the United Nations General Assembly to restrict access to, in his scenario, control of the sea, which had been claimed by a more powerful state. This tactic could be used whether the less powerful state had a legitimate claim or, as in his scenario, was used as a legal “pushback” in response to a public assertion by the more powerful state regarding its command of the sea. (16-17).

One example is the case of the *United States Diplomatic and Consular Staff in Tehran* (*United States of America v. Iran*), which was decided by the International Court of Justice on 24 May 1980. The court ruled Iran violated its obligations under international law to the United States and ordered it to release the US hostages. This was a legitimate use of the international justice system and though it was doubtful the United States thought this would force the release of the hostages, it did serve to sway international opinion and put international pressure on Iran.¹⁹

Another example of a case where the courts were used by a smaller state against a larger state was the *Case Concerning Military And Paramilitary Activities In And Against Nicaragua* (*Nicaragua v. United States Of America*).²⁰ The court rejected the defense of collective security put forth by the United States and ruled the United States violated international law by arming and training the *contra* forces in violation of the US obligation not to intervene in the internal affairs of another state. In fact, the court cited General Assembly Resolution 3314 (XXIX) as evidence that the collective self-defense claim by the United States was not a valid use of force barring an invitation from the victim country. (Notice the Soviet Union in every intervention in this dissertation took care of this objection on the front end by at least “claiming” an invitation.)

Because it would be virtually impossible to codify every use of the international legal system for political purposes, and since they vary in degree to such an extent, this dissertation concentrates on its use as a supplement to military strategy. The two cases above were reactions to a situation, not manipulation in advance of the system. They were also valid uses of the international law system.

The Soviet Union proves the perfect case study to demonstrate the use of lawfare. Though not

¹⁹ *United States Diplomatic and Consular Staff in Tehran* (*United States of American v. Iran*). *Judgment, ICJ Reports 1980*, p. 3.

<http://www.icj-cij.org/docket/files/64/6291.pdf>. (accessed 1 April 2009).

²⁰ *Military and Paramilitary Activities in und against Nicaragua* (*Nicaragua v. United States of America*). *Merits, Judgment. ICJ Reports 1986*, p. 14. <http://www.icj-cij.org/docket/files/70/6503.pdf>. (accessed 1 April 2009).

noted for upholding treaties and adherence to rules, the Soviet government was expert at using laws to manipulate the international legal system in its favor as demonstrated by the evidence presented later in the dissertation. This concept, though expertly practiced for decades, has just begun to come to the attention of US military and academics. The Council on Foreign Relations claimed lawfare was a “somewhat new phenomenon, the full effects of its application are not yet known.”²¹ I argue that this is not a somewhat new phenomenon and has been practiced by the Soviet Union for decades, only under the auspices of aggression and crimes against peace rather than humanitarian law. In fact, Melbone Graham, in 1929, concluded that Soviet treaties at that time were aimed at predicting or controlling another state’s behavior by virtue of a legal rule.

This dissertation looks at the use of the terms aggression and aggressive war by the Soviet Union and the Russian Federation as they practiced the art of lawfare through treaties and international public forums from 1933 to 1999. By doing so, it becomes evident that the use of lawfare is not new to the Soviet Union and Russian Federation. The concept was employed by the Soviet Union and the Russian Federation to supplement their foreign policy when it was necessary to “buy time” to prepare their military. It was employed to limit actions that could be taken against the Soviet Union and Russian Federation by other states. International law was utilized when the Soviet Union or Russian Federation was in a weaker military state to restrict the actions of others. Finally, propaganda, practiced as a supplement to lawfare, was used to their advantage to accuse other states of aggressive action in the public media.

A study of the Soviet Union’s use of international law would not be complete without a short note on the influence of Marxism-Leninism on that process. I address it here to demonstrate the principles from which some of the later concepts such as the Brezhnev Doctrine were drawn and to show that there is more continuity than change in the application of international law by the Soviet

²¹ “Lawfare, the Latest in Asymmetries.”

Union and the Russian Federation. Under Marxist-Leninist theory, “[i]t is an axiom of Soviet legal scholarship that law is a superstructure of norms reflecting the class organization of society and serving the interests of the dominant class.”²² The state was the organization that advanced those interests.²³ Carrying this one step further, Nicholas Rostow noted, Soviet participation in the League of Nations and United Nations systems made “the Soviet Union a significant contributor to the enforceable superstructure that is international law.”²⁴ This provides an indication of why the Soviet Union was so involved in propagating a definition of aggression and aggressive war. The more involved it became, the more influence it had on both the process and the outcome. This is evidenced throughout the dissertation as the definition changed little from that proposed by the Soviet Union in 1933 to that used in the 1974 General Assembly Resolution 3314 (XXIX).

Although Vladimir Il’ich Lenin recognized the right of self-determination, separatist movements challenged that concept. Joseph Stalin (1878 -1953) differentiated between “having” and “exercising” the right of self-determination and ultimately secession.²⁵ Because the communist party was the party of the proletariat and occupied a leading position among socialist states, another communist party could not secede from the Soviet Union. This argument was carried forward as justification for the invasion of Hungary in 1956, Czechoslovakia in 1968 and ultimately, formed the Brezhnev Doctrine.²⁶

²² Nicholas Rostow, “Law and the Use of Force by States: The Brezhnev Doctrine,” 7 *Yale Journal of World Publications Ord.* 209, 211 (1980-1981). Rowstow, in fact, outlined the use of Soviet legal theory much the same for Hungary, Czechoslovakia and Afghanistan as will be explained in more detail later in this dissertation. See also Edward McWhinney, “The ‘New Thinking’ in Soviet International Law: Soviet Doctrines and Practice in the Post-Tunkin Era” 28 *Canadian Yearbook of International Law* 309 (1990) and Alice Erh-Soo Tay and Eugene Kamenka, “Marxism, Socialism and the Theory of Law” 23 *Columbia Journal of Transnational Law* 217 (1984-1985).

²³ Vratislav Pechota, “The Contemporary Marxist Theory of International Law,” 75 *American Society of International Law Proceedings* 149 (1981).

²⁴ Rostow, 211.

²⁵ Ibid., 213-214.

²⁶ Ibid., 214.

Nikita Sergeevich Khrushchev defined peaceful coexistence as an aspect of the ongoing international struggle of the proletariat against the aggressive imperialists.²⁷ By claiming this policy, Khrushchev not only exempted socialist states from this concept, but he “implicitly claimed for the Soviet government the role of ultimate judge of what is and is not a legal use of force.”²⁸ Until the fall of the Soviet Union, policy and legal concepts were still being couched in terms of Marxist-Leninist theory.

After the fall of the Soviet Union and communism, the words associated with Marxism-Leninism were gone but the underlying strategic use of the principle remained. The 1993 Russian Constitution, in its preamble, did not mention The Great October Socialist Revolution or dictatorship of the proletariat. There was no reference to Marxism-Leninism. However, it did include a reference to self-determination. The excuse to support interventions to suppress counter-revolution in other socialist countries no longer existed but the primary reasons used during Soviet times such as an invitation by the government, self-determination of a nation’s people, and self-defense are still viable today. The Russian Federation, as did the Soviet Union, continues to use the international system to their advantage, particularly by positioning itself at the forefront of defining aggressive war, both internally and through international bodies.²⁹

In order to assess the use of the terms aggression and aggressive war in the context of military, political and legal settings, I use a mix of historical and legal methodology. Archival documentation of the decision-makers will be coupled with public proceedings, notes and minutes from

²⁷ Ibid., 220.

²⁸ Ibid.

²⁹ See Tarja Långström, “Russia in Transition: Reflections on International Law Doctrines” 66 *Nordic Journal of International Law* 475 (1997). The legal textbooks compared were G.I. Tunkin, (ed) *Mezhdunarodnoe pravo*, (Moskva: Yuridicheskaiia literature, 1982) and J. M. Kolosov and V. I. Kuznezov (eds) *Mezhdunarodnoe pravo*, (Moskva: Isdatel’stvo mezhdunarodnye otnosheniia, 1995) for a comparison of two international law textbooks, one before the fall of the Soviet Union, one after. Långström concluded that the presentation of the doctrine of international law might appear to have changed over time, but the “hard juridical core” had experienced less change and exhibited considerable continuity. (504)

international bodies. The heaviest focus is on the language of the treaties themselves to demonstrate the consistency with which the definition has been espoused. Press coverage will be added to demonstrate propaganda value. It is not my intent to recreate the historical events but to look at this documentation in the light of military actions to show a consistent, continuous, and calculated use of international law as a form of lawfare.

On a cautionary note, Igor Kavass warned that many of the published materials during the Soviet time were primarily propaganda.³⁰ He further cautioned, “The soul of the people is deep, and the true values and preferences of these individuals who make up the Soviet society are neither uniform nor easily discernable. Unlike some Western societies, where candor is encouraged, the art of dissembling is a fundamental trait of the Soviet character.”³¹ That being said, however, it is important to note that due to the public nature of lawfare and propaganda, there will be references throughout the dissertation to the “party line.” These references are intentional and meant to demonstrate the use of propaganda at the time. It is also understood in Soviet foreign policy, that the law is created by a small group of individuals. It is not the intent of this dissertation to delve into the personalities of these individuals but to acknowledge that those personalities do play a large role. I have shown the internal decision-making process when it is available, but because the concept of lawfare is intentionally played out on the public stage, the results of those deliberations as they appear in the public domain take precedence.

I have used the transliteration system of the Library of Congress except for well-known names such as Vyshinsky, which are presented in their more common manner. A number of terms, abbreviations and acronyms are also simplified. For example, the Central Committee of the Communist Party of the Soviet Union, or CPSU CC, is simply referred to as the Central Committee.

³⁰ Igor I. Kavass, *Soviet Law in English: Research Guide and Bibliography, 1970- 1987* (Buffalo, N.Y.: W.S. Hein, 1988), 10.

³¹ Ibid., 39.

A glossary is included at the end, which will offer further assistance to the reader.

This introduction is followed by a brief treaty overview and comments on the general concept of aggression as emphasized by Soviet and Russian scholars, jurists and other legal specialists. Chapters One and Two serve to set the stage for the detailed analysis in the subsequent chapters. Treaty language presented in these chapters will be referenced throughout the work. Chapter One, “Treaties Prior to WWII” focuses on a brief general history of the definition of the terms as addressed in the Covenant of the League of Nations, the Convention for the Definition of Aggression and other non-aggression treaties. Chapter Two, “The Molotov-Ribbentrop Pact, Poland and Finland,” addresses the period of World War II. This chapter will emphasize the League of Nations’ branding of the Soviet Union as an aggressor against Finland. Chapter Three, “The Nuremberg Trial and Individual Responsibility,” focuses on the Soviet input on the definition of aggression to the trial and the international community. Chapter Four, “The Korean War,” analyzes the Korean War and the 1950s. This period is noteworthy because it is a prime example of the use of lawfare and propaganda against an opponent, the United States. Chapter Five, “Hungary,” covers the Soviet invasion of Hungary. Special emphasis will be placed here on the debate within the UN General Assembly condemning the Soviet Union for aggression in 1956. Chapter Six, “Czechoslovakia, the Brezhnev Doctrine and Vietnam,” covers those conflicts and concepts over the period of the 1960s and 1970s. Most noteworthy in this chapter is the 1974 General Assembly Resolution 3314 (XXIX) codifying the definition of aggression. Chapter Seven, “Afghanistan,” is a good example of a clear contradiction between Soviet understanding of their actions versus the perspective they present in public. The 1980s and 1990s include Chechnya, the 1993 Constitution, the 1996 Criminal Code and the 1996 Draft Code of Crimes Against Peace and Mankind and are covered in Chapter Eight, “Chechnya, International and Internal Codification of Aggression.” Chapter Nine concludes with a

summary of the political and legal agreements used to define aggression and aggressive war from 1933 to 1999 and the military actions over the same period. It also features the 1999 definition of aggression posed to the International Criminal Court by the Russian Federation. The final analysis will demonstrate how the Soviet Union and Russian Federation utilized lawfare to achieve their political, legal and military objectives while at the same time, utilizing that same set of international laws against the opponent in a very public setting.

TREATY OVERVIEW

The same year Jelf concluded that the aggressor was the one without international law on its side, the Soviet Union took substantial steps to make sure it had a leading role in drafting those laws and other treaties which would substantially affect it. The Soviet Union posed a draft definition of aggression to the Committee on Security Questions to the General Commission of the Disarmament Conference for the Reduction and Limitation of Armaments on 6 Feb 1933. The definition was slightly revised on 24 May 1933 but was never finalized. For the purposes of this study, this is the beginning of a long history of the use of international law and treaties by the Soviet Union and Russian Federation to narrowly define the aggressor.³²

During 1932 the Soviet Union signed non-aggression treaties with Finland, Latvia, Estonia and Poland. On 3 July 1933, the Soviet Union was a signatory to the Convention for the Definition of Aggression with other signatories from Romania, Estonia, Latvia, Poland, Turkey, Persia, and Afghanistan. Throughout 1933, the Soviet Union initiated several treaties defining aggression between itself and countries such as Czechoslovakia, Turkey, Yugoslavia and Lithuania. These definitions focused on the state as the aggressor. The International Conference on Military Trials (the “London Conference” held 26 June – 8 August 1945), to which the Soviet Union was a party, established the London Charter of the International Military Tribunal in 1945, listing a war of aggression as one of the “Crimes Against Peace” to be used to prosecute individuals, in this case, the

³² E. A. Korovin, Corresponding Member of the USSR Academy of Sciences, noted in the forward to K.A. Baginyan’s *The Struggle of the Soviet Union against Aggression*, that this definition was based on broad historical experience with international conflicts of the imperialism era and proletarian revolutions. See K. A. Baginyan, *Borba Sovetskogo Soiuza protiv agressii*, Izdatel’stvo sotsial’no-ekonomicheskoi literatury (Moskva, 1959). Baginyan reviews the historical facts and documents of the Soviet Government and people to maintain peace. He used works by Soviet and foreign (many American) jurists, international treaties and agreements, and official documents of the UN. The bibliography is especially helpful for sources from the 1920s - 1950s. As we have cautioned before, it is important to look at the time during which these statements were made. Though some works are quite objective, there is also a strong “party line” tendency, particularly if the work was published for an English reading audience.

Nazi leaders. The International Military Tribunal at Nuremberg (Nuremberg Trial) and the International Military Tribunal for the Far East (Tokyo Trial) subsequently utilized the following definition for Crimes Against Peace:

Crimes Against Peace: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;³³

In 1974, United Nations General Assembly Resolution 3314 (XXIX) of December 14, 1974 on the Definition of Aggression, with Special Regard to: Indirect Aggression was adopted. Article 3 reads:

Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provisions of article 2, qualify as an act of aggression;

- (a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;
- (b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;
- (c) The blockade of the ports or coasts of a State by the armed forces of another State;
- (d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;
- (e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;
- (f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;
- (g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

Article 5 reads:

³³ Charter of the International Military Tribunal. II. Jurisdiction and General Principles, Article 6 (a). <http://www.yale.edu/lawweb/avalon/imt/proc/imtconst.htm>. (accessed 1 August 2008).

1. No consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression.
2. A war of aggression is a crime against international peace. Aggression gives rise to international responsibility.
3. No territorial acquisition or special advantage resulting from aggression is or shall be recognized as lawful.³⁴

This resolution, once again, focused on the state's role in aggressive acts. In 1996, the International Law Commission submitted The Draft Code of Offences against the Peace and Security of Mankind, which eventually only addressed the individual responsibility for aggression, having deleted the elements of the offense originally proposed in 1991 concerning state action.³⁵ In 1999 the Russian Federation posed the following definition to the Preparatory Commission of the International Criminal Court for consideration:

For the purposes of the present Statute and subject to prior determination by the United Nations Security Council of an act of aggression by the State concerned, the crime of aggression means any of the following acts: planning, preparing, initiating, carrying out a war of aggression.³⁶

The ICC was created by the Rome Statute of the International Criminal Court (Rome Statute), which entered into force 1 July 2002.³⁷ It was designed to "exercise its jurisdiction over persons for the most serious crimes of international concern."³⁸ Article 5(1) of the Rome Statute lists the crime of aggression as falling within the jurisdiction of the ICC. It qualified it immediately thereafter, however, by stating, "[t]he Court shall exercise jurisdiction over the crime

³⁴ Definition of Aggression, G. A. Res. 3314 (XXIX) of 14 December 1974, U.N. Doc. A/RES/3314 (XXIX) 14 Dec 1974. <http://www1.umn.edu/humanrts/instrct/GAres3314.html>. (accessed 7 October 2008).

³⁵ M. Cherif Bassiouni & Benjamin B. Ferencz, "The Crime Against Peace and Aggression: From its Origins to the ICC," *International Criminal Law* Vol. 1, Chapter 3.1, (3rd in print 2008, Transnational/Brill), 36. This is one of the most current historical overviews available on the subject.

³⁶ Proposal of the Russian Federation to the Preparatory Committee for the International Criminal Court. New York. 16-26 February 1999, 26 July–13 August 1999, 29 November–17 December 1999. PCNICC/1999/DP.12. <http://untreaty.un.org/cod/icc/documents/aggression/english/1999.dp12.pdf>. (accessed 16 January 2008).

³⁷ The Russian Federation signed the Rome Statute on 13 September 2000 but has yet to ratify it.

³⁸ Rome Statute of the International Criminal Court, Part 1. Establishment of the Court, Article 1, "The Court." <http://untreaty.un.org/cod/icc/statute/romefra.htm>. U.N. Doc. A/CONF. 183/9 signed 17 July 1998. 2187 UNTS 90. (accessed 16 January 2008).

of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime.”³⁹ The Assembly of State Parties established a Special Working Group on the Crime of Aggression (SWGCA) in 2002.⁴⁰ The SWGCA was mandated to submit proposals on the crime of aggression to the ASP no earlier than 2009 for consideration as an amendment to the Rome Statute.

This dissertation is situated in the midst of this ongoing debate. As I write, there are conferences being held and new publications coming out monthly on the issue of defining aggression. It is my hope that this dissertation will assist in the understanding of the terms of aggression and aggressive war and expand on the understanding and ramifications for their use, both as a means for preventing aggressive war and to better understand how they are used as a form of lawfare. Variations of the definition are applied in separate instances to the state and the individual. Both will be discussed throughout this paper as they appear chronologically in the treaties to which the Soviet Union and Russian Federation are a party. They are inextricably woven in the ongoing debate and each is important in its own right as evidenced in the following section. Let us begin with the understanding, as stated by George Ginsburgs, that “As one might expect, the record of Soviet contributions to the history of international law is neither as rosy as some have painted nor as crimson as others have claimed.”⁴¹

³⁹ Ibid., Part 2. Jurisdiction, Admissibility and Applicable Law. Article 5 Crimes within the Jurisdiction of the Court, para 1-2.

⁴⁰ “The ICC and the Crime of Aggression,” Coalition for the International Criminal Court, FactSheet. http://www.iccn.org/documents/CICCFS_Crime_of_Aggression_Factsheet_FINAL_eng_1May07.pdf. (accessed 16 January 2008).

⁴¹ George Ginsburgs, “The View from Without,” 62 *American Society of International Law Proceedings*, 196. (1968).

THE ONGOING DEBATE⁴²

T. A. Taracouzio, Head of the Slavic Department of the Harvard Law Library, explained in 1934 that the communist concept of law was a combination of the Marxist relationship between “compulsion as a derivative of inequality” and class struggle and oppression.⁴³ This, coupled with international relations resulting from the cooperation of the masses against capitalism, resulted in a brand of international law that “determines and regulates the inequality of the rights and duties of the internationally organized national laboring classes in their common struggle for proletarian world supremacy.”⁴⁴ Taracouzio went on to say that treaties became the basic source of international law in the Soviet Union,⁴⁵ with a demonstrated preference for bilateral treaties. He grouped these treaties into three categories: those with the Western Powers and Japan, those with the Baltic States, Finland and Poland, and those in the Near East. They differed primarily in the “degree of political aggression, as well as in the degree of economic benefits.”⁴⁶

Taracouzio noted the often cited maxim that “[w]ar, for the communist, is nothing but a continuation of the political relationship by the use of different means.”⁴⁷ He went on to explain that it was “not surprising that the flexibility of this definition of war was duly appreciated by the communists. It was admirably adapted to their logical necessities. It permitted aggressive war to

⁴² Although there is a plethora of Americans and others that publish on the definition of aggression, this dissertation will focus mainly on Russian sources or authors that contribute to the understanding of the concept from the Russian perspective.

⁴³ T. A. Taracouzio, “The Effect of Applied Communism on the Principles of International Law.” 28 *American Society of International Law Proceedings* 105, 106 (1934).

⁴⁴ Ibid., 107. These treaties were generally submissive when concluded with stronger nations, dominating when concluded with weaker nations, and equal when between nations of equal economic, military and political footing. (119)

⁴⁵ Ibid., For a thorough discussion of the importance of treaties in Soviet international law and relations, see John Quigley, “The New Soviet Approach to International Law,” 7 *Harvard International Law Journal* 1, 2-13 (1965).

⁴⁶ Ibid., 115.

⁴⁷ Ibid., 116, citing FN 8 Korovin, *Sovremennoe Mezhdunarodnoe pravo*, (Moskva, 1926), 137. The concept was first suggested by Carl von Clausewitz in *Vom Kreige*, his unfinished work first seen in 1832. Specifically, Clausewitz stated, “war is not merely an act of policy but a true political instrument, a continuation of political intercourse, carried on with other means.” Michael Howard and Peter Paret, eds. and trans. *On War* (Princeton University Press, 1976), 87.

appear in the guise of an instigation to self-determination, or, at worst, as an armed class intervention – a mere extension of the class conflict beyond the confines of the USSR.”⁴⁸ This explanation goes a long way to explain actions decades later in Hungary and Afghanistan. Although as we will see, support of a class struggle in those countries proved more of an excuse for intervention than an opportunity to promote an ideology.

Even in 1934, Taracouzio put “continuation of the political relationship” together with the use of propaganda to form the concept of lawfare. He commented that a “new method of warfare” was being used at this time: socialist propaganda. The logic was that this propaganda promoted free decision by the masses to voluntarily accept the ideas espoused by the Soviet Union, therefore, not violating international law.⁴⁹

Ronald Nelson and Peter Schweizer, in their work *The Soviet Concept of Peace, Peaceful Coexistence and Détente*, noted additionally that it was “essential to understand that when Soviet officials and writers use the term ‘peace’ (*mir*), it does not equate exclusively to the absence of war or other hostilities nor does it mean harmonious relations between states.”⁵⁰ These concepts of war and peace can also be seen in what Grigorii Ivanovich Tunkin (1906 - 1993), a world-renowned Russian jurist, called “old international law.”

Tunkin gave a glimpse into the reasoning behind the transition from old law to new law in the Soviet Union. He talked of “old international law” and the transition to “new international law” that existed during the period of coexistence of capitalism and socialism between the First and Second World Wars. Of the utmost importance was the principle of non-aggression.⁵¹ Before the

⁴⁸ Ibid., 116.

⁴⁹ Ibid., 118.

⁵⁰ Ronald Roy Nelson and Peter Schweizer, *The Soviet Concepts of Peace, Peaceful Coexistence, and Detente* (Lanham, MD: University Press of America, 1988), x, citing FN 1, J.A. Emerson Vermaat and Hans Bax, “The Soviet Concept of Peace,” *Strategic Review*, (Fall 1983): 64.

⁵¹ G. I. Tunkin, *Theory of International Law*, 2nd ed. ([S.I.]: Wildy, Simmons and Hill Pub., 2003), 49. (Russian citation, *Teoriia mezhdunarodnogo prava*. (Moskva: Mezhdunarodnye otnosheniiia, 1970).

Great October Socialist Revolution (1917), international law recognized the right of states to go to war, *jus ad bellum*, whenever they considered it advisable. “Of course, a particular claim always was found against the State that was attacked in order to justify the aggression, the claims being well-grounded or unfounded.”⁵²

Aron Naumovich Trainin (1883-1957), Corresponding Member of the Academy of Sciences of the USSR, reflecting on the concept of responsibility of a state in international law, noted criminal sanction was not applicable as a sanction of international law.⁵³ States were incompatible to individuals, to which criminal sanctions applied.⁵⁴ The state was limited initially to compensation for damage caused as its actions.

Prohibition of aggressive war signified a revolution in international law and introduced major changes in a state’s international responsibility under international law.⁵⁵ By eliminating the “right of a State to go to war,” the “right of the victor” also disappeared, along with “conquest” and “indemnities.”⁵⁶ Under old international law, the only legal relations were between the offending state and the victim state.⁵⁷ States could wage war to effectuate their claims and other states had no

Tunkin held various posts in the Ministry of Foreign Affairs, including head of the Treaty Law Section from 1952-1965. From 1957-1966 he was a member of the International Law Commission. From 1965 until his death in 1993, he was the Chair of International Law at the Law Faculty of Lomonosov Moscow State University. He published extensively on international law. For other works by Tunkin see the extensive bibliography by W. E. Butler, “The Learned Writings of Professor G. I. Tunkin,” 4 *Journal of the History of International Law* 394 (2002).

⁵² Ibid., 50.

⁵³ Ibid., 446.

⁵⁴ Ibid., 447. See also Mauro Politi and Giuseppe Nesi, eds. *The International Criminal Court and the Crime of Aggression* (Aldershot, Hants, England; Burlington, Vt.: Ashgate/Dartmouth, 2004). William Schabas, in the chapter “Origins of the Criminalization of Aggression: How Crimes Against Peace Became the ‘Supreme International Crime’” 28, noted “Soviet enthusiasm for the prosecution of aggression had never really been in doubt, and the international law arguments in support had been developed by its leading specialist Professor A.N. Trainin.” He noted that the British representative to the London Conference pointed out that Trainin had treated aggression as a “crime against peace” and not as a “crime of war” and a compromise in the terminology was agreed to by all.

⁵⁵ Ibid, 448.

⁵⁶ Ibid.

⁵⁷ Ibid.

right to object.⁵⁸ Contemporary situations where there were many international ties, demonstrated that any war affected the interests and even rights of all states.⁵⁹ Principles in international law such as non-aggression were evidence of this. “Under contemporary international law every State has not only the right but to a certain extent also the duty to take measures within the limits permitted by international law for the purpose of ensuring international peace and security and, therefore, to demand that other States have complied with norms of international law relating to the securing of peace.”⁶⁰

Trainin, in *Hitlerite Responsibility Under Criminal Law*,⁶¹ thoroughly investigated state acts of aggression and individual criminal responsibility. He examined the difference in levels of material, political, moral and criminal responsibilities. “It should be recognized with complete definiteness that a State can and must bear political responsibility (for example, the disarmament of an aggressor State) and material responsibility (for example, making good the damage caused by war).”⁶² However, Trainin explained that the state could not bear criminal responsibility, since the state itself was not capable of intent or carelessness.⁶³ Individual persons, who could bear criminal responsibility, could not be answerable for international offences since the state was the principal of international juridical relations.⁶⁴ “The State cannot be freed from responsibility from crimes in wartime. It is a most serious responsibility, but it is political and material. Criminal responsibility for crimes committed, however, must be borne by concrete physical persons who are guilty of the

⁵⁸ Ibid., 463.

⁵⁹ Ibid. 464.

⁶⁰ Ibid.

⁶¹ A. N. Trainin, A. I. A. Vyshinskii, and Andrew Rothstein, *Hitlerite Responsibility under Criminal Law* (London, New York [etc.]: Hutchinson & Co., 1945). First published in Russian for the Institute of Law, Academy of Sciences of the U.S.S.R. under *Ugolovnaia otvetstvennost' gitlerovtsev*, ed. A. Ia. Vyshinsky (Moscow, 1944).

⁶² Ibid., 72.

⁶³ Ibid., 73.

⁶⁴ Ibid., 76.

crimes which have been committed.”⁶⁵ The perpetrator of an international crime, however, is different in “that he acts not only himself but also with the help of a complex executive machinery.”⁶⁶ This lead to a person that could perpetrate an international crime, such as a violation of a convention, and others that committed common crimes such as murder.⁶⁷ “Thus the perpetrator in the sense of national criminal law and the perpetrator in the sense of international criminal law are not completely identical figures.”⁶⁸

The concepts espoused by the Russian jurists Tunkin and Trainin continued in the new Russian Federation international criminal law literature. In the 1950s the theory of peaceful coexistence was developed and applied by Tunkin to international law.⁶⁹ Peaceful coexistence involved respect for “sovereignty, nonaggression, noninterference in internal affairs and equality of states.”⁷⁰ In his publication of 1967, *Crimes Against Peace and Humanity*, P. S. Romashkin devoted a chapter to “Aggression – the Most Serious Crime Against Peace and Humanity.”⁷¹ Although most

⁶⁵ Ibid., 77-78.

⁶⁶ Ibid., 79-80.

⁶⁷ Ibid. 80.

⁶⁸ Ibid., 81. See also Mohammed Gomaa, “The Definition of the Crime of Aggression and the ICC Jurisdiction over that Crime,” in Mauro Politi and Giuseppe Nesi, eds. *The International Criminal Court and the Crime of Aggression*. Gomaa, Legal Advisor to the Egyptian Delegation to the UN and member of the Egyptian Delegation in the Preparatory Commission for the Establishment of an International Criminal Court, in his article “The Definition of the Crime of Aggression and the ICC Jurisdiction over that Crime,” addressed the idea of “State” versus “Individual” thoroughly. He noted the “attribution of a wrongful act to a State is the attribution of a conduct by the individual to that State.” He suggested the State must be declared as an aggressor (pursuant to the Charter of the United Nations and the definition of aggression annexed to G.A. Res. 3314), before an individual can be tried by the ICC on the basis of that legal nexus. (65) In fact, in a report to the International Law Commission (ILC) it was stated, “A State can commit aggression only with the active participation of the individuals who have the necessary authority or power to plan, prepare, initiate or wage aggression.” (66, FN 36 citing the Report of the ILC, 6 May – 26 July 1996, U.N. GAOR, 51st Sess. Supp. No. 10 U.N.Doc A/51/10. 84.)

⁶⁹ John Quigley, Notes and Comments, “*Perestroika* and International Law,” 82 *American Journal of International Law* 788, 789 (1988).

⁷⁰ Ibid., 790, see also FN 17 citing Edward McWhinney, *The International Law of Détente*, 27 (1978), John N. Hazard, “Codifying Peaceful Co-Existence,” 55 *American Journal of International Law* 109 (1961); Hazard, “Co-Existence Codification Reconsidered,” 57 *American Journal of International Law* 88 (1963); Hazard, “New Personalities to Create New Laws,” 58 *American Journal of International Law* 952 (1964); Hazard, “Co-Existence Law Bows Out,” 59 *American Journal of International Law* 59 (1965); Alwyn V. Freeman, “Some Aspects of Soviet Influence on International Law,” 62 *American Journal of International Law* 710, 715 (1968).

⁷¹ P. S. Romashkin, *Prestupleniya protiv mira i checliffechestva*, Izdatelstvo “Nauka”, (Moskva 1967). Another work of the time, was I. K. Koblyakov, *USSR: For Peace Against Aggression 1933 – 1941*, (Moscow; Progress

definitely from the Soviet perspective, Romashkin concisely listed the efforts, up to the time of publication, to define aggression and aggressive war. He noted propaganda also played a part to justify the preparation for aggression.⁷²

Soviet literature continued to address the concept of aggression. D. Donskoi, in *Aggression, Outside the Law*, wrote a detailed legal analysis of the definition of aggression. He concluded that any adopted definition of aggression would not put an end to aggressive acts, “But a definition freely adopted by states in carrying out of their sovereign rights, draws its force in the conviction that the observance of this definition responds to the interests of all and each separately. In this case the definition, like other legal principles, is valuable in that it calls attention to the factors that logically affect a solution.”⁷³

In *Criminal Responsibility for Aggression*, A.G. Kubalnik and O.V. Malakhova, echoed the sentiment that one of the most acute questions of international criminal law was not the definition of aggression as an international crime but also as a crime against peace for which individuals bear responsibility. They noted that both the measures taken to suppress aggression by introducing a ban on the waging of aggressive war, and measures to establish criminal responsibility of persons planning, developing, and waging aggressive war were necessary.⁷⁴ In outlining the history of international law and specifically aggressive war, they reference the same individuals referenced by many of their American counterparts, among them Benjamin Ferencz.

Publishers, 1976) Tranlation into English from the first printing in Russian also in 1976. Although biased from the point of the Soviet Union, it is important to realize that not only were the officials of the Soviet government proponents of the use of international law and propaganda, Soviet scholars also contributed to the effort.

⁷² Ibid., 33.

⁷³ D. Donskoi, *Aggressia--Vne Zakona* (1976).121. Igor Ivanovich Lukashuk gave a strong review of aggression in international law from its very beginnings in the 16th century up to the 1974 definition in Igor Ivanovich Lukashuk, Chapter V., Crimes Against Peace, 1. International Illegality and Criminality of Aggression in George Ginsburgs and V. N. Kudriavtsev, *The Nuremberg Trial and International Law* (Dordrecht; Boston: M. Nijhoff; Kluwer Academic Publishers, 1990), 131. Another good summary is Evgeny N. Nasinovsky, “The Impact of Fifty Years of Soviet Theory and Practice on International Law,” 62 *American Society of International Law* 189 (1968). See Kazimierz Grzybowski, “Soviet Theory of International Law for the Seventies,” 77 *American Journal of International Law* 872 (1983) for a discussion of that period.

⁷⁴ A.G. Kibalnik and O.V. Malakhova, *Ugolovnaia Otvetstvennost' za Agressii*. (Stavropol' 2003), 4.

Benjamin Ferencz, one of the most vocal proponents of defining aggression, brought American and Soviet legal experts together in 1990 to demonstrate the part individuals play in international law and how their actions, as representatives of a state, organization or corporation, affect world order. The colloquium titled “World Security for the 21st Century: Challenges and Solutions,” was hosted by the Pace Peace Center, Pace Law School.⁷⁵ Present from Moscow were Dr. Galina G. Shinkaretskaia and Prof. Rais A. Touzmohammad from the Institute of State and Law of the Russian Academy of Sciences. While discussing ways in which jurists could assist in securing legal means of preventing the possibility of one state deciding for itself when to use force, Dr. Shinkaretskaia noted that states were very sensitive to being told they were wrong in public, which led to the use of vetoes by the United States for actions in Panama and Grenada and a veto by the Soviet Union during the invasion of Afghanistan. She recommended that lawyers could make changes to the UN Charter to disallow this type of veto.⁷⁶

Touzmohammad stressed the importance of the principles of self-determination and non-use of force as peremptory norms that could not be altered by treaty. These principles were used as a pretext for aggressors, however, and though the Security Council should intervene, “neither my country in invading Afghanistan nor the United States in Grenada informed the Security Council.”⁷⁷ When discussing the possibilities of strengthening the law of peace, Professor Touzmohammad stated his support for establishment of courts. “In supporting the idea of the rule of law, we in the Soviet Union support that idea as proclaimed by Gorbachev. It’s not the rule of law over the state but the state in which courts rule and determine the law.”⁷⁸ This quote alone demonstrates the focus utilized by the Soviet Union and Russian Federation regarding the use of lawfare. The state is the

⁷⁵ Benjamin B. Ferencz, ed. *World Security for the 21st Century: Challenges and Solutions, A Colloquium between American and Soviet Legal Experts.* (Oceana Publications, Inc. 1991).

⁷⁶ Ibid., 25.

⁷⁷ Ibid., 35

⁷⁸ Ibid., 49.

primary entity, supported by the courts and the law. It is not hard to make the jump from internal uses of the court system to support the state to lawfare on an international basis.

Dr. Shinkaretskaia went on to say, as she reviewed the most recent wars, that they were not designed to conquer and retain territory but to restore public order. However, the entity in the right was determined by the intruder. “This was the case in Grenada and in Afghanistan or even in Vietnam and Korea.”⁷⁹ Comments by these Soviet experts demonstrate not only the ongoing struggle to define both state and individual actions but the openness to look at acts of aggression committed by their country and others in an unbiased application of the definition.

One of the most recent, and well-documented studies on aggression, though not specifically on the Soviet Union, was published in 2007 by Oscar Solera.⁸⁰ Solera credited the Soviet Union’s effort to define aggression during the 1930s as the “first example of systemisation of the rules regulating the use of force. Their influence lasted for various decades, until the adoption of the UN General Assembly resolution on the definition of aggression.”⁸¹ Solera noted that the Soviet Union employed aggression more as a political expression than a legal notion through its treaties, but nonetheless, set the stage for developing the legal ideas on the use of armed forces “by proposing a systematic method of analysis of what could be considered as aggressive acts. Above all, they set the

⁷⁹ Ibid., 90.

⁸⁰ Oscar Solera, *Defining the Crime of Aggression* (London: Cameron May, 2007). For other bibliographical references on aggressive war generally, see Keith Petty, “Sixty Years in the Making: The Definition of Aggression for the International Criminal Court,” 31 *Hastings International and Comparative Law Review* 531 (2008). http://works.bepress.com/cgi/viewcontent.cgi?article=1002&context=keith_petty. (accessed 18 July 2008), see Petty’s footnote 11 for an extensive listing of background documentation for the applicability of the definition. A recent conference at Case Western Reserve University School of Law also produced an excellent bibliography which can be found at http://law.case.edu/lectures/files/2008-2009/20080926_WCRSymp-ICC&AggressionBib9.26.08-REV.pdf. The conference itself can be accessed at

http://law.case.edu/lectures/index.asp?lec_id=172. Ahmed M. Rifaat, *International Aggression: A Study of the Legal Concept: Its Development and Definition in International Law* (Stockholm Atlantic Highlands, N.J.: Almqvist & Wiksell international; Humanities Press, 1979) also contains a helpful bibliography. Rifaat provides an exceptional review of the definition of aggression from its medieval historical origins to G.A. Res. 3314. It includes language from several of the Soviet treaties but is a more general overview.

⁸¹ Ibid., 33.

stage of the discussions that took place years later in Nuremberg, as well as in the UN General Assembly.”⁸²

Like Solera’s study, this dissertation looks at the legal and political reasons that pushed the process in a given direction. However, this dissertation looks at the process through the eyes of only one actor, the Soviet Union and later the Russian Federation. In doing so, it looks more thoroughly at how underlying factors were used or manipulated by the Soviet Union and Russian Federation as it proposed the definition of aggression and aggressive war to the UN and other international bodies through the use of international law. More importantly, it sets this use against the context of military operations conducted at the time to better analyze the actual use of these definitions in real world situations. By taking the lead in the definition through treaties and international law, the Soviet Union and Russian Federation placed themselves in a position to benefit from its use politically, legally and militarily as a form of lawfare.

⁸² Ibid., 38.

CHAPTER 1

TREATIES PRIOR TO WWII

“When a man who was attacked by barking dogs asks why, seeing that barking dogs do not bite, he was afraid, he replied that he knew this alright, but he was not sure whether the dogs knew it. (General laughter) We Bolsheviks are not afraid of barking dogs, but still we are not going to rely on the consciousness of the dogs (Laughter and applause), and will arm ourselves with a stronger and a longer cudgel.”¹

Speech delivered to the Extraordinary Eighth Congress of Soviets of the USSR on November 28th, 1936, by Maxim Litvinov

The Soviet Union entered the 1930s in an isolationist political environment externally and focused on rapid industrialization and collectivization internally. In order to accomplish the internal changes, it was important to the Soviet Union to maintain peaceful foreign relations.² Internally, new draft civil and criminal procedural codes were being introduced. The procuracy, courts, the People’s Commissariat of Justice and the secret police were being reformed.³ Externally treaties were initiated with neighboring states to allow time to accomplish these internal changes. This isolationist policy could also have been attributed to what Stalin claimed was “capitalist encirclement,” as well

¹ *Against Aggression: Speeches by Maxim Litvinov*, (International Publisher Co. Inc.: New York), 73.

² Robert H. Donaldson and Joseph L. Nogee, *The Foreign Policy of Russia: Changing Systems, Enduring Interests*, 2nd ed. (Armonk, N.Y.: M.E. Sharpe, 2002), 58.

³ Gabor T. Rittersporn, “Extrajudicial Repression and the Courts: Their Relationship in the 1930s,” in Peter H. Solomon, *Reforming Justice in Russia, 1864-1996: Power, Culture, and the Limits of Legal Order* (Armonk, N.Y.: M.E. Sharpe, 1997), 207. Eugene Huskey, in “Russian Judicial Reform After Communism,” in the work cited above, noted that “Soviet politics imposed a measure of discipline on state legal institutions” shifting the configuration of institutional power. (325) For this dissertation this is relevant because they were accomplishing internally what the use of international treaties was accomplishing externally. Huskey, in “From Legal Nihilism to Pravovoe Gosudarstvo” in Donald A. Barry, ed. *Toward the “Rule of Law” in Russia?: Political and Legal Reform in the Transition Period*, (Armonk, New York: M.E. Sharpe, 1992) noted that despite increasing use of the law it was still “compromised, self-serving, and ‘suspendable.’” (30). Harold Berman noted “both law and terror are instruments through which the state accomplishes its objectives.” Harold Berman, “The Law of the Soviet State,” *Soviet Studies* 6, no.3 (Jan 1955): 236. He went on to state that in the Soviet system, legal order is used concisely to inculcate the motives and “the sense of rights and duties which the leaders believe to be necessary to make their system work.” (234) He concluded that the Soviet system (at the time of writing in 1955) was dangerous, not because it lacked law and justice but a new law was being developed that, although it met the general requirements of all law to satisfy a need for justice, was “reconcilable with political and ideological tyranny.” (237)

as a reaction, in part, to the intervention in western Russia by the United States, Britain, France and Japan immediately after the Bolshevik Revolution.

As early as 1929, Malbone Graham noted that Soviet treaties of the early 1920s were consciously timed to discredit the diplomacy of Western Powers and to boost the capacity of the Commissariat of Foreign Affairs to cope with actions taken by the capitalist world.⁴ More specifically, the neutrality clauses permitted the forecasting of the conduct of states in given contingencies and, by virtue of a legal rule, of a state's political behavior.⁵ Graham noted the Soviet treaty system was meant to be practical and utilitarian, meeting objectives of the Soviet system, namely, “[t]o avoid the direct possibility of war by the categorical, yet reciprocal renunciation of all forms of aggression; to restrict the scope and the incidence of wars by unconditional, yet mutual pledges of neutrality and non-participation in hostile acts undertaken by third powers; to provide, in bold outlines, a supple machinery of pacific adjustment and liquidations of controversies.”⁶

These treaties were the precursor to a long series of those introduced by the Soviet Union over the next two decades. This chapter examines several of these in detail as they relate to establishment of the definition of aggression and aggressive war. Although it appears this chapter is

⁴ Malbone W. Graham, “The Soviet Security Treaties,” 23 *The American Journal of International Law*, no. 2. 336, 340 (Apr. 1929).

⁵ Ibid., 343.

⁶ Ibid., 345. For further study on this period of collective security, see also Jonathan Haslam, *The Soviet Union and the Struggle for Collective Security in Europe, 1933-39* (New York: St. Martin's Press, 1984).

Jiri Hochman, *The Soviet Union and the Failure of Collective Security, 1934-1938, Cornell Studies in Security Affairs*. (Ithaca: Cornell University Press, 1984). Haslam noted that the reason the Soviet Union entered these treaties was to “enmesh expansionist Germany in a web of multilateral guarantees and, failing this, the creation of an alliance system to contain Hitler’s wild ambitions.”(2) Hochman noted that many of the treaties signed by the Soviets at the time, particularly the initial peace treaties of 1920, were primarily a means of creating a pause. (15) He noted the general task of Soviet foreign policy of this time was to secure safe external conditions in order to facilitate Stalin’s policies to remodel Russia. (172) The primary goals were to prevent formation of a hostile combination of foreign powers and to keep the Soviet Union out of international conflict while she was growing militarily. He contended the Soviet Union’s special relationship with Germany was the main focus of this policy until 1934 (16) and that the international conventions and protocols were not a preparatory step in another direction but to further promote foreign recognition and improve advantages drawn from foreign trade. (28) Hochman noted that the Russians, with several non-aggression pacts, specifically that with Poland, sought consent from Berlin before finalizing them. (35). He was critical overall of Soviet policy during this period and questioned if the desire for collective security was truly the goal.

a series of excerpts from treaties, it is important to establish the consistency with which the Soviet Union utilized the definition of aggression and aggressive war. This chapter emphasizes the prominence of the use of the definition in manipulating the relationships between the Soviet Union and its neighbors and the international community as a whole. It is also important to note that the treaties of this period emphasized the definition of aggression and aggressive war as it applied to state actors.

ESTABLISHING THE DEFINITION

Broadly setting the stage, in 1927, at the Eighth Ordinary Session of the Assembly of the League of Nations, a resolution was adopted concerning wars of aggression. It read:

The Assembly,
 Recognising the solidarity which unites the community of nations;
 Being inspired by a firm desire for the maintenance of general peace;
 Being convinced that a war of aggression can never serve as a means of settling international disputes and is, in consequence, an international crime;
 Considering that a solemn renunciation of all wars of aggression would tend to create an atmosphere of general confidence calculated to facilitate the progress of the work undertaken with a view to disarmament:

Declares:

- (1) That all wars of aggression are, and shall always be, prohibited;
- (2) That every pacific means must be employed to settle disputes, of every description, which may arise between States.

The Assembly declares that the States Members of the League are under an obligation to conform to these principles.⁷

On 27 August 1928, the Pact of Paris, also known as the Kellogg-Briand Pact, was signed.

The Pact of Paris is the primary starting point for future discussions on the definition of aggression and aggressive war. The pertinent articles read:

Article I

The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it, as an instrument of national policy in their relations with one another.

Article II

The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.⁸

⁷ Declaration Concerning Wars of Aggression, A.119.1927.IX. Eighth Ordinary Session of the Assembly of the League of Nations, Resolution adopted by the Assembly on September 24th, 1927 (morning).

<http://digital.library.northwestern.edu/league/le000045.pdf>. (accessed 4 August 2008). The Soviet Union became a member of the League of Nations 18 September 1934.

⁸ Pact of Paris (also known as the Kellogg-Briand Pact), signed 27 August 1928. 94 LNTS 57. Ratified by Russia 29 August 1928. <http://www.yale.edu/lawweb/avalon/imt/kbpact.htm>. (accessed 5 August 2008). See also Litvinov Protocol of immediate entry into force of the 1928 Pact of Paris. 89 LNTS 369.

Building on the Pact of Paris, which was ultimately signed by sixty-one nations, Maxim Maximovich Litvinov (1876 - 1951),⁹ at the Thirty-First Meeting of the General Commission of the League of Nations (hereafter the Commission) at the Conference for Reduction and Limitation of Armaments, on 6 February 1933, proposed what would come to be the bedrock of future versions of the definition of aggression and aggressive war. He set the stage for decades to come by asking "How is the aggressor to be determined, and who is to determine the aggressor? Apparently we must either think about setting up a special international organ for this purpose, or invest a conference of all signatories to the Pact [Pact of Paris] with the necessary judicial powers."¹⁰ Litvinov further noted that justifications for aggression were many, including the desire to exploit natural riches, infringement of an international agreement, encroaching upon material interests, and the outbreak of revolutions. He commented that even war had recently been used to justify investments in other countries and as a method of ensuring peace. He concluded that if this continued, an aggressor would never be found.¹¹ At that point he proposed a draft definition for consideration. It read as follows:

Considering that, in the interests of general security and in order to facilitate the attainment of an agreement for the maximum reduction of armaments, it is necessary, with the utmost precision, to define aggression, in order to remove any possibility of its justification;

Recognising the principle of equal right of all States to independence, security and self-defence;

Animated by the desire of ensuring to each nation, in the interests of general peace, the right of free development according to its own choice and at the rate that suits it best, and of safeguarding the security, independence and complete territorial inviolability of each State and its right to self-defence against attack or invasion from outside, but only within its own frontiers; and

Anxious to provide the necessary guidance to the international organs which

⁹ Commissar for Foreign Affairs, 1930 - 1939.

¹⁰ Records of the Conference for the Reduction and Limitation of Armaments. League of Nations, Geneva, 1933. Series B. Minutes of the General Commission. Series of League of Nations Publications. Vol. II December 14th 1932-June 29th 1933. IX. Disarmament. 1933 IX.10. Thirty-first Meeting held on Monday 6 February 1933. 236. <http://digital.library.northwestern.edu/league/le00072b.pdf>. (accessed 7 January 2009).

¹¹ Ibid., 237. For more speeches by Litvinov against aggression, see M. M. Litvinov, *Against Aggression; Speeches* (New York; International Publisher Co. Inc., 1939).

may be called upon to define the aggressor:

Declares:

1. The aggressor in an international conflict shall be considered that State which is the first to take any of the following actions:
 - (a) Declaration of war against another State;
 - (b) The invasion by its armed forces of the territory of another State without declaration of war;
 - (c) Bombarding the territory of another State by its land, naval or air forces or knowingly attacking the naval or air forces of another State;
 - (d) The landing in, or introduction within the frontiers of, another State of land, naval or air forces without the permission of the Government of such a State, or the infringement of the conditions of such permission particularly as regards the duration of sojourn or extension of area;
 - (e) The establishment of a naval blockade of the coast or ports of another State.
2. No considerations whatsoever of a political, strategical or economic nature, including the desire to exploit natural riches or to obtain any sort of advantages or privileges on the territory of another State, no references to considerable capital investments or other special interests in a given State, or to the alleged absence of certain attributes of State organisation in the case of a given country, shall be accepted as justification of aggression as defined in Clause 1.

In particular, justification for attack cannot be based upon:

- A. *The internal situation in a given State*, as, for instance:
- (a) Political, economic or cultural backwardness of a given country;
 - (b) Alleged mal-administration;
 - (c) Possible danger to life or property of foreign residents;
 - (d) Revolutionary or counter-revolutionary movements, civil war, disorders or strikes;
 - (e) The establishment or maintenance in any State of any political, economic or social order.

B. *Any acts, laws or regulations of a given State*, as for instance:

- (a) The infringement of international agreements;
- (b) The infringement of the commercial, concessional or other economic rights or interests of a given State or its citizens;
- (c) The rupture of diplomatic or economic relations;
- (d) Economic or financial boycott;

- (e) Repudiation of debts;
 - (f) Non-admission or limitation of immigration, or restriction of rights or privileges of foreign residents;
 - (g) The infringement of the privileges of official representatives of other States;
 - (h) The refusal to allow armed forces transit to the territory of a third State;
 - (i) Religious or anti-religious measures;
 - (k) Frontier incidents.
3. In the case of the mobilisation or concentration of armed forces to a considerable extent in the vicinity of the frontiers, the State which such activities threaten may have recourse to diplomatic or other means for the peaceful solution of international controversies. It may at the same time take steps of a military nature, analogous to those described above, without, however, crossing the frontier.¹²

Litvinov clarified that it was not his purpose to include all justifications for war but pointed out the listing contained those from history and the foreseeable future.¹³ Addressing those who suggested the Soviet government was using the proposal to give them time to rebuild during peaceful conditions, he answered that they did not deny this but would also not deny other states wishing to accomplish the same purpose.¹⁴ Unfortunately the Commission never achieved codification of this definition. However, it did serve to bring the definition that continues to be discussed today to the attention of the international community.

In 1932 and 1933, during and after the Conference, the Soviet Union entered into a series of agreements in the form of non-aggression treaties.¹⁵ Their language varied, but focused primarily on refraining from any act of violence or aggression which violated the territorial independence,

¹² Ibid., 237-238.

¹³ Ibid.

¹⁴ Ibid., 239.

¹⁵ It is relevant to note that the text of these treaties were published in “Official Documents,” 27 *Supplement to the American Journal of International Law* 167 (1933). The American Society of International Law. The UN citation will be used however for my purposes since the *Supplement* was a translation from the *Soviet Union Review* and differed slightly from the UN source. See Benjamin B. Ferencz, *Defining International Aggression: The Search for World Peace, a Documentary History and Analysis*, vols. 1-2 (Dobbs Ferry, New York: Oceana Publications, Inc. 1975) Vol. 1, 28 for additional commentary regarding the differences in the treaties.

inviolability or political independence of the other state. Note the transition from the “act of violence” which is regarded as aggression to “act of aggression” or “aggressive acts” in the subsequent treaties. In the treaty with Latvia, the ideas of economic and financial boycott were added. Following are the relevant excerpts from these treaties.

The Treaty of Non-aggression and Pacific Settlement of Disputes Between Finland and the Union of Soviet Socialist Republics, signed 21 January 1932 and ratified 9 August 1932 noted:

Article 1.

The High Contracting Parties mutually guarantee the inviolability of the existing frontiers between the Union of Soviet Socialist Republics and the Republic of Finland, as fixed by the Treaty of Peace concluded at Dorpat on October 14th, 1920, which shall remain the firm foundation of their relations, and reciprocally undertake to refrain from any act of aggression directed against each other.

2. Any act of violence attacking the integrity and inviolability of the territory or the political independence of the other High Contracting Party shall be regarded as an act of aggression, even if it is committed without declaration of war and avoids warlike manifestations.

Protocol to Article 1

In conformity with the provisions of Article 4 of the present Treaty, the Agreement of June 1st, 1922, regarding measures ensuring the inviolability of the frontiers shall not be affected by the provisions of the present Treaty and shall continue to remain fully in force.

Article 2.

1. Should either High Contracting Party be the object of aggression on the part of one or more third Powers, the other High Contracting Party undertakes to maintain neutrality throughout the duration of the conflict.
2. Should either High Contracting Party resort to aggression against a third Power, the other High Contracting Party may denounce the present Treaty without notice.

Article 3.

Each of the High Contracting Parties undertakes not to become a party to any treaty, agreement or convention which is openly hostile to the other Party or contrary, whether formally or in substance, to the present Treaty.¹⁶

¹⁶ No. 3613. Treaty of Non-aggression and Pacific Settlement of Disputes Between Finland and the Union of Soviet Socialist Republics, signed at Helsinki, 21 January 1932. 157 LNTS 393.
http://untreaty.un.org/unts/60001_120000/18/19/00034939.pdf. (accessed 24 January 2009).

The Treaty of Non-Aggression Between Latvia and the Union of Soviet Socialist Republics, signed 5 February 1932 and ratified 18 July 1932 stated in Article 1:

Each of the High Contracting Parties undertakes to refrain from any act of aggression directed against the other, and also from any acts of violence directed against the territorial integrity and inviolability or the political independence of the other Contracting Party, regardless of whether such aggression or such acts are committed separately or together with other Powers, with or without a declaration of war.

Article 2, in this case further clarifies Article 1 and reads as follows:

Each of the High Contracting Parties undertakes not to be a party to any military or political treaties, conventions or agreements directed against the independence, territorial integrity or political security of the other Party, or to any treaties, conventions, or agreements aiming at an economic or financial boycott of either of the Contracting Parties.¹⁷

The Treaty of Non-Aggression and Peaceful Settlement of Disputes Between Estonia and the Union of Soviet Socialist Republics, signed 4 May 1932 and ratified 18 August 1932, guaranteed in Article 1:

...to refrain from any act of aggression or any violent measures directed against the integrity and inviolability of the territory or against the political independence of the other Contracting Party, whether such acts of aggression or such violent measures are undertaken separately or in conjunction with other Powers, with or without a declaration of war.¹⁸

The Pact of Non-Aggression Between Poland and the Union of Soviet Socialist Republics, signed 25 July 1932 and ratified 23 December 1932 stated in Article 1:

Article 1.

The two Contracting Parties, recording the fact that they have renounced war as an instrument of national policy in their mutual relations, reciprocally undertake to

¹⁷ No. 3408. Treaty of Non-Aggression Between Latvia and the Union of Soviet Socialist Republics. Signed at Riga, 5 February 1932. 148 LNTS 113. http://untreaty.un.org/unts/60001_120000/18/7/00034341.pdf. (accessed 24 January 2009).

¹⁸ No. 3020. Treaty of Non-Aggression and Peaceful Settlement of Disputes Between Estonia and the Union of Soviet Socialist Republics. Signed at Moscow 4 May 1932. 131 LNTS 297. http://untreaty.un.org/unts/60001_120000/17/26/00033258.pdf. (accessed 24 January 2009).

refrain from taking any aggressive action or invading the territory of the other Party, either alone or in conjunction with other Powers.

Any act of violence attacking the integrity and inviolability of the territory or the political independence of the other Contracting Party shall be regarded as contrary to the undertakings contained in the present Article, even if such acts are committed without declaration of war and avoid all warlike manifestations as far as possible.

Article 2.

Should one of the Contracting Parties be attacked by a third State or by a group of other States, the other Contracting Party undertakes not to give aid or assistance, either directly or indirectly, to the aggressor State during the whole period of the conflict. Should one of the Contracting Parties commit an act of aggression against a third State, the other Contracting Party shall have the right to denounce the present Pact without notice.

Article 3.

Each of the Contracting Parties undertakes not to be a party to any agreement openly hostile to the other Party from the point of view of aggression.

Article 4.

The undertakings provided for in Articles 1 and 2 of the present Pact shall in no case limit or modify the international rights and obligations of each Contracting Party under agreements concluded by it before the coming into force of the present Pact, so far as the said agreements contain no aggressive elements.¹⁹

Culminating in the Convention for the Definition of Aggression (the London Convention), signed at London, 3 July 1933, the Soviet Union joined Romania, Afghanistan, Estonia, Latvia, Persia, Poland and Turkey in an agreement that read in part:

Being desirous of consolidating the peaceful relations existing between their countries;

Mindful of the fact that the Briand-Kellogg Pact, of which they are signatories, prohibits all aggression;

Deeming it necessary, in the interests of the general security, to define aggression as specifically as possible, in order to obviate any pretext whereby it might be justified;

And noting that all States have an equal right to independence, security, the defence of their territories, and the free development of their institutions;

And desirous, in the interest of the general peace, to ensure to all peoples the

¹⁹ No. 3124. Pact of Non-Aggression Between Poland and the Union of Soviet Socialist Republics, signed 25 July 1932. 136 LNTS 41. http://untreaty.un.org/unts/60001_120000/17/32/00033562.pdf. (accessed 24 January 2009).

inviolability of the territory of their countries;

And judging it expedient, in the interest of the general peace, to bring into force, as between their countries, precise rules defining aggression, until such time as those rules shall become universal; ...

We have agreed on the following provisions:

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 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 or protection.

Article III. No political, military, economic or other considerations may serve as an excuse or justification for the aggression referred to in Article II. (For examples, see Annex.)

Article IV. The present Convention shall be ratified by each of the High Contracting Parties in accordance with its laws.

This Convention includes the following Annex:

ANNEX TO ARTICLE III OF THE CONVENTION RELATING TO THE DEFINITION OF AGGRESSION.

The High Contracting Parties signatories of the Convention relating to the definition of aggression,

Desiring, subject to the express reservation that the absolute validity of the rule laid down in Article III of that Convention shall be in no way restricted, to furnish certain indications for determining the aggressor,

Declare 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 or economic 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.

The High Contracting Parties further agree to recognise that the present Convention can never legitimate any violations of international law that may be implied in the circumstances comprised in the above list.²⁰

Conventions were signed with Czechoslovakia, Romania, Turkey and Yugoslavia on 4 July 1933 and with Lithuania on 5 July 1933 with the same wording regarding the relevant articles.²¹

Note not only the reference to the Pact of Paris, but also the listing of specific acts that were labeled as aggressive as well as the addition of a list in the Annex of situations within a state which did not justify aggression such as civil war, and economic and financial interests.

Interestingly, the Pact of Non-Aggression between France and the Union of Soviet Socialist Republics, signed in Paris, 29 November 1932 and ratified 15 February 1933, stated:

Article I.

Each of the High Contracting Parties undertakes with regard to the other not to resort in any case, whether alone or jointly with one or more third Powers, either to war or to any aggression by land, sea or air against that other Party, and to respect the inviolability of the territories which are placed under that Party's sovereignty or which it represents in external relations or for whose administration it is responsible.

Article II.

²⁰ Convention for the Definition of Aggression. Signed at London, July 3rd, 1933. 147 LNTS 67. See also 148 LNTS 211 and 148 LNTS 79. http://untreaty.un.org/unts/60001_120000/18/6/00034259.pdf (accessed 7 January 2009). The Convention was signed by Maxim Litvinov on the same date with subsequent ratifications by all parties and accession by Finland 31 January 1934.

²¹ "Official Documents," 27 *Supplement to the American Journal of International Law* 167, 194-5 (1933). See John B. Quigley, *Soviet Legal Innovation and the Law of the Western World* (Cambridge; New York: Cambridge University Press, 2007). Quigley noted that this series of treaties moved international law into a more precise regulation of armed forces by defining the acts considered violations of the Pact of Paris.

Should either High Contracting Party be the object of aggression by one or more third Powers, the other High Contracting Party undertakes not to give aid or assistance, either directly or indirectly, to the aggressor or aggressors during the period of the conflict. Should either High Contracting Party resort to aggression against a third Power, the other High Contracting Party may denounce the present Treaty without notice.²²

This is different from the preceding treaties in that the parties also agreed to take into consideration those territories under the sovereignty of the other and that have fallen under their representation in foreign affairs or administrative control. The result of this language restricted France when dealing with other states where the Soviet Union had taken over foreign policy or administrative control, such as will happen in Poland and the Baltic States. Now this stipulation was built into an international treaty, subject to international law.

On 18 September 1934, the Soviet Union joined the League of Nations, adopting the Covenant of the League of Nations. Article 10 read as follows:

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 or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled.²³

However, regarding the Covenant of the League of Nations, Litvinov, in his speech of 1 July 1936 on the Indivisibility of Peace and the Strengthening of Collective Security delivered at the XVI Plenum of the League of Nations, stated, “Where the Covenant is greatly deficient, I think, is in its omission of a definition of aggression....An end must be put to the situation wherein pleas of sovereignty and constitutional formalities are an obstacle to the performance of international

²² No. 3615. Pact of Non-Aggression Between France and the Union of Soviet Socialist Republics, signed in Paris, 29 November 1932. 157 LNTS 411. http://untreaty.un.org/unts/60001_120000/18/19/00034941.pdf. (accessed 24 January 2009).

²³ The Covenant of the League of Nations, including Amendments adopted to December, 1924. <http://www.yale.edu/lawweb/avalon/leagcov.htm>. (accessed 4 August 2008).

obligations.”²⁴ Later, on 28 September 1936, in a speech delivered at the XVII Plenary Session of the League of Nations, Litvinov stated, “I am profoundly convinced that these forces have only to unite to some extent, they have only to show that joint actions are possible, and not only will the danger of war be averted, but sooner or later the aggressor will have to ask to be included in the general system of collective security.”²⁵

²⁴ *Against Aggression: Speeches by Maxim Litvinov*, 43.

²⁵ Ibid., 49. Sergius Yakobson noted that the Soviet attitude towards the League of Nations was not ideological but motivated by the need for security brought on by Hitler’s rise to power. Secondly, regarding other treaties, the Soviet Union while focusing on its own security, based its efforts on the insecurity of other states. “World Security and Regional Arrangements – Soviet Position,” Sergius Yakobson, panelist, Chief Foreign Affairs Section, Legislative Reference Services, Library of Congress, Proceeding for the American Society of International Law at its 44th Annual Meeting held in Washington, DC, 27-29 April 1950.

SUMMARY

This blitz of treaties has proven to be the basis for continued debates over the next seven decades. It is important to note the parties to the treaties at this point are almost all states that border Russia. Strategically, both sides are now under an obligation to refrain from aggressive attacks, either separately or jointly with other powers. Furthermore, the treaty with France restricts each from attacking states under the sovereignty or administrative control of the other. Of particular interest should be the Annex of the London Convention for the Definition of Aggression, which specifically identifies political disturbances such as strikes, revolutions, counter-revolutions and civil war as excluded from justification for aggressive action. Nor are frontier incidents allowed. Also, in the preceding non-aggression treaties, territorial inviolability and political independence are protected concepts. The Soviet Union would soon use these and the statement in the London Convention that all states have an equal right to independence, security and the defense of their territories, to justify acts that are explicitly forbidden by the London Convention itself.

As the Soviet Union continued to rebuild both its military and its system of law internally, it was also building a system of law externally to benefit it militarily and politically. The first test of these treaties would come with neighboring Finland just seven years after the treaty on non-aggression was ratified between the two.

CHAPTER 2

THE MOLOTOV-RIBBENTROP PACT, POLAND AND FINLAND

This chapter focuses on the years just prior to the German attack on the Soviet Union in 1941. The treaty of non-aggression between Germany and the USSR was signed 23 August 1939. On 1 September 1939 German troops invaded Poland. Soviet troops crossed into Poland on 17 September 1939 declaring that the Polish state had collapsed. The same month negotiations were beginning in Finland, which would result in the “Winter War” (30 November 1939 - 13 March 1940). This sequence of events provides interesting lessons in the art of lawfare along with a clear pattern of its use by the Soviet Union. The Soviet Union was forced to realize the weight of the international treaties and their enforcement of the definition of aggression and aggressive war as it was enforced against them by the League of Nations. It became evident how the designation of aggressor could be used politically and militarily, but the Soviet government also saw how public opinion was swayed by its use. During the Winter War it was the Soviet Union that attempted to declare the non-aggression pact void. The Germans would declare their pact with the Soviet Union void shortly thereafter.

This chapter will focus primarily on the expulsion of the Soviet Union from the League of Nations as a result of the Winter War. It is the first, and only, instance of a designation by that body of a state as an aggressor. Their reasoning is very important to the continued discussions. The chapter will conclude, based on a detailed analysis by George Ginsburgs of the invasion of Poland, with a demonstration of the debate, intersection and ultimately clash of the wording in the treaties utilized by the Soviet Union as justification for their actions.

MOLOTOV-RIBBENTROP PACT

Just prior to the events of the Winter War, in August of 1939, Germany and the Soviet Union entered into a non-aggression pact. Many scholars have debated the Soviet reasoning behind entering into this agreement with Germany.¹ Possibly it was defensive in nature, establishing a *cordon sanitaire* around the USSR via the annexation of Poland, the Baltics and Finland. Possibly it was offensive, a preemptive attempt against Germany. Geoffrey Roberts saw it as a response to the fear that the Soviet Union would become the primary victim of a full-scale military conflict.²

Either way, the Soviet Union utilized international law as a means to delay military actions to allow themselves the opportunity to build their armed forces. The Treaty of Non-aggression between Germany and the Union of Soviet Socialist Republics (hereafter the Molotov-Ribbentrop Pact),³ signed in Moscow 23 August 1939, consisted, in part, of the following language:

The Government of the German Reich and the Government of the Union of Soviet Socialist Republics desirous of strengthening the cause of peace between Germany and the U.S.S.R., and proceeding from the fundamental provisions of the Neutrality Agreement concluded in April 1926 between Germany and the U.S.S.R., have reached the following agreement:

Article I

Both High Contracting Parties obligate themselves to desist from any act of violence,

¹ Albert Loren Weeks, *Stalin's Other War: Soviet Grand Strategy, 1939-1941* (Lanham, Md.: Rowman & Littlefield Publishers, 2002). See 2-10 for a thorough discussion of this argument. Litvinov noted, when speaking on the subject of why democratic states would not join Russia against the aggressors, that the capitalist countries had unstable governments that change frequently and would ultimately, should peace fail, seek first to attack Russia, in Adam Bruno Ulam, *Expansion and Coexistence; the History of Soviet Foreign Policy, 1917-67* (New York.; Praeger, 1968), 205-206. Citing Jane Tabrisky Degras, *Soviet Documents on Foreign Policy*, III: 1933-41 (London and New York, 1953), 61. Donaldson, however, in *The Foreign Policy of Russia*, brings up the point that in his secret speech to the Twentieth Party Congress, Khrushchev said the steps to properly defend Russia were not taken, the military had been wounded by the purges and Soviet war-fighting doctrine was based on repelling an attack immediately and fighting the war on enemy soil. (65). Although reasonable at the time, signing the Nazi-Soviet Pact was not so much so when Germany attacked. (65).

² Geoffrey Roberts, *Stalin's Wars: From World War to Cold War, 1939-1953* (New Haven [Conn.]; London: Yale University Press, 2006), 35.

³ Named for the two major signatories: Viacheslav Mikhailovich Molotov (1890 – 1986), who succeeded Litvinov as Commissar for External Affairs in 1939 and Joachim von Ribbentrop (1893 – 1946) who was German Reich Minister of Foreign Affairs from 1938 until 1945.

any aggressive action, and any attack on each other, either individually or jointly with other powers.

Article II

Should one of the High Contracting Parties become the object of belligerent action by a third power, the other High Contracting Party shall in no manner lend its support to this third power. [...]

Article IV

Neither of the two High Contracting Parties shall participate in any grouping of powers whatsoever that is directly or indirectly aimed at the other party. [...]⁴

Secret Additional Protocol

On the occasion of the signature of the Nonaggression Pact between the German Reich and the Union of Soviet Socialist Republics the undersigned plenipotentiaries of each of the two parties discussed in strictly confidential conversations the question of the boundary of their respective spheres of influence in Eastern Europe. These conversations led to the following conclusions:

1. In the event of a territorial and political rearrangement in the areas belonging to the Baltic States (Finland, Estonia, Latvia, Lithuania), the northern boundary of Lithuania shall represent the boundary of the spheres of influence of Germany and the U.S.S.R. In this connection the interest of Lithuania in the Vilna area is recognized by each party.

2. In the event of a territorial and political rearrangement of the areas belonging to the Polish state the spheres of influence of Germany and the U.S.S.R. shall be bounded approximately by the line of the rivers Narew, Vistula, and San.

The question of whether the interests of both parties make desirable the maintenance of an independent Polish state and how such a state should be bounded can only be definitely determined in the course of further political developments. [...]

4. This protocol shall be treated by both parties as strictly secret.⁵

As a result of the Molotov-Ribbentrop Pact, Poland became another of the initial instances where the Soviet government demonstrated its use of lawfare.

⁴ Treaty of Non-aggression between Germany and the Union of Soviet Socialist Republics, 1 XDIA 408. http://avalon.law.yale.edu/20th_century/nonagres.asp. (accessed 15 March 2009).

⁵ Secret Protocol to the Treaty of Non-aggression between Germany and the Union of Soviet Socialist Republics, http://avalon.law.yale.edu/20th_century/addsepro.asp. (accessed 15 March 2009).

THE SOVIET INVASION OF POLAND

The language in the Secret Protocol of the Molotov-Ribbentrop Pact defined rearrangement of Poland based on German and Soviet spheres of influence. Soviet troops moved into Poland shortly after the Germans to firm up the arrangement. Recall a treaty of non-aggression had been signed between Poland and the USSR on 25 June 1932, specifically agreeing to “refrain from taking any aggressive action or invading the territory of the other Party.” Furthermore, they agreed in Article 3, “not to be a party to any agreement openly hostile to the other Party from the point of view of aggression.” Poland was also a party to the London Convention for the Definition of Aggression. The most interesting analysis can be drawn in this instance, not from the military movements on the ground, but the publicity generated to justify the aggression. In his article, “A Case Study in the Soviet Use of International Law: Eastern Poland in 1939,”⁶ George Ginsburgs drew such concise conclusions relevant to this dissertation, that I will base my analysis on his article to make the points which are relevant here.

After Soviet troops crossed the Polish border on 17 September 1939, the Soviet government began an all-out campaign to ensure the Soviet Union was not branded the aggressor. In fact, Ginsburgs concluded that international law was used in this instance as a “propaganda tool supporting its political moves and giving them the appearance of plausibility and quasi-legality.”⁷ In the instance of Poland, the Soviet government used a multi-faceted approach to place quasi-legal arguments in a context that would influence the “man on the street.”

⁶ George Ginsburgs, “A Case Study in the Soviet Use of International Law: Eastern Poland in 1939,” 52 *The American Journal of International Law*, no. 1, 69 (Jan. 1958).

⁷ Ibid, 84. Ginsburgs further stated that the USSR had shown great awareness of the importance of international law and its use as a weapon, which, when skillfully used, has proven “a great weight in the battle for human minds.”

The primary argument put forth for the invasion of Poland was the disappearance of the Polish state and the Polish government.⁸ Ginsburgs claimed this served several purposes. First, it invalidated the current treaties between the states, two of which included those described above.⁹ The Soviet government further stressed that because the Polish government disintegrated, all territorial titles it held lapsed,¹⁰ thus leaving itself open not only to abandonment of the treaties but giving the Soviet Union the right to intervene in self-defense. The Soviet government argued that the “dangers inherent in the development of a political vacuum” on its frontiers allowed it to intervene against potential threats.¹¹

Along with this argument, it was put forth both in the media and governmental meetings that this also served as self-defense against Germany, despite the fact they had just signed the Molotov-Ribbentrop Pact.¹² One final argument that was used was intervention on “grounds of humanity,” to protect “brother Slavs.” Ginsburgs noted that if the population of Ukrainian and White Russian people was in danger, “the validity of the Soviet argument must be conceded on the basis of generally recognized rules of international law.”¹³

Finally, the concept of national self-determination was put forth. Utilizing the common nationality of the Ukrainian and Byelorussian people, the Soviet government agreed that because these were annexed illegally by Poland in 1921, this action amounted to allowing the people to voluntarily determine their nationality.¹⁴ Ginsburgs noted that although questionable on the part of

⁸ Ibid., 70.

⁹ Ibid., 71.

¹⁰ Ibid., 73.

¹¹ Ibid., 75.

¹² Ibid.

¹³ Ibid., 77.

¹⁴ Ibid., 79.

the Soviets, the Polish entitlement to the area did result from a “direct act of force and military conquest.”¹⁵

Ginsburgs concluded that although most arguments were only quasi-legal in basis, the Soviet government did not intend them to withstand the scrutiny of the international legal community. They were meant, instead, to influence the public opinion of the masses, both near and abroad, to gain support for its policies.¹⁶ They did this by appealing to a *de facto* argument couched in *de jure* terms.¹⁷ Ginsburgs also noted the importance of timing when executing these strategies and prior evaluation by the authorities to “mobilize public support for a course of action.”¹⁸ Throughout the remainder of this study, one can see this combined technique of lawfare and propaganda as the Soviet government sought to champion the definition of aggression while at the same time, explain away their own military actions as something other than a violation of that same definition.

¹⁵ Ibid., 80.

¹⁶ Ibid., 82.

¹⁷ Ibid., 83.

¹⁸ Ibid.

WINTER WAR

The Winter War is one such example of this tactic of combining lawfare and propaganda. Rather than outline the events of the Winter War, for the purposes of this analysis, I describe the events as they were outlined in the Report of the Special Committee of the Assembly of 13 December 1939 (hereafter Report) assigned to assess the situation and make a recommendation to the Council of the League of Nations. As has been seen previously, perception is very important. It is not the events themselves that need to be analyzed for this dissertation, but what it was about the events, as the Council of the League of Nations saw them, that provided justification to label the Soviet Union as an aggressor. To this end I will start with a caveat that the Soviet government would not supply information to the committee other than a telegram from Molotov dated 14 December 1939. The Special Committee utilized this along with Telegraph Agency of the Soviet Union (hereafter TASS) reports and documents from the Finnish government to compile its report.¹⁹

The Report noted that on 12 October 1939, the Soviet government made an unofficial proposal to negotiate a mutual assistance pact with the Finnish government to ensure the safety of the USSR and particularly Leningrad from attack. The proposal was rejected with the explanation that the pact would be “inconsistent with her policy of strict neutrality.”²⁰ The Soviet government subsequently proposed to lease certain islands from Finland, which was also rejected.²¹ The TASS report of 11 November 1939 reported that not only was the Finnish government not willing to accept the Soviet proposal, it was increasing troops close to Leningrad.²² On 26 November an incident occurred, dubbed the “Mainila Incident.” The Incident, according to Soviet reports, noted Finnish

¹⁹ Report of the Assembly, Provided for in Article 15, paragraphs 4 and 10, of the Covenant, submitted by the Special Committee of the Assembly. Geneva, 13 December 1939, A.46.1939.VII. 531-541.

²⁰ Ibid., A. para 3, 532. Note that Finland and the Soviet Union were parties to the Covenant of the League of Nations, parties to the Pact of Paris, parties to their own non-aggression pact of 1932 and Finland acceded to the 1933 Soviet Convention for the Definition of Aggression. (Ferencz, *Defining International Aggression*, vol. 1, 36.)

²¹ Ibid.

²² Ibid., 533.

artillery opened fire on Soviet forces, killing four and wounding nine. The Soviet forces did not retaliate. The Finns reported that the shots came from the Russian, not the Finnish, side, even noting it may have been an accidental firing.²³ The Soviet Union protested the troops being so close to Leningrad and requested that the Finnish troops be withdrawn from the Karelian Isthmus in order to preclude the possibility of any further actions of this type. The Finnish government rejected the protest.²⁴ The Soviet government, on 28 November, then replied that the continued positioning of troops at that location was a direct threat to Leningrad and was a hostile act, incompatible with the pact of non-aggression between the two countries. It therefore, considered itself released from the obligations of that treaty due to their violation.²⁵ Molotov followed on 29 November in a broadcast with a speech declaring Finland an independent state. He stated, “[t]he object of the steps we are taking is solely to ensure the security of the U.S.S.R., and particularly of Leningrad, with its 3 1/2 million inhabitants. In the present atmosphere, raised to white heat by the war, we cannot allow the solution of this vital and urgent problem to depend upon the ill-will of those who at present govern Finland. That problem must be solved by the efforts of the U.S.S.R. itself, in friendly co-operation with the Finnish people.”²⁶ This statement was an attempt to justify the action and establish the Soviet view that the government currently ruling Finland was not the body they considered in charge. On 30 November, Soviet troops crossed the border into Finland.²⁷

This was followed closely by a TASS announcement that formation of a Popular government was proposed and was now recognized by the Soviet government.²⁸ The existence of this government and its new relations with the Soviet Union were used as the reason for a continued

²³ Ibid. para 5, 533.

²⁴ Ibid.

²⁵ Ibid., para 8, 534.

²⁶ Ibid., 2 (c), 535.

²⁷ The Red Army claimed it was in response to armed provocations of the Finnish military. Finland’s government claimed that the Red Army actually crossed on the 29th. Ibid., para 12, 535.

²⁸ Ibid., para 13, 536.

military presence.²⁹ On 3 December 1939, the Finnish government referred the matter to the Council of the League of Nations.

The Report of the Assembly outlined a list of the treaties to which both states were a party, primarily, the Pact of Paris of 1928, the Convention for the Definition of Aggression to which Finland acceded in 1934, the Treaty of Non-aggression and Pacific Settlement of Disputes concluded between Finland and the USSR in 1932 and extended until 1945, and the Covenant of the League of Nations.³⁰ The Special Committee noted that the original request for Finland to cede territory was a violation of the Non-aggression Treaty of 1932 and the Pact of Paris, which set the territories of each as inviolable.³¹ It went on to note the definition of aggression that was applied to this instance was that which was codified in Articles I, II and III of the Convention for the Definition of Aggression signed at London on 3 July 1933.³² Specifically, it found “Finland and the Union of Soviet Socialist Republics are bound by the Convention for the Definition of Aggression signed at London on July 3rd, 1933. According to Article II of this Convention, the aggressor in an armed conflict shall be considered to be that State which is the first to invade by its armed forces, with or without declaration of war, the territory of another State or to attack by its land, naval or air forces, with or without declaration of war, the territory, vessels or aircraft of another State.” It stated further that under the terms of Article III, no political, military, economic or other consideration may serve as an excuse or justification for this aggression. “The order to enter Finland was given to the Soviet troops on the ground of ‘further armed provocation’. The reference was to frontier incidents or alleged frontier incidents. In the Annex, however, to Article II of the Convention, it is declared that no act of aggression within the meaning of Article II of the Convention can be justified by frontier incidents

²⁹ Ibid., para. 15, 16, 536.

³⁰ Ibid., para 1-5, 537. See Chapter 1 for the pertinent language of these treaties.

³¹ Ibid., B para 5. 537.

³² Ibid., para 7. 537.

not forming any of the cases of aggression specified in Article II.”³³ The Report went on to note that the government of Finland recognized by the League was freely elected and based on respect for democratic agreements. The Soviet government could not create a “so-called” government, either *de jure* or *de facto*, and regard it as the government of Finland, thus justifying its action under Article 15 of the Covenant.³⁴ The Special Committee then resolved to condemn the action taken by the USSR against Finland, resulting in expulsion of the USSR on 14 December 1939.

Contrary to placing the Soviet Union in a less favorable position, less than a year later the Soviet Union ended up with what it sought at the beginning. On 12 March 1940, the Moscow Peace Treaty was signed between the USSR and Finland. As part of the peace treaty, the Karelian Isthmus and the city of Vyborg were ceded to the Soviet Union, along with the lease of the Hanko Peninsula.

³³ Ibid., para 6, 539.

³⁴ Ibid., para 7, 540.

SUMMARY

As is evident by the succession of events to this point, there are a number of inconsistencies in the definition of aggression and aggressive war posed by the Soviet Union in treaties and the actions taken by their military. The treaties themselves were intentionally crafted to provide a measure of predictability to the actions of the other countries. Specifically, non-aggression treaties with the surrounding countries of Latvia, Estonia, Lithuania, Poland and most notably, Finland, were implemented not so much to influence those countries' actions as they applied to the Soviet Union, but to provide a barrier against the Germans, British and French using alliances with those countries to come right up to the border of the Soviet Union. In other words, they sought to secure a commitment from Latvia, Estonia, Lithuania, Poland and Finland before one was secured with them by Germany, France and Great Britain. Not knowing how the tide would turn during the lead-up to the Second World War, the Soviet government hedged their bets. The most blatant example of this was the Molotov-Ribbentrop Pact. Whether one believes it was a cunning plan on Stalin's part or extreme naiveté, it appears to continue to follow the trend put in place in the 1930s by the Soviets of penning these treaties to attempt to control the surrounding territories and allow itself time to build its military forces.

Although the definition of aggression posed by the Soviet Union was included in a number of treaties, it was not globally followed and sanctions were not applied. As demonstrated over the period, the treaties, such as that entered into with Finland, were not adhered to by the Soviet Union either. The League of Nations declared the Soviet Union the aggressor against Finland but the only ramification was expulsion from a dying entity. The excuse given by the Soviets was protection of Leningrad from German invasion, though they broke a number of their own proposed indicators to achieve that security militarily. In the end, they were rewarded with what they asked for originally.

Another reason given by the Soviets for invading neighboring states was protection of “brother Slavs.” However, this was in direct opposition to the definition they proposed against interference in the political independence of another state as well as the idea that political, military and economic reasons were not justification for aggression. They left the opening however, of invitation by the state to the Red Army. The Soviets could easily, and frequently did, set up a small revolutionary force within the state to request such interdiction. The League of Nations did not allow this characterization, however, and stated that the government of Finland was democratically elected and could not be determined by the Soviets to justify their actions.

The transition from the treaties initiated in the aftermath of WWI to the situation created by the Soviet need for security at the beginning of WWII was a volatile one. The Soviets stayed true to the definition of aggression and aggressive war as they posed it in treaties, both regionally and internationally, in word, if not in deed. The definition up to this time was aimed primarily at state actions. The next chapter will introduce the concept of aggression and aggressive war as it was introduced at the Nuremberg Trial and its application to individuals. As with the state definition, the Soviet Union played a central role in its crafting.

CHAPTER 3

THE NUREMBERG TRIAL AND INDIVIDUAL RESPONSIBILITY

As promised, this chapter looks at the introduction of individual responsibility for aggression. Western literature generally begins the discussion of the use of the definition of aggression from the perspective of the term's use at the International Military Tribunal at Nuremberg. To the contrary, it was suggested in at least a general form as early as 26 December 1941 in a proposal by the Deputy People's Commissar of Foreign Affairs sent to the State Committee on Defense in a letter addressed to Joseph Stalin and Viacheslav Mikhailovich Molotov. It proposed a financial-economic and political commission be established regarding the damage inflicted by the Nazis and the resolution of post-war borders respectively.¹

Molotov subsequently changed the name and powers, initiating the "All Union Committee of the Soviet Council of People's Deputies for the Investigation of the Villainous Crimes of the Nazis and their Accomplices and for the Determination of Damage Caused by the War."² This is the beginning of a long effort to allocate criminal responsibility to individuals responsible for aggression.

On 2 November 1942 the Soviet government, along with suggesting allied powers cooperate in the formation of an international tribunal, announced the creation of the "Extraordinary State Commission for Ascertaining and Investigating Atrocities Perpetrated by the German Fascist Invaders and Their Accomplices" (Extraordinary Commission), to collect evidence of Nazi

¹ Marina Yu. Sorokina, "People and Procedures: Toward a History of the Investigation of Nazi Crimes in the USSR," *Kritika: Explorations in Russian and Eurasian History* 6, no. 4 (Fall, 2005): 809-810.

² Ibid., 811. Sorokina noted that this was an initial effort to consolidate the calls from other countries to call the aggressor to account. These other countries were important to the Soviet Union for territorial, ideological, political or economic reasons.

atrocities.³ Marina Sorokina noted that the materials produced by the Extraordinary Commission were a type of “Soviet collective witness” when used at Nuremberg.⁴ The aim of the findings was to show the impact of Hitlerite crimes against the Soviet people.⁵ However, these documents also had a more general intention. They were to be used to facilitate international legal legitimacy and to alleviate the possibility of doubt in the Western world of the Soviet system.⁶

Andrei Ianuarievich Vyshinsky (1883 - 1954), Deputy Minister of Foreign Relations,⁷ and G. F. Alexandrov, the head of the Propaganda Department, edited the reports for this commission then sent them to Molotov for approval and finally to Stalin.⁸ According to Sorokina, through the Commission, Stalin successfully created the phantom “public accuser” of fascism.⁹ This “public accuser” persona is a prime example of what can be created by the impact of legal proceedings on international policy and public opinion. In other words, the “public accuser” is the culmination of lawfare and propaganda.

The Soviet Union held trials in Krasnodar, Khar’kov, Briansk, Leningrad, Riga, Minsk, and other venues over the period from 1943 to the early 1950s. These trials served as “the original

³ Alexander Victor Prusin, “‘Fascist Criminals to the Gallows!’: The Holocaust and Soviet War Crimes Trials, December 1945 – February 1946.” *Holocaust and Genocide Studies* 17, no. 1, (Spring 2003): 1-30. For a detailed, well documented account of the iterations of the Commission, its make-up and its work, see Marina Sorokina, “People and Procedures: Toward a History of the Investigation of Nazi Crimes in the USSR.”

⁴ Marina Yu. Sorokina, “Svideteli Niurnberga: ot anketi k biografi” in *Vtorye chtenia pamyati veniamina iofe pravo na imia. Biografiya kak paradigma istoricheskogo protsessa*, 16-18 Aprelia 2004. (2005), 52 and “Gde svoi, a gde chuzhie? K istorii rassledovaniia natsistskikh prestuplenii v SSSR.” *Priroda* no. 11 (2005). See also Francine Hirsch, “The Soviets at Nuremberg: International Law, Propaganda, and the Making of the Postwar Order,” *The American Historical Review* 113 (June 2008): 701-730.

<http://www.journals.uchicago.edu/doi/abs/10.1086/ahr.113.3.701?journalCode=ahr>. (accessed 26 August 2008). Hirsch concluded propaganda did not work in favor of the Soviet Union at Nuremberg.

⁵ Ibid. 62.

⁶ Ibid., 55.

⁷ Vyshinsky was named Prosecutor General of the USSR in 1935, Prosecutor of the Moscow Trials during the Great Purge (1936 - 1938) and Soviet Foreign Minister from 1949 - 1953.

⁸ Sorokina, “Svideteli Niurnberga,” 62.

⁹ Ibid., 63.

introduction to the Nuremberg Trial, paving the way for the application and effectuation of many norms and principles which later constituted the basis of Nuremberg Law.”¹⁰

The Moscow Declaration Statement of Atrocities,¹¹ signed on 30 October 1943, at the Moscow Conference held from 18 October to 11 November 1943, was the first of several treaties leading up to Nuremberg. This was part of a Joint Four-Nation Declaration signed by the United States, United Kingdom, Soviet Union and China who acknowledged “their responsibility to secure the liberation of themselves and the peoples allied with them from the menace of aggression” and admitted “the necessity of insuring a rapid and orderly transition from war to peace and of establishing and maintaining international peace and security with the least diversion of the world's human and economic resources for armaments.”¹² The Declaration outlined the atrocities committed by the Nazis and set the basis for the subsequent Agreement and London Charter of the International Military Tribunal.¹³ The London Charter was signed on 8 August 1945 by the United States, United Kingdom, USSR and France and set down the laws and procedures for the International Military Tribunal.

Discussions by the four nations that were to sit in judgment at Nuremberg are particularly enlightening on the definition of aggression and aggressive war. This chapter will track the efforts of the Soviet Union to further define aggression and aggressive war through participation in the International Conference on Military Trials (hereafter London Conference, 26 June - 8 August

¹⁰ I.A. Lediakh, Chapter IX. The Influence of the Nuremberg Trial on the Development of International Law, 2. “The Application of the Nuremberg Principles by other Military Tribunals and National Courts” 263, in Ginsburgs and Kudriavtsev, *The Nuremberg Trial and International Law*. Ginsburgs noted that “only the verdict of such a Court would be heard by all mankind as the voice of world public opinion,” 72. FN 3 per N.S. Lebedeva, *Podgotovka Niurnbergskogo Protessa*, (Moscow 1975): 43-44, et. al.

¹¹ Moscow Conference, October 1943, Statement of Atrocities signed by President Roosevelt, Prime Minister Churchill and Premier Stalin. <http://avalon.law.yale.edu/wwii/Moscow.asp>. (accessed 11 November 2008).

¹² Moscow Conference, October 1943, Joint Four-Power Declaration, signed by the governments of the United States, United Kingdom, Soviet Union and China. <http://avalon.law.yale.edu/wwii/Moscow.asp>. (accessed 11 November 2008).

¹³ Report of Robert H. Jackson, United States Representative to the International Conference on Military Trials. London, 1945. http://www.loc.gov/rr/frd/Military_Law/pdf/jackson-rpt-military-trials.pdf. (accessed 8 January 2009). See also 82 UNTS 279.

1945)¹⁴ and the International Military Tribunal at Nuremberg (hereafter Nuremberg Trial, 14 November 1945 -1 October 1946).¹⁵

¹⁴ The London Conference consisted of representatives from the United States, USSR, United Kingdom and France. It set forth a statement of principles of substantive law and agreed on the method to try the Nazi war criminals.

¹⁵ A CIA translation of *Istorii vtoroi mirovoi voiny 1939-1945*, vol. 11, (Moscow, 1980), Chapter 15 “Policy of Imperialist States in the Far East and Southeast Asia,” noted the primary aim of Soviet diplomacy after the war was consolidating its results in international legal documents, creating agencies to monitor demilitarization and democratization of conquered Axis states, and organizing competent international courts to prosecute the Nazis. 26. JPRS L/9678. CIA-RDP82-00850R00300040041-9.

LONDON CONFERENCE

In the minutes of the London Conference Session on 29 June 1945, General Iona Timofeevich Nikitchenko (1895 - 1967),¹⁶ one of the Soviet representatives to the Conference, explained that criminals in this trial had already been convicted by both the Moscow and Crimea Declarations.¹⁷ Nikitchenko noted that, “[o]nly rules of fair trial must, of course, apply because years and centuries will pass and it will be to posterity to examine these trials and to decide whether the persons who drew up the rules of the court and carried out the trials did execute their task with fairness and with justice but subject to giving the accused an opportunity for defense to that extent. The whole idea is to secure quick and just punishment for the crime.”¹⁸

Shortly thereafter, a Soviet draft was presented which listed as aggressive acts:

- a) initiation of war in violation of the principles of International Law and in breach of treaties;
- b) launching a war of aggression.¹⁹

The American version listed not only the launching of a war of aggression but “ c) invasion or threat of invasion of, or initiation of war against, other countries in breach of treaties, agreements or assurances between nations, or otherwise in violation of International Law.”²⁰

¹⁶ Nikitchenko was one of the three main drafters of the London Charter, a previous judge of several the Show Trials in the 1930s, and later the Soviet judge at the Nuremberg Trial.

¹⁷ Robert Houghwout Jackson, *Report of Robert H. Jackson, United States Representative to the International Conference on Military Trials, London, 1945. A Documentary Record of Negotiations of the Representatives of the United States of America, the Provisional Government of the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics, Culminating in the Agreement and Charter of the International Military Tribunal* (New York,: AMS Press, 1971). XVII Minutes of Conference Session of June 29, 1945, Explanation of Soviet Memorandum [XVI] 104 - 105. The Crimea Conference is generally known as the Yalta Conference which took place from 4 to 11 February 1945 between the United States, the United Kingdom and the Soviet Union to discuss Europe’s postwar reorganization. The Crimea declaration is the communiqué that resulted on 11 February to, among other things, bring the German war criminals to swift justice.

¹⁸ Ibid., 106.

¹⁹ Ibid., XXIII. Draft Showing Soviet and American Proposals in Parallel Columns, Executive Agreement. Last Draft of Soviet Statute I. General Provisions. Art. 2, Range of Crimes. 169.

²⁰ Ibid.

Interestingly, in this instance, it was the Americans pushing to include a definition of “aggressor.” General Nikitchenko cautioned,

On the point of the Jackson proposal as to the definition of “aggressor,” this question has been frequently discussed at various conferences and meetings, and it seems to us it does not enter into the competence of this commission to do so; in trying to punish persons guilty, we should base ourselves on the definitions entered in the various previous documents...The Tribunal would not be competent to judge really what kind of war was launched by the defendants; neither would it go into the question of the causes of war. If we try to enter a definition of aggression into the charter, that we would not be competent to do, as the Tribunal would not be competent to do so. It would really be up to the United Nations or the security organization which has already been established to go into questions of that sort. There is an international court forming part of the U.N.’s organization which would pass judgment on conflicts and arguments between the different states. The task of the Tribunal is to try war criminals who have committed certain criminal acts.²¹

It is important to point out the give and take between General Nikitchenko, Sir David Maxwell Fyfe, Professor Gros, Professor Trainin, and Justice Robert Jackson²² on the definition of aggression and its inclusion. Overall, the dialog was extremely cordial, professional and open. For instance, to Nikitchenko’s comments above, Justice Jackson noted that he feared that not defining aggression in the Charter would allow it to be used by the defense arguing defensive purposes as has been allowed in the varying language of previous citations of the crime. “I would be greatly surprised if they would not say that the charge of aggression could be met by any evidence showing that the purpose was ultimately defensive, if we do not define aggression in such a way that it

²¹ Ibid., 302 - 303. XXXVII Minutes of Conference Session of July 19, 1945.

²² Sir David Maxwell Fyfe (1900 - 1967) was then the British Attorney General and later British Prosecutor at Nuremberg, Justice Robert Houghwout Jackson (1892 - 1954) was an Associate Justice on the United States Supreme Court and subsequent Chief Prosecutor at the Nuremberg Trial for the United States. A. N. Trainin was a member of the Soviet Academy of Sciences and Professor Andre Gros was the United Nations War Crimes Commission representative. See also Raymond Dennett, Joseph E. Johnson, and World Peace Foundation, *Negotiating with the Russians* (Boston: World Peace Foundation, 1951). Sydney Alderman (Justice Jackson’s deputy at Nuremberg) noted that the reason the London negotiations were successful was that there was no difference in the ultimate aim of the negotiations of the parties. “The Russians were second to none in politeness and tact...They could sit tight on a matter for days and weeks, remaining totally impervious to the arguments of others, without ever giving any offense or departing in the slightest from an attitude of perfect politeness. They would agree to a matter one day and repudiate the agreement the next, evidently having communicated with Moscow in the meantime, without any appearance of embarrassment at the inconsistency and with the blandest suavity of manner. These acts or tactics often harassed, sometimes vexed, the other conferees, but neither the words nor the manners of the Russians ever did.” (53)

excludes resort to war to redress economic or political disadvantages or threats of encirclement, et cetera.”²³

General Nitkinchenko continued to question references to the Kellogg-Briand Pact (Pact of Paris) and the League of Nations in defining the crimes, in contravention to their references to these agreements in previous Soviet non-aggression pacts.²⁴ He noted, “[s]ometimes treaties change. When one was signed it had one significance and may in the course of time change that significance and acquire a new significance. For that reason I thought it best not to refer to old history and possibly have a more modern statement by the United Nations organization.”²⁵ An interesting point, no doubt, given the previous record of the Soviet Union.

In the redraft of the Definition of Crimes submitted by the Soviet Delegation on 23 July 1945, the Soviet proposal contained the following revisions:

The Tribunal shall have power to try any person who has in any capacity whatever directed or participated in the preparation or conduct of any or all of the following acts, designs or attempts namely:

- a) Aggression against or domination over other nations carried out by the European Axis in violation of the principles of international law and treaties;...

and who is therefore personally answerable for the violation of international law, of the laws of humanity and of the dictates of public conscience, committed in the course of carrying out the said acts, designs, or attempts by the forces and authorities whether armed, civilian or otherwise, in the service of any of the European Axis Powers.²⁶

General Nikitchenko pointed out that the UN Charter did not define aggression, though it was mentioned several times. “Apparently, when people speak about ‘aggression,’ they know what

²³ Ibid., 305.

²⁴ Ibid., 316. XLII Minutes of Conference Session of July 20, 1945. Nikitchenko noted the Soviet Union was not a member of the League of Nations at the time the acts were committed.

²⁵ Ibid., 317.

²⁶ Ibid., 327. XLIII Redraft of Definition of “Crimes,” submitted by Soviet Delegation, July 23, 1945, Draft Article 6 of the Charter.

that means, but, when they come to define it, they come up against difficulties which it has not been possible to overcome up to the present time.”²⁷

Justice Jackson continued to argue that it was proper for this Committee to settle the definition by agreement to what the law was for this trial.²⁸ He stated that the Americans did not think that the definition posed, which makes the act only relevant if carried out by the Axis powers, was relevant because, “[i]f certain acts in violation of treaties are crimes, they are crimes whether the United States does them or whether Germany does them.”²⁹ Jackson clarified a point with Professor Trainin, that as he understood it, Trainin’s book argued that a “war of aggression or initiating war in violation of treaties is an international crime.” Professor Trainin agreed. Jackson went on to say that he felt the four countries could declare certain acts criminal.³⁰

The next redraft submitted by the Soviet delegation utilized the following language:

The following acts, designs or attempts at any of them shall be deemed crimes and shall come within the jurisdiction of the Tribunal:

- a) Aggression against or domination over other nations carried out by the European Axis Power in violation of treaties, agreements and assurances.³¹

Justice Jackson continued “[t]he difficulty with the phrase ‘aggression or initiation of war in violation of treaties, agreement and assurances’ seems to drop out entirely if the launching of a war of aggression regardless of agreements, treaties, or assurances is in itself – as it is in our judgment – a crime. We are supported by a course of dealings in which the countries have given up war as a means of promoting policy.”³²

²⁷ Ibid., 328. XLIV Minutes of Conference Session of July 23, 1945.

²⁸ Ibid., 329.

²⁹ Ibid., 330.

³⁰ Ibid., 335.

³¹ Ibid., 379. XLVIII. Redraft of Definition of “Crimes”, Submitted by Soviet Delegation, July 25, 1945.

³² Ibid., 380. LI, Minutes of Conference Session of July 25, 1945.

Further arguing the definition, General Nikitchenko surprisingly exclaimed, “[i]s it supposed then to condemn aggression or initiation of war in general or to condemn specifically aggressions as started by the Nazis in this war? If the attempt is to have a general definition, that would not be agreeable.”³³ After continued discussions, General Nikitchenko warned that “[i]f we start discussion on that again, I am afraid the war criminals would die of old age.”³⁴

The result of these debates was not death by old age but the Charter of the International Military Tribunal at Nuremberg, which read in pertinent part:

The Tribunal established by the Agreement referred to in Article 1 hereof for the trial and punishment of the major war criminals of the European Axis countries shall have the power to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organizations, committed any of the following crimes.

The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

- (a) Crimes against Peace: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a Common Plan or Conspiracy for the accomplishment of any of the foregoing.³⁵

³³ Ibid., 387.

³⁴ Ibid., 389. Though there are instances which report Justice Jackson and the Soviet delegation did not always work well together, in an address to the New York State Bar Association in 1947, Jackson noted that the “Soviet Union has a system of civil and criminal law, as elaborate and as mature as our own, with roots as deep in history, and I doubt if its application is any deeper in confusion.” 70 *NY State Bar Association Rep.* 147 (1947). <http://www.roberthjackson.org/documents/012447/> (accessed 17 October 2005). In another article, Jackson noted, “I regret that the entire judiciary of the United States cannot take a sabbatical year and spend it in company with French, British, and Soviet jurists and lawyers such as those with whom I have had the advantage of working....But I would be false to the teachings of my experience if I did not say that we western peoples, particularly in the United States, are likely to exaggerate the difference between our legal philosophy and that of the Soviet. The machinery of justice appears much more unlike than do the rules applied. Under different forms, again and again one finds the same concept of right and wrong and of fair dealing.” “The Trials of War Criminals: An Experiment in International Legal Understanding,” 32 *American Bar Association Journal* 319 (1946). <http://www.roberthjackson.org/documents/040246/> (accessed 17 October 2005).

³⁵ Charter of the International Military Tribunal, Article 6, II. Jurisdiction and General Principles. 8 August 1945. Hermann Göring, Gerhard L. Weinberg, and International Military Tribunal., *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, 14 November 1945-1 October 1946* (New York; AMS Press, 1971), 11.

Roger Clark attributed this back and forth argument between the conference members to a “dance” that had been going on between Justice Jackson and the Soviet and French delegations throughout the conference.³⁶ George Ginsburgs noted that all sides ultimately compromised with a general definition, but the decree that the Tribunal was specifically set up to try and punish the major war criminals of the European Axis retained the essence of the Soviet request. The Americans did change the term “crimes against war” to “crimes against peace” in keeping with the Soviet precedent.³⁷

At first glance it is curious why the Soviets did not jump at the chance to define aggression yet again as they had in previous agreements. However, Nikitchenko’s commentary on 19 July 1945 is illuminating. Whether intentional based on technically astute legal reasoning or intentional for the purpose of avoiding Soviet complicity in some of the charges, he laid the groundwork for the argument that is still on-going today: the difference between acts of a state and those of an individual. Nikitchenko noted that the UN’s organizations would pass judgment on conflicts between states. The current court was meant only to try certain war criminals individually for certain criminal acts.

³⁶ Roger S. Clark, “Nuremberg and the Crime Against Peace,” 6 *Washington University Global Studies Law Review* 527, 533 (2007).

³⁷ George Ginsburgs. *Moscow’s Road to Nuremberg: The Soviet Background to the Trial*. (The Hague; Boston: M. Nijhoff, 1996), 105.

THE NUREMBERG TRIAL

As a result of the London Conference, the Nuremberg Trial began on 14 November 1945.

Vyshinsky, who coordinated the Extraordinary Commission, was placed in charge by the Soviet government of the Commission for Directing the Nuremberg Trial.³⁸ The Commission came to be known as the “Vyshinsky Commission.” It managed all aspects of the Soviet prosecution at Nuremberg.

In “Unknown Nuremberg”³⁹ Natalia Lebedeva detailed the interaction between Molotov, Vyshinsky and General Roman Andreevich Rudenko (1907 - 1981), Chief Prosecutor for the Soviet Union, during the trial process. Many of their instructions were not viable in the trial process, such as limiting the list of subjects that were permissible for discussion, primarily the Molotov-Ribbentrop Pact. Lebedeva commented that perhaps by seeking to place these restrictions on the Tribunal, Stalin and Molotov may have been aware that their actions also may have qualified as a crime against peace.⁴⁰ The British and the Soviet prosecutors worked out a system so that each would defend the other in case of attack by the Germans on these questions.⁴¹ But it was the American Chief Prosecutor who generally received credit for directly putting forth the argument on the definition of aggression and aggressive war at the trial.

³⁸ Hirsch, “The Soviets at Nuremberg” see FN 37 for the make-up of the Commission. The article gives a good overview on the problems of managing the Commission from Moscow.

³⁹ Natalia S. Lebedeva, “Neizvestnyi Niurnberg,” *Rodina* (2006). <http://www.ostfront.ru/Text/NP.html>. (accessed 3 June 2005). Other works by Lebedeva on Nuremberg include *Podgotovka Niurnbergskogo protsessa* (Moskva, 1975), “SSSR i Niurnbergskii protsess,” in N.S. Lebedeva and V.V. Ishchenko, eds., *Niurnbergskii protsess: Uroki istorii* (Moskva, 2007). I attended the conference “Nuremberg Process: the Lessons of History” hosted by the Russian Academy of Sciences, Institute of World History, the Institute of State and Law and the General Prosecutor Office of the Russian Federation Nov. 20-21, 2006 in Moscow. Lebedeva was a truly gracious hostess and provided me with a number of the books that I have used as reference in this work. Comments at the conference were similar to those already referenced in the sections above. Lebedeva also writes on Katyn.

⁴⁰ Ibid. Others included in the list of non-admissible subjects were Molotov’s visit to Berlin, Ribbentrop’s visit to Moscow, Soviet Baltic Republics, the Soviet-German agreement to exchange Latvia, Lithuania and Estonia, Soviet foreign policy and Soviet-Polish relations.

⁴¹ Ibid.

Justice Jackson, in his opening statement, addressed the weakness of the lack of a definition for a war of aggression. He stated directly that the reason the lack of a definition was not a problem was because of the reliance on the firmly established international law in the Convention for the Definition of Aggression signed at London on 3 July 1933 between the Soviet Union and seven others. Based on this Convention he suggested that the “‘aggressor’ should generally be held 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; and
- 4) Provision of support to armed bands formed in 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 or protection.”⁴²

He went on to add “that 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.”⁴³ This incorporated the previous Soviet definition in its full form to be used as the test to determine if the wars begun by the Nazi leaders were “unambiguously aggressive.”⁴⁴ Jackson continued that this Tribunal would not consider the causes of the war. “They are for history to unravel... Our position is that whatever grievances a nation may have, however objectionable it finds the *status quo*, aggressive warfare is an illegal means for settling those grievances or for altering those conditions.”⁴⁵

⁴² *Trial of the Major War Criminals.*, Vol. II. Second Day, Afternoon Session, 21 November 1945, Opening Statement of Justice Robert Jackson, Chief Prosecutor for the United States of America, 148.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid. 149.

A telegram to Moscow dated 21 November 1945, from Soviet political advisor Vladimir Semenov to Vyshinsky, retransmitting a telegram from Colonel Y. V. Pokrovsky, Deputy Chief Prosecutor for the Soviet Union, praised Jackson's opening statement. Pokrovsky described Jackson's "beautifully prepared speech" and quoted one of the oft-quoted lines. The line, directly translated, was, "If we don't give a cup with poison to those on trial, it means we should drink it ourselves." He noted that some of the speech was exemplary from the standpoint of international courtesy and oratorical mastery and recommended the expanded version be published in the Soviet press.⁴⁶

On 4 December 1945, Sir Hartley Shawcross (1902 - 2003), Chief Prosecutor for the United Kingdom, continued Justice Jackson's justification. He listed the treaties concluded between the Soviet Union and Persia in 1927 and France in 1935, among others, which included the concept of aggression.⁴⁷ Later that day, Shawcross detailed the attack on Russia in violation of many treaties, not the least of which was the Molotov-Ribbentrop Pact.

On 8 February 1946, General Rudenko laid out in his opening statement the case against Nazi aggression and aggressive war. "For a number of decades nations interested in strengthening the cause of peace have proclaimed and advocated the idea that aggression constitutes the gravest encroachment on the peaceful relations between nations, a most serious international crime. These hopes and demands on the part of nations found their expression in a series of acts and documents which officially recognized aggression as an international crime." Contrary to the argument at the London Conference, he led with the Kellogg-Briand Pact (Pact of Paris) as an example of one of this

⁴⁶ Telegram from Semenov to Vyshinsky, 21 November 1945, 5:50 pm AVPRF, f. 07, op. 13, p. 41, d. 8, l. 83. The quoted line from Jackson's opening speech is generally seen in English as "To pass these defendants a poisoned chalice is to put it to our own lips as well." Ibid., 101.

⁴⁷ Ibid., Vol. 3, Twelfth Day, 4 December 1945, Morning Session, 96.

series.⁴⁸ He went on to say that the Kellogg-Briand Pact (Pact of Paris) and others long ago “proclaimed the principle of penal responsibility for criminal aggression, the principle which found its clear legal expression in Subparagraph (a) of Article 6 of the Charter of the International Military Tribunal.”⁴⁹

Deputy USSR Chief Counsel Colonel Pokrovsky, in his Presentation of the Case, noted that the connection between Hitlerite propaganda and acts of aggression was revealed by Rudenko in his opening statement.⁵⁰ “The conspirators willingly concluded any agreement, on arbitration, on non-aggression, etc. They did it, not because they were really striving for peace, but with the sole intention of waiting for a suitable moment to strike the next treacherous blow and of lulling the nations of the world into a sense of false security.”⁵¹ He noted that the “intention to protect the interests of the fascist minorities” was a favorite pretext for aggression.⁵² Pokrovsky cited another means of initiating a war that allowed it to look nonaggressive. Plan “Gruen,” detailing the invasion of Czechoslovakia, suggested creation of an incident in Czechoslovakia that would give the Germans the pretext for military intervention.⁵³

Pokrovsky went on to note that during the aggression against Poland, many of the same features were prominent, “systematic violation of treaties and solemn declarations, false assurances, the creation of a paid fifth column organized on a military footing, and the suddenness of the treacherous lightning blow.”⁵⁴ He later pointed out that the attack on Yugoslavia was in violation of

⁴⁸ Ibid., Vol. 7, Fifty-Fourth Day, 8 February 1946, Morning Session.148.

⁴⁹ Ibid. 149.

⁵⁰ Presentation of the Case by the Deputy USSR Chief of Counsel, Colonel Y.V. Pokrovsky, “Crimes Against Peace” RG 238 National Archives Collection of WWII War Crimes Records: United States Counsel for the Prosecution of Axis Criminality, Records Retained by Justice Jackson. Soviet Document Books, 1945-1946. Box 2, PI-21, Entry 24. 1. Also, Ibid., 197.

⁵¹ Ibid., 2.

⁵² Ibid., 6.

⁵³ Ibid., 12. Pokrovsky quoted a document signed by Jodl, which went so far as to describe the weather conditions necessary to implement this plan.

⁵⁴ Ibid., 15.

the Kellogg-Briand Pact (Pact of Paris)⁵⁵ and while continually giving friendly assurances to Yugoslavia about the inviolability of her boundaries, they were preparing to attack.⁵⁶ These actions culminated in the attack on the USSR.⁵⁷

On 29 July 1946, Rudenko closed the case for the prosecution. On 30 September and 1 October the Judgment was issued. Twelve defendants were found guilty of Crimes Against Peace.⁵⁸ Michael J. Bazyler suggested that the Soviet aim to make the Nuremberg Trial a “show trial” actually had the effect of making the proceedings more legally effective and that Rudenko and his staff were “in many ways the most prepared prosecuting team of the four Allied prosecutorial teams.”⁵⁹ Bazyler acknowledged that the Soviet Union’s complicity in crimes for which the Germans were tried and convicted did diminish the legacy of Nuremberg.⁶⁰ Nonetheless, the Soviet contributions to the Trial lent “credence to the legitimacy of the trials as a whole.”⁶¹

Russian historian A. M. Larin noted that Nuremberg Trial member General-Major Nikitchenko dissented on the acquittal of Schacht, Papen and Fritzsche and that Soviet jurists following the trial at the time agreed with him. However, A.N. Trainin best summed up the proceedings with an emphasis on the great degree of consensus of the Tribunal. Chief among that consensus was confirmation of the principles of individual responsibility for crimes against peace.⁶²

⁵⁵ Ibid., 35.

⁵⁶ Ibid., 44.

⁵⁷ Ibid., 39.

⁵⁸ Antonio Cassese, *International Criminal Law*, 2ed. (Oxford University Press, 2008), 152 FN 4 which goes into detail regarding subsequent trials and convictions for aggression. Also see Guénaël Mettraux, *Perspectives on the Nuremberg Trial* (Oxford ; New York: Oxford University Press, 2008). Appendix 7, Table of Charges and Verdicts.

⁵⁹ Michael J. Bazyler, “The Role of the Soviet Union in the International Military Tribunal at Nuremberg,” in Herbert R. Reginbogen and Christoph Johannes Maria Safferling, *The Nuremberg Trials: International Criminal Law since 1945 - Die Nürnberger Prozesse: Völkerstrafrecht Seit 1945* (München: K.G. Saur, 2006), 47.

⁶⁰ Ibid., 51.

⁶¹ Ibid.

⁶² A.M. Larin, “Nuremberg Trial: The Law Against War and Fascism,” in Mettraux, *Perspectives on the Nuremberg Trial*. 553-4. Citing as examples of the Soviet jurists that agreed with Nikitchenko, Poltorak A.I., *Niurnbergskii epilog*, 3rd ed. (Moskva: Iuridicheskaya literatura, 1983); Volkov A. F., *Niurnbergskii prigovor: Sovetskoe gosudarstvo i pravo*, no. 10 (1976).

A. I. Poltorak, a member of the Soviet legal team at the Nuremberg Trial, concluded,

A further strengthening of the effectiveness of international law in the fight for peace requires a precise definition of aggression which would have facilitated the interests of restraining the aggressor and supporting peace and security. This is why the Soviet Union, continuing its attempts over many years in this field and overcoming resistance of the aggressive groups of the US and their allies, is currently investing its energies in trying to pass a definition of aggression at the United Nations and thus make more effective the standards of international law that are based on the preservation of peace.⁶³

On 11 December 1946 the UN General Assembly affirmed the principles recognized by the Nuremberg Charter.⁶⁴

⁶³ A.I. Poltorak, "The Nuremberg Trials and the Question of Responsibility for Aggression," in *Perspectives on the Nuremberg Trial*, 454.

⁶⁴ Ginsburgs and Kudriavtsev, *The Nuremberg Trial and International Law*. 133.

SUMMARY

Through the use of trials at home and internationally to establish individual criminal responsibility for aggressive acts, previous treaty language defining aggression and aggressive war, and the ability to limit the application of this concept as they had at Nuremberg, the Soviet Union achieved several objectives. They were recognized as a “great power” by the world. They were recognized as a leader in the use of international law against Nazi aggressors. Soviet law was legitimized to some degree, although this was negated by the commission of similar offenses. They also demonstrated their previous attempts to universalize the concept of the definition of aggression and aggressive war were so successful they were used by Justice Jackson in his opening statement. The language suggested and codified at Nuremberg of “planning, preparation, initiation and waging a war of aggression,” will become extremely important in Soviet lawfare, particularly when directed at the United States.

On 13 June 1949, Vyshinsky and Andrei Andreevich Gromyko (1909 - 1989),⁶⁵ former Soviet ambassador to the United States, now a Deputy Minister of Foreign Affairs of the USSR, received a top secret memo with a preliminary draft of a resolution “Call on the Great Powers to Conclude a Peace Pact,” for discussion at the 4th General Assembly session.⁶⁶ It stated that although the great powers had cooperated in the past, that postwar relations were the main reason for the current alarming situation in the world. It called for conclusion of a Peace Pact agreeing not to resort to war against each other, utilization of the United Nations to resolve disputes, reduction of arms, prohibition of nuclear weapons and prohibition of preparation and propaganda for a new war.⁶⁷ Although just concluding a successful effort with the United States to define the individual aggressor

⁶⁵ Later Minister of Foreign Affairs of the Soviet Union from 1957-1985 and Chairman of the Presidium of the Supreme Soviet from 1985 - 1988.

⁶⁶ RGASPI, f. 82, op. 2, d. 1079, l. 1.

⁶⁷ Draft Resolution, “Call on the Great Powers to Conclude a Peace Pact,” RGASPI, f. 82, op. 2, d. 1079, l. 2-4.

at Nuremberg, this set the stage for Soviet use of lawfare and propaganda to position the United States squarely within the definition of aggressor in Korea.

CHAPTER 4

THE KOREAN WAR

It is a well known principle that princes and states are not bound to observe a treaty contrary to their interest.

Cardinal Alberoni¹

North and South Korea were established at the end of WWII, divided by the 38th parallel.

Prior to this period, Korea had undergone a lengthy occupation by Japan.² The leader of the Democratic People's Republic of Korea (DPRK), heavily influenced by the Soviet Union, was Kim Il Sung. The South, or Republic of Korea (ROK), heavily influenced by the US, was led by Syngman Rhee. The impending Cold War between the US and the Soviet Union overtook the civil war between North and South.³ Adding to this already volatile situation, Mao-Tse Tung had just defeated Chiang Kai-shek in a civil war in China. In October 1949, the People's Republic of China (PRC) was established. A second communist party created tension but also led to a series of agreements between China and the Soviet Union.⁴ Also adding to the tension, General Douglas MacArthur presided over the transition of Japan to an American friendly economic and strategically. These forces converged during the Korean War (25 June 1950 - 27 July 1953).

This chapter looks at the buildup to the Korean War from the Soviet perspective to demonstrate the understanding of the Soviet government regarding the effects and the perception of an invasion by North Korea. Because the war was not primarily a military incursion into Korea by

¹ James Cable, *The Geneva Conference of 1954 on Indochina* (Basingstoke: Macmillan, 1986), 136. Citing a dictum by a Spanish Foreign Minister uttered in 1717.

² For a thorough discussion of this period and that leading up to the war see Bruce Cumings, *The Origins of the Korean War*, 2 vols. (Princeton, N.J.: Princeton University Press, 1990). Vol. 1 and Chapter 10 Vol. 2, "The Soviets and North Korea."

³ Peter Lowe, *The Origins of the Korean War* (New York; London: Longman, 1986), x-xii.

⁴ Peter Lowe, *The Korean War, Twentieth-Century Wars*. (New York: St. Martin's Press, 2000), 17.

the Soviet Army,⁵ as was Finland and as we will see in the next chapter, Hungary, the emphasis by the Soviet Union was on lawfare and propaganda. In fact, not only were large numbers of Soviet forces not engaged, but, originally, the Soviet government advised the North Korean government they were not ready to invade the South. Instead of a vast military action, as the situation emerged, a protracted lawfare campaign vastly enhanced by propaganda both in the General Assembly and the press, took clear aim at the United States. In order to demonstrate the Soviet use of lawfare and propaganda, I present Soviet telegrams and communiqés with the UN and other states along with news clippings and the ongoing proposals to the UN on the definition of aggression to illustrate the “full court press” used to condemn the United States as the aggressor. (I use drafts of these in several instances, although the final is available, because the handwritten changes to the draft show the thought process to a greater degree.) Pertinent to this chapter is a review of the rhetoric in the Security Council regarding the question of aggression. For my purposes, the Korean War serves as a prime example of the use of the definition of aggressor and aggressive war as a form of lawfare by the Soviet Union against another state, the United States.

⁵ Vladimir Antonovich Zolotarev, *Rossiya (SSR) v lokalnykh voinakh i voennikh konfliktakh vtoroi poloviny XX veka*. (Moskva: Kuchkovo pole: Poligrafresursy, 2000). Chapter 2, “Military-Political and Military-Strategic Support of Local Wars and Armed Conflict: In the Far East and Southeast Asia.” 63-77. English translation located at www.korean-war.com/russianregionalconflicts.html. (accessed 3 June 2007). Zolotarev noted that as seen from the documents in the Russian Archives of the President of the Russian Federation and the Central Archives of the Ministry of Defense of the Russian Federation, “initially no thought was given to Soviet forces participating in the war in Korea.” He noted that the Kremlin was aware that participation of Soviet forces in Korea would create a crisis within NATO. Given that information, the leadership of the USSR decided only to establish a limited number of Soviet military advisors in North Korea. There were also 4,293 military specialists in North Korea which served as technical services for air routes from Port Arthur to Vladivostok, reconnaissance, translation specialists, doctors in Soviet hospitals newspaper editors and military school trainers. The advisors and specialists were with Kim Il Sung at the beginning of the war but were forbidden throughout the war to cross the 38th parallel. The leadership of the USSR still wanted to avoid direct intervention but participated by providing staff support and military goods to China and the DPRK. After 15 September 1951 Soviet military personnel were forbidden to accompany Korean units on operations. The most active part of the Soviet participation was to protect political-administrative and economic centers from American air strikes and reconnaissance and to protect infrastructure. John B. Quigley in *The Ruses for War: American Interventionism since World War II*. (Amherst, N.Y. : Prometheus Books, 2007), 49 also noted that the Soviet Union had only a handful of military advisors in Korea.

BUILDUP TO THE WAR

As late as September 1949, Soviet authorities recommended against North Korea's intervention into South Korea. A draft directive was prepared by Nikolai Alexandrovich Bulganin, (1895-1975) USSR Minister of Armed Forces, later Minister of Defense and Premier of the Soviet Union, and Andrei Andreevich Gromyko, on 23 September 1949.⁶ It instructed General Terentii Fomich Shtykov, Soviet Ambassador to the DPRK, to meet with Kim Il Sung and Pak Hon-yong, DPRK Foreign Minister, and declare that their proposal to begin an attack of the Korean People's Army on the South required an assessment of both the military and political aspects of this issue. They stated that from a military standpoint the People's Army was not prepared for such an attack. The draft further noted that military experience showed that an invading army needed at least a two-fold advantage. This was crossed out on the draft and inserted in handwriting were the words "an improperly prepared" invasion could turn into a protracted military operation, which would not only lead to defeat of the opponent but would create significant political and economic difficulties for North Korea, which could not be allowed to happen.⁷ They explained that at the present time, North Korea did not have the "necessary" (handwritten) superiority of Armed Forces over South Korea. They summarized this point saying that it must be acknowledged that the North was completely unprepared for a military attack on the South. Therefore, from a military standpoint, the attack was not permissible.⁸

The directive went on to say that from a political standpoint, the North Koreans were also unprepared for an attack on the South. The drafters noted they agreed with the Ambassador that the

⁶ RGASPI, f. 82, op. 2, d. 1267, l. 4-12. The final directive of 24 September 1949 can be found at Woodrow Wilson International Center for Scholars Cold War International History Project. Source: AVPRF, f. 059a, op. 5a, d. 3, p. 11, l. 75-77.

http://www.wilsoncenter.org/index.cfm?topic_id=1409&fuseaction=va2.document&identifier=5034C6E8-96B6-175C-9B096B7546D11BD0&sort=Collection&item=The%20Korean%20War. (accessed 10 January 2009).

⁷ Ibid., 5.

⁸ Ibid.

people of Korea were waiting to be united and that people in the South were waiting to be freed from the yoke of the reactionary regime, but nothing had yet been done to raise the people in South Korea to an active struggle. Nor had a partisan movement, liberated districts or organized forces to support an uprising been developed. Only by developing a people's uprising to disrupt the base of the reactionary regime could a military attack play a decisive role in overthrowing the South Korean reactionaries and uniting Korea into a democratic state.⁹ It concluded, “[i]t must be admitted that from a political standpoint that you are not prepared for your proposed attack on the South.”¹⁰

The directive further stated that it must be taken into account that if military actions begin at the initiative of the North, this would give the Americans reason (and the following is crossed out by hand) to intervene and to put their troops into the Korean territory under the guise of “so-called aid to the Korean government.” The introduction of American troops into South Korea could entail a long-term occupation of the southern part of the country and consequently delay unification.¹¹ The directive concluded that because of the above reasons, the task of fighting for the unification of Korea required more concentration on development of a partisan movement, creation of liberated districts and preparation of all people of South Korea for an armed uprising in order to overthrow the reactionary regime, to unify Korea and to strengthen the People’s Army in Korea.¹²

⁹ Ibid., 6. See also Michel Garder, *A History of the Soviet Army* (New York: F. A. Praeger, 1966), 187-188. Garder suggests that after WWII, Soviet policy was a three-phase strategy. The first phase replaced Western influence by a communist camp without causing those countries to become communist. The second phase was a “peaceful” triumph of communism through psychological, political, economic and social means. Finally, after taking over leadership of these countries, the communist developed countries would bring others along.

¹⁰ Ibid.,

¹¹ Ibid., 6-7.

¹² Ibid., 7. The final paragraph which instructs that if the South begins offensive operations they should be ready to retaliate is crossed off. The final version can be found at “Politburo decision to confirm the following directive to the Soviet ambassador in Korea,” Woodrow Wilson International Center for Scholars Cold War International History Project. Source: AVP RF, f. 059a, op. 5a, d. 3, p. 11, l. 75-77, dated 24 September 1949. http://www.wilsoncenter.org/index.cfm?topic_id=1409&fuseaction=va2.document&identifier=5034C6E8-96B6-175C-9B096B7546D11BD0&sort=Collection&item=The%20Korean%20War. (accessed 11 December 2008).

This directive gave insight into several themes that will play out consistently in the Soviet use of lawfare. First, the directive showed what the Soviets were looking for in a state that was ripe for intervention: partisan movements, liberated districts and people willing to participate in an armed uprising. Second, it left no doubt that intervention by the United States was a strong consideration.

A subsequent document dated 30 January 1950, is held to be evidence by Kathryn Weathersby and others that Stalin changed course and authorized the North Korean offensive against the South.¹³

I received your report. I understand the dissatisfaction of Comrade Kim Il Sung, but he must understand that such a large matter in regard to South Korea such as he wants to undertake needs large preparation. The matter must be organized so that there would not be too great a risk. If he wants to discuss this matter with me, then I will always be ready to receive him and discuss with him. Transmit all this to Kim Il Sung and tell him that I am ready to help him in this matter.¹⁴

Unfortunately, this is almost the complete extent of what is available on the preparations for the war implicating the Soviet Union.¹⁵ In her article “To Attack, or Not to Attack? Stalin, Kim Il Sung, and the Prelude to War,” Kathryn Weathersby concluded Stalin likely made this decision at

¹³ Kathryn Weathersby, “New Russian Documents on the Korean War,” *Cold War International History Project Bulletin*, Issue 11, (Winter 1998): 30. See also Kathryn Weathersby, “To Attack or Not to Attack?: Stalin, Kim Il Sung and the Prelude to War,” *Cold War International History Project Bulletin* 5 (1995): 1-9. See Comments to the Editor in the same issue for a debate between Weathersby and Cumings as to the significance of the telegram. 120-122.

¹⁴ Telegram from Stalin to Stykov, Cold War International History Project, Woodrow Wilson Center, Source: AVP RF, f. 059a, op. 5a, d. 3, p. 11, l. 92. http://www.wilsoncenter.org/index.cfm?topic_id=1409&fuseaction=va2.document&identifier=5034C717-96B6-175C-9278EC3D276BE335&sort=Subject&item=Korea,%20DPRK,%20Soviet%20Specialists%20in (accessed 10 December 2008).

¹⁵ Ibid. Kathryn Weathersby did however, offer one additional source. In a document dated 26 June 1950, unearthed by a British Broadcasting documentary, Shtykov reports to Zakharov, head of the special Soviet military mission in Korea, that “concentration of the People’s Army in the region near the 38th parallel began on June 12 and concluded on June 23, as was prescribed in the plan of the General Staff.” He further stated the planning and reconnaissance were carried out with the participation of Soviet advisors. It noted a political order was read to the troops on 24 June which explained the South Korean Army provoked a military attack by crossing the 38th parallel and that they were to counterattack. For further reading see Anatolii Vasilevich Torkunov, *Zagadochnaia Voina: Koreiskii Konflikt 1950-1953 Godov* (Moskva: Rossppen, 2000). Mezhdunarodnaia nauchno-teoreticheskaiia konferentsiiia "Voina v Koree 1950-1953 gg.--vzgliad cherez 50 let", and Iurii Vasil'evich Vanin. 2001. *Voina v Koree 1950-1953 gg.: vzgliad cherez 50 let : materialy mezhdunarodnoi nauchno-teoreticheskoi konferentsii, Moskva, 23 iiunia 2000 goda.* Moskva: Rro "Pervoe Marta". A.S. Orlov and Viktor A. Gavrilov. 2003. *Tainy koreiskoi voiny. Voennye tainy XX veka.* Moskva: "Veche".

least in part in response to a speech by US Secretary of State Dean Acheson on 12 January 1950, placing South Korea outside the American defense perimeter.¹⁶ However, in a Statement of the Ministry of Foreign Affairs from Vyshinsky, subsequently sent to Molotov and Stalin, Vyshinsky never mentioned Korea specifically being outside the defense perimeter but only the reference to Korea as an example of a “just and independent state.” He commented the reference was a lie by Acheson and noted Korea was essentially an American colony with a puppet political regime.¹⁷ Vyshinsky concluded that Acheson’s speech was a new confirmation of the aggressive course of the policy of the US ruling circles who talk about the need to strengthen defense measures while really preparing for aggression.¹⁸ This set the stage, as early as January 1950, for the blitz of lawfare and propaganda, in lieu of a massive military intervention, soon to be directed vehemently against the United States.

¹⁶ Kathryn Weathersby, “To Attack, or Not to Attack? Stalin, Kim Il Sung, and the Prelude to War,” Cold War International History Project *Bulletin*, Issue 5, (Spring 1995): 4. She stated the same conclusion in “New Russian Archival Materials, Old American Debates, and the Korean War,” *Problems of Post-Communism* 42, Issue 5 (Sep/Oct 95): 25. She went even further in “The Korean War Revisited,” *Wilson Quarterly* 23, Issue 3 (Summer 99):91 stating “There is now no doubt that the original North Korean attack was a conventional military offensive planned and prepared by the Soviet Union.” She suggested Stalin wanted to gain control of the peninsula to insure Japan, if it rearmed, would not again use it as a staging ground. “The fateful decision to attack South Korea was thus part of a regional rather than global strategy, designed to take advantage of the new American policy of avoiding military engagements on the Asian mainland.”

¹⁷ RGASPI f. 82, op. 2, d. 1261, l. 43-50, 47.

¹⁸ Ibid., 50.

LAWFARE AT THE SECURITY COUNCIL

In June of 1950, it is generally established North Korea crossed the 38th parallel into South Korea.¹⁹ In the absence of the Soviet Union,²⁰ the Security Council determined the attack was a breach of the peace. The Soviet Union took the other view, that it was the United States that was the aggressor and that South Korea launched an unprovoked attack.²¹ On 25 June 1950, the Security Council adopted a draft resolution submitted by the United States, which determined that the armed

¹⁹ There are considerable differences in the literature as to whom actually crossed the 38th parallel first, the North or South. Cumings, in *The Origins of the Korean War*, vol. 2, noted that the question cannot be answered. (568). Kathryn Weathersby, in “The Korean War Revisited,” *Wilson Quarterly* 23, Issue 3 (Summer 99): 91, noted that new evidence available from the Soviet archives showed that the contemporary observers were much closer to the truth than revisionists such as Cumings who proposed only marginal involvement of the Soviets. “There is now no doubt that the original North Korean attack was a conventional military offensive planned and prepared by the Soviet Union.” <http://0-web.ebscohost.com.maurice.bgsu.edu:80/ehost/detail?vid=4&hid=17&sid=0a553d00-dd8e-4b95-b1b0-d4227430d507%40sessionmgr8&bdata=JmxvZ2lucGFnZT1Mb2dpbi5hc3Amc2l0ZT1laG9zdC1saXZlJnNjb3BlPXNpdGU%3d#db=a9h&AN=2055181>. (accessed 8 December 2008). Soviet participation in the war is portrayed by prominent US historians as generally culpable for advising the DPRK to invade. See Lowe, *The Origins of the Korean War*, who noted that at the time of publication Soviet records were not accessible so all conclusions were drawn from the records of the US. Also, see Peter Lowe, *The Korean War*, which noted on the first page that the Soviet Union encouraged the DPRK to attack the ROK(1) but said the “war constituted the failure of one of Stalin’s few great gambles in the international sphere.” (2) Lowe claimed “Stalin took the most fateful decision of any individual leader when he decided to encourage Kim Il Sung in the latter’s endeavor to fulfill his ardent ambition to unite Korea. Stalin thus set in motion a chain of events that led inexorably to the localised eruption of the Cold War into a hot war.” (3) Lowe did note that Stalin did later pull back from subsequent direct action but urged Mao to commit large numbers of Chinese forces. (3) For another perspective see I. F. Stone, *The Hidden History of the Korean War* (New York: Monthly Review Press, 1952). Stone claimed neither the Chinese nor the Russians wanted the war and did not support the North Koreans until MacArthur forced them to. (x) The Russians had no hand in the initial attack. He cites MacArthur as the major reason the war did not end in late 1950. (xi). For a precise chronology of the war see Rosemary Foot, *The Wrong War: American Policy and the Dimensions of the Korean Conflict, 1950-1953* (Ithaca: Cornell University Press, 1985), 15-19. In an excerpt from Gromyko’s diary dated 11 Jul 1950 regarding the visit of the British Ambassador D.B. Kelly, Gromyko corrected Kelly on his inference that the North Koreans started the war stating your “comment concerning which side initiated the military actions underway in Korea does not correspond to reality because these events were provoked by the South Korean authorities.” RGASPI, f. 82, op. 2, d. 1270, l. 173-174. For an analysis from the perspective of the United Nations deliberations on aggression in Korea see *Yearbook of the United Nations 1950*. (New York: Office of Public Information, United Nations, 1951), 251-257.

²⁰ The Soviet Union was boycotting the Security Council because the Council refused to recognize the mainland Chinese government as the holder of the seat on the Council. The Soviet representative left on 13 June 1950 and returned 1 August 1950.

²¹ Benjamin B. Ferencz, *Defining International Aggression: The Search for World Peace, a Documentary History and Analysis*. vols. 1-2 (Dobbs Ferry, New York: Oceana Publications, Inc. 1975) vol. 2, 1-2 referencing FN 4 General Assembly, Official Records, Fifth Sess., Supp. 1 (A/1287), Annual Report of the Sec. Gen., 1 July 1949 – 30 June 1950, at 21-23. For a thorough discussion of the Korean question see *Yearbook of the United Nations, 1950*, III Political Security Questions, B. The Question on Korea, 220-300.

attack by the forces of North Korea on the Republic of Korea constituted a “breach of the peace.”²² They did not use the term aggression. The issue was debated constantly through 1950.

A memorandum from US Ambassador to the USSR, Mr. Alan G. Kirk, was sent to Moscow on 27 June 1950.²³ It stated that he was instructed to bring to the attention of the government of the USSR that the North Korean troops crossed the 38th parallel, which resulted in the Security Council session of 25 June from which the Soviet government was absent. The United States government relayed a request for assurance that the USSR did not take responsibility for the attack and that it would use its influence to seek withdrawal of the North Korean forces.²⁴ On 28 June 1950 a draft response to the memorandum transmitted 27 June to the USSR Ministry of Foreign Affairs by the US Ambassador to Moscow was submitted to Stalin from Gromyko and Molotov.²⁵ It led with the declaration that the events now occurring in Korea were provoked by the South Korean authorities and were an internal affair of the Korean people, which have the sovereign right to resolve their own internal affairs. It reiterated that, governed by the principle of non-intervention in the international affairs of other countries, the Soviet government withdrew all its military units from Korea in December 1948.²⁶

The Soviet government further claimed that the declaration made by the government of the United States reported that US Air and Navy forces had been ordered to provide support for South Korea, indicating armed aggression on the part of the US against Korea.²⁷ This presented the UN with a fait accompli.²⁸ The Soviet government noted the action was in complete disregard for the obligations of the United States to the UN. The draft went on to declare the position of the US

²² Ibid., 140. 473rd meeting of the Security Council. FN 84 See S/1497 and *Official Records of the Security Council, Fifth Year, No. 15*.

²³ RGASPI, f. 82, op. 2, d. 1268, l. 46-48.

²⁴ Ibid., 46.

²⁵ RGASPI, f. 82, op. 2, d. 1268, l. 42-48.

²⁶ Ibid., 44.

²⁷ Ibid.

²⁸ Ibid., 45.

regarding China's lack of representation on the Security Council as an unacceptable position and therefore, the USSR representative could not take part in the Security Council sessions and that the Security Council, when lacking two of its permanent members, could not make decisions having legal force.²⁹ This less than subtle charge against the United States contained many of the elements that had been listed in earlier treaties as evidence of aggression. Intervention in internal affairs of another state, invasion by air and naval forces and disregard for treaty obligations are all spelled out.

A telegram was sent by UN Secretary-General Trygve Lie on 7 July 1950, regarding the adoption of a resolution by the Security Council that the attack on the Korean Republic by the forces of North Korea was a violation of the peace. It called for all members of the UN to provide the Korean Republic with aid to repel the attack and return peace and security to the region. In response, Gromyko provided the above referenced information in a draft response to Stalin and Molotov.³⁰ Gromyko suggested the USSR Ministry of Foreign Affairs should send a response to indicate the illegality of the Security Council resolution and categorize the resolution as an attempt to aid American aggression against Korea under the name of the UN.³¹ The draft itself was similar to that above, incorporating changes but maintaining the language that the actions of the US in Korea represented an open intervention in the internal affairs of the Korean people who were fighting to preserve the unity of their country and its national independence and freedom.³² Handwritten notes added the word "aggressive" before policy of the US in the draft.³³

The majority of these points were subsequently presented at the 480th meeting of the Council on 1 August 1950. The Soviet representative, now Chairman of the Council, took the floor, and along with the ideas voiced in the above memos, accused the United States of aggression via a "plan

²⁹ Ibid.

³⁰ RGASPI, f. 82, op. 2, d 1270, l. 81-2.

³¹ Ibid., 109.

³² Ibid., 128.

³³ Ibid., 130.

previously prepared by and with the knowledge and agreement of highly placed United States officials.”³⁴ Here the Soviet government invoked the language of Nuremberg, implicating the US government officials themselves of crimes against peace.

A draft directive on the Korean issue to the USSR delegation for inclusion in the fifth session of the UN General Assembly was put forth for review. It contained directions for the delegates to bring into the open the real aim of the UN Commission on Korea, which was to ensure the interests of the American monopolies, and introduce and defend the USSR’s proposals for peaceful resolution of the issue. The delegation was to demand that both North and South Korea be brought to the table and that the main task should be to ensure the fastest peaceful resolution of this conflict.³⁵ They were also instructed to give an analysis of the attempts of the Anglo-American bloc to depict the civil war in Korea as aggression by one of the parties. They were to indicate that this was a perversion of the concept of aggression generally acknowledged in international law and practice. In fact, they were instructed to state the position of the Soviet government on the issue of the definition of aggression, using the draft definition introduced by the Soviet delegation in February 1933 to the Commission on the Conference on the Reduction of Armaments. Specifically, it was stated, “Here use article 1 of the said draft, which defines aggression as an attack of one state on another state and which excludes the application of this concept to civil wars or internal conflicts between two parts of one people who have been split into two government camps.” The directive went on to say it should be noted that the Soviet definition of aggression was the basis for several international treaties and is “generally acknowledged in international practice.”³⁶

³⁴ *Yearbook of the United Nations, 1950*, 232.

³⁵ RGASPI, f. 82. op. 2, d. 1080, l. 158-159.

³⁶ *Ibid.*, 159.

The Soviet Union proposed to the General Assembly, on 4 November 1950, a draft resolution on the definition of aggression, “to forestall any pretext which might be used to justify it.”³⁷ The party “guilty of attack” is the one that first committed:

- 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 violations 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.³⁸

During this time, Soviet rhetoric against the United States was not limited to its actions in Korea. In September 1950 the Soviet Union placed a “Complaint by the USSR regarding aggression against China by the United States” on the agenda of the General Assembly (A/1375). The representative from China however, stated that his government knew of no aggression against it by the United States and attributed it to an anti-American campaign going on since 1949 by the Soviet Union.³⁹

³⁷ Ferencz, *Defining International Aggression* vol. 2., 79. Document 1, General Assembly Fifth Section Annexes. Document A/C.1/608 Union of Soviet Socialist Republics: draft resolution on the definition of aggression.

³⁸ Ibid.

³⁹ *Yearbook of the United Nations 1951*, (New York: Office of Public Information, United Nations, 1952). III. Political and Security Questions. F. The Question of Korea. G. Complaint by the USSR regarding United States Aggression Against Korea, 258-9.

SOVIET STATEMENT TO THE WORLD⁴⁰

The General Assembly and the Security Council were used as venues to broadcast the propaganda associated with lawfare against the United States. They also became a target of the Soviet press when rulings went against the Soviet Union. In a memorandum titled “Ignorance in Questions of International Law,” it was claimed that the Soviet Union, from the first day of its turn as Chairman of the Security Council, introduced proposals on the peaceful resolution of the Korean issue and presented a draft resolution proposing the cessation of military actions in Korea.⁴¹ It accused the Anglo-American bloc of rejecting the Soviet proposal in favor of one falsely referring to aggression supposedly by North Korea in obvious distortion of generally accepted principles of international law and international practice.⁴²

The memo then noted the need to address the problem of aggression in international legal science. It stated that the generally recognized principle of foreign intervention into the internal affairs of states was impermissible. “Modern international law also considers intervention in the form of an attack by one government on another (aggression) as the most serious international crime.”⁴³ Further, it continued, in international law, the concept of an attack of one state (aggressor) on another state was firmly established. No one ever thought to consider a war within a single country as aggression. To the contrary, the intervention of a foreign state in internal conflicts or civil wars of another state was qualified as a typical manifestation of aggression.⁴⁴ The example of the northern and southern states in America was raised by the memo. No one thought of them as aggressors. When the English government tried to intervene, world public opinion characterized this

⁴⁰ For other instances where the Soviet Union accused the US of Aggression see Quigley, *Soviet Legal Innovation and the Law of the Western World*, 165-171.

⁴¹ RGASPI, f. 82, op. 2, d. 1272, l. 28-34. When I retrieved this document from the archive, I neglected to secure the cover sheet so I am not able to verify date and drafters.

⁴² Ibid., 29. See also *Yearbook of the United Nations 1950* for a summary of this presentation. (231-232).

⁴³ Ibid.

⁴⁴ Ibid., 29-30.

policy as intervention in internal affairs.⁴⁵ The only aggressors in Korea, it went on to say, were the states maintaining troops on Korean territory and interfering in the fight between the northerners and southerners of Korea.⁴⁶

The memo recalled that the 1933 definition proposed by the delegation of the Soviet Union was approved by the United States, England and France. Treaties were concluded with eleven states in accordance with this definition. In these treaties, the attacking side, the aggressor, was the state that committed one of the actions listed in the convention: declaration of war against another state, incursion of armed forces of one state on the territory of another state, even without declaration of war, bombardment of ground troops, naval forces, or air forces of one government on the territory of another government, naval blockade, etc.⁴⁷ When addressing why the civil war in Korea was being declared an aggression, it answered that the government of the United States, which was really carrying out the aggression, was attempting to deflect attention from their criminal acts of aggression. “These facts incontrovertibly establish that from the standpoint of international law and international practice, the military actions of the US government in relation to the Korean people are armed aggression and all the responsibility for aggression in Korea is borne by the government of the United States of America.”⁴⁸

In addition to creating their own propaganda, the Soviet government was extremely interested in world public opinion and reviewed international media publications regularly. Those that promoted their policies were distributed through TASS. A TASS report on the actions in Korea relayed American newspaper accusations, specifically those of *The Times Herald*, that US intervention in Korea was an “illegal declaration of war.” *The Baltimore Sun* reported that the US

⁴⁵ Ibid., 30.

⁴⁶ Ibid., 32.

⁴⁷ Ibid., 32.

⁴⁸ Ibid. 34.

was playing a “colossal game of chance,” by demonstrating force in the area to save the US and the world from an expensive war with Russia.⁴⁹

As part of the ongoing propaganda, an article in the Soviet Army newspaper, *Red Star*, on 29 September 1950 claimed that the attack on the “peace-loving Korean people,” was carried out by Syngman Rhee’s “puppet clique” under direct instructions from Washington. The article claimed the attack was the result of a previously thought out and carefully prepared strategic plan of the American command and the puppet clique.⁵⁰ This language again placed the act squarely under the definition of planning and preparation for aggressive war set forth at Nuremberg.

The article went on to say that the US government began armed intervention in Korea before the Security Council meeting of 27 June. The Security Council subsequently “stamped” approval of the resolution proposed by the US government, approving the “aggressive actions” undertaken in Korea in gross violation of the UN Charter.⁵¹ It concluded that, according to article 27 of the UN Charter, all Security Council resolutions must have seven votes, in this instance, the seventh vote was by the illegal occupant of China’s seat on the Security Council.⁵²

The article accused the UN Security Council of not operating as a body to maintain peace, but as a weapon used by the US ruling circles to unleash war. It accused UN Secretary-General Mr. Trygve Lie of aiding the United States in their “aggressive” plans regarding Korea.⁵³ In further defining the act as aggressive, the article pointed out a statement made by President Truman at a press conference on 29 June 1950. According to the article, he stated that the United States was only taking “police actions” in support of the UN and they were directed against “groups of bandits” from

⁴⁹ RGASPI, f. 82, op. 2 d. 1268, l. 4. The TASS reports I reviewed in the archives were all edited prior to reporting by the government of the USSR and sometimes Stalin himself.

⁵⁰ “Dokumenty, razoblatchayushie amerikanskikh interventov v Koree,” *Krasnaia zvezda*, no. 232 (29 September 1950).

⁵¹ Ibid., 83 - 84.

⁵² Ibid., 84.

⁵³ Ibid., 85 – 86.

North Korea. The article noted that it had long been known that the aggressor resorts to some method to cover up the aggression.⁵⁴ It concluded with a condemnation of the US Government for its gross intervention in the internal affairs of Korea.⁵⁵

On 22 July 1950, an article appeared in *Red Star* linking American actions to corporate greed. The American company, Oriental Consolidated Mining, exploited gold deposits in North Korea and in 1939 a significant part of these deposits were sold to Japan. After the Soviets defeated the Japanese, American monopolists in South Korea confiscated the shares of this company. It also alleged that the Morgan banking house created a company that owned over a billion dollars worth of mines, land and banks in Korea. The North proved a barrier to continued expansion and this in turn lead to the main reason for US intervention. Having noted that the Americans were not able to achieve their goals behind the scenes, they resorted to open aggression against the Korean people, adding again “[t]his aggression was prepared long ago and carefully.” The article continued that the Americans moved from a “policy of preparing for aggression to direct acts of aggression, carried out a hostile act against peace, and started on a path of undisguised armed intervention in Korea.”⁵⁶ The language of “preparing” and “carrying out” set the Americans even more firmly under the standards for international aggression and crimes against peace established at Nuremberg. The accusation that the aggressive action had economic roots placed it in a category that was specifically labeled as a reason such action could not be justified in previous treaty language.

Editorial articles in the December 1950 and January and February 1951 issues of *Soviet State and Law* continued this vein. An article entitled “Aggression and Intervention in the Far East in the

⁵⁴ Ibid., 86.

⁵⁵ Ibid., 91.

⁵⁶ General G. Kovalev, “Amerikanskie agressory v Koree razoblacheny,” *Krashaia zvezda* no. 173 (22 July 1950).

Light of International Law”⁵⁷ by Professors V. N. Durdenevskii and A. M. Ladyzhenskii accused the US of a long record of intervention.⁵⁸ They stated the use of force internally was civil war as referenced by a list of treaties including the Convention of 1933.⁵⁹ W. W. Kulski, commenting on the article, noted however, that it might be relevant to point out that absent from the list that signed the 1933 Convention were Lithuania, Latvia and Estonia, which were annexed by the Soviet Union seven years later.⁶⁰

On 16 November 1951 a draft for the speech to be given by N. S. Tikhonov at the Third All Union Conference of the Adherents of Peace, was submitted to Panteleimon Kondrat'evich Ponomarenko (1902 - 1984), a member of the All-Union Secretariat and secretary of the Central Committee.⁶¹ The speech was a summarization of the results of collecting signatures in the USSR to use to appeal to the World Council of Peace to conclude a Peace Pact between the five great powers.⁶² It accused the UN of turning into a weapon of aggressive war, acting for the needs of the American aggressors⁶³ and called the American and UN coalition a “wolf’s clique under an angel’s smile.”⁶⁴ Further driving this point home, it demanded conclusion of a Peace Pact between the US, Soviet Union, Chinese People’s Republic, Great Britain and France and considered any refusal evidence of the aggressive intentions of that government.⁶⁵ The speech concluded with a call for immediate resolution of the Korean conflict.⁶⁶

⁵⁷ V. N. Durdenevskii and A. M. Ladyzhenskii, “Aggression and Intervention in the Far East in the Light of International Law” *Sovetskoe gosudarstvo i pravo*, no. 2. (February 1951).

⁵⁸ Kulski, W. W. “Soviet Comments on International Law and International Relations,” 45 *The American Journal of International Law*, no.3, 556. (Jul., 1951).

⁵⁹ Ibid., 557.

⁶⁰ Ibid., 558.

⁶¹ RGASPI, f. 17, op.137, d. 468,, l. 88 – 110.

⁶² Ibid., 89.

⁶³ Ibid., 92.

⁶⁴ Ibid., 96.

⁶⁵ Ibid., 100.

⁶⁶ Ibid., 106.

On 12 March 1951, the USSR published the Peace Defense Act “Offenses Against the Peace and Security of Mankind.” It stated that the USSR would not tolerate the use of war propaganda conducted by aggressive circles. It further resolved “1. That war propaganda, in whatever form conducted, undermines the cause of peace, creates the anger of a new war and is therefore a grave crime against humanity 2. That persons guilty of war propaganda shall be committed for trial as major criminals.”⁶⁷ This codification of war propaganda will be carried through to the present day Constitution of the Russian Federation. Once again, the Soviet government set forth restrictions that it, itself, would not obey. Thus, we will see it used the same way as treaties and other international law in the future, as a tool for lawfare, not meant to restrain the originator.

All combined, these efforts positioned the Soviet Union, once again, as the “public accuser,” as Marina Sorokina labeled Stalin during the Nazi war criminals’ trials. This time, the target was the United States through Soviet efforts both in the United Nations and the media. Efforts continued in the General Assembly even as the war was winding down.

⁶⁷ *Supplement to the American Journal of International Law*, vol. 46, 1953, Official Documents, 34.

CONTINUED EFFORTS IN THE GENERAL ASSEMBLY

On 5 January 1952, the USSR submitted another draft resolution to the General Assembly, listing the above traits as those to be used to identify the aggressor but adding:

- 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.⁶⁸

As a result of the 408th plenary meeting on 20 December 1952, the General Assembly adopted resolution 688 which established a Special Committee of fifteen members to submit draft definitions of aggression or draft statements on the notion of aggression to the ninth session of the General Assembly.⁶⁹ As a result of the discussion, the Union of Soviet Socialist Republics submitted a draft definition of aggression,⁷⁰ which was distributed to the members. This draft reiterated the previously submitted definition of the aggressor, but added specific actions, which would be labeled indirect and economic aggression:

2. That State shall be declared to have committed an act of indirect aggression which:

- (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 favour of the aggressor.

3. That State shall be declared to have committed an act of economic aggression which first commits one of the following acts:

- (a) Takes against another State measures of economic pressure violating its sovereignty and economic independence and threatening the bases of its economic life;

⁶⁸ Ferencz. *Defining International Aggression*, vol. 2, 91. General Assembly Sixth Session Annexes, Agenda Item 49. Document A/C.6/L.208 Union of Soviet Socialist Republics: draft resolution.

⁶⁹ Ibid., 188. Document 6, “Report of the Special Committee on the Question of Defining Aggression.” A/AC.66/L.11. At the time the Soviet press was declaring the US to be “aggressors” in an “Aggressive War” see I. Alexandrov, “Porazhenie amerikanskikh agressorov v Koree” *Voennoe znaniye* no. 6 (1952): 9 and V. Korionov, “Amerikanskaia burzhauznaia interventsiia v Koree,” *Pogranichnik* no. 9 (1951): 67-74.

⁷⁰ A/AC.66/L.2/Rev. 1.

- (b) Takes against another State measures preventing it from exploiting or nationalizing its own natural riches;
- (c) Subjects another State to an economic blockade.⁷¹

During the general discussion of the committee, the USSR representative, Mr. Platon Dmitrievich Morozov, defended his government's submission of a specific enumerated definition by calling the so-called general definition of aggression inadequate. "For example, aggression had been defined as an international crime, which in effect, was rather like saying that aggression was aggression. Naturally, such an approach would not help that Committee to carry out the task before it."⁷² He went on to say that the "definition was based on the principle that the definition of the concept of armed attack was of primary importance in defining aggression. The proposal was to confirm the recognized principle of international law that the State which under any pretext or for any reason took the initiative in starting a war, that is to say, was the first in an international conflict to take any of the actions listed in paragraph 1 of the USSR draft definition would be declared the attacker."⁷³ Mr. Morozov concluded that a clear-cut definition of aggression, and its adoption by the General Assembly, "would be of great importance for the maintenance of international peace and security and, in particular, for the elimination of the possibility of justifying aggression."⁷⁴

In 1953 the USSR proposed to the General Assembly a prohibition of economic, ideological and indirect aggression. The Soviet media at the time charged the Western powers with blocking the adoption of the proposal and trying to abolish the Commission on the Definition of Aggression

⁷¹ Ferencz, *Defining International Aggression* vol. 2, 199, Annex. Texts submitted to the Committee. Draft Resolution Submitted by the Union of Soviet Socialist Republics (A/AC.66/L.2/Rev. 1)

⁷² Ibid., 190. Document 6. Chapter 1, The various types of definitions of aggression. I. General Definition. Para. 30.

⁷³ Ibid., 191. Chapter 1, II. Enumerative Definition. Para. 35.

⁷⁴ Ibid., 197. Chapter III. The connection between a definition of aggression and the maintenance of international peace and security. para. 93.

established in 1953.⁷⁵ Stalin's death on 5 March 1953 possibly had an effect on the end of the war but it did not stop the continued attempts of the Soviet government to place the definition of aggression before the United Nations.

On 18 October 1954, the USSR filed another draft resolution, this time adding:

4. That State shall be declared to have committed an act of ideological aggression which:
 - (a) Encourages war propaganda;
 - (b) Encourages propaganda in favour of using atomic, bacterial, chemical and other weapons of mass destruction;
 - (c) Promotes the propaganda of fascist-nazi views, of racial and national exclusiveness, and of hatred and contempt for other peoples.⁷⁶

Also reiterated in this revision were instances where the acts of aggression referenced might not be justified by any considerations of a political, strategic or economic nature or other interests in that territory or by the refusal to recognize the distinguishing marks of statehood. It went on to give specific instances that may not be used as justification:

- A. The internal situation of any State, as for example:
 - (a) Backwardness of any people 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;
 - (e) Establishment of maintenance in any State of any political, economic or social system.
- B. Any acts, legislation or orders of any State, as for example:
 - (a) Violation of international treaties;
 - (b) Violation of rights and interests in the sphere of trade, concessions or any kind of economic activity acquired by another State or its citizens;
 - (c) Rupture of diplomatic or economic relations;
 - (d) Measures constituting an economic or financial boycott;
 - (e) Repudiation of debts;

⁷⁵ John Yin, *The Soviet Views on the Use of Force in International Law* (Hong Kong (G.P.O. Box 2232): Asian Research Service, 1980), 20. Yin noted that approval of the Soviet motion would relinquish aggression to a propaganda word, losing its legal meaning.

⁷⁶ Ferencz, *Defining International Aggression*, vol. 2, 207. Document A/C.6/L.332/Rev.1. Union of Soviet Socialist Republics: draft resolution.

- (f) Prohibition or restriction of immigration or modification of the status of foreigners;
- (g) Violation of privileges recognized 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 religious or anti-religious nature;
- (j) Frontier incidents.⁷⁷

The 1956 Special Committee on the Question of Defining Aggression convened 19 meetings between 8 October and 9 November 1956. The results were reported to the General Assembly. The 1956 report was tabled, however, on 29 November 1957. The General Assembly decided to request the views of the 22 new member states on the question of defining aggression and place it on the provisional agenda of the General Assembly no earlier than the fourteenth session.⁷⁸

⁷⁷ Ibid., 208. Document A/C.6/L.332/Rev.1. Union of Soviet Socialist Republics: draft resolution.

⁷⁸ Ibid., 253. Resolution 1181 (XII). Action taken by the General Assembly. Question of Defining Aggression. 29 November 1957.

SUMMARY

As we see by the rhetoric both at home and abroad, through international political bodies and public propaganda, the Soviet Union worked exhaustively to place the face of the aggressor on the United States. By utilizing both the definition proposed for the state by earlier treaties and that proposed for the individual at Nuremberg, the Soviet Union again and again placed the terms of aggression and aggressive war onto the world stage to undermine the actions of a major opponent, the United States. Phrases such as intervention into the internal affairs of another country, action in disregard of the obligations of the United States to the UN, invasion by armed naval and air forces, and planning, preparing and carrying out hostile acts, were repeated often to clearly place the United States in violation of the current public definition, even if it was not a strictly legal one.

During this period the definition remained consistent, it was the frequency with which it was espoused that increased. Still we see the combination of lawfare and propaganda as a weapon in lieu of major military commitment used to discredit an opponent. We also see strong deliberation regarding the initial advice to North Korea not to invade. The Soviet government looked not only at North Korea's military readiness but the ramifications of US involvement. We will see this type of deliberation again regarding Hungary and Czechoslovakia. Another feature of these deliberations was a description of what the Soviet government was looking for in a state that would justify intervention. It would need partisan movements, liberated districts and people willing to participate in an armed uprising. The Soviet government would also seek this situation in Hungary and Czechoslovakia, not only in order to increase the odds of success, but to provide justification for actions that fall directly under the definition of aggression and aggressive war.

During the early 1950s, the strong showing as the public accuser highlighted the Soviet Union's stature elsewhere in the world. With the exception of Yugoslavia, the Soviet Union was

dominant in Eastern Europe. This influence was utilized to control production and exact economic contributions towards the war effort in Korea. These increased demands set the stage for resistance against increased production and collectivization. The growing discontent was addressed by increasing secret police activity. Riots began to break out, first in Czechoslovakia in 1952 and East Berlin in 1953.⁷⁹ After taking the position of public accuser of the United States through lawfare and propaganda and exerting strong control over Eastern Europe in the early 1950s, the revolt in Poznan, Poland stoked the fire for the next confrontation in Hungary. This time, it would not be lawfare and propaganda, but the Soviet Army that was utilized by the Soviet Union. This intervention would place the Soviet Union on the receiving end of accusations regarding the concept of aggression.

⁷⁹ Vladimir Wozniuk, *Understanding Soviet Foreign Policy: Readings and Documents* (New York: McGraw-Hill, 1990), 76.

CHAPTER 5

HUNGARY

An old piece of barracks humor in the Soviet Union had it that ‘one day the Soviet peace effort will be so successful that not a brick will be left standing anywhere.’¹

Julius Stone, in his work *Aggression and World Order*, pointed out that while the General Assembly’s Special Committee was deliberating on the definition of aggression in 1956, the Soviet Union, by displacing the Nagy regime in Hungary, “provided a realistic demonstration as well of the need for definition if such could be supplied at all, as of the dubious sincerity of some of the most vigorous champions of (the) definition. For the outstanding champion, the Soviet Union, was engaged in an operation in Hungary which was to fall squarely within the very definition of aggression which it was pressing on other nations as the greatest crime against mankind.”²

Even before the Korean War the USSR and Hungary signed a Treaty of Friendship, Co-operation and Mutual Assistance, at Moscow on 18 February 1948. As the events in Korea were winding down, unrest began to build in several places. In Hungary, Stalinist Mátyás Rákosi (1892 - 1971),³ who had been appointed Prime Minister prior to Stalin’s death, once again dislodged reformist Imre Nagy (1896 - 1958)⁴ in 1955. On 25 February 1956, Nikita Sergeevich Khrushchev⁵ (1894 - 1971) denounced Stalin in his “secret speech.” In July 1956, Egyptian leader Gamel Abdel

¹ Albert Loren Weeks, *Stalin's Other War: Soviet Grand Strategy, 1939-1941* (Lanham, Md.: Rowman & Littlefield Publishers, 2002), 38.

² Julius Stone, *Aggression and World Order: A Critique of United Nations Theories of Aggression* (Westport, Conn.: Greenwood Press, 1976), 1-2.

³ Matyas Rákosi was First Secretary to the Hungarian Workers’ Party from June 1948 - July 1956. He also served as Hungarian Prime Minister from 1952 - June 1953.

⁴ Imre Nagy was Hungarian Prime Minister from July 1953 - March 1955 and from 24 October 1956 - 4 November 1956. After seeking refuge in the Yugoslav embassy on 4 November 1956, he was arrested and transferred to Romania. He was hanged June 1958. For more information see E. D. Orekhova, *Sovetskii Soiuz i vengerskii krizis 1956 goda: dokumenty*. (Moskva: Rossppen, 1998).

⁵ Nikita Khrushchev served as First Secretary of the Communist Party of the Soviet Union from 1953 to 1964, following the death of Joseph Stalin, and Chairman of the Council of Ministers from 1958 to 1964.

Nasser (1918 - 1970) announced nationalization of the Suez Canal Company much to the consternation of Israel, France and Great Britain, which provided the Soviet Union a useful distraction for the other countries that might oppose its actions in Hungary.

The Soviet government remained involved in activities within Hungary and in July 1956 decided that Rákosi should be removed as the Hungarian Workers' Party First Secretary. András Hegedűs (1922 - 1999)⁶ was appointed Prime Minister of Hungary from April 1955 to 24 October 1956. Ernő Gerő (1898 - 1980) was First Secretary of the Hungarian Workers' Party from 18 July 1956 to 25 October 1956. The Soviet government once again intervened and returned Nagy as Prime Minister from 24 October 1956 to 4 November 1956. János Kádár (1912 - 1989) was elected Hungarian Workers' Party First Secretary on 25 October 1956, Chairman of the Hungarian Workers Party Presidium from 28 October until the new party was formed on 1 November, state minister to Imre Nagy's government from 1 to 4 November 1956, and was the leader of the newly formed Provisional Workers' and Peasants' Government from 4 November until 1988.⁷

As one can see, the government was in a constant state of turmoil before, during and after the significant dates of the Hungarian uprising of 1956 (23 October to 10 November 1956). Meanwhile, at approximately the same time, Moscow declined military intervention in Poland where a series of worker's strikes had been ongoing for months.⁸ The uprising in Hungary, however, turned out quite differently. It was significant because it was the first large-scale mass movement to oppose Soviet

⁶ András Hegedűs also served as the First Deputy Prime Minister from 24 - 27 October 1956.

⁷ Mark Kramer, “‘Malin Notes’” on the Crises In Hungary and Poland, 1956,” translated and annotated by Mark Kramer. *Cold War International History Project Bulletin*, Woodrow Wilson International Center for Scholars, Issue 8/9 (Winter 1996/1997): 385-410.

⁸ For a very thorough background on the subject utilizing new archival evidence “New Evidence on 1953, 1956 Crises: Conferences in Budapest, Potsdam Spotlight Cold War Flashpoints,” *Cold War International History Project Bulletin*, Woodrow Wilson International Center for Scholars, Issue 8/9 (Winter 1996/1997): 355-357, and in the same issue Mark Kramer, “New evidence on Soviet Decision-making and the 1956 Polish and Hungarian Crises,” 358-384.

hegemony in this part of Europe. Of crucial importance, it was the first sustained movement to promise a share of state power to non-communist political parties.⁹

In this chapter I look initially at a conversation between Viacheslav Mikhailovich Molotov (1890 - 1986), who succeeded Litvinov as Commissar for External Affairs in 1939, and Rákosi, to establish the extent of the political and economic relationship between the USSR and Hungary. The Treaty of Friendship, Co-operation and Mutual Assistance with Hungary (signed 18 February 1948) and the Warsaw Pact (signed 14 May 1955) become the focus of a subsequent condemnation by the United Nations.¹⁰ I also look to the conversations between the senior Soviet decision makers at the initial phases of the conflict to set the stage as I did in the case of the Korean conflict. These conversations, taken with the findings of the Special Committee on the Problem of Hungary, appointed by the UN General Assembly to investigate the violation of the political independence of Hungary by the Soviet Union, give a good indication of the reasons the Soviet government used to defend its intervention into Hungary. The conversations also indicate the reasons why they might have been willing to violate their previous efforts at lawfare.

⁹ Terry Cox, *Hungary 1956 -- Forty Years On* (London; Portland, OR: Frank Cass, 1997), 2. See also Johanna Granville, "In the Line of Fire: The Soviet Crackdown on Hungary, 1956-57," in Cox, *Hungary 1956*, 67-107, who noted that Soviet motivation for intervention in Hungary was not only the desire to keep Hungary from leaving the Warsaw Pact, but also was a result of the persecution of the Hungarian communists. (69).

¹⁰ It is argued by other scholars whether this was a revolution, a counter-revolution or an insurrection. It is also called a rebellion and an uprising. See Ibid. 2-3. For the purposes of this paper it is called an uprising.

BUILDUP TO THE UPRISING

As early as 1947 there were discussions regarding concern over US economic intervention in Hungary and the possibility of mobilization of the masses. In a transcript of a conversation between Molotov and Rákosi, General Secretary of the Hungarian Communist Party at the time, on 29 April 1947, these concerns were highlighted.¹¹ Rákosi noted a possible conspiracy that involved the Prime Minister and possibly the President of the Republic of Hungary. He accused the reactionary leaders of wanting to present the situation as the USSR only taking reparations from Hungary while America was doing good things.¹² He asked about ratification of a treaty and the duration of the stay of Soviet troops in Hungary. Molotov responded that the peace treaty with Austria would certainly not be signed that year as Soviet troops would still be in Austria, Hungary and Romania for all of 1947.¹³ However, Molotov responded that a peace treaty with Hungary would likely be ratified in May with sixty days for troop drawdown. There would still be Soviet troops remaining but the expenses would be covered by the USSR.¹⁴

Rákosi reported on the makeup of the Communist Party in Hungary and its support base and the current political situation overall. The Communist Party was in an extremely difficult position because it was the only one supporting reparations to the Soviet Union, which made up about fifty percent of Hungary's budget.¹⁵ Rákosi noted, if a certain point was reached, they would have to resort of mobilization of the masses. He questioned what type of support could be counted on from the Soviets.¹⁶ Molotov, as was typical in this exchange, answered vaguely, "This will depend on the circumstances."

¹¹ RGASPI, f. 82, op. 2. D. 1151, l. 72-93.

¹² Ibid., l. 73.

¹³ Ibid., l. 75.

¹⁴ Ibid., l. 75.

¹⁵ Ibid., l. 77.

¹⁶ Ibid., l. 79.

The following year, to further solidify the situation in Hungary, several treaties were implemented. On 18 February 1948 a Treaty of Friendship, Co-operation and Mutual Assistance was signed between Hungary and the USSR.¹⁷ Article 2 read:

Should either of the High Contracting Parties be involved in hostilities with Germany or with any State associated with Germany in acts of aggression in Europe which States might seek to renew their policy of aggression, or with any other State which might be associated with Germany directly or in any other way in a policy of aggression, the other High Contracting Party shall immediately extend to the Contracting Party involved in hostilities military and other assistance with all the means at its disposal.

The present Treaty will be implemented in conformity with the principles of the United Nations Charter.

On a broader scale the Treaty of Friendship, Cooperation and Mutual Assistance Between the People's Republic of Albania, the People's Republic of Bulgaria, the Hungarian People's Republic, the German Democratic Republic, the Polish People's Republic, the Rumanian People's Republic, the Union of Soviet Socialist Republics and the Czechoslovak Republic, (hereafter the Warsaw Pact) was signed 14 May 1955. The pertinent articles read:

Article 1

The Contracting Parties undertake, in accordance with the Charter of the United Nations Organization, to refrain in their international relations from the threat or use of force, and to settle their international disputes peacefully and in such manner as will not jeopardize international peace and security.

Article 3

The Contracting Parties shall consult with one another on all important international issues affecting their common interests, guided by the desire to strengthen international peace and security.

They shall immediately consult with one another whenever, in the opinion of any one

¹⁷ No. 743 Union of Soviet Socialist Republics And Hungary Treaty Of Friendship, Co-Operation And Mutual Assistance. Signed At Moscow, On 18 February 1948 Official Texts: Russian And Hungarian. Registered By The Union of Soviet Socialist Republics On 15 March 1950. http://untreaty.un.org/unts/1_60000/2/8/00002382.pdf. (accessed 12 January 2009).

of them, a threat of armed attack on one or more of the Parties to the Treaty has arisen, in order to ensure joint defence and the maintenance of peace and security.

Article 4

In the event of armed attack in Europe on one or more of the Parties to the Treaty by any state or group of states, each of the Parties to the Treaty, in the exercise of its right to individual or collective self-defence in accordance with Article 51 of the Charter of the United Nations Organization, shall immediately, either individually or in agreement with other Parties to the Treaty, come to the assistance of the state or states attacked with all such means as it deems necessary, including armed force. The Parties to the Treaty shall immediately consult concerning the necessary measures to be taken by them jointly in order to restore and maintain international peace and security.

Measures taken on the basis of this Article shall be reported to the Security Council in conformity with the provisions of the Charter of the United Nations Organization. These measures shall be discontinued immediately [as] the Security Council adopts the necessary measures to restore and maintain international peace and security.

Article 5

The Contracting Parties have agreed to establish a Joint Command of the armed forces that by agreement among the Parties shall be assigned to the Command, which shall function on the basis of jointly established principles. They shall likewise adopt other agreed measures necessary to strengthen their defensive power, in order to protect the peaceful labours of their peoples, guarantee the inviolability of their frontiers and territories, and provide defence against possible aggression.¹⁸

Note the language in article 4 referring to article 51 of the UN Charter and the Security Council.

This language will continue to appear in subsequent treaties. On its face, it validated the treaty language but as we will see, it did not serve to restrict the Soviet Union.

¹⁸ Treaty of Friendship, Cooperation and Mutual Assistance, signed 14 May 1955, 219 UNTS 3. http://avalon.law.yale.edu/20th_century/warsaw.asp. (accessed 12 January 2009). Ratified by the USSR 1 June 1955 and Hungary 2 June 1955.

EVENTS OF THE UPRISING

In the Working Notes from the Session of the Central Committee Presidium on 23 October 1956, regarding the situation in Hungary, Marshal Georgii Zhukov (1896 - 1974), Soviet Defense Minister, reported a demonstration of 100,000 people in Budapest. Khrushchev, among others, spoke in favor of sending troops, which appeared to be in response to a request sent from Ernő Gerő. The request came initially via Yuri Vladimirovich Andropov (1914 - 1984), then Soviet Ambassador to Hungary, (who transmitted Gerő's appeal to Moscow and followed up with an emergency phone call) and then was repeated during a phone call that Khrushchev placed to Gerő. A written appeal from then-Prime Minister Hegedűs, supposedly delivered on the night of 23-24 October 1956, was transmitted by Andropov in a ciphered telegram on 28 October.¹⁹ Zhukov transmitted orders for five Soviet divisions.²⁰ Anatas Ivanovich Mikoyan (1895 - 1978), First Deputy Premier of the Soviet Union, and others were dispatched to Budapest.

¹⁹ "Working Notes from the Session of the CPSU CC Presidium on 23 October 1956," Woodrow Wilson International Center for Scholars, Cold War Project. Source: TsKhSD, f. 3, op. 12, d. 1006, l. 4-4ob, compiled by V. N. Malin. Published in CWIHP Bulletin 8-9, pp. 388-389. Identifier: 6911B52A-A135-13F4-8A05D8D14C8AF95D. (accessed 5 December 2008). Citing FN 3, "Shiftelegramma" (Strictly Secret—Urgent), 28 October 1956, in AVPRF, f. 059a, op. 4, p. 6, d. 5, l. 12. http://www.wilsoncenter.org/index.cfm?topic_id=1409&fuseaction=va2.document&identifier=6911B52A-A135-13F4-8A05D8D14C8AF95D&sort=Collection&item=1956%20Hungarian%20Revolution. Andropov forwarded the following letter from Budapest on 28 October 1956: Urgent- I hereby forward a letter from the Hungarian Government to: "The Council of Ministers of the Soviet Socialist Republics Moscow On behalf of the Council of Ministers of the People's Republic of Hungary I appeal to the Government of the Soviet Union to send Soviet troops in order to put an end to the riots that have broken out in Budapest, to restore order as soon as possible, and to guarantee the conditions for peaceful and creative work. 24 October 1956

Budapest Prime Minister of the People's Republic of Hungary András Hegedűs. "Andropov Report, 28 October 1956" Woodrow Wilson International Center for Scholars, Cold War Project. Source: AVP RF, f. 059a, op. 4, p. 6, d. 5, l. 12; translation from *The Hungarian Quarterly* 34 (Spring 1993):104. Published in CWIHP Bulletin 5, p. 30. Identifier: 823303CA-DC77-5EDA-3549E2C050F2C53D.

http://www.wilsoncenter.org/index.cfm?topic_id=1409&fuseaction=va2.document&identifier=823303CA-DC77-5EDA-3549E2C050F2C53D&sort=Collection&item=1956%20Hungarian%20Revolution. (accessed 5 December 2008).

²⁰ Ibid., citing "TsK KPSS," memorandum from Zhukov and Marshal Vasilii Sokolovskii, chief of the Soviet General Staff, to the CPSU Presidium, 24 October 1956 (Strictly Secret—Special Dossier), in APRF, f. 3, op. 64, d. 484, l. 85-87.

On the next day, the Central Committee met regarding the situation in Poland, then moved to Hungary where the following conversation was recorded:

When Comrade Khrushchev talked by phone on 23 Oct. 1956 with Comrade Gerő, whom he summoned for a consultation, Comrade Gerő told him that the situation in Budapest is bad and for that reason he cannot come to Moscow. As soon as the conversation was over, Comrade Zhukov informed [Khrushchev] that Gerő had asked the military attache at the Soviet embassy in Budapest to dispatch Soviet troops to suppress a demonstration that was reaching an ever greater and unprecedented scale. The Presidium of the CC CPSU did not give its approval for such an intervention because it was not requested by the highest Hungarian officials, even when Comrade Gerő had been speaking earlier with Comrade Khrushchev.²¹

The Memorandum of Conversation went on to say that on the morning of 24 October, Nagy went on the radio to call for order. He also mentioned the request for help from the Soviet troops to enter Budapest.

A report from Deputy Minister of Internal Affairs of the USSR, Mikhail Pervukhin on 24 October stated that “[i]n accordance with the decision of the Minister of Defense Marshal Zhukov, Soviet troops crossed the Hungarian border. In all there were 128 rifle divisions and 39 mechanized divisions, which began to enter Hungary at 2:15 at the points Csop, Beregovo, and Vylok. ... The whole border was guarded in order to permit us to violate state borders with impunity. The crossing of troops over the border continues.”²²

²¹ “Account of a Meeting at the CPSU CC, on the Situation in Poland and Hungary,” 10/24/1956, Woodrow Wilson International Center for Scholars, Cold War Project. Memorandum of Conversation. Created by Antonin Novotny with contributor Nikita S. Khrushchev. Identifier: 5034FB75-96B6-175C-916BBD3FD3D93A89. http://www.wilsoncenter.org/index.cfm?topic_id=1409&fuseaction=va2.document&identifier=5034FB75-96B6-175C-916BBD3FD3D93A89&sort=Collection&item=1956%20Hungarian%20Revolution. (accessed 5 December 2008).

²² “Report from Soviet Deputy Minister of Internal Affairs Perevertkin” 10/24/1956. Woodrow Wilson International Center for Scholars, Cold War Project. Source: f. 89, p. 45, d. 7, Center for the Storage of Contemporary Documentation (TsKhSD), Moscow. Identifier: 5034E993-96B6-175C-99E50B4CFC218ACF. http://www.wilsoncenter.org/index.cfm?topic_id=1409&fuseaction=va2.document&identifier=5034E993-96B6-175C-99E50B4CFC218ACF&sort=Collection&item=1956%20Hungarian%20Revolution. (accessed on 5 December 2008). Although possibly the word division may refer to units due to their size.

On 1 November there was more debate within the Central Committee Presidium. Mikoyan advocated working with Nagy's government. Many others advocated a sharp military reaction to the unrest.²³ Notes from the Presidium meeting the following day implied adoption of a military plan with the impetus being the fear of fascist influence in Hungary.²⁴ Khrushchev, in a speech on 3 November, admitted that Rákosi and others were not the right people to place in charge and that Nagy was a traitor and a possible tool of the US government. He advocated support of Kádár. Most interestingly, however, was an unexplained comment about England, France and Egypt and that the Soviet Union could not sit on the sideline.²⁵ This comment might have suggested that they thought others were engaged elsewhere and not concentrating on Hungary, giving them greater liberty to invade.

In a meeting of the Presidium on 4 November, Khrushchev invited members and candidate members of the Central Committee, members of the Auditing Commission, all ministers who were not Central Committee members, senior officials of the Party Central Committee and the Moscow Committee, and secretaries of the Moscow City rayon committees to inform them of the state of affairs in Hungary. By way of explanation he noted:

²³ "Working Notes from the Session of the CPSU CC Presidium on 1 November 1956," Woodrow Wilson International Center for Scholars, Cold War Project Source: TsKhSD, f. 3, op. 12, d. 1006, l. 19-22, compiled by V. N. Malin. Published in CWIHP Bulletin 8-9, pp. 394-395.

http://www.wilsoncenter.org/index.cfm?topic_id=1409&fuseaction=va2.document&identifier=691D4148-E19B-5847-386420CC1E24B87C&sort=Collection&item=1956%20Hungarian%20Revolution. (accessed on 13 January 2009). These documents were published in Russia under Kommunisticheskia Partii Sovetskogo Soiuza, and Aleksander A. Fursenko. Prezidium CK KPSS: 1954 - 1964: chernovye protokol'nye zapisи zasedanii, stenogrammy, postanovleniya; v 3 tomach 2 Postanovleniya 1954 - 1958. Moskva: Rossppen, 2006.

²⁴ "Working Notes from the Session of the CPSU CC Presidium on 2 November 1956." Woodrow Wilson International Center for Scholars, Cold War Project Source: TsKhSD, f. 3, op. 12, d. 1006, l. 30, compiled by V. N. Malin. Published in CWIHP Bulletin 8-9, p. 397.

http://www.wilsoncenter.org/index.cfm?topic_id=1409&fuseaction=va2.document&identifier=6923DB85-ED92-7ECC-11CC2F47A6870609&sort=Collection&item=1956%20Hungarian%20Revolution. (accessed on 13 January 2009).

²⁵ "Imre Horvath's Notes of Khrushchev's Speech at the 3 November Session," Woodrow Wilson International Center for Scholars, Cold War Project Source: Magyar Orszagos Leveltar, XIX J- 1-K Horvath Imre kulugyminiszter iratai, 55, doboz. Published in CWIHP Bulletin 8-9, p. 398.

http://www.wilsoncenter.org/index.cfm?topic_id=1409&fuseaction=va2.document&identifier=69262312-9B02-0B6C-098BDDB4738C10AA&sort=Collection&item=1956%20Hungarian%20Revolution. (accessed 13 January 2009).

We in the Presidium thought a great deal about the situation in Hungary and were very concerned that the events playing out in Hungary did not spread to other countries. We were very concerned about Romania and Czechoslovakia because there are about 500,000 ethnic Hungarians among the population in Romania and about 400,000 or even 600,000 Hungarians in Czechoslovakia, located in areas near the borders. In addition, these countries have elements that were dissatisfied with the existing order in the people's democracies and who very much wanted to change it and return to the capitalist system. In the CC Presidium we discussed the situation that had developed in Hungary many times. Of course, we had enough forces even in the first days to defeat the counterrevolutionary forces, but we thought that if we used armed force to brutally put down the rebels, the Hungarians would not understand this and it might end up that they would all unite against us. Events might grow into a national uprising against the Soviet Army and against the Soviet Union. In such an event, defeating the counterrevolutionary forces, even if they had not shown all their fascist nature, would have brought us very great political complications. There was no doubt of military success, because our superiority goes without saying. But another aspect worried us: the overall international situation. What also worried us was how our actions would be understood in the countries of the socialist camp and how they were assessing the situation that had been created.

You know that during this period a Declaration of the Government of the Union of Soviet Socialist Republics about the principles for the development and further strengthening of friendship and cooperation between the Soviet Union and other socialist countries was published in the press, which talked about the readiness to withdraw Soviet troops from Hungarian territory after suitable talks with the Hungarian government and other Warsaw Pact members. When we made this decision it was not yet clear to us when and how to withdraw them. It was not clear because we had no inner desire to withdraw our troops from there. To withdraw troops meant to give Hungary over to being torn apart by the forces of counterrevolution and give the Americans an opportunity to approach our own borders. This is what it would have meant.²⁶

It is important to look at the full explanation here because it gives justification for the actions of the Soviet government from their perspective. It shows that they were indeed concerned that the events in Hungary not spread to other Warsaw Pact countries. Having just allowed Poland a bit of latitude in handling their workers' rebellion, it might establish a trend they did not want to start.

²⁶ "Stenographic record of a 4 November 1956 meeting of Party activists," Woodrow Wilson International Center for Scholars, Cold War Project Source: APRF, f. 52, op. 1, d. 261, l. 74-110. Published in *Istochnik* no. 6, (Moscow, 2003): 63-75. Translated by Gary Golberg. http://www.wilsoncenter.org/index.cfm?topic_id=1409&fuseaction=va2.document&identifier=0AAFF65-A001-6622-20FCC90B2AFD5870&sort=Collection&item=1956%20Hungarian%20Revolution. (accessed 13 January 2009).

Khrushchev also expressed concern with the international situation. Finally, he expressed concern that the Americans not be given an opportunity to approach Russian borders. Initially Khrushchev explained that the Soviet military had been asked to intervene by the Hungarian government. Taken together, the excuse given to intervene, an invitation, with the reasons given above, demonstrate what the Soviet government considered circumstances which called for intervention. The reference to Czechoslovakia and the tone of the speech will be solidified in the next chapter as this ideology is given a name – the Brezhnev Doctrine.

PUBLIC OPINION

Whereas, in the past, Soviet propaganda had been used to bolster their lawfare accusations against the United States, in Hungary the tables were turned. Although the Soviet government had been careful to set the military intervention as the result of a request from the government of Hungary, an RFE/RL (Radio Free Europe/Radio Liberty) background report from the Hungarian Unit on the Hungarian Revolution, clearly labeled it as aggression.²⁷ They relayed a slightly different version of events. On 23 October 1956 disturbances began in Budapest. The next day Radio Budapest announced a request for help from the Hungarian Government to the Soviet forces stationed there under the Warsaw Pact for help in restoration of order, although on 30 October Radio Budapest stated that Nagy had not signed the appeal to the Soviet Government. On the 24th, Nagy assumed the post of Prime Minister. Between 25 and 28 October, Nagy announced negotiations between the Hungarian and Soviet governments regarding troop withdrawal. On 1 November Nagy demanded that the Soviet troops be immediately withdrawn along with a declaration for Hungary to withdraw from the Warsaw Pact and assume a neutral position. On 4 November Nagy stated on the radio that Soviet troops had launched an unlawful attack on the lawful democratic Hungarian government. After radio silence from seven in the morning on 4 November to ten in the evening, an announcement was made that the Nagy Government had disintegrated and ceased to exist.²⁸

The background report offered by RFE/RL then addressed the question: Does Soviet intervention in Hungary, under the above assumptions, constitute aggression under the Soviet definition? They specifically referred to article 1, which read:

In an international conflict that State shall be declared the attacker which first

²⁷ RFE/RL Collection – Background Reports. Box 31, Folder 1, Report 127. “Aspects of the Hungarian Revolution.” 17 October 1960, Hungarian Unit. http://www.osa.ceu.hu/files/holdings/300/8/3/text_da/31-1-127.shtml. (accessed 21 July 2008).

²⁸ Ibid., IV. Hungary and the Soviet Definition of Aggression, International Commission of Jurists, 1 - 13, 13-14.

commits one of the following acts:...

- (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.²⁹

The reporters concluded that if Soviet intervention took place without Hungarian permission, it was clearly an act of aggression.³⁰ They noted that article 4 of the Warsaw Pact envisaged the duties for mutual defense under the Warsaw Pact to include only defense against the armed attack of another state, not suppression of a people's uprising of a member state.³¹ They noted Soviet legal literature criticized capitalist states for suppressing the struggle for national liberation.³²

They continued to argue that even if the request by the Hungarian Government was legitimate (although doubtful) that in light of the Soviet definition, not even a request by a foreign government could justify intervention from an international law standpoint. They referenced article 6, "acts of economic, ideological and indirect aggression...may not be justified by any argument of a political, strategic or economic nature... In particular the following may not be used as justifications:

- a) The internal position of any State, as for example...d) Any revolutionary or counter-revolutionary movement, civil war, disorders or strikes; e) the establishment or maintenance in any State of any

²⁹ Ibid., 14-15.

³⁰ Ibid., 15 citing that permission to station Soviet troops in Hungary was given by the Warsaw Pact of 14 May 1955 in accordance with their requirements for mutual defense.

³¹ Ibid., 15 citing FN 10: "Article 4: 'In the event of armed attack in Europe on one or more of the Parties to the Treaty by any State or group of States, each of the Parties...shall... come to the assistance of the State or States attacked with all such means as it deems necessary, including armed force."

³² Ibid., citing FN 12, Tunkin, G. I. *Sovetskoe gosudarstvo i pravo*, no. 1, 101-102 (Moscow 1956).

political, economic or social system.”³³ They also concluded that even if permission were given, repeated requests by Nagy to withdraw troops cancelled that permission. Finally, they accused the Soviet Government of indirect aggression by illegally detaining Hungarian representatives sent to negotiate.³⁴

The matter was brought to the attention of the General Assembly and on 12 December 1956, General Assembly Resolution 1131 (XI) declared that “by using its armed force against the Hungarian people, the Government of the Union of Soviet Socialist Republics is violating the political independence of Hungary.”³⁵ Resolution 1132 (XI) recommended a Special Committee (hereafter the Committee on Hungary) be formed to study this problem.³⁶

In the Report of the Special Committee on the Problem of Hungary to the UN General Assembly, Eleventh Session in 1957, the Committee on Hungary gave their findings on the situation created by the intervention of the USSR in the internal affairs of Hungary.³⁷ Although hampered by the fact that neither the Hungarian government nor the Soviet government participated in the investigation, the Committee on Hungary concluded that the uprising was a spontaneous national uprising resulting from longstanding grievances with the Hungarian government and strict Soviet influence.³⁸ The Committee did not find that the uprising was caused by Western “Imperialists” as alleged by the Soviet Union.³⁹ It appeared, they noted, that although the whole uprising was spontaneous, the Soviet military had taken steps as early as 20 October to plan for armed

³³ Ibid., 16.

³⁴ Ibid.

³⁵ G.A. Res. 1131 (XI) of 4 December 1956, 608th Plenary Meeting.
<http://www.un.org/Depts/dhl/dag/docs/ares1132e.pdf>. (accessed 12 January 2009).

³⁶ G.A. Res. 1132 (XI) of 12 December 1956, 618th Plenary Meeting.
<http://www.un.org/Depts/dhl/dag/docs/ares1132e.pdf>. (accessed 12 January 2009).

³⁷ *Report of the Special Committee on the Problem of Hungary* to the United Nations General Assembly, Official Records: Eleventh Session. Supplement No. 18 (A/3592) New York, 1957.

³⁸ Ibid., Chapter XVII Conclusions, para 785 (i) 244.

³⁹ Ibid., (ii) 244.

intervention in case of an uprising.⁴⁰ No clause in the Warsaw Pact Treaty provided for Soviet military intervention due to political developments within a signatory state.⁴¹ Further, it was still uncertain as to who issued the request to the Soviet authorities to assist to stop the uprising and to its legal validity.⁴²

“In the light of the extent of foreign intervention, consideration of the Hungarian question by the United Nations was legally proper, moreover, it was requested by a legal Government in Hungary. Accordingly, the Committee on Hungary does not regard objections based on paragraph 7 of Article 2 of the Charter as having validity in the present case. A massive armed intervention by one Power on the territory of another, with the avowed intention of interfering with the internal affairs of the country must, by the Soviet’s own definition of aggression, be a matter of international concern.”⁴³ The Committee noted that during the meetings of the Warsaw Conference, Bulganin, in a statement delivered 11 May 1955, stated that “Our draft Treaty proceeds from the principle of respect for the national sovereignty, and non-interference in the internal affairs of others, which forms the basis of the foreign policy of all the states represented here.”⁴⁴

International treaties used in the reasoning of the Committee to determine Soviet intervention were the provisions of article 2 in the Treaty of Friendship, Co-operation and Mutual Assistance with the Soviet Union that guaranteed human rights and fundamental freedoms including political rights, the Warsaw Pact characterization against external aggression and the unacceptability of the use of armed forces stationed within a foreign country for use internally, and the UN Charter.

⁴⁰ Ibid., (iv) 245.

⁴¹ Ibid.

⁴² Ibid., (vi) 246.

⁴³ Ibid., (xiii) 247. Paragraph 7 reads “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.”

⁴⁴ Ibid., Chapter VIII “The Question Of The Presence And The Utilization Of The Soviet Armed Forces In The Light Of Hungary’s International Commitments,” B. Post-war international instruments governing Hungary’s international status. Para 316 p. 96-97.

An international group of jurists that advised the Committee suggested that Soviet action in Hungary “would probably be open to condemnation under the Soviet Government’s own definition of aggression.” It referenced the submission by the USSR to the United Nations 1956 Special Committee on the Question of Defining Aggression, specifically, the language that the state was the aggressor which first invaded “by its armed forces, even without a declaration of war,… the territory of another State.” Further, “A State would be declared to have committed an act of aggression if it “promotes an internal upheaval in another State or a change of policy in favor of the aggressor.” It went on to state, as we have seen many times before submitted by the Soviet government, that the internal situation of the state such as revolutionary or counter-revolutionary movements, disorder or strikes, or establishment or maintenance of any political, economic or social system were not justification.⁴⁵

The Committee concluded that the reason for the Soviet intervention was to “save a political regime, and retain a military ally within its area of economic dominance.”⁴⁶ The Soviet Union had done this during the period from 29 October to 4 November via a definite plan for conquest and military subjugation of Hungary by the Soviet military.⁴⁷ Notice the language of “a definite plan.”

⁴⁵ Ibid., para 324, 99. The conference took place on 2 March 1957 and was headed by Sir Hartley Shawcross of Nuremberg fame. For the conference publication see International Commission of Jurists (1952-), *The Hungarian Situation and the Rule of Law* (The Hague: The Commission, 1957). Documents were presented however, arguing the opposite as well. In an Interview on Legal Aspects of Soviet Intervention in Hungary, G. P. Zadorozhnyi noted that the Soviet forces were there legally and at the request of the Hungarian regimes of both Nagy and Kádár. He went on to say that Nagy’s regime could not annul the Warsaw Pact, only the state body that ratified it could. (23-24). Citing Radio Broadcast from Moscow in English for North-America on November 18, 1956, 23.00 GMT (excerpts monitored by *BBC Summary of World Broadcasts*, Part I, No. 780, 23 November 1956, pp. 19-20). In another broadcast, Evgenii A. Korovin, explained that Hungary was exercising its right of collective defense under the Warsaw Pact Treaty in asking for assistance from the Soviet forces. (25) Citing Radio Broadcast from Moscow in English for South-East Asia on November 26, 1956, 14.45 GMT (as monitored by *BBC, Summary of World Broadcasts*, Part I, No. 782, 30 November 1956, p. 31) Finally, in the *New Times*, Korovin turned the tables and accused the UN of violating its Charter, saying they were in violation by intervening in domestic matters of a state. (26) Citing *New Times* (Moscow), 1957, No. 1, pp. 15-17, here pp. 16-17.

⁴⁶ Ibid., para 325, 99.

⁴⁷ Ibid. Chapter V: Second Soviet Military Intervention, para F. Conclusions. 67.

Not only did the Committee note the violation of the state definition of aggression, it also implicated the individual participation in the act of aggression from Nuremberg.

SUMMARY

The circumstances leading up to the uprising in Hungary exhibited a great deal of unrest in both Hungary and the world. The Soviet Union, in an attempt to dominate Eastern Europe, played a large role in the constant governmental turnovers in Hungary. Having “allowed” Poland to quell its riots with some degree of autonomy so closely in time to the uprising in Hungary, the Soviet government felt it could ill afford to let a trend start among the Warsaw Pact states. Internal debates showed that it was not a concerted, planned invasion but a heavily debated response to a situation in Hungary that had moved beyond the power of the Soviet diplomats to control politically. The Treaty of Friendship, Co-operation and Mutual Assistance and the Warsaw Pact, put in place prior to the uprising, seemed more focused on keeping Western powers out. The Warsaw Pact did, however, clearly refer to the UN Charter and the Security Council as bodies to which the pact was to conform. Not only did they not conform, per the treaty language, the Soviet government vetoed an American resolution in the Security Council to have Soviet troops withdrawn. Although the Soviet government made an attempt to justify their actions based on a request by the Hungarian government, the UN Special Committee noted that just because troops of one state were stationed inside another state as part of a collective defense, it did not extend their use to quell unrest or insure placement of a select government. Although the international commission of jurists assigned to investigate concluded that the Soviet Union had violated its own definition of aggression, the General Assembly did not use such strict language. Once again, as with Finland, the Soviet Union ended up with a “slap on the hand” for intervention into the internal affairs of Hungary and with their candidate, Kádár, in charge until 1988.

It is relevant to consider the explanation given by Khrushchev for the intervention. As has been seen before and will be seen again, the Soviet government was concerned with countries it

considered part of a *cordon sanitaire*. Khrushchev mentioned that loosing Hungary would give the Americans the opportunity to approach their border. Countering the Americans again played a large role. Although public opinion and the media were set against the Soviet Union, the opposition was not nearly what the Soviet Union had mounted during the Korean War when the United States was the target.

The lessons learned in Finland were reinforced in Hungary. Despite the general consensus that the Soviet Union's actions were aggressive, the Security Council veto allowed it to stay clear of that body and the General Assembly was unable to put action behind its resolution. The communist party was restored in Hungary and its alliance to the Warsaw Pact confirmed.

If the events in Hungary did not draw such a strong reaction from the international community, the next decade would make up for it. The second Berlin Crisis (1958 - 1961) pitted a confident Khrushchev against a new John F. Kennedy. Khrushchev threatened a separate peace with the German Democratic Republic unless the West entered into negotiations to turn Berlin into a "demilitarized 'free city.'"⁴⁸ After a second nuclear threat from Khrushchev against the West, Kennedy retaliated in a speech on 25 July 1961, calling Berlin "the great testing place of Western courage." As a result, the Soviets and East Germans began construction on the structure later to become the Berlin wall on 13 August 1961.⁴⁹ These events were to be closely linked with events of the next decade as we will soon see.

⁴⁸ Alex Peter Schmid and Ellen Berends, *Soviet Military Interventions since 1945: With a Summary in Russian* (New Brunswick, U.S.A.: Transaction Books, 1985), 48.

⁴⁹ Edward H. Judge and John W. Langdon, *The Cold War: A History through Documents*, (New Jersey: Prentice Hall, 1999), 116-117.

CHAPTER 6

CZECHOSLOVAKIA, VIETNAM AND GENERAL ASSEMBLY RESOLUTION 3314 (XXIX)

It is said that in ancient times they used to ring bells when there was a threat of war.
In our days a bell should be ringing in every house.¹

Andrei Andreevich Gromyko, 1 March 1963

The 1960s and early 70s offer an interesting look at lawfare from the Soviet perspective. The beginning of the 1960s found the United States and the Soviet Union embroiled in the Cuban Missile Crisis. Although not part of the analysis for this dissertation, it is important to note the use of propaganda, once again, by the Soviet Union in branding the United States as the aggressor.²

¹ Gromyko Speech in Oslo: “The Soviet Union and Its Foreign Policy,” Airgram from the American Embassies in Oslo to the Department of State, March 4, 1963, p. 1 (Informal translation of account appearing in *Friheten* Communist) March 1, 1963. RG 59, Political Defense Policy, Box 4126, Central Foreign Policy File 1963, From Pol 2-1 Joint Weekas USSR 2/1/63 to: Pol 15 Government USSR Khrushchev 2/1/63.

² On 12 September 1962, a telegram was sent to the Secretary of State from Lyon in Paris with the Quai Eastern European Chief's initial reaction to the Soviet warning on Cuba. Number 6 on the list was the possibility that Moscow was trying to generate an atmosphere of crisis so they could introduce it at the UN and charge the US with “aggressive intent.” Telegram from Paris to Secretary of State. 1255, September 12, 6 pm, RG 59, International Political Relations US/East Europe CDF 1960-63, Box 1270, Microcopy M1855, Roll No. 85, From 611.62/8 – 162 to 611.6145/3-1660. Khrushchev’s letter to President Kennedy dated 27 October 1962 noted satisfaction with the results of negotiations between the two and suggested that Khrushchev would make a statement at the Security Council “to the affect that the Soviet Government gives a solemn promise to respect the inviolability of the borders and sovereignty of Turkey, not to interfere with its internal affairs, not to invade Turkey, not to make available our territory as a bridgehead for invasion, and that it would also restrain those who contemplate committing aggression against Turkey, either from the territory of the Soviet Union or from the territory of Turkey’s other neighboring states.” “Letter to the President from Chairman Khrushchev, dated October 27, 1962. Memorandum for Mr. McGeorge Bundy, The White House, from William H. Brubeck, Executive Secretary. 8 November 1962, English Translation, p.4. RG 59, International Political Relations US/East Europe CDF 1960-63, Box 1270, Microcopy M1855, Roll No. 85, From 611.62/8 – 162 to 611.6145/3-1660. Note these words are setting the stage by laying out the definition of aggression and opening the United States up to violations in Cuba. In fact, Khrushchev’s letter to President Kennedy on 28 October 1962, noted Soviet presence in Cuba was based on the “continual threat from aggressive forces” planning to invade Cuba. Transmittal of original letters from Chairman Khrushchev to President Kennedy of October 27, 28, 1962. From the American Embassy in Moscow, R.T. Davies, to the State Department. English translation, p.2. RG 59, International Political Relations US/East Europe CDF 1960-63, Box 1270, Microcopy M1855, Roll No. 85, From 611.62/8 – 162 to 611.6145/3-1660. In March of 1963, Khrushchev noted that the US rhetoric on Cuba from Kennedy was in direct contradiction “to norms of international law.” Translation of Oral Statement from Gromyko to Kohler in the American Embassy in Moscow to the Secretary of State. No. 2421, March 27, 8 pm. RG 59, International Political Relations US/East Europe CDF 1960-63, Box 1270, Microcopy M1855, Roll No. 85, From 611.62/8 – 162 to 611.6145/3-1660. For further study, see A. A. Fursenko and

Czechoslovakia, another of the Warsaw Pact countries, saw their borders invaded by the Warsaw Pact nations 20-21 August 1968, following the “Prague Spring” (January - August 1968). As with Imre Nagy in Hungary, Czechoslovak Communist Party leader Alexander Dubček (1921 - 1992) tried to liberalize the country's communist regime. Czechoslovakia was part of the Warsaw Pact - and the Soviet Union reacted as they had with Hungary, sending troops to occupy the country. The implementation of the policy of intervention when a socialist country attempted to lean toward capitalism became known as the "Brezhnev Doctrine."³

Another war of words started as early as 1964 between the Soviet Union and the United States regarding Vietnam. As in Korea, there was a minimum of troops and a maximum of words employed in the lawfare that followed. The most relevant outcome for this period, however, was the adoption of General Assembly Resolution 3314 (XXIX) of 14 December 1974 defining aggression. This resolution was the culmination of years of effort to implement the definition of aggression although the resolution itself does not have the force of law. It does, however, reiterate the continuity of the Soviet definition. It is almost a verbatim copy of the definition posed the previous forty years.

The invasion of Czechoslovakia, the resulting Brezhnev Doctrine and the Vietnam War (1959 - 1975) will be covered in this chapter. The primary goal is to continue to evaluate the use of lawfare in these situations. These events should be viewed together to demonstrate a continued pattern of Soviet lawfare and propaganda. The secondary goal, however, is to set the stage for the Soviet military invasion of Afghanistan. Many have compared the Soviet War in Afghanistan to the US position in Vietnam. Others have said the Soviets were emboldened by the results of the Vietnam

Timothy J. Naftali, *Khrushchev's Cold War: The Inside Story of an American Adversary*, 1st ed. (New York: Norton, 2006).

³ The doctrine was utilized by Brezhnev in a 1968 speech to Polish workers to justify action in Czechoslovakia. See <http://www.fordham.edu/halsall/mod/1968brezhnev.html> citing *Pravda*, September 25, 1968; translated by Novosti, Soviet press agency. Reprinted in L. S. Stavrianos, *The Epic of Man* (Englewood Cliffs, N.J.: Prentice Hall, 1971), 465- 466.

War. This chapter shows the Soviet Union testing the waters of both lawfare and warfare during the 60s and early 70s.

CZECHOSLOVAKIA AND THE BREZHNEV DOCTRINE

As with Finland and Hungary before, the Soviet Union signed a non-aggression pact with Czechoslovakia on 4 July 1933. Czechoslovakia was also a signatory to the Warsaw Pact. As with Hungary, the internal situation in Czechoslovakia at the time led the Soviet Union to believe it was pulling away from Soviet influence and the Warsaw Pact. Upon the resignation of Stalinist Antonin Novotny on 5 January 1968, Alexander Dubček became the First Secretary of the Czechoslovakian Communist Party. Dubček initiated a series of reforms over a period that came to be known as the Prague Spring. The party approved an Action Program to give “Czechoslovakian socialism a human face.”⁴ This, and the thought Czechoslovakia might withdraw from the Warsaw Pact, caused concern among the socialist states and the Soviet Union. Soviet troops were not originally stationed there as they had been in Hungary but a series of military exercises were conducted in June and July, giving them a reason to be present.⁵ On 20 August 1968, troops of the Soviet Army and other socialist countries crossed the border.⁶ The Soviet military did not try to assume full control or carry out police actions as they had in Hungary. The Czechoslovakian military offered no resistance.⁷ The Soviet government tried to present the invasion as a response to an invitation but all authorities in Czechoslovakia denied it. There was no one who would support the Soviets via a puppet government so the Soviet government was forced to work with the legitimate Czechoslovakian government.⁸

The justification for intervention, however, fell along the same lines as that used in the past. In a letter from the Central Committees of the Bulgarian, East German, Hungarian, Polish, and

⁴ Alex Peter Schmid and Ellen Berends, *Soviet Military Interventions since 1945: With a Summary in Russian* (New Brunswick, U.S.A.: Transaction Books, 1985), 30.

⁵ Ibid., 31.

⁶ Ibid., 31-32.

⁷ Ibid., 32.

⁸ Ibid., 33.

Soviet Communist Parties regarding the Warsaw Pact intervention in Czechoslovakia, the reasons were stated:

Under the circumstances most of the members of the Presidium of the Central Committee of the Communist Party of Czechoslovakia and of the Government of the Czechoslovak Socialist Republic asked for help from the fraternal socialist states. The fate of Socialist Czechoslovakia is dear and close to the peoples of all the socialist countries. They cannot accept that our common enemies detach Czechoslovakia from the socialist way, that they imperil it by separating it from the socialist community. Our peoples have suffered too many sacrifices, they shed too much blood in the fierce battles of the past war, in the struggle for social and national liberation, to allow now the counterrevolution to tear Czechoslovakia away from the socialist states family. The defense of socialism in Czechoslovakia is not only a domestic affair of that country's people, but, as you all realize, a question of safeguarding the security of our countries, of defending the positions of world socialism. For these reasons, we deemed it necessary to comply with the request of our Czechoslovak friends and help the peoples of Czechoslovakia in defense of the conquests of socialism, and consequently, we ordered our military units to take the necessary measures and grant assistance to the Czechoslovak working people.

By making this responsible decision, the Central Committees of our parties took into account the fact that it was the fiercest battle between imperialism and socialism, that Czechoslovakia's going over to the capitalist camp would mean a heavy defeat of world socialism, of the international revolutionary movement. ...

By extending a brotherly hand to the Czechoslovak comrades, our countries are fulfilling their internationalist duty to the Czechoslovak people, to the international working-class communist movement, and to the national liberation movement. And this duty is more important than anything else.⁹

The reasons given in that address were reiterated in a speech given by General Secretary of the Communist Party of the Soviet Union, Leonid Il'ich Brezhnev (1906 - 1982), outlined in a *Pravda* article of 26 September 1968. His justification of the August invasion gave birth to the term the Brezhnev Doctrine. Brezhnev stated, “[t]he weakening of any link in the world socialist system

⁹ “Letter from the Central Committees of the Bulgarian, East German, Hungarian, Polish, and Soviet Communist Parties regarding the Warsaw Pact intervention in Czechoslovakia.” 21 August 1968. Source: ANIC, Fond CC RCP - Chancellery, File No. 133/1968, pp. 27-36. Translated by Delia Razdolescu. Woodrow Wilson International Center for Scholars Cold War History Project. http://www.wilsoncenter.org/index.cfm?topic_id=1409&fuseaction=va2.document&identifier=5034F328-96B6-175C-96BFB272CF647958&sort=Collection&item=Soviet%20Invasion%20of%20Czechoslovakia. (accessed 25 January 2009).

has a direct effect on all the socialist countries.”¹⁰ He went on to explain that those who thought the actions in Czechoslovakia were illegal “forget that in a class society there is and can be no such thing as non-class law. Laws and the norms of law are subordinated to the laws of the class struggle and the laws of socialist development.”¹¹ This was the reason he stated as creating the “internationalist duty” to Czechoslovakia by the socialist states to “act in resolute opposition to the anti-socialist forces.”¹² An article by S. Kovalev of the same date phrased the justification for invasion in terms of the key geographical position of Czechoslovakia. If the Czechoslovakian government aligned with Western Europe, it would create a dramatic shift in the balance of power in the region.¹³

In a later speech in November 1968 to Polish workers, Brezhnev further clarified this policy. He commented, “the socialist states respect the democratic norms of international law. They have proved this more than once in practice, by coming out resolutely against the attempts of imperialism to violate the sovereignty and independence of nations... However, from a Marxist point of view, the norms of law, including the norms of mutual relations of the socialist countries, cannot be interpreted narrowly, formally, and in isolation from the general context of class struggle in the modern world.”¹⁴

Bernard A. Ramundo suggested that in order to support the need to intervene or “assist” socialist states, while at the same time condemning the use of force or intervention by Western

¹⁰ Vladimir Wozniuk, *Understanding Soviet Foreign Policy: Readings and Documents* (New York: McGraw-Hill, 1990), 182. Wozniuk cites Sergei Kovalev, “International Obligations of Socialist Countries,” *Pravda*, 26 September 1968, p.4 as translated in Richard Lowenthal, “The Sparrow in the Cage,” *Problems of Communism* 17, no. 6 (November - December 1968): 2-28 excerpts.

¹¹ Ibid.

¹² Ibid.

¹³ Richard Goodman, “The Invasion of Czechoslovakia, 1968,” 4 *The International Lawyer* no. 1, 42, 63-64 (1969-1970) citing S. Kovalev, “Sovereignty and the International Obligations of Socialist Countries,” *Pravda*, 26 September 1968, at 4, translated at XX(39) CDSP 19 (1968), and *The New York Times* 27 September 1968 at 3.

¹⁴ Modern History Sourcebook, the Brezhnev Doctrine.

<http://www.fordham.edu/halsall/mod/1968brezhnev.html>. (accessed 1 February 2009).

states, the Soviet government created the principle of “socialist internationalism.” This was a blending of peaceful coexistence with the authority to intervene by force.¹⁵ “A capitalist state’s attempt to use force in support of a Hungarian-type uprising is banned because a non-socialist uprising does not qualify as a struggle for national liberation.” This differed from fraternal assistance by a socialist state because the socialist states had a “common commitment to the building of socialism and Communism.”¹⁶ Colonel James P. Terry clearly stressed the difference in the interpretation of the doctrines of aggression, intervention and self-defense between the capitalist and socialist states. He concluded that the Soviet government determined the nature of law by the purpose it served.¹⁷

Finally, Soviet consideration for US policy was also present as it was in Korea and Hungary. In this instance, the United States had advertised a “hands-off” policy of non-involvement, which possibly allowed the Soviet government to calculate the risk of invasion in their favor.¹⁸ The consequences of their actions did, however, affect relations with the West. The non-proliferation treaty negotiations were discontinued and the Strategic Arms Limitation Talks (SALT) were put on hold.¹⁹ In addition, John Norton Moore and Robert F. Turner, in *International Law and the Brezhnev Doctrine*, argued that the use of this doctrine by the Soviet Union threatened the fundamental principles of the UN Charter and the gains made up to 1985.²⁰

Although state governments accused the Soviet Union of violating both international law and the UN Charter, the accusations were vague. A Soviet veto at the Security Council effectively

¹⁵ Bernard A. Ramundo, “Czechoslovakia and the Law of Peaceful Coexistence: Legal Characterization in the Soviet National Interest,” 22 *Stanford Law Review* 963, 969 (1969-1970).

¹⁶ Ibid., 970.

¹⁷ James P. Terry, Colonel, USMC (ret), “Moscow’s Corruption of the Law of Armed Conflict: Important Lessons for the 21st Century,” 53 *Naval Law Review* 73, 138-139 (2006).

¹⁸ Ibid., 139.

¹⁹ Ibid., 138.

²⁰ John Norton Moore and Robert F. Turner, *International Law and the Brezhnev Doctrine* (Lanham: University Press of America, 1987).

silenced the major international reaction. As opposed to the situation when the Soviet Army entered Hungary in 1956, there was no emergency session of the General Assembly nor a special committee set up to investigate.²¹

Richard Goodman concluded however, that previous international attention to the lawlessness of aggression and armed intervention had some affect on Soviet leaders. He noted their approach differed from Hungary in several ways. For example, the troops stationed in Czechoslovakia did not go into action at the very beginning of the conflict. When the invasion did occur, the indiscriminate shooting found in Hungary was generally not seen.²² For the purposes of this dissertation however, the similarities regarding the Soviet use of lawfare are of greater interest. There was a treaty of mutual assistance in place with both Czechoslovakia and the Warsaw Pact states. The treaty was used to justify intervention. Justification was couched in terms that would be exceptions to the Soviet definition of aggression. Finally, the public propaganda, once again based on quasi-legal rhetoric, was pervasive, resulting in the Brezhnev Doctrine. The next major intervention would be by the United States in Vietnam. The Soviet government would take full advantage of this to, once again, take the position of the public accuser of the United States.

²¹ Goodman, 44.

²² Ibid., 77.

VIETNAM

Vietnam, although Soviet troops were present, was another example of propaganda being used to heavily supplement a lawfare campaign against the United States. Prior to the war in Vietnam, Stalin had refused to support the Vietnamese in a national liberation war against France. The Soviet Union was instrumental in creating two Vietnams as a result of the Geneva Conference of 1954. In fact, China, rather than the Soviet Union, was the primary benefactor of North Vietnam prior to the conflict.²³ Ilya Gaiduk, a Russian authority on Vietnam, concluded that in 1964 - 1965 the Soviet Union was trying to strengthen its position relative to the Chinese and rebuild Soviet-North Vietnamese relations but the goal had shifted by the end of the decade. It was then to hold Vietnam as the “outpost of Moscow in South-East Asia.” Gaiduk argued that the reason for this shift was the beginning of the American bombing campaign in early 1965 and especially those that coincided with Soviet premier Alexei Nikolaevich Kosygin’s (1904 - 1980) visit to Hanoi.²⁴ Gaiduk noted specifically the public accusations of aggression against the United States, all the while, continuing to negotiate with them.²⁵

This propaganda continued on many fronts. On 7 July 1966, when Soviet Deputy Premier Dmitri Polyansky arrived in Canada, he “vehemently attacked United States ‘aggression’ in Vietnam and promised that the Soviet Government would increase its aid to North Vietnam as a result of the

²³ Schmid., 49. Gaiduk summed up the Soviet policy in Vietnam as that of providing economic and military aid to the North Vietnamese and at the same time continuing efforts to find a diplomatic solution to the conflict. Ilya V. Gaiduk, “Developing an Alliance: The Soviet Union and Vietnam, 1954-75,” 143 in Peter Lowe, *The Vietnam War* (New York: St. Martin’s Press, 1998). Gaiduk noted specifically that assistance in 1968 was 50% of all socialist aid coming into North Vietnam with 2/3 of it being military aid totaling \$396.7 million dollars. (144).

²⁴ Ilya V. Gaiduk, “Peacemaking or Troubleshooting? The Soviet Role in Peace Initiatives during the Vietnam War,” 260 in Lloyd C. Gardner and Ted Gitterman, *The Search for Peace in Vietnam, 1964-1968*, 1st ed., *Foreign Relations and the Presidency; No. 8.* (College Station: Texas A&M University Press, 2004).

²⁵ Ibid., 261.

United States bombings.”²⁶ He went on to say that this was “a prime example of the game(s) indulged in by the United States. In words, the U.S. seeks a peaceful solution. In deeds, it is doing its utmost to escalate the war.”²⁷

Subsequently, on 7 December 1966, First Secretary of the Moscow Party Committee, Nikolai Egorychev attacked the US Embassy staff for “conducting blatant aggression against Vietnamese people and where US planes (are) bombing peaceful cities as well as villages of DRV – a socialist country with which we (are) bound by links of friendship and fraternity.”²⁸ Harry C. McPherson, Jr., reporting to Walt Whitman Rostow, Special Assistant for National Security Affairs, continued to report along this line from a luncheon with Soviet Minister Alexander I. Zinchuk on 19 December 1966. Zinchuk stressed that continued US bombing, particularly of Hanoi, made it difficult for the Russians to convince the Vietnamese to terminate the war. More importantly, he noted that continued bombing might also cause the Soviet Union to have to honor their offer of volunteers to help North Vietnam and “nobody in Moscow wants to go through with that commitment.”²⁹

The CIA was extremely interested in this propaganda. In a biweekly report, it summarized Communist statements regarding intervention in Vietnam. On 15 March 1966, the report noted that Brezhnev made a statement that if “‘US aggression’ continued, it would cause a serious regression in US-Soviet relations.”³⁰ The 30 April 1966 report noted that on 21 April 1966, the Soviet Minister of Defense Rodion Ia. Malinovskii, stated in Hungary that the Soviet Union was aiding the heroic

²⁶ Airgram, “Soviet Deputy Premier Attacks USG on Visit to British Columbia,” 7 July 1966, From American Consulate Vancouver to the Department of State. RG 59, Central Foreign Policy Files: 1964-1966, Political and Defense, Box 2870.

²⁷ Ibid.

²⁸ Incoming Telegram, Department of State, From Moscow to the Secretary of State, 7 December 1966. From Harry C. McPherson, Jr. to Walt Rostow. RG 59, Central Foreign Policy Files: 1964-1966, Political and Defense, Box 2870.

²⁹ Ibid., para 3.

³⁰ “Biweekly Report: Communist Statements Regarding Intervention in Vietnam and Possible Negotiations.” 15 March 1966. Approved for Release 2004/07/16. CIA-RDP79T00826A000400010077-7. I-1.

Vietnamese in “their fight against the aggressors.”³¹ Finally, in a CIA Memorandum on reactions abroad to Vietnam protest demonstrations in the US, it was noted that the bloc countries “have energetically exploited the demonstrations in the US in their propaganda denouncing ‘US aggression’ in Vietnam.”³²

Gaiduk concluded that the reasons the Soviet Union wanted to end the war were based on several factors. First, the Kremlin wanted to prevent a two-front confrontation where they might have to fight both China and the United States.³³ Second, once Moscow stopped the US bombing, this freed them of their obligation to North Vietnam and alleviated their “international duty.”³⁴ Finally, Soviet resources could be used for economic reforms at home.³⁵ In his 2003 work, *Confronting Vietnam*, Gaiduk clarified that one of the primary objectives was détente with the United States and the West.³⁶ He also referenced the position of Indochina as being “outside of the Kremlin’s geostrategic interests.”³⁷ Most relevant was his conclusion that the Soviet government was primarily a “passive observer … who confined themselves to press comments about U.S. ‘aggressive actions.’”³⁸

Though it is not the purpose of this paper to assign blame for the Vietnam War, Quincy Wright made a statement that placed the US actions in Vietnam on a parallel path with those of the Soviet Union in Czechoslovakia. Wright noted that prior to 1965, no American President recognized

³¹ “Biweekly Report: Communist Statements Regarding Intervention in Vietnam and Possible Negotiations.” 30 April 1966. Approved for Release 2002/09/04. CIA-RDP79T00826A000600010046-9. I-1.

³² “Reactions Abroad to Vietnam Protest Demonstrations in the US.” CIA Intelligence Memorandum, Approved for Release 2003/08/21. CIA-RDP79T00472A000600030005-8. Annex B. B-1.

³³ Gaiduk, “Peacekeeping or Troubleshooting?” 261.

³⁴ Ibid., 267.

³⁵ Ibid., 272.

³⁶ I. V. Gaiduk, *Confronting Vietnam: Soviet Policy toward the Indochina Conflict, 1954-1963*, Cold War International History Project Series. (Washington, D.C. Stanford, Calif.: Woodrow Wilson Center Press; Stanford University Press [distributor], 2003), 211.

³⁷ Ibid., 209.

³⁸ Ibid., 206. It should be noted that this was not seen as a positive action by some in the Soviet Union. Oleg Platonov, a Russian historian, argued that achieving détente with the US while the US was still involved in an aggressive war in Vietnam “was a disgrace for the USSR’s foreign policy.” Tatyana Shvetsova, “Détente,” Voice of Russia. 7 August 2006. <http://www.ruvr.ru/main.php?lng=eng&q=2181&cid=125&p=07.08.2006>. (accessed 1 May 2007).

any legal commitment to defend South Vietnam. By signing the Southeast Asia Treaty Organization (SEATO) Treaty, these obligations to defend South Vietnam applied only in the case of “Communist” aggression. He concluded the Americans’ actions in Vietnam were in pursuit of containment of Communism, not a result of a legal obligation.³⁹ This loosely mirrored the Brezhnev Doctrine.

Harold Berman also drew on the similarities rather than the differences of Soviet and US actions, although he listed several differences that stood out. He concluded the Soviet government’s approach to international law stressed the right of each state to determine which principles to accept, emphasizing treaties as the primary source of international legal norms.⁴⁰ He noted that the Soviet Union also limited public dissent and discussion. No Soviet legal scholar or commentator of the time could publicly denounce the actions. Because of this, the Soviet government was better able to manipulate the rules of international law.⁴¹ Berman also noted that the primary difference between the Monroe and Truman Doctrines and the Brezhnev Doctrine was that the Brezhnev Doctrine sought to support its policy intentions with legal rational.⁴² We have seen this before when Soviet justifications were couched in quasi-legal terms intended for a public audience, not a court of law.

The lessons learned from the Vietnam War are important as they establish the continued use of lawfare and serve primarily to show the consistency of the use of propaganda. William Zimmerman and Robert Axelrod asserted that the Soviet Union was encouraged by its success in

³⁹ Quincy Wright, “Legal Aspects of the Vietnam Situation,” 60 *American Journal of International Law* 750, 769 (1966). Wright added that in his study of over 45 international conflicts since WWI, national interests, capabilities and vulnerabilities, as perceived by the decision-makers, as well as the perception of the domestic and international opinion, had more influence than legal obligations on these conflicts.

⁴⁰ Harold J. Berman, “Law as an Instrument of Peace in US-Soviet Relations,” 22 *Stanford Law Review* 943, 950 (1969-1970).

⁴¹ Ibid., 951-952.

⁴² Berman, “Law as an Instrument of Peace,” 972. The Monroe Doctrine of 1823 held that any interference by a European state with states in the Americas would be considered an act of aggression against the US creating the right for the US to intervene. The Truman Doctrine of 1945 held that the US had the right to support free people resisting subjugation from outside forces.

Vietnam and the weakened role of the US internationally. As a consequence, the Soviet Union accelerated its efforts in the third world.⁴³ Before the Soviet Army moved into Afghanistan, however, the most relevant international agreement since Nuremberg was concluded, codifying the Soviet definition of aggression in a General Assembly resolution.

⁴³ William Zimmerman and Robert Axelrod, "The 'Lessons' of Vietnam and Soviet Foreign Policy." *World Politics* 34, no. 1 (Oct 1981): 2.

GENERAL ASSEMBLY RESOLUTION 3314 (XXIX)

The Special Committee on the Question of Defining Aggression was established as the result of a proposal by the Soviet Union to the General Assembly at its 22nd Session (1967). It consisted of 35 member states appointed by the President of the General Assembly.⁴⁴ The Special Committee held 24 meetings between 4 June and 6 July 1968.

The Report of the Special Committee (hereafter Report) was heard at the 23rd Session of the UN General Assembly. The Report gave a glimpse into the positions of the parties as the debate began.⁴⁵ It acknowledged the first definition of aggression had been submitted by the Soviet Union at the General Commission of the Disarmament Conference in 1933. It then went on to detail that since that time, a definition was considered at the San Francisco Conference in 1945, and continuously thereafter by the General Assembly Sixth Committee, the International Law Commission, as well as two Special Committees established in 1953 and 1956.⁴⁶

Although the Soviet Union was credited for the initial definition, it was countered by the fact that they also were the only world power having formally been judged an aggressor.⁴⁷ The United States representative to the 23rd Session took the opportunity to compare the Soviet proposals of a definition for aggressive war with its military actions in Estonia and Lithuania after its non-aggression treaty was signed. He continued that the invasion of Finland in 1939 led to the declaration of the Soviet Union as an aggressor. Czechoslovakia had signed a non-aggression treaty with the Soviet Union in 1948 but a pro-Soviet regime was installed later. An appeal by Czechoslovakia to the Security Council was blocked by a Soviet veto. Four years later the Soviet

⁴⁴ *Yearbook of the United Nations 1968*, (New York: Office of Public Information, United Nations, 1971) Legal Questions. IV. The Question of Defining Aggression. 831-837.

⁴⁵ United Nations General Assembly 23rd Session, Report of the Special Committee and the Question of Defining Aggression. 29 August 1968.

⁴⁶ Ibid., para 14.

⁴⁷ Ibid., para 25.

definition included internal upheaval and changing policy in the aggressor's favor as violations of the definition. The US representative went on to point out that the communist regime in North Korea, with the USSR as accomplice, violated the use of invasion by armed forces. Finally, he concluded, that even though the Soviet Union proposed revolutionary or counter-revolutionary movements as not being reasons for aggressive actions, it did not help Hungary in 1956.⁴⁸

The Soviet representative retorted that the most flagrant case of aggression since WWII was the United States' invasion of Vietnam. He countered that the people of the Baltic States and Hungary had overthrown their own regimes. He also noted that the United States would have committed aggression against Cuba by a naval blockade if the USSR had not stepped in.⁴⁹

As had been the case for decades, in the Report, the Soviet Union pushed for a definition and the United States suggested it was inadvisable to define aggression at all. At that time the Soviet Union argued that actions aimed at self-determination and national liberation should be excluded from the definition.⁵⁰ The Special Committee on the Question of Defining Aggression met in 1970 to consider the draft proposal put forth by the Soviet Union. Discussion followed and a report was forwarded to the General Assembly, where it was discussed at twelve meetings between 20 October and 2 November 1970 but the Committee only recommended continued work.⁵¹

In December 1974 the General Assembly approved the Definition of Aggression elaborated by the Special Committee and adopted by consensus on 12 April 1974. General Assembly Resolution 3314 (XXIX) of 14 December 1974 on the Definition of Aggression, with Special Regard to: Indirect Aggression was set forth. Although it was printed in part in the introduction to

⁴⁸ Ibid., para. 26.

⁴⁹ Ibid., 27.

⁵⁰ Ibid.

⁵¹ *Yearbook of the United Nations 1970* (New York: Office of Public Information, United Nations, 1972) Legal Questions. III. The Question of Defining Aggression. 792-797.

this dissertation, we are now able to see just how much of the language from previous attempts to define aggression by the Soviet Union was contained within. In its entirety it read as follows:

The General Assembly,

Having considered the report of the Special Committee on the Question of Defining Aggression, established pursuant to its resolution 2330(XXII) of 18 December 1967, covering the work of its seventh session held from 11 March to 12 April 1974, including the draft Definition of Aggression adopted by the Special Committee by consensus and recommended for adoption by the General Assembly,

Deeply, convinced that the adoption of the Definition of Aggression would contribute to the strengthening of international peace and security,

1. Approves the Definition of Aggression, the text of which is annexed to the present resolution;
2. Expresses its appreciation to the Special Committee on the Question of Defining Aggression for its work which resulted in the elaboration of the Definition of Aggression;
3. Calls upon all States to refrain from all acts of aggression and other uses of force contrary to the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations;
4. Calls the attention of the Security Council to the Definition of Aggression, as set out below, and recommends that it should, as appropriate, take account of that Definition as guidance in determination, in accordance with the Charter, the existence of an act of aggression.

2319th plenary meeting, 14 December 1974

Annex

Definition of Aggression

The General Assembly,

Basing itself on the fact that one of the fundamental purposes of the United Nations is to maintain international peace and security and 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,

Recalling that the Security Council, in accordance with Article 39 of the Charter of the United Nations, shall determine the existence of any threat to the peace, breach of the peace or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security,

Recalling also the duty of States under the Charter to settle their international disputes by peaceful means in order not to endanger international peace, security and justice,

Bearing in mind that nothing in this Definition shall be interpreted as in any way affecting the scope of the provisions of the Charter with respect to the functions and powers of the organs of the United Nations,

Considering also that, since aggression is the most serious and dangerous form of the illegal use of force, being fraught, in the conditions created by the existence of all types of weapons of mass destruction, with the possible threat of a world conflict and all its catastrophic consequences, aggression should be defined at the present stage,

Reaffirming the duty of States not to use armed force to deprive peoples of their right to self-determination, freedom and independence, or to disrupt territorial Integrity,

Reaffirming also that the territory of a State shall not be violated by being the object, even temporarily, of military occupation or of other measures of force taken by another State in contravention of the Charter, and that it shall not be the object of acquisition by another State resulting from such measures or the threat thereof,

Reaffirming also the provisions of the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,

Convinced that the adoption of a definition of aggression ought to have the effect of deterring a potential aggressor, would simplify the determination of acts of aggression and the implementation of measures to suppress them and would also facilitate the protection of the rights and lawful interests of, and the rendering of assistance to, the victim,

Believing that, although the question whether an act of aggression has been committed must be considered in the light of all the circumstances of each particular case, it is nevertheless desirable to formulate basic principles as guidance for such determination,

Adopts the following Definition of Aggression:

Article 1

Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition.

Explanatory note: In this Definition the term "State":

- (a) Is used without prejudice to questions of recognition or to whether a State is a member of the United Nations;
- (b) Includes the concept of a "group of States" where appropriate.

Article 2

The First use of armed force by a State in contravention of the Charter shall constitute *prima facie* evidence of an act of aggression although the Security Council may, in conformity with the Charter, conclude that a determination that an act of aggression has been committed would not be justified in the light of other relevant circumstances, including the fact that the acts concerned or their consequences are not of sufficient gravity.

Article 3

Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provisions of article 2, qualify as an act of aggression:

- (a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof,
- (b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;
- (c) The blockade of the ports or coasts of a State by the armed forces of another State;
- (d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;
- (e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;
- (f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;
- (g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

Article 4

The acts enumerated above are not exhaustive and the Security Council may determine that other acts constitute aggression under the provisions of the Charter.

Article 5

1. No consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression.
2. A war of aggression is a crime against international peace. Aggression gives rise to international responsibility.
3. No territorial acquisition or special advantage resulting from aggression is or shall be recognized as lawful.

Article 6

Nothing in this Definition shall be construed as in any way enlarging or diminishing the scope of the Charter, including its provisions concerning cases in which the use of force is lawful.

Article 7

Nothing in this Definition, and in particular article 3, could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist regimes or other forms of alien domination: nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration.

Article 8

In their interpretation and application the above provisions are interrelated and each provision should be construed in the context of the other provisions.⁵²

The Soviet representative commented that the preamble, reading as it did, reflected a political will to see an end to wars of aggression.⁵³ He also noted, along with others, that article 3(g) would not interfere with self-determination nor the right of other states to provide assistance to a state struggling for its freedom.⁵⁴ He argued that article 7 allowed a state the right, and maybe even

⁵² G.A. Res. 3314 (XXIX) of 14 December 1974. <http://www1.umn.edu/humanrts/instree/GAres3314.html>. (accessed 7 October 2008).

⁵³ *Yearbook of the United Nations 1974*, (New York: Office of Public Information, United Nations, 1977) Legal Questions. II. The Question of Defining Aggression, 836 - 848. 842.

⁵⁴ *Ibid.*, 844.

the duty, to provide support in the exercise of the right of freedom of self-determination.⁵⁵ The United States argued the opposite.⁵⁶

Donskoi, in his work, *Aggression is Outside the Law*, analyzed the definition of aggression in the 1974 UN General Assembly Resolution 3314 (XXIX). He noted that international legal means had an important role in reining in aggressors and that this resolution was a direct result of the political initiative of the USSR.⁵⁷ He noted that the Resolution in its current form had a “recommendation status.”⁵⁸ In the 29th Session of the UN General Assembly, the Soviet delegation raised the issue of giving the definition of aggression mandatory force through a Security Council Resolution to that effect. Donskoi went on to state that the definition of aggression was included in many treaties of a universal nature and if the treaty was ratified by a majority of states, in addition to the definition being mandatory for those states, it would be an integral part of existing international law.⁵⁹

Julius Stone also analyzed General Assembly Resolution 3314 (XXIX). He countered the notion that claims were being made that the Soviet theme of depriving a potential aggressor of “loopholes and pretexts to unleash aggression” had been accomplished with this “consensus definition.” He refuted those claims with a host of reasons why the text actually “codified into itself” all these loopholes.⁶⁰ He made the point that any resolution of the General Assembly was impotent because of its inability to impose legal obligations over and above those already in the Charter or other treaties. Because of differing state interpretations of the language of the resolution, “we face

⁵⁵ Ibid., 845.

⁵⁶ Ibid., 846.

⁵⁷ D. Donskoi, *Agressiya, Vne Zakona: Ob Obshepriznannom Opredelenii Agressii* (Moskva: Mezhdunar. odnyeotnosheniia, 1976), 3.

⁵⁸ Ibid., 118.

⁵⁹ Ibid., 119-120.

⁶⁰ Julius Stone, “Hopes and Loopholes in the 1974 Definition of Aggression,” 71 *The American Journal of International Law*, no. 2, 224 (Apr. 1977).

the paradox that the closing off of ‘loopholes’ and ‘pretexts’ hailed by the Soviet Union as the great achievement is precisely what the definition did *not* achieve.”⁶¹

Stone discussed the relevance of intention and purpose as one of the most debated obstacles to a definition. Because of the importance of this issue, this dissertation has made it a point to provide the discussion leading to those decisions by the Soviet leadership. The Soviet government had long supported the “first use of force” as evidence of aggression as codified in article 2 of the resolution, however, it was followed by the caveat that the Security Council had the ability to determine an act not aggressive in the “light of other relevant circumstances.”⁶² Stone went on to note that in a previous draft, the relevant circumstances included “the purposes of the States concerned,” which was omitted in the final version. He concluded the conflicting positions blocking consensus in the first place just morphed into conflicting interpretations.⁶³

Stone continued that the Soviet Union had been “zealous” in supporting a state’s right to take “police action against dissonant movements.”⁶⁴ In article 7, the final version included “the right to self-determination” and “peoples under colonial and racist regimes or other forms of alien domination” should not be denied the right to struggle to that end and seek and receive support. Stone noted that this actually preserved the pre-consensual conflicts as we saw them in Korea, Hungary, Czechoslovakia, and as will see shortly, Afghanistan. Stone concluded with a prime example of the use of this definition as lawfare, although the terminology is different. He noted that one reason this definition was adopted was “to maximize the value of the definition to themselves as

⁶¹ Ibid., 225. For further discussion see Julius Stone, *Conflict through Consensus: United Nations Approaches to Aggression* (Baltimore: Johns Hopkins University Press, 1977).

⁶² Ibid., 228.

⁶³ Ibid., 229. See also Kathryn Rider Schmeltzer, “Soviet and American Attitudes Toward Intervention: The Dominican Republic, Hungary and Czechoslovakia,” 11 *Virginia Journal of International Law* 97, 98 (1970-1971). Schmeltzer noted that both American and Soviet interventions deviated from the spirit of the UN Charter. She found that it was difficult to determine just what constitutes intervention, how much is allowed and how much is too much (i.e. economic aid) and the distinctive factual context of each instance.

⁶⁴ Ibid., 233.

an instrument to be invoked in support of their own political objectives, or to minimize its value as an instrument invoked by others against themselves. On this alternative hypothesis, the definition is envisaged, above all, as an instrument of political warfare.”⁶⁵

⁶⁵ Ibid., 245.

SUMMARY

The decades of the 1960s and 1970s saw solidification of all the iterations of lawfare from the Soviet perspective. The invasion of Czechoslovakia saw military intervention despite a treaty of non-aggression. Justification along the lines of that given in Hungary in defiance of “non-socialist intervention” took the form of the new Brezhnev doctrine. The rhetoric of class struggle coupled with international law was brought back to the forefront. The geographical position of Czechoslovakia and the reaction (or lack of reaction) of the United States were considerations as they had been in previous interventions. Once again, the international outcry was muted and the Soviet government achieved the result it intended.

Vietnam combined these concepts with the use of lawfare and propaganda, once again aimed at the United States. As with Korea, heavy rhetoric was utilized to paint the United States as the aggressor. Though diametrically opposed in the campaign of lawfare, several legal scholars drew parallels to the Soviet invasion of Czechoslovakia and the US invasion of Vietnam. Scholars also drew similar parallels to the US invasion of Vietnam and the Soviet invasion of Afghanistan.

Finally, General Assembly Resolution 3314 (XXIX) was adopted, taking the previously proposed Soviet definition almost verbatim. Unfortunately, it did not have the force of law. It was also argued that it codified not only the restrictions it proposed but the loopholes previously used by states such as the Soviet Union as well. Although separate and distinct on their own, these events, taken together, set the stage for a confident Soviet Union to look towards another country with which they had a non-aggression pact, Afghanistan.

Robert Turner, noted that the Soviet Union saw the use of force as legal when used towards the cause of communism or socialism. However, he noted that the question to ask was not was it “legal” but was it “desirable” to the Soviet government at the time. He gave the example of

Afghanistan. Quoting Professor Asparturian, he listed the factors that were in front of the Soviet government in the late 1970s. President Carter had not reacted to Soviet/Cuban intervention in Angola and had not supported Somalia. The United States had allowed a Soviet brigade in Cuba and was in the throws of a hostage situation in Tehran. The B-1 bomber had been canceled as well as many other US military concessions. Turner concluded there was no need to look to legal theories for the invasion of Afghanistan, “it was a classical application of the fundamental principles of Marxist-Leninist theory.”⁶⁶

⁶⁶ Moore and Turner., 112-113.

CHAPTER 7

AFGHANISTAN

“The Soviets might have succeeded in bombing the Afghans into the ‘stone Age’ but for the fact that they were already there.”

Robert M. Cassidy¹

The Soviet-Afghan War (24 December 1979 - 15 February 1989) continued a long history of Soviet-Afghan involvement. The Marxist People’s Democratic Government of Afghanistan (PDPA) split into two factions in 1967. Nur Muhammed Taraki (1913 - 1979) and Hafizullah Amin (1929 - 1979) headed the Khalq party and Babrak Karmal (1929 - 1996) headed the Parcham party. In 1973, Former Prime Minister Mohammad Daoud Khan (1909 - 1978) seized power in a coup unseating King Mohammad Zahir Shah (1914 - 2007). On 27 April 1978 Daoud was overthrown and Taraki became Secretary General of the PDPA and Prime Minister of the newly established Democratic Republic of Afghanistan (DRA). Unrest continued under their rule amid purges and executions. Amin seized power and Taraki was killed in September 1979. The Soviet Army invaded shortly thereafter on 24 December 1979. After long years of unsuccessful fighting, the Soviet troops finally withdrew by 15 February 1989.

The neighboring countries were also embroiled in their own issues during this time. The Iranian Revolution occurred in 1978 - 1979 with the overthrow of the Shah. Ayatollah Ruhollah Khomeini transformed Iran into an Islamic Republic. The United States faced a hostage crisis in Iran between 1979 and 1981. There was an ongoing Iran-Iraq War between 1980 and 1988.

¹ Robert M. Cassidy, “Russia in Afghanistan and Chechnya: Military Strategic Culture and the Paradoxes of Asymmetric Conflict,” Strategic Studies Institute (US Army War College, February 2003).

Within the Soviet Union, Leonid Il'ich Brezhnev, General Secretary of the Communist Party of the Soviet Union and Chairman of the Presidium of the Supreme Soviet of the USSR, died in 1982. The next six years saw three other men hold the office with another taking an acting chairman's position three separate times.² Mikhail Sergeyevich Gorbachev (b. 1931) came to power as General Secretary of the Communist Party of the Soviet Union in March of 1985. After Gromyko's resignation in 1988, he became Chairman of the Presidium of the Supreme Soviet of the USSR. He was elected President of the USSR on 15 March 1990. In the mid-1980s, Gorbachev introduced his version of *perestroika* and *glasnost* in an effort to address the economic, political and social crises in Russia. *Perestroika*, or restructuring, was an attempt to separate the economy from political control. The unintended result, however, was economic collapse. *Glasnost*, or openness, and democratic transparency played their own role in the breakup of the Soviet Union and the collapse of the Communist Party.

This chapter looks at the buildup to the war to show the dissent among the leadership as well as the clear knowledge that going into Afghanistan would constitute aggression. This discussion is compared to the public rhetoric after the invasion. The Soviet government continued to work to present the public face of a non-aggressor by utilizing the exceptions created in the definition of aggression. Though the UN General Assembly voted eight times for withdrawal of Soviet troops from Afghanistan, the external pressure from international bodies and other state governments once again did not force the Soviet Army to withdraw. The Afghan people coupled with economic

² Leonid Il'ich Brezhnev (1906 - 1982) – Chairman from 16 June 1977 - 10 November 1982
Vasili Vasilevich Kuznetsov (1901 -1990) – acting chairman from 10 November 1982 - 16 June 1983
Yuri Vladimirovich Andropov (1914 -1984) – Chairman from 16 June 1983 - 9 February 1984
Kuznetsov – acting chairman from 9 February 1984 - 11 April 1984
Konstantin Ustinovich Chernenko (1911 - 1985) – Chairman from 11 April 1984 - 10 March 1985
Kuznetsov – acting chairman from 10 March 1985 – 27 July 1985
Andrei Andreevich Gromyko (1909 - 1989) – Chairman from 27 July 1985 - 10 October 1988

concerns at home and a changing domestic political environment would converge to play a much greater role in the final withdrawal.

BUILDUP TO THE WAR

As early as 2 June 1974, Brezhnev, General Secretary of the Communist Party of the Soviet Union, Nikolai Viktorovich Podgorny, Chairman of the Presidium of the Supreme Soviet of the USSR, and Alexei Nikolaevich Kosygin, Chairman of the USSR Council of Ministers, met with Prime Minister of the Republic of Afghanistan, Mohammad Daoud and other Afghani government officials. They reiterated the close ties and friendly relations between Afghanistan and the Soviet Union.³ On 5 December 1978, Afghanistan and the Soviet Union entered into the Treaty of Friendship, Goodneighborliness and Cooperation. Over the signatures of Breshnev and Taraki the treaty reaffirmed the previous treaties between them of 1921 and 1931, reaffirmed their dedication to the principles of the United Nations Charter, and expressed their determination “to facilitate the strengthening of peace and security in Asia and the whole world.”⁴ Specifically, the pertinent articles read:

Article 1

The High Contracting Parties solemnly declare their determination to strengthen and deepen the inviolable friendship between the two countries and to develop all-round cooperation on the basis of equality, respect for national sovereignty, territorial integrity and noninterference in each other’s internal affairs.

Article 4

The High Contracting Parties, acting in the spirit of the traditions of friendship and goodneighborliness, as well as the U.N. Charter, shall consult each other and take by agreement appropriate measures to ensure the security, independence, and territorial integrity of the two countries.

In the interests of strengthening the defense capacity of the High Contracting Parties, they shall continue to develop cooperation in the military field on the basis of appropriate agreements concluded between them.

³ “Top Secret Attachment, by KGB cipher Kabul,” The Woodrow Wilson International Center for Scholars, Cold War International History Project.

http://www.wilsoncenter.org/index.cfm?topic_id=1409&fuseaction=va2.document&identifier=5034D63A-96B6-175C-93188791687AA8A3&sort=Collection&item=Soviet%20Invasion%20of%20Afghanistan. (accessed 19 January 2009).

⁴ Afghanistan-Union of Soviet Socialist Republics: Treaty of Friendship, Goodneighborliness and Cooperation, Signed at Moscow 5 December 1978 and ratified on 27 May 1979. 19 *International Legal Materials* 1, 1980.

Article 5

The Union of Soviet Socialist Republics respects the policy of nonalignment which is pursued by the Democratic Republic of Afghanistan and which is an important factor for maintaining international peace and security.

The Democratic Republic of Afghanistan respects the policy of peace pursued by the Union of Soviet Socialist Republics and aimed at strengthening friendship and cooperation with all countries and peoples.

Article 6

Each of the High Contracting Parties solemnly declares that it shall not join any military or other alliances or take part in any groupings of states, as well as in actions or measures directed against the other High Contracting Party.

Article 9

The High Contracting Parties shall continue their consistent struggle against machinations by the forces of aggression, for the final elimination of colonialism and racism in all their forms and manifestations.

The two sides shall cooperate with each other and with other peaceloving states in supporting the just struggle of the peoples for their freedom, independence, sovereignty and social progress.

Article 10

The High Contracting Parties shall consult each other on all major international issues affecting the interests of the two countries.⁵

⁵ Ibid., 1-3. For discussion of the legal responses to the use of this treaty by the Soviet government to justify intervention into Afghanistan see, “Legal Responses to the Afghan/Iranian Crises” 74 *American Society of International Law Proceedings* 248 (1980). Farooq Haassan argued that the use of this treaty to justify intervention in this case was the same scenario the Soviets had used before. A treaty was signed, troops arrived to suppress an alleged uprising, a coup d’etat took place instating someone receptive to the Soviets who then requested assistance under the treaty. This allowed the Soviet Union to claim they were protecting the “political independence of the country.” (259) The Deputy Legal Advisor for the US Department of State noted, on the same panel, that even if the invasion was arguably conducted under a basis listed in the treaty, the Soviet Union violated other portions of that and others as well such as the UN Charter. He went on to state that it would be hard to comprehend that the invitation to intervene came from a chief of state who they subsequently murdered. (267). Further panel discussion from Benjamin Ferencz had a slightly different viewpoint. Although he stated the acts of the Soviet Union toward Afghanistan were aggressive, he noted that no act could be legally “labeled as aggressive unless the Security Council determines it to be so.” Since the Soviet Union had veto power on the Security Council, it was not considered. He also noted that even though doubt existed as to whether the troops had been invited to intervene, if they were acting in self-defense it would allow the action as non-aggressive. He made the point though, that even though these acts were obviously aggressive the state of the prevailing law allowed room for doubt. (268) In response, the US Department of State representative stressed that the Security Council was not alone in its ability to determine aggression. In this case the General Assembly had actually addressed the matter under a “Uniting-for-Peace” resolution. (270) John Norton responded that this resolution failed to name the Soviet Union. (271) Thomas N. Franck further observed that under article 51 of the Charter, in the absence of a ruling by the Security Council a state might act on its own or in collective self-defense. (272).

One now recognizes the familiar language of respect for national sovereignty, territorial integrity and noninterference in internal affairs, as well as agreements to fight aggression and support a just struggle of the people. This was an example of the intentional use of lawfare to support follow-on warfare. Henry S. Bradsher reaffirmed that prior to this invasion, the Soviet government was looking for a cover story. Specifically, they needed a small group of Afghans clothed in a claim of legitimacy, who would move against the current president and request “Soviet help as a legal response to a treaty obligation.”⁶ Bradsher, as this study does, drew parallels to Finland, Hungary and Czechoslovakia.

Despite public displays such as the treaty and cultural exchanges, the situation within Afghanistan continued to escalate with conflicting reports from Taraki and Amin coming in to the Central Committee. On 26 April 1978, the KGB, in communications with Moscow, possibly misinterpreted the situation and even thought the attempted coup, if it did happen, would be unsuccessful.⁷

On 27 April 1978 Taraki overthrew Daoud. The KGB defector, Vasilii Mitrokhin, noted that from that time, the country turned to drastic repressive methods, purges and executions after the coup. Just prior to his execution by Amin, Taraki communicated that he had been kept under house arrest and expressed that he was unable to take action and that the only way to save his version of the

⁶ Henry S. Bradsher, *Afghan Communism and Soviet Intervention* (Oxford; New York: Oxford University Press, 1999), 93.

⁷ The KGB in Afghanistan - Geographical Volume 1. Vasilii Mitrokhin Archive. February 2002. The Woodrow Wilson International Center for Scholars, Cold War International History Project. http://www.wilsoncenter.org/index.cfm?topic_id=1409&fuseaction=va2.document&identifier=CDE50D78-CB01-8B7A-D4E5A68856CA3CD9&sort=Collection&item=Soviet%20Invasion%20of%20Afghanistan. (accessed 14 January 2009). The text is an edited version of a manuscript outlining the KGB's operational activities in Afghanistan between 1978 and 1983, authored by Vasilii Mitrokhin, a former KGB archivist who defected to Britain in 1992.

government was Soviet intervention. He qualified it with the caveat, “but the Soviet comrades will evidently not save me as they must consider the reaction of the US.”⁸

In January of 1979, Kosygin approved a draft telegram to the Soviet Ambassador in Afghanistan granting funding for Soviet specialists and military support in Afghanistan.⁹ On 17 March 1979, the Central Committee discussed the worsening situation in Afghanistan.¹⁰ Although Amin advised that all was under control, others did not. The following exchange addressed the issues being considered by the Soviet government prior to the invasion, including the definition of aggression. It established the thoughts of the committee members as they considered military actions that would violate their own definition. It also demonstrated the reasons they were involved in Afghanistan and the concerns they saw as pertinent. The reader will see a marked difference between the conversation here and the version that will ultimately reach the United Nations. The following exchanges have been severely edited for brevity. Gromyko initiated the conversation:

In my opinion, we must proceed from a fundamental proposition in considering the question of aid to Afghanistan, namely: under no circumstances may we lose Afghanistan. For 60 years now we have lived with Afghanistan in peace and friendship. And if we lose Afghanistan now and it turns against the Soviet Union, this will result in a sharp setback to our foreign policy. Of course, it is one thing to apply extreme measures if the Afghan army is on the side of the people, and an entirely different matter, if the army does not support the lawful government. And finally,

⁸ Ibid.

⁹ CPSU CC Politburo Decision on Draft Telegram to the Soviet Embassy in Afghanistan, 07 January 1979. The Woodrow Wilson International Center for Scholars, Cold War International History Project. Source: TsKhSD, f. 89, perechen (per.) 14, dokument (dok.) 24 [cited by Archive-Information Bulletin, 1993 as RGANI, op. 14, d. 24, ll. 4, copy, special file, CC].

http://www.wilsoncenter.org/index.cfm?topic_id=1409&fuseaction=va2.document&identifier=5034DBA8-96B6-175C-9BA45BA1DEEF25CF&sort=Collection&item=Soviet%20Invasion%20of%20Afghanistan. (accessed 19 January 2009).

¹⁰ Transcript of CPSU CC Politburo Discussions on Afghanistan regarding deterioration of conditions in Afghanistan and possible responses from the Soviet Union Source: TsKhSD, f. 89, per. 25 dok.1, ll. 1, 12-25. 17 March 1979. The Woodrow Wilson International Center for Scholars, Cold War International History Project.

http://www.wilsoncenter.org/index.cfm?topic_id=1409&fuseaction=va2.document&identifier=5034DBB8-96B6-175C-9823CBCE6162CEDA&sort=Collection&item=Soviet%20Invasion%20of%20Afghanistan. (accessed 19 January 2009).

third, if the army is against the government and, as a result, against our forces, then the matter will be complicated indeed ...¹¹

Dmitrii Fedorovich Ustinov (1908 - 1984) USSR Minister of Defense, Yuri Vladimirovich Andropov, KGB Chairman at the time, and Andrei Pavlovich Kirilenko (1906 - 1990), Secretary of the Central Committee of the Communist Party discussed communications with Taraki and the concern that they were unable to identify exactly whom they were fighting against. Their fear was that they would have to wage war primarily against the Afghan people. Kosygin then addressed the political concerns of military intervention:

I would consider it necessary to send an additional number of qualified military specialists, and let them find out what is happening with the army. Moreover, I would consider it necessary to adopt a more comprehensive political decision. Perhaps the draft of such a political decision can be prepared by our comrades in the Ministry of Foreign Affairs, the Ministry of Defense, or the Foreign Department of the KGB. It is clear that Iran, China, and Pakistan will come out against Afghanistan, and do everything within their power and means to contravene the lawful government and discredit its actions. It is exactly here that our political support of Taraki and his government is necessary. And of course, Carter will also come out against the leadership of Afghanistan. With whom will it be necessary for us to fight in the event it becomes necessary to deploy troops - who will it be that rises against the present leadership of Afghanistan? They are all Mohammedans, people of one belief, and their faith is sufficiently strong that they can close ranks on that basis. It seems to me that we must speak to Taraki and Amin about the mistakes that they have permitted to occur during this time.¹²

Ustinov then recommended several military options, but was adamant the Soviet Army not mix with Afghan forces. Kirilenko then stated the rational we have seen so many times before for armed intervention: "We cannot deploy troops without a request from the government of Afghanistan, and we must convey this to Comrade Taraki. And this must be directly stated in a conference between Comrade Kosygin and Taraki."¹³ Andropov, considering international opinion, responded, "We

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

must finalize the political statement, bearing in mind that we will be labeled as an aggressor, but that in spite of that, under no circumstances can we lose Afghanistan.”¹⁴

Andropov opened the Politburo session on 18 March 1979 with a summary of the situation. The following exchange addressed their concern with using military force in Afghanistan and their concern with international opinion.

ANDROPOV. Comrades, I have considered all these issues in depth and arrived at the conclusion that we must consider very, very seriously, the question of whose cause we will be supporting if we deploy forces into Afghanistan. It's completely clear to us that Afghanistan is not ready at this time to resolve all of the issues it faces through socialism. The economy is backward, the Islamic religion predominates, and nearly all of the rural population is illiterate. We know Lenin's teaching about a revolutionary situation. Whatever situation we are talking about in Afghanistan, it is not that type of situation. Therefore, I believe that we can suppress a revolution in Afghanistan only with the aid of our bayonets, and that is for us entirely inadmissible. We cannot take such a risk.

KOSYGIN. Maybe we ought to instruct our ambassador, Comrade Vinogradov, to go to Prime Minister of Iran [Mehdi] Bazargan and inform him that interference in the internal affairs of Afghanistan cannot be tolerated.

GROMYKO. I completely support Comrade Andropov's proposal to rule out such a measure as the deployment of our troops into Afghanistan. The army there is unreliable. Thus our army, when it arrives in Afghanistan, will be the aggressor.

Against whom will it fight? Against the Afghan people first of all, and it will have to shoot at them. Comrade Andropov correctly noted that indeed the situation in Afghanistan is not ripe for a revolution. And all that we have done in recent years with such effort in terms of detente, arms reduction, and much more - all that would be thrown back. China, of course, would be given a nice present. All the nonaligned countries will be against us. In a word, serious consequences are to be expected from such an action. There will no longer be any question of a meeting of Leonid Ilych with Carter, and the visit of [French President] Giscard d'Estang at the end of March will be placed in question. One must ask, and what would we gain? Afghanistan with its present government, with a backward economy, with inconsequential weight in international affairs. On the other side, we must keep in mind that from a legal point of view too we would not be justified in sending troops. According to the UN Charter a country can appeal for assistance, and we could send troops, in case it is subject to external aggression. Afghanistan has not been subject to any aggression. This is its internal affair, a revolutionary internal conflict, a battle of one group of the population against another. Incidentally, the Afghans haven't officially addressed us on bringing in troops. In a word, we now find ourselves in a situation where the leadership of the country, as a result of the serious mistakes it has allowed to occur,

¹⁴ Ibid.

has ended up not on the high ground, not in command of the necessary support from the people....¹⁵

An excerpt from Chernenko¹⁶ further clarified the understanding of violating their own definition of aggression. He stated, "If we introduce troops and beat down the Afghan people then we will be accused of aggression for sure. There's no getting around it here."¹⁷

Andropov, Gromyko and Chernenko clearly discussed their understanding of armed intervention and its predicted international reprisals. The Soviet government was very adept at manipulating the concept of aggression by this time and here we see the thought process clearly. There were, however, other disagreements over military escalation in Afghanistan. Sarah Mendelson asserted that even the leadership of the Ministry of Defense was against the invasion.¹⁸ The debate continued into the fall as other options appeared.

After Amin's coup and Taraki's execution in September 1979, Andropov wrote a personal memo to Brezhnev stating that the Soviet government was contacted by a group of Afghan communists abroad headed by Babrak Karmal and Asadullah Sarwari. They recommended replacing the Amin government but because of mass executions carried out by Amin, they requested Soviet military involvement. Andropov noted that there was sufficient military in Kabul. He concluded, "The implementation of the given operation would allow us to decide the question of defending the

¹⁵ Ibid.

¹⁶ Konstantin Ustinovich Chernenko (1911 - 1985) Secretary, CC CPSU , later Chairman of the Presidium of the Supreme Soviet of the USSR.

¹⁷ Excerpt from Politburo meeting. Source: A. A. Liakhovskii's "Plamia Afgana" ("Flame of the Afghanistan veteran"), Moscow: Iskon, 1999; p. 84 [TsKhSD, f. 89, per. 25, d. 1, pp. 12-25 footnoted as the original source] Translated for CWIHP by Gary Goldberg. The Woodrow Wilson International Center for Scholars, Cold War International History Project.

http://www.wilsoncenter.org/index.cfm?topic_id=1409&fuseaction=va2.document&identifier=5034D0BB-96B6-175C-9DD1B7A96574D8BE&sort=Collection&item=Soviet%20Invasion%20of%20Afghanistan. (accessed 19 January 2009).

¹⁸ Sarah Elizabeth Mendelson, *Changing Course: Ideas, Politics, and the Soviet Withdrawal from Afghanistan*, Princeton Studies in International History and Politics. (Princeton, N.J.: Princeton University Press, 1998), 56.

gains of the April revolution, establishing Leninist principals in the party and state leadership of Afghanistan, and securing our positions in this country.”¹⁹

Over the next few months, a number of smaller military units continued to filter into Afghanistan amid growing repression by and complaints against Amin. Finally, a directive was signed by Ustinov and Nikolai Vasilevich Ogarkov (1917 - 1994), Chief of the General Staff, USSR Armed Forces,²⁰ on 24 December 1979. It stated that “[c]onsidering the military-political situation in the Middle East, the latest appeal of the government of Afghanistan has been favorably considered. The decision has been made to introduce several contingents of Soviet troops deployed in southern regions of the country to the territory of the Democratic Republic of Afghanistan in order to give international aid to the friendly Afghan people and also to create favorable conditions to interdict possible anti-Afghan actions from neighboring countries...”²¹

As was the case in Korea, access to the discussions of the Soviet government in reaching that decision was limited, but the early discussions of the upper echelon of the Soviet Union indicated Afghanistan was falling into complete chaos. Many reasons could be gleaned from the above conversations for the intervention. Continued concern over maintaining a *cordon sanitaire* and

¹⁹ “Personal memorandum Andropov to Brezhnev.” Source: APRF, from notes taken by A. F. Dobrynin and provided to Norwegian Nobel Institute; provided to CWIHP by Odd Arne Westad, Director of Research, Nobel Institute; trans. for CWIHP by Daniel Rozas. 12 January 1979. The Woodrow Wilson International Center for Scholars, Cold War International History Project.
http://www.wilsoncenter.org/index.cfm?topic_id=1409&fuseaction=va2.document&identifier=5034DB5A-96B6-175C-9D886C24443BD2D4&sort=Collection&item=Soviet%20Invasion%20of%20Afghanistan. (accessed 19 January 2009).

²⁰ Also First Deputy USSR Minister of Defense.

²¹ Directive No. 312/12/001 of 24 December 1979 signed by Ustinov and Ogarkov. Source: A. A. Liakhovskii’s “Plamia Afgana” (“Flame of the Afghanistan veteran”), Iskon, Moscow, 1999; Translated for CWIHP by Gary Goldberg. 24 December 1979. The Woodrow Wilson International Center for Scholars, Cold War International History Project.
http://www.wilsoncenter.org/index.cfm?topic_id=1409&fuseaction=va2.document&identifier=5034E02C-96B6-175C-944CF54E250A1889&sort=Collection&item=Soviet%20Invasion%20of%20Afghanistan. (accessed 19 January 2009). For a review of the role of the military from the Russian General Staff perspective, see Michael A. Gress, Lester W. Grau, and Russia (Federation). Generalnyi shtab., Lester W. Grau, and Michael A. Gress, *The Soviet-Afghan War: How a Superpower Fought and Lost, Modern War Studies*. (Lawrence: University Press of Kansas, 2002). The Russian General Staff Authors’ Collective is headed by Colonel Professor Valentin Runov. The work is dedicated “to soldiers everywhere, who pay for the politicians’ mistakes.” (xxvii).

concerns that the Afghan government was in such a state that some other power might step in, i.e. China or the United States, were factors. Another factor may have been the lack of serious consequences of this type of action in the past imposed by the international community. Andrew Bennett noted that high-ranking Soviet officials at a conference in 1995 suggested excessive concern for possible US involvement as a key factor.²² Journalist Henry S. Bradsher attributed the motives not to any major importance of Afghanistan to the Soviet Union, but to the concept that the Soviet Union would step in whenever it perceived a danger or an opportunity.²³ He further noted that there was little consideration prior to making the decision and that the primary reasons were to support a client regime, prevent any rollback of communism, protect their border and continue to display military power to the world.²⁴

The following Politburo decree provided the basis for sending troops into Afghanistan. Note the similarity between this and the Korean War. For both, there was debate among the Politburo members and well-reasoned arguments presented. Initially, both situations resulted in agreement not to intervene. Subsequently, with little trace of the reason, the government moved from an initial recommendation of nonintervention to intervention. What follows here, like they did in Korea, are the statements to the public once the decision not to intervene was reversed.

Thus, the intervention from without and the terror unleashed by Amin within the country have actually now created a threat to liquidate what the April Revolution brought Afghanistan. Under these conditions Afghan forces consisting of people committed to the cause of the Revolution who are now inside the country or due to well-known reasons ended up abroad, are taking steps at the present time to remove the usurper, preserve the gains of the April Revolution, and defend the independence of Afghanistan. Considering all this and the request of the new Afghan leadership for aid and assistance in repelling foreign aggression, the Soviet Union, guided by its

²² Andrew Bennett, *Condemned to Repetition? The Rise, Fall, and Reprise of Soviet-Russian Military Interventionism, 1973-1996*. (Cambridge, Mass.: MIT Press, 1999), 173.

²³ Henry S. Bradsher, *Afghan Communism and Soviet Intervention* (Oxford; New York: Oxford University Press, 1999), xi. He cautions that anyone giving simple, clear facts about the Soviet involvement in Afghanistan "should be read with skepticism." (preface)

²⁴ Ibid., xiii.

international duty, has decided to send limited Soviet military contingents to Afghanistan which will be withdrawn from there after the reasons which occasioned the necessity of this action disappear. In undertaking this temporary forced action we are explaining to all governments with whom the Soviet Union maintains diplomatic relations that are responding to the request of the newly formed leadership of the government of Afghanistan which turned to the Soviet Union for aid and assistance in a struggle against foreign aggression. The Soviet Union thereby is proceeding from a commonality of interests of Afghanistan and our country in issues of security recorded in the 1978 Treaty of Friendship, Good Neighborliness, and Cooperation and the interests of maintaining peace in this region. The favorable reaction of the Soviet Union to this request of the leadership of Afghanistan also proceeds from the provision of Article 51 of the UN Charter stipulating the inherent right of countries to collective and individual self-defense in order to repel aggression and restore peace.²⁵

Note the familiar terminology – struggle against foreign aggression, reference to a treaty and the UN Charter, and self-defense. The Soviet Union continued to couch its position in the terms of lawfare that were acceptable, that they were the aggressor notwithstanding.

The KGB defector Mitrokhin gave additional perspective when he summarized, “There were two reasons for the Soviet troops to be sent to Afghanistan: to defend the revolution and to safeguard the security of the Soviet Union. If the USA had moved into Afghanistan we would have been forced to keep a large number of troops on the Soviet-Afghan border.” He further stated, “Soviet internationalism often covers vast geographical expanses under the guise of the fight against imperialism.”²⁶ Lawfare might have been included within what he called “active measures” by the KGB which aimed to “confuse the opponent, to undermine and weaken his position, to thwart his plans and the realization of his goals....to influence the internal and external situation...to weaken the political economic military and ideological position of the opponent, to disrupt their plans and

²⁵ Politburo Decree P177/151. Top Secret Special Folder Attachment 1 Berlin, Warsaw, Budapest, Prague, Sofia Havana, Ulan Bator, and Hanoi – to the Soviet Ambassador.

http://www.wilsoncenter.org/index.cfm?topic_id=1409&fuseaction=va2.document&identifier=5034D7EF-96B6-175C-9BB15F0B108F5D48&sort=Collection&item=Soviet%20Invasion%20of%20Afghanistan. (accessed 19 January 2009).

²⁶ “The KGB in Afghanistan.”

intentions and to create conditions which are beneficial to the Soviet plans and intentions to create conditions which are beneficial to the Soviet Union.”²⁷

These “active measures” included the now familiar use of propaganda. As with Hungary, an announcement was made via radio reiterating the new DRA government’s “insistent” request for assistance from the Soviet Union.²⁸ As the justification to be used publicly started to solidify, Gromyko advised the Soviet representative to the UN General Assembly just how he should approach the question of Soviet aggression.

I would like to share a few thoughts about the current situation in the Security Council as well as the character of your appearance at the upcoming session. You, comrade minister, have every reason to appear as the accuser - not as the accused. It seems there are enough facts for this. It is necessary to emphasize that the deployment of a limited military contingent in Afghanistan has been undertaken by the Soviet Union as a response to repeated appeals by the DRA to the government of USSR. These requests had been voiced earlier by Taraki during his visit to Moscow and by Amin. It would also be useful to remind the participants at the Security Council of Article 51 of the UN Charter. The change in the leadership of Afghanistan is solely the internal matter of Afghanistan. The representatives of Western countries, Thatcher in particular, are trying to draw a correlation between the change in the Afghan leadership and the deployment of the Soviet military contingent in Afghanistan. However, one should emphasize that there is no relationship here. This is purely coincidental....

As you have requested, we have prepared for you a number of materials, in particular concerning American military bases. These materials will be sent to New York along with V.S. Safronchuk who is going there to assist you as you have requested earlier. When you are assaulted [with questions] concerning the deployment of a Soviet military contingent in Afghanistan, you can parry this by exposing the aggressive politics of the USA. In Cuba, the USA, despite the constant demands of the Cuban government and people, continues to maintain its military base in Guantanamo. This is an example of open and rude interference in the internal affairs of a sovereign nation.²⁹

²⁷ Ibid.

²⁸ Ibid.

²⁹ Meeting of Soviet Foreign Minister Gromyko and Afghan Foreign Minister Shad Mohammad Dost, 04 January 1980. Source:

RGANI (formerly TsKhSD), f. 89, per. 14, dok. 36, ll. 1-13 [cited by Archive-Information Bulletin, 1993 as RGANI, op. 14, d. 36, ll. 13, copy, CC]. Provided by M. Kramer; trans. by D. Roza. The Woodrow Wilson International Center for Scholars, Cold War International History Project.

http://www.wilsoncenter.org/index.cfm?topic_id=1409&fuseaction=va2.document&identifier=5034DE38-96B6-175C-967BD3049E94C299&sort=Collection&item=Soviet%20Invasion%20of%20Afghanistan. (accessed 19 January 2009).

Gromyko blatantly advised the representative to take on the role of the public accuser, continuing the tradition in this capacity of the Soviet Union.

The process that had come very quickly in Hungary and Czechoslovakia was hindered by counter-revolutionary forces, support of outside forces such as the US to the counter-revolutionaries, and unrest among the military and the general population voiced against both the Afghan government and the Soviet military.³⁰ During this period, dissent within the party continued. “Some Ideas About Foreign Policy Results of the 1970s (Points)” by academician O. Bogomolov was sent to the Central Committee and the KGB on 20 January 1980. He concluded that any advantages that were achieved during the invasion were more than countered by the damage inflicted on the Soviet interests.³¹

³⁰ “The KGB in Afghanistan.” In a joint Afghan, Soviet telegram of 24 February 1980 to the Ministry of Foreign Affairs and the FCD it was stated, “The plan of the imperialists and reactionary forces was to establish a puppet regime headed by Amin and to appeal to the USA, China, Pakistan for their troops to be sent in order to put an end to the independence, sovereignty and territorial integrity of Afghanistan.”

³¹ “Some Ideas About Foreign Policy Results of the 1970s (Points)” of Academician O. Bogomolov of the Institute of the Economy of the World Socialist System sent to the CC CPSU and the KGB. Source: A. A. Liakhovskii’s “Plamia Afgana” (“Flame of the Afghanistan veteran”), Moscow: Iskon, 1999; Translated for CWIHP by Gary Goldberg. 20 January 1980. The Woodrow Wilson International Center for Scholars, Cold War International History Project.

http://www.wilsoncenter.org/index.cfm?topic_id=1409&fuseaction=va2.document&identifier=5034E08A-96B6-175C-942922BAB585B8C7&sort=Collection&item=Soviet%20Invasion%20of%20Afghanistan. (accessed 19 January 2009).

DEBATE

The press was also very involved in these disagreements. In response to Mendelson's comments regarding dissention, several articles came to light that made this point. On 6 July 1990, an article by R. Mustafin was published in the *Red Star*. In the article, titled "How to Solve the Afghanistan Question," he presented several options both positive and negative to the Soviet Union. He suggested that one way out would be to decrease Soviet support and have the United States or West European countries take up the difference. He concluded with the hope that peace would come to Afghanistan.³² Another article, supporting the proposition that even the military leaders were against moving into Afghanistan, was published in a Russian military journal, *Military Studies*.

This article was an interview with General of the Soviet Army I. G. Pavlovsky. Pavlovsky credited *perestroika* with the ability to speak of the war with Afghanistan, otherwise, the actions of the limited contingency "remained as if they say behind seven seals." Pavlovsky opened with the comment that "today we can honestly and openly say that then, in 1979, a serious mistake was made. The cost is well known." He reiterated the request from Tariki and Amin for Soviet troops. He stated that they requested military aid on several occasions. He even replied to Amin, "this could complicate the military political situation in the region and intensify the American aid to the insurgents." He also reiterated that this step would cause a negative reaction in the international society. "It is my firm conviction that the tightly bound Afghan knot could and had to be untied not with the help of our troops but by Afghan forces themselves or by negotiations."³³

³² R. Mustafin, "Kak vyiti iz afganskogo toopika," *Krasnaia zvezda*, 6 (July 1990): 3.

³³ G. Cherniisheva, Correspondent, VZ, "Afganistan ne dolzhen povtoritsia," *Voennoe. znania*. no. 1 (1990): 2-3.

There were also many of the now recognizable propaganda articles. For example, TASS broadcast Boris Nikolaevich Ponomarev's (1905 – 1995)³⁴ speech at the Soviet Peace Committee in Moscow on 26 March 1982 where he stated, "the struggle between the imperialists' aggressive course and actions and the peace-loving forces is intensifying in the international arena."³⁵ The *Red Star* broadcast the announcement of the Ministry of National Defense of the DRA that the "enemy" was using chemical weapons in Afghanistan. That enemy was the United States, which provided, "gangsters and terrorists with chemical weapons."³⁶ Other articles over the decade from 1980 through 1992 sported attention-getting titles such as "Poisonous"³⁷ and "Mistake? No – Provocation."³⁸

The debate was not only in the press. On 23 September 1980, Gromyko addressed the United Nations. He stated that only "gullible" people would believe that the introduction of a limited Soviet military contingent into Afghanistan had aggravated the world situation. The incursion was meant to assist the Afghan people in "protecting their country's sovereignty and repelling armed incursions from the outside." It was also meant to prevent emergence of any security threat to the USSR itself.³⁹ He went on to say that assistance had been requested by the Afghan government in full accord with the Soviet-Afghan Treaty of 1978 and the UN Charter.⁴⁰

A draft resolution calling for immediate and unconditional withdrawal of Soviet troops from Afghanistan was defeated in the Security Council on 7 January 1980 due to a veto by the USSR. The

³⁴ Secretary, CC CPSU; Chief, International Department, CC CPSU.

³⁵ "Ponomarev's Speech at Soviet Peace Committee Plenum," Source: Telegraph Agency of the Soviet Union in Russian for abroad 1855 gmt 26 Mar 82. BBC Summary of World Broadcasts, March 29, 1982. Part I The USSR; A. International Affairs; General and Western Affairs; SU/6990/A1/1.

³⁶ "The Announcement of the Ministry of the National Defense," *Krasnaia zvezda*, 3 June 1980.

³⁷ "Otravitei!" *Krasnaia zvezda* 12 April 1980.

³⁸ A. Oleinik, special correspondent, "Oshibka? Net- provokatsiia" *Krasnaia zvezda*, 11 January 1992.

³⁹ William A. Landskron, ed., *Annual Review of United Nations Affairs 1980*, (Oceana Publications, Inc.: Dobbs Ferry, New York 1981), 23 September, A/35/PV.6. 458. It should also be noted that KGB defector Mitrokhin stated that during this time the KGB was actively engaged in active measures to counter world opinion of the occupation of Afghanistan. "The KGB in Afghanistan."

⁴⁰ Ibid.

Security Council met six times that year on the issue of Afghanistan.⁴¹ At its 35th Session, the General Assembly called for withdrawal of Soviet troops. It was adopted by a majority but the dissenters voiced the opinion that the issue involved internal affairs of Afghanistan and did not fall under the oversight of the UN.⁴²

Forcing the discussion of the "Afghan question" repeatedly on the UN General Assembly cannot help the cause of political settlement in any way. All this may only distract the General Assembly's attention from the solution of the tasks of the defense of peace and the maintenance of international security facing the UN. It should be made clear to the representatives of the non-aligned countries that the resolution passed at the 35th session of the UN General Assembly - independently of the motives of the individual countries in voting for it - is used in reality by the forces of imperialism and hegemonism to prevent political settlement and to increase the tension of the whole international situation. The repeated discussion of the so-called "Afghan question" at the current General Assembly - despite the protest of the DRA government - helps only the above-mentioned forces and makes possible their interference in the affairs of a sovereign country citing the UN.⁴³

The UN General Assembly ultimately voted eight times for withdrawal of the Soviet Union from Afghanistan.⁴⁴

⁴¹ Ibid., 75.

⁴² Ibid., 77-78.

⁴³ Soviet position on the declaration of the DRA government. 24 August 1981. The Woodrow Wilson International Center for Scholars, Cold War International History Project. http://www.wilsoncenter.org/index.cfm?topic_id=1409&fuseaction=va2.document&identifier=5034D5DC-96B6-175C-992CC925002C6F3B&sort=Collection&item=Soviet%20Invasion%20of%20Afghanistan. (accessed 19 January 2009).

⁴⁴ Bradsher, 254.

SUMMARY

Despite consistent denunciation by the international community at the United Nations, Soviet withdrawal was driven in the end by its own internal economic and political situation. An agreement was finally reached on 14 April 1988 when the Geneva Accords (1988) were signed by the Afghan and Pakistani governments and guaranteed/witnessed by the United States and the Soviet Union. The Accords contained instructions on troop withdrawal as well as non-intervention agreements between Afghanistan and Pakistan.

The Afghan intervention marked the first time in the history of the Soviet Union that it was forced to leave a country after sustained occupation.⁴⁵ The initial conversations in the Politburo prior to sending troops demonstrated not only the uncertainty of sending troops as we saw in previous discussions concerning Korea and Hungary, but a clear understanding that military involvement would fall squarely within the definition of aggression. The military did intervene however, despite the non-aggression pacts in place. Justification was publicly changed to match those exceptions to a violation that would be labeled as aggressive. Although the UN General Assembly considered the actions on many occasions, there was no formal designation of aggression and no subsequent backlash from the Security Council. So, though lawfare did not work to their advantage this time, it did not work against them. In this case, other factors led to their withdrawal.

In his study of the withdrawal of the Soviet Union from Afghanistan, Tom Rogers noted that several elements contributed to its retreat. The Afghan resistance was very strong. The death of Konstantin Ustinovich Chernenko on 10 March 1985 and the revised policies of Gorbachev played a major role.⁴⁶ *Perestroika* forced a reconsideration of the war and its cost when compared to the domestic economic crisis. Domestic economic needs took precedence over “costly foreign ventures.”

⁴⁵ Tom Rogers, *The Soviet Withdrawal from Afghanistan: Analysis and Chronology* (Westport, Conn.: Greenwood Press, 1992), preface.

⁴⁶ Ibid., 21.

Gorbachev's new policies forced a prioritization of the advantages of being involved in Afghanistan versus alliance with the United States. The continued struggle once again, as in Vietnam, was an impediment to improved relations.⁴⁷ The change brought about by *perestroika* and *glasnost* within the Soviet Union produced a monumental swing in priority from competition with the West as a military superpower to economic competition. This drove policies such as arms control initiatives, force reductions and human rights concessions as well as the withdrawal from Afghanistan.⁴⁸ Soviet support of UN Resolution 665 of 25 August 1990⁴⁹ and UN Resolution 678 of 30 November 1990,⁵⁰ which authorized the use of force by the members of the United Nations against Iraq, was a complete reversal of Soviet opposition to US military intervention in the third world.⁵¹

This period also saw the collapse of the Berlin Wall and the Warsaw Pact. The Soviet Union, as it had been known since 1922, was collapsing as well. Though these changes were monumental, the use of lawfare, this time by the Russian Federation, and its espousal of the definition of aggression would remain virtually unchanged.

⁴⁷ Ibid., 4.

⁴⁸ Carolyn McGiffert Ekedahl and Melvin A. Goodman, *The Wars of Eduard Shevardnadze* (University Park: Pennsylvania State University Press, 1997), 63.

⁴⁹ See UN Resolution 665, adopted 25 August 1990, S/RES/0665 (1990), [http://www fas.org/news/un/iraq/sres/sres0665 htm](http://www fas org/news/un/iraq/sres/sres0665 htm). (accessed 12 March 2009).

⁵⁰ See UN Resolution 678, adopted 30 November 1990, S/RES/0678 (1990), <http://www fas.org/news/un/iraq/sres/sres0678 htm>. (accessed 12 March 2009).

⁵¹ Ibid., 197.

CHAPTER 8

CHECHNYA, INTERNATIONAL AND INTERNAL CODIFICATION OF AGGRESSION

[I]n legal affairs, as in other areas of Soviet life, events have a way of overtaking theory.

Eugene Huskey¹

From the mid-1940s through the early 1990s, the Cold War dominated events. By 1989, Moscow had renounced the Brezhnev Doctrine. By 1991 the communist governments of Bulgaria, Czechoslovakia, East Germany, Hungary, Poland and Romania had fallen. The Soviet government collapsed shortly after a failed coup against President Mikhail Sergeevich Gorbachev in August 1991. In October 1991, General Dzhokhar Musayevich Dudayev (1944 - 1996) became president of the Chechen republic. In November of that year, Chechnya declared its independence from Russia, though it was not recognized by the government of the Russian Federation, or by most others. On 21 December 1991, all of the Union Republics of the USSR, except Georgia, signed the Alma-Ata Declaration formally dissolving the Soviet Union and declaring their independence.² On 25 December of that year, Boris Nicholaevich Yeltsin (1931 - 2007) became president of the Russian Federation.

¹ Eugene Huskey, in "From Legal Nihilism to Pravovoe Gosudarstvo" in Donald A. Barry, ed. *Toward the "Rule of Law" in Russia?: Political and Legal Reform in the Transition Period*, (Armonk, New York: M.E. Sharpe, 1992), 34.

² Other republics, not designated as "Union Republics" were still considered by the Russian Federation to be subjects of the Russian Federation. The 1993 Constitution of the Russian Federation listed the Chechen Republic as a subject of the Federation (article 65) and the status of its subjects could only be changed by mutual consent of the Russian Federation and the republic. The Constitution of the Chechen Republic, adopted by Decree no. 108 of the Parliament of the Chechen Republic of Grozny on 12 March 1992, proclaimed the Chechen Republic as an independent sovereign state, in opposition to the Russian Federation claim of it as a subject of the Russian Federation.

Although George Ginsburgs described this stage of the post-Stalinist reformation of the Kremlin's policies towards its "satellites" as a transition from "brute domination" to a partnership based on "institutionalized techniques of regulation", treaties were still dominant in its administration.³ Though this period and the events to be detailed in this chapter, in and of themselves, present a monumental change, there is much to be argued for consistency of the Soviet and new Russian Federation use of lawfare and propaganda. Paul Stephan pointed out, "the closer one looks at these events, the less important the Cold War seems to have been."⁴ He concluded that there was a high degree of continuity in Soviet legal culture over the period. This dissertation proposes that that continuity continued, at least as far as the definition of aggression is concerned, through the 1990s.

The invasion of Chechnya, like that of Korea and Afghanistan, occurred after much dissension within the Politburo and the Department of Defense. As with Hungary and Czechoslovakia, where there was concern that they would leave the Warsaw Pact, there was a concern that Chechnya would secede, although on a much grander scale. And as with Afghanistan, despite denunciation by the international community, Russia's internal economic and political situation would ultimately drive their decision to pull out.

The 1994 - 1996 conflict, generally known as the First Chechen War, though outwardly appearing similar to Russia's invasion of Hungary or Afghanistan, was labeled by the Russian Federation and the world as an "internal" matter, not an international event falling under the definition of aggression. It was cited in the UN as a violation of human rights and humanitarian law. This introduced the beginning of a subtle shift away from a focus on aggression to a focus on

³ Ginsburgs, George "The Soviet Union and International Co-operation in Legal Matters: Criminal Law: The Current Phase," 19 *The International and Comparative Law Quarterly*, no. 4, 626, 668 (October 1970).

⁴ Paul B. Stephan, "The Cold War and Soviet Law," Panel discussion, 93 *American Society of International Law Proceedings* 43 (1999).

humanitarian issues. As with Chechnya, Kosovo hinged on humanitarian issues and not crimes against peace.⁵

We will not delve into Kosovo as a separate action but note the strong humanitarian leaning of the international community concerning both Chechnya and Kosovo. Russian reaction to the interaction into Kosovo was strong as well. In a speech in 1999 by Russian President Boris Yeltsin, he adamantly stated,

Russia is outraged at NATO military action against sovereign Yugoslavia, which is nothing other than an open aggression. Only the UN Security Council has the right to decide what measures, including the use of force, should be taken to maintain or restore international peace and security. The UN Security Council did not make such decisions with regard to Yugoslavia. This is a violation of not just the UN Charter, but also of the NATO-Russia Founding Act of mutual relations, cooperation and security. This has created a dangerous precedent of the revival of military diktat, and threatened the international law and order.⁶

Over this same period, the definition of aggression was being considered in documentation both internationally and domestically. The Draft Code of Crimes Against Peace and Security of Mankind was finally adopted by the International Law Committee (ILC) and submitted to the General Assembly in 1996. The Russian Federation adopted a new Constitution in 1993 and a new Criminal Code in 1996, containing expanded application of international law, and in the case of the Criminal Code, a specific listing of the crime of aggression.

The term “Marxism-Leninism” was dropped from the 1993 Constitution. In its Preamble, it did not mention “The Great October Socialist Revolution”, “dictatorship of the proletariat”, or “the working class” as did the 1977 Constitution. The 1993 Constitution did include the term “self-

⁵ For further reading on Kosovo see Christopher J. Borgen, “Introductory Note to Kosovo’s Declaration of Independence,” 47 *International Legal Materials* 461 (2008), Marc Weller, “The Rambouillet Conference on Kosovo.” *International Affairs (Royal Institute of International Affairs 1944-)* 75, no. 2 (April 1999): 211-251, and V. Kozin, “Kosovo at the Crossroads,” *International Affairs* 48, no. 3 (2002): 198-209.

⁶ Solera, *Defining the Crime of Aggression*, 459-460, citing the statement by Russian President Yeltsin of 24 March 1999.

determination”, however. Though the Marxist-Leninist terms were dropped, the 1993 Constitution continued to place the Russian Federation in a position to take full advantage of international law.

This chapter will highlight the war in Chechnya to show how the event was perceived by the Russian Federation and the international community. This chapter will then examine the 1991 and 1996 Draft Codes of Crimes Against Peace and Security of Mankind to show the position of the international community regarding the definition of aggression. Finally, the relevant portions of the 1993 Constitution and 1996 Criminal Code of the Russian Federation will be examined. The chapter, and this dissertation, will conclude with the year 1999 and the submission of the definition of crimes against peace by the Russian Federation to the ICC.

CHECHNYA

Afghanistan and Chechnya had many similarities, though the conflicts may have been viewed somewhat differently by the Russian Federation and the international community. As with Afghanistan, Russia and Chechnya had a long history of political and military conflict. As with Afghanistan, Chechen fighters proved to be difficult to overcome. And as with Afghanistan, there was much dissent among the members of the administration as to the logic of sending troops.⁷

Though the Chechen conflict has taken place in two main stages, we are most interested in the First Chechen War, beginning when Russian Federation military troops invaded Chechnya on 1 December 1994. The conflict lasted almost two years and ended with Russian troops withdrawing under the Khasaviurt Accords, signed on 31 August 1996.

The reasons proposed for the First Chechen War were many. Michael McFaul concluded, “[w]ithout question, preserving territorial integrity of the Russian Federation was a major objective of the offensive in Chechnya.”⁸ McFaul concluded, however, that the real reason Yeltsin intervened was to save his presidency.⁹ He also noted that the Russian government claimed to be protecting Russian citizens in Chechnya.¹⁰ In almost all the conflicts reviewed in this study, creating security on its border was the most frequently listed cause of intervention by the Soviet government. Poland

⁷ Matthew Evangelista, *The Chechen Wars: Will Russia Go the Way of the Soviet Union?* (Washington, D.C.: Brookings Institution Press, 2002), 33-39. Evangelista noted that on 27 December 1994, the Expert Analytical Council of the President of the Russian Federation met and opposing views were voiced regarding the consequences of invading Chechnya. He also noted “a cautious and sensible approach seems to have been fairly widespread at the Defense Ministry and in the General Staff.” (37) Colonel General Eduard Vorob’ev refused an order to lead the troops into Chechnya on the basis that the preparations were not adequate. Approximately 557 officers were believed to have been disciplined or protested against the invasion. Lack of preparation soon turned to the problem they foresaw with Afghanistan, they were fighting civilians. (38). Although Ben Fowkes, in his introduction noted that the Russian army may have argued in favor of the war to help lobby for more resources. Ben Fowkes, ed. *Russia and Chechnya: The Permanent Crisis* (New York: St. Martin’s Press, 1998), 17. He also noted organized crime as another reason for Russian intervention.

⁸ Michael McFall, “Eurasia Letter: Russian Politics after Chechnya,” *Foreign Policy* no. 99 (Summer, 1995): 149-165, 150.

⁹ Ibid., 151.

¹⁰ Ibid., 150.

was a previous example of the Soviet Union basing its invasion, at least in part, on its desire to protect its people living within another state's borders. Now the Russian Federation was rejuvenating these justifications.

Possibly the strategic location of key transportation routes linking northern Russia to the countries of eastern and southern Europe was a deciding factor. Its use for oil refining was another. Matthew Evangelista commented that some Russian officials justified the first invasion to secure these oil assets in Chechnya for the sake of the “economic well-being of the rest of the country.”¹¹ He noted, in addition to the strategic argument, it was possible that the Russian Federation did not want Chechnya to set a precedent for secession.¹² This would place the reasoning of the Russian Federation on Chechnya in line with that of the Soviet Union, with Hungary and Czechoslovakia, to intervene when they threatened to withdraw from the Warsaw Pact.

The reasoning of the government of the Russian Federation for sending the military into Chechnya is speculative at this point in time. Due to the recent nature of the conflict, most of the information that would allow a direct comparison to the debates of the senior officials in other conflicts is still classified. We do know, however, that there was debate both internally and externally regarding the invasion, though the international debate was not centered on aggression. The rhetoric of Chechnya centered on human rights, not crimes against peace or aggression. In fact, the Chairman of the Commission on Human Rights of the UN on 27 February 1995 stated “deep concern over the disproportionate use of force by the Russian armed forces and deplorable violations of human rights and humanitarian law.”¹³ The Russian Federation itself, because it along with most

¹¹ Evangelista, 3. See also John B. Dunlop, *Russia Confronts Chechnya: Roots of a Separatist Conflict* (Cambridge University Press, 1998).

¹² Ibid.

¹³ Thomas D. Grant, “A Panel of Experts for Chechnya: Purposes and Prospects in Light of International Law,” 40 *Virginia Journal of International Law* 115, 118 (1999-2000). FN 10 citing 1995 UNYB 819-820, 925, UN Doc E/1995/23. Larson noted that only once between 1945 and 1989 had the UN authorized intervention in a civil conflict – Korea. Geoff Larson, “The Right of International Intervention in Civil Conflicts: Evolving

others, did not recognize Chechnya's independence, declared the conflict an internal one, thus removing aggression from the consideration, since one of the exceptions to the definition of aggressive war is an internal conflict.

The United States also classified the war as an "internal matter" and compared it to the Civil War in the United States (as the Soviets had done in numerous speeches in the past when they accused the United States of intervening in a civil action).¹⁴ The United States continued engagement with Russia so as not to jeopardize its relationship with Yeltsin and Russia's perceived political democratization and economic reform.¹⁵ In fact, a US State Department spokesman commented that the United States had been aware of the situation in Chechnya for some time but attributed it to Russia moving against a "very crime-ridden and corruption-ridden province."¹⁶ In an article that addressed the question of whether Russia legally acquired the territory of Chechnya so as to determine if Chechnya was in fact an independent state after 1991, it was concluded that it might well be difficult to assert that Chechnya was not part of Russia.¹⁷

International Law on State Sovereignty in Observance of Human Rights and Application to the Crisis in Chechnya," 11 *Transnational Law and Contemporary Problems* 251, 266 (2001). He noted the only reason that happened was the absence of the Soviet Union from the Security Council meeting on the subject. He also noted Vietnam, which was not sanctioned by the UN and constituted unilateral intervention "not supported under international law or by the United Nations." He noted Grenada and Hungary were also unilateral. That changed on 25 August 1990 when the UN authorized intervention in Kuwait. This was followed by intervention on a human rights basis in Somalia, Haiti and Bosnia. (267-269) Russia blocked UN intervention in Kosovo but could not block NATO from intervening in response to reported human rights violations. (271).

¹⁴ Ibid., 145. In another Report by the Commission on Security and Cooperation in Europe, titled "The War in Chechnya and Russian Civil Society," 17 June 2004, (Washington, 2005) it was noted by one of the commentators that President Clinton, while in Moscow in April 1996, gave his opinion that Chechnya was an internal affair, comparable to the US Civil War. (12).

¹⁵ Gail W. Lapidus, "Contested Sovereignty: the Tragedy of Chechnya," *International Security* 23, no. 1 (Summer, 1998): 5-49, 36.

¹⁶ Ibid., citing FN 66, US State Department daily press briefing, 12 December 1994.

¹⁷ Thomas D. Grant, "A Panel of Experts for Chechnya," 191. He also suggested that multilateral organizations had avoided suggestion that this was an international conflict. (118) He noted as part of the reasoning that Chechnya was not independent earlier and that there had been no third-party state recognition of Chechnya. (117). Peter Daniel DiPaola, "A Noble Sacrifice? *Jus ad Bellum* and the International Community's Gamble in Chechnya," 4 *Indiana Journal of Global Legal Studies* 435, 436-7 (1996-1997). Dipaolo contended the opposite, that it was not an internal conflict but an international one and UN Charter articles 2(4) and 51 should apply. He maintained that Chechnya had a recognizable right of self-determination because the government of Russia did not represent the people of Chechnya.

Many governments not only saw the Chechen conflict as an internal matter, they also “did not wish to establish precedents that would weaken their efforts to deal with troublesome issues of minority secessionism or terrorism.”¹⁸ Russian analyst Andrei Kortunov reported on the Western reaction in 1995. He concluded, “[s]o far, the events in the North Caucasus have not led to any even halfway serious crisis in relations between Russia and the West... our leading Western partners have, on the whole, reacted to the ‘pacification’ in Chechnya with Olympic calm.”¹⁹ The European Union delayed implementation of a pending partnership agreement with the Russian Federation, stating, “We don’t dispute that Chechnya is part of the Russian Federation... but we do have serious concern – verging on indignation – at the way a political problem is being addressed by military means.”²⁰ Indignation aside, the First Chechen War lasted until 1996.

Though labeled an internal situation, the resulting settlement offered an international solution. The Khasaviurt Accords codified that international law should govern the relations between Chechnya and Russia. Russia, on the one hand, claimed that Russian sovereignty and the Russian Constitution took priority over Chechnya’s right of self-determination.²¹ The Khasaviurt Accords left open the status of Chechnya for five years. They stated a treaty between the two, governed by the norms and principles of international law, was to be reached by 31 December 2001. The Treaty on Peace and the Principles of Mutual Relations between the Russian Federation and the Chechen Republic of Ichkeria was signed 12 May 1997. It consisted simply of the following language:

The esteemed parties to the agreement, desiring to end their centuries-long antagonism and striving to establish firm, equal and mutually beneficial relations, hereby agree:

¹⁸ Lapidus, 41.

¹⁹ Ibid. 37, citing FN 70, Andrei Kortunov, “The Quasi-State and the West,” *Moskovskie Novosti* 8-15 January 1995, p. 9 as cited in the *Current Digest of the Post-Soviet Press*, 47, no.1 (1 February 1995), 11.

²⁰ Ibid., 38, citing FN 73, Tyler Marshall, “EU Delays Pact over Chechnya,” *Los Angeles Times*, 6 January 1995, A10.

²¹ Larson, “The Right of International Intervention in Civil Conflicts,” 257.

1. To reject forever the use of force or threat of force in resolving all matters of dispute.
2. To develop their relations on generally recognised principles and norms of international law. In doing so, the sides shall interact on the basis of specific concrete agreements.
3. This treaty shall serve as the basis for concluding further agreements and accords on the full range of relations.
4. This treaty is written on two copies and both have equal legal power.
5. This treaty is active from the day of signing.²²

In contrast to previous treaties, this was a very simple, short agreement basically agreeing to agree later. By virtue of hindsight, we know that the peace did not last long and that the Russian troops again entered Chechnya in 1999. However, Anatol Lieven's conclusion still applied. He concluded, "A striking thing about the Chechen War, as seen from the perspective of the year after its close, is how little difference it seems to have made in the short term to the governments or the underlying political and economic orders in either Russia or Chechnya."²³

Once again we see not so much change as continuity with Russia's actions. As with Vietnam and Korea, the Russian government labeled Chechnya an internal conflict, although this time it was an internal conflict involving them. This placed them within an exception to the definition of aggression. The international community agreed. The opposition was couched under different terms

²² The Treaty on Peace and the Principles of Mutual Relations between the Russian Federation and the Chechen Republic of Ichkeria was signed 12 May 1997, <http://www.incore.ulst.ac.uk/services/cds/agreements/pdf/rus2.pdf> (accessed 13 February 2009). For further discussion see Wendy Turnoff Atrokhov, "The Khasavyurt Accords: Maintaining the Rule of Law and Legitimacy of Democracy in the Russian Federation Amidst the Chechen Crisis," 32 *Cornell International Law Journal* 367, 379 (1999). Atrokhov concluded that the Russian Federation intended sovereignty of the republic and the agreement's self-determination provisions, as those that would later be established in a bilateral treaty between the Russian Federation and the Republic of Chechnya. (380).

²³ Anatol Lieven, *Chechnya: Tombstone of Russian Power* (New Haven and London: Yale University Press, 1998), 13. See also Svante E. Cornell, "The War Against Terrorism and the Conflict in Chechnya: A Case for Distinction," 27 *Fletcher F. World Affairs* 167, 168 (2003) and Anna Matveeva, "Chechnya: Dynamics of War and Peace," *Problems of Post-Communism* 54, no. 3 (May/June 2007): 3-17. Mentioned by Lieven on page 157, and expounded on by Bakhtiyar Tuzmukhamedov, "The implementation of international humanitarian law in the Russian Federation," *Current Issues and Comments* 85 (June 2003): 385-396, the Constitutional Court of the Russian Federation heard a case brought against Yeltsin in July 1995. The Russian Duma charged him with illegal use of armed force in launching a war against Chechnya. He was exonerated. The Court was asked to review the constitutionality of the use of armed force to quell the Chechen insurgency and several other decrees by Yeltsin. The Constitutional Court made general references to the Geneva Convention but noted that it "lacked authority to review specific acts committed by parties to the non-international armed conflict in Chechnya." (395)

though, those of humanitarian law. The opposition was however, muted. This time accommodations with the West were not used as leverage to stop the fighting so those accommodations did not play a strong role in its cessation as they did with Korea and Afghanistan. As we have seen so many times now, Russian Federation military action, like that of the Soviet Union, was allowed to run its course under their terms.

David Kennedy called lawfare the art of managing law and war together.²⁴ His idea of lawfare, he claimed, required an “active strategy by military and humanitarian actors to frame the situation to their advantage.” These professionals “make strategic assessments about the solidity of the boundary between war and peace all the time, insisting on the absolute privilege to kill or the inviolability of those outside combat when it seems more advantageous than an assessment of proportionality and vice versa.”²⁵ The First Chechen War showed the Russian Federation’s ability to continue walking this fine line as the Soviet Union had done in the past.

²⁴ David Kennedy, *Of Law and War* (Princeton University Press, 2006), 125.

²⁵ Ibid.

INTERNATIONAL CODIFICATION OF AGGRESSION

Before and after the First Chechen War, the international community, with strong support from the Soviet and Russian Federation governments, produced further codification of the definition of aggression based on the same definition from the 1933 London Convention. After almost five decades of work, the ILC produced the 1991 Draft Code of Crimes Against Peace and Security of Mankind.²⁶ It outlined aggression as follows:

PART TWO

CRIMES AGAINST THE PEACE AND SECURITY OF MANKIND

Article 15. Aggression

1. An individual who as leader or organizer plans, commits or orders the commission of an act of aggression shall, on conviction thereof, be sentenced [to...].
2. Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations.
3. The first use of armed force by a State in contravention of the Charter shall constitute *prima facie* evidence of an act of aggression, although the Security Council may, in conformity with the Charter, conclude that a determination that an act of aggression has been committed would not be justified in the light of other relevant circumstances, including the fact that the acts concerned or their consequences are not of sufficient gravity.
4. Any of the following acts, regardless of a declaration of war, constitutes an act of aggression, due regard being paid to paragraphs 2 and 3:
 - (a) the invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;
 - (b) bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;
 - (c) the blockade of the ports or coasts of a State by the armed forces of another State;
 - (d) an attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;
 - (e) the use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement, or any extension of their presence in such territory beyond the termination of the agreement;
 - (f) the action of a State in allowing its territory, which it has placed at the disposal of

²⁶ For further comment see M. Cherif Bassiouni, *Commentaries on the International Law Commission's 1991 Draft Code of Crimes Against Peace and Security of Mankind*. (Association Internationale De Droit Pénal: Érès, 1993).

- another State, to be used by that other State for perpetrating an act of aggression against a third State;
- g) the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein;
- (h) any other acts determined by the Security Council as constituting acts of aggression under the provisions of the Charter.
5. Any determination by the Security Council as to the existence of an act of aggression is binding on national courts.
6. Nothing in this article shall be interpreted as in any way enlarging or diminishing the scope of the Charter of the United Nations including its provisions concerning cases in which the use of force is lawful.
7. Nothing in this article could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist regimes or other forms of alien domination; nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration.

An individual who as leader or organizer establishes or maintains by force or orders the establishment or maintenance by force of colonial domination or any other form of alien domination contrary to the right of peoples to self-determination as enshrined in the Charter of the United Nations shall, on conviction thereof, be sentenced [to...].²⁷

The 1991 version included everything to date and more. Between the 1991 and 1996 drafts, the Russian Federation representative to the 1992 and 1993 ILC, Vladlen Vereshchetin, demonstrated the same tenacity as those representing the Soviet Union in international commissions over the past five decades. He routinely added to the conversation with clarifying points or questions regarding the substance or procedure of the draft.²⁸ At that time it still looked more like General Assembly Resolution 3314 (XXIX) than the Nuremberg definition. However, by 1996, when Igor

²⁷ International Law Commission (ILC) 1991 Draft Code of Crimes Against Peace and Security of Mankind, *Report of the International Law Commission*, 43rd Sess. 29 April - 19 July 1991, 46th Sess. Supp. (no.10), A/46/10. http://untreaty.un.org/ilc/documentation/english/A_46_10.pdf. (accessed 10 February 2009).

²⁸ *Yearbook of the International Law Commission* 1992, Vol. I, Summary records of the meetings of the forty-fourth session, 4 May – 24 July 1992. (United Nations, New York and Geneva, 1994) and *Yearbook of the International Law Commission* 1993, Vol. I, Summary of records of the meetings of the forty-fifth session, 3 May - 23 July 1993, (United Nations, New York and Geneva, 1995).

Ivanovich Lukashuk was the Russian Federation's representative, the 1991 version had morphed into the Nuremberg language of Crimes Against Peace focused on individuals. Fully supportive, by the 2441st meeting on 13 June 1996, Lukashuk stated, "that the Commission had been considering the article on aggression for many years; probably no other article had been the subject of so many versions. Having worked on the article for so long, the Commission had succeeded in producing the best draft. There was no reason not to adopt it in its present form."²⁹ The 1996 Draft Code, in its final form, read as follows:

PART TWO

CRIMES AGAINST THE PEACE AND SECURITY OF MANKIND

Article 16

Crime of aggression

An individual who, as leader or organizer, actively participates in or orders the planning, preparation, initiation or waging of aggression committed by a State shall be responsible for a crime of aggression.³⁰

The contrast is stark, to say the least. The 1991 Code included twelve crimes including aggression, threat of aggression, colonial domination, intervention, apartheid, training of mercenaries and willful and severe damage to the environment, among others.³¹ Reservations were expressed by the ILC members that the 1991 version contained too many articles and should be trimmed down. The final 1996 version contained only four: aggression, genocide, crimes against

²⁹ *Yearbook of the International Law Commission 1996*, Vol. I, Summary records of the meetings of the forty-eighth session, 6 May - 26 July 1996. (United Nations, New York and Geneva, 1998), 2441st Meeting, 13 June 1996 at 10:05 am, 61.

³⁰ Draft Code of Crimes against the Peace and Security of Mankind 1996. Text adopted by the International Law Commission at its forty-eighth session, in 1996, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (at para. 50). The report, which also contains commentaries on the draft articles, appears in *Yearbook of the International Law Commission, 1996*, vol. II (Part Two). http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/7_4_1996.pdf. (accessed 10 February 2009).

³¹ Rosemary Rayfuse, "The Draft Code of Crimes Against Peace and the Security of Mankind: Eating Disorders at the International Law Commission," 8 *Criminal Law Forum* no. 1, 43, 47 (1997).

humanity and war crimes.³² Although another attempt at codification, as a draft, the Code did not have the sway of law. Nor did it determine state actions that constitute aggression. At the time, however, internally Russia was doing a great deal more to codify both adherence to international law and the definition of aggression.

³² Ibid.. 49. Note the similarity to the crimes prosecuted at Nuremberg.

INTERNAL CODIFICATION OF AGGRESSION

Following major national upheaval, the Constitution of the Russian Federation was adopted by national referendum on 12 December 1993 (hereafter the 1993 Constitution).³³ It provided increased presidential and judicial powers among many other pertinent areas, but for our purposes, the most important was incorporation of international law. Article 15(4) of the 1993 Constitution stated that international law and international treaties made up an integral part of the Russian legal system. It further stated, “if an international treaty of the Russian Federation establishes rules other than those stipulated by the law, the rules of the international treaty shall apply.”³⁴ Gennady M. Danilenko and William Burnham pointed out that two features of article 15 were outstanding. First, they noted the fact that *all* international law was incorporated into the national legal system, including treaties, and second, that treaty law took precedence over domestic Russian law.³⁵ Bakhtiyor Tuzmukhamedov cautioned, however, that a “mere reference to an international treaty or decision in an opinion of a domestic judicial authority does not amount to the application of international law.”³⁶ As early as the 1950s, Soviet jurist V. I. Lisovski maintained that the decrees

³³ The Constitution of the Russian Federation was adopted by national vote on December 12, 1993. The Constitution came into force on the day of its official publication. The text of the Constitution was published in *Rossiiskaia Gazeta* as of December 25, 1993. <http://www.constitution.ru/en/10003000-01.htm>. (accessed 9 February 2009). See also George Ginsburgs, “The Struggle for Law in Post-Soviet Russia,” in András Sajó, *Western Rights?: Post-Communist Application* (Hague, Netherlands; Boston: Kluwer Law International, 1996), 53. Ginsburgs noted that in Article 2, a person’s rights and freedoms were of supreme value. He saw this as a change in thought from the state being higher than the law, to the law being higher than the state.

³⁴ The Constitution of the Russian Federation 1993, Article 15(4).

³⁵ Gennady M. Danilenko and William Burnham, *Law and Legal System of the Russian Federation*, 2nd ed. (Parker School of Foreign and Comparative Law, Columbia University: Juris Publishing, Inc., 2000), 29. W. E. Butler, *The Law of Treaties in Russia and the Commonwealth of Independent States: Text and Commentary* (Cambridge University Press: 2002), 1 noted the history of treaty incorporation into Soviet and Russian law: The Decree on the Procedure for the Conclusion of International Treaties of the USSR (1925), Decree on the Procedure for the Submission of International Treaties and Agreements Concluded in the Name of the USSR for Approval, Confirmation, and Ratification of the Government of the USSR (1925), Law on the Procedure for the Ratification and Denunciation of International Treaties of the USSR (1938), Law on the Procedure for Conclusion, Performance, and Denunciation of International Treaties of the USSR (1978), (the 1978 USSR Law was replaced by the post-Soviet CIS states).

³⁶ Tuzmukhamedov, “The implementation of international humanitarian law,” 386. For the edification of the reader, a resolution was adopted by the Plenum of the Supreme Court of the Russian Federation: No. 5 Moscow 10 October 2003, “On application by courts of general jurisdiction of the commonly recognized

and decisions of these international bodies, as long as they were not contrary to the basic principles of international law, were “obligatory.”³⁷

Regarding international treaties, William Butler commented on the Preamble to the Federal Law on International Treaties of 15 July 1995.³⁸ He noted it reflected a significant change to the traditional Soviet commentary that treaties were the traditional source of international law. The treaty was still given recognition but here “[i]nternational treaties form the legal foundation of inter-State relations and promote the maintenance of universal peace and security and the development of international cooperation in accordance with the purposes and principles of the United Nations.”³⁹ Article 103 confirmed that the UN Charter would prevail over an international treaty.⁴⁰ We have seen UN Charter references in many of the preceding non-aggression and friendship treaties in the past. This has not precluded the Soviet Union and now possibly the Russian Federation from manipulating the UN system. The Security Council veto has allowed them to take actions they desired without formal sanction. They used the UN as a pulpit for propaganda against the United States. They also used the UN as a forum to promote their definition of aggression and aggressive war. Though the codification of the concepts may be remarkable this study predicts application in the context of lawfare will remain consistent with that of previous decades.

Just as incorporation of international law into the Constitution of the Russian Federation and the Federal Law on International Treaties, the Criminal Code of the Russian Federation (hereafter 1996 Criminal Code), which took effect on 1 January 1997, produced changes in the new version as

principles and norms of the international law and the international treaties of the Russian Federation” which clarifies the use substantially. See <http://www.supcourt.ru/EN/resolution.htm>. (accessed 13 February 2009).

³⁷ Jan F. Triska and Robert M. Slusser, “Treaties and the Sources of Order in International Relations: The Soviet View,” 52 *American Journal of International Law* 699, 716 (1958).

³⁸ Sobranie Zakonodatelstva Rossiiskoi Federatsii SZ RF, 17 July 1995, No. 29, Art. 2757.

³⁹ Butler, *The Law of Treaties in Russia*, 5-6. Citing Federal Law of 15 July 1995, SZ RF (1995), no. 29, item 2757. Butler noted that Article 15 of the 1993 Constitution and the Preamble to the 1995 Law flip the priority of generally recognized norms of international law and treaties, leaving some ambiguity in their function within the Russian legal system.

⁴⁰ Ibid., 6.

well.⁴¹ William E. Butler commented that the social values on which the code was based were the same as those of the 1993 Constitution regarding international law.⁴² Anatolyi Naumov noted that “[f]or the first time in Russia’s history, the Criminal Code separately provides for crimes against the peace and security of mankind.”⁴³ Having now incorporated international law into its national law, regarding the crime of aggression, complementarity applied. Complementarity, in this case, refers to the concept that allows state jurisdiction over a crime that is listed in the Rome Statute, such as Crimes Against Peace, unless the state is unable or unwilling to proceed or is conducting the investigation in bad faith.

The specific reference to aggression and aggressive war in the Criminal Code read as follows:

Article 353. Planning, Preparing, Unleashing, or Waging an Aggressive War

1. Planning, preparing, or unleashing an aggressive war shall be punishable by deprivation of liberty for a term of seven to fifteen years.
2. Waging an aggressive war shall be punishable by deprivation of liberty for a term of 10 to 20 years.

Article 354 Public Appeals to Unleash an Aggressive War

1. Public appeals to unleash an aggressive war shall be punishable by a fine in the amount of 500 to 700 minimum wages, or in the amount of the wage or salary, or any other income of the convicted person for a period of a five to seven months, or by deprivation of liberty for a term of up to three years.
2. The same deeds, committed with the use of the mass media or by a person who holds a state post of the Russian Federation or a state post of a subject of the Russian Federation, shall be punishable by a fine in the amount of 700 to 1,000 minimum wages, or in the amount of the wage or salary, or any other income of the convicted person for a period of seven to twelve months, or by deprivation of liberty for a term of two to five years, with disqualification to

⁴¹ Anatolyi V. Naumov, “The New Russian Criminal Code as a Reflection of Ongoing Reforms,” 8 *Criminal Law Forum* no. 2, 191, 192 (1997).

⁴² William E. Butler, *Criminal Code of the Russian Federation*, Fourth Edition (London: Wildy, Simmonds & Hill Publishing Ltd., 2004), xi.

⁴³ Ibid., 224.

hold specified offices or to engage in specified activities for a term of up to three years.⁴⁴

Also under this section, the Code lists manufacturing and dissemination of weapons of mass destruction, use of prohibited means or methods of conducting warfare, genocide, ecocide, use of mercenaries, and attacks on persons or institutions under international protection as crimes against peace and security of mankind.⁴⁵

Because we have the capability of hindsight, we know that the ICC was created by the Rome Statute, which entered into force on 1 July 2002. The implications of this, not only for national prosecution, but for the ICC as well, are important.

Astrid Reisinger and Pål Wrangle, submitted commentary on this topic to the “Conference on International Criminal Justice” held in Turin from 14 to 18 May 2007.⁴⁶ Reisinger noted that the ILC held that the crime of aggression was not suitable for domestic prosecution, and the 1996 Draft Code of Crimes against Peace and Security of Mankind limited the jurisdiction to the international criminal court unless the person being prosecuted was a national of the state.⁴⁷ However, the Rome

⁴⁴ The Criminal Code of the Russian Federation. Adopted by the State Duma on May 24, 1996. Adopted by the Federation Council on June 5, 1996. Federal Law No. 64-FZ of June 13, 1996 on the Enforcement of the Criminal Code of the Russian Federation Part II. Special, Section XII. Chapter 34 Crimes Against Peace and Mankind's Security. www.russian-criminal-code.com/PartI/SectionXII/Chapter34.html. (accessed 3 February 2008). Interestingly, however, article 353 does not seem to determine who can be prosecuted. Article 354 in paragraph B states that if the crime is performed by a person holding a state post in the Russian Federation, they will be held accountable in such a way. Article 353 shows no such restriction.

⁴⁵ Criminal Code of the Russian Federation, Chapter 34: Crimes Against Peace and Security of Mankind.

⁴⁶ Assembly of States Parties. Sixth Session. New York. 30 November – 14 December 2007. Advance Copy. ICC-ASP/6/INF.2. http://www.iccnow.org/documents/Turin_Report_English_21-08-07_ADVANCE_COPY.pdf. (accessed 3 February 2008).

⁴⁷ Ibid., Part III. The crime of aggression, E. “National legislation on individual responsibility for conduct amounting to aggression.” 35. Note: Draft Code of Crimes against the Peace and Security of Mankind, Text adopted by the International Law Commission at its forty-eighth session, in 1996, and submitted to the General Assembly as a part of the Commission’s report covering the work of that session (at para. 50). The report, which also contains commentaries on the draft articles, appears in *Yearbook of the International Law Commission, 1996*, vol. II (Part Two).

http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/7_4_1996.pdf. Article 16: Crime of Aggression states, “An individual who, as leader or organizer, actively participates in or orders the planning, preparation, initiation or waging of aggression committed by a State shall be responsible for a crime of aggression.” Article 8, Establishment of Jurisdiction states, “Jurisdiction over the crime set out in article 16 shall rest with an international criminal court.”

Statute looks initially for states to prosecute. At this time there are ninety national criminal codes prosecuting for the crime of aggression. These codes fall under generally one of two kinds: those implemented as provided by customary international law, and those that criminalized the conduct under national law, protecting largely domestic legal values.⁴⁸

Pål Wrangle further demonstrated the problems that might result from state prosecution of the crime of aggression. They are as follows:

1. admissibility of proceedings if a national court initiated a case prior to the ICC,
2. immunity of foreign leaders,
3. possibility of state doctrine being used to shield a leader from prosecution,
4. lack of a prior determination by a body such as the Security Council of a determination of aggression – taking the crime out of the jurisdiction of the ICC,
5. Article 8 of the 1996 Draft Code of Crimes Against the Peace and Security of Mankind, which limits jurisdiction to the ICC and the state of the aggressor, leaving open the argument on territoriality and state security, and
6. universal acceptance of the UN Security Council's jurisdiction.⁴⁹

The Russian Federation has already spoken on this issue by adoption of the crime of aggression into its national law. The general nature of the definition allowed them to define the crime and thus the causation and leadership question as they saw fit. This placed the Russian Federation in a position to argue that it was able and willing to proceed in the investigation of a crime under the Rome Statute so as not to fall under its jurisdiction. The Russian Federation had taken a page out of the Soviet playbook. This preemptive inclusion positioned it to take full advantage of international law, once again. This could also lead to a number of the problems Pål

⁴⁸ Ibid., 35.

⁴⁹ Ibid., F. "The principle of complementarity under the Rome Statute and its interplay with the crime of aggression." 37-38.

Wrange outlined, particularly shielding a potential leader from prosecution and basing their jurisdiction not solely on state boundaries but allowing for territorial or security issues to make national law applicable to a broader audience.

Continuing to cover all bases in its ongoing campaign, in 1999 the Russian Federation posed the following definition to the Preparatory Commission of the International Criminal Court for consideration:

For the purposes of the present Statute and subject to prior determination by the United Nations Security Council of an act of aggression by the State concerned, the crime of aggression means any of the following acts: planning, preparing, initiating, carrying out a war of aggression.⁵⁰

Notice this definition, though simple on its face, restricts the determination of an individual under the crime of aggression to use only upon a Security Council determination that the state committed an act of aggression. Not all state governments agree on this restriction. Because the ICC is specifically designed for individual prosecution, the Nuremberg version is appropriate but it leaves open the definition of aggression and aggressive war, as it did when it was first drafted. Though there is the language of the London Convention and General Assembly Resolution 3314 (XXIX) to give the Security Council or other authority guidance, it is not a definition that can be relied on for prosecution. The debate has continued since submission of this draft by the Russian Federation but at the time of writing, there has been no resolution. What we do know however, is that Russia has consistently incorporated its definition in every venue possible.

Despite the intentions behind *glasnost* and democratic transparency, the fall of the Soviet Union and the emergence of the Russian Federation, the 1999 submission demonstrates a continuation of the Soviet Union's definition of aggression and aggressive war. The definition is

⁵⁰ Proposal of the Russian Federation to the Preparatory Committee for the International Criminal Court. New York. 16-26 February 1999, 26 July -13 August 1999, 29 November -17 December 1999. PCNICC/1999/DP.12. <http://untreaty.un.org/cod/icc/documents/aggression/english/1999.dp12.pdf>. (accessed 16 January 2008).

consistent with that posed at Nuremberg and Soviet use of the terms planning, preparing, initiating and carrying out a war of aggression in the propaganda seen in this study against the United States. The Russian Federation had thus positioned itself to continue its use of the exceptions to the definition as demonstrated by the Soviet Union and its propagation of the definition in the international arena.

SUMMARY

Though the subjects of this chapter cover a diverse range, they are the culmination of the Soviet and now Russian Federation's use of lawfare. The international codification and statutes put forth by international bodies and the Russian Federation focused on the individual definition of the aggressor during this period. Because the bodies to which they apply, specifically the International Criminal Court (ICC) and Russian Courts, have authority over individuals, this was the focus they had to take. The definition posed remains true to that posed at Nuremberg. This unfortunately leaves the international aspect of prosecution in a bind because neither the Nuremberg Charter nor the Rome Statute defined aggression and though it falls under the jurisdiction of the ICC, it is not prosecutable because it is not defined. Though the Special Working Group on the Crime of Aggression has met on many occasions since 1999, a consensus has not been reached for a definition that would apply to the state.

The debate is ongoing as I write. Still hotly contested is the necessity of a ruling by the Security Council of a state as an aggressor, a delineated list of acts that constitute aggression and the applicability of this all to non-state actors. Basically, the same debate as we have seen in international bodies for decades. Possibly a subtle change has occurred as the result of a work-around to this logjam. Chechnya and Kosovo are examples of actions that are technically aggressive being declared violations of human rights. Those actions currently fall under the jurisdiction of the ICC. Though Russia incorporated a greater reliance on international law and humanitarian rights into its constitution and the definition of aggression in its criminal code, in Chechnya, it was still utilizing exceptions to General Assembly Resolution 3314 (XXIX), in this case an internal conflict, for its own purposes. We have seen the use of these exceptions many times in the past such as the interventions into Hungary, Czechoslovakia and Afghanistan. The Russian Federation was also

using the propaganda of aggression as recently as Kosovo against NATO. So, although *glasnost* and democratization can be credited with monumental changes, the concept of lawfare and its supporting propaganda regarding the use of the terms aggression and aggressive war continued under the Russian Federation.

Though Marxist-Leninist terms are gone, and the excuse to support interventions to suppress counter-revolution in other socialist countries no longer exists, the primary reasons used during Soviet times such as an invitation by the government, self-determination of a nation's people, and self-defense are still viable today. The Russian Federation, as did the Soviet Union, continues to use the international system to their advantage, particularly by positioning itself at the forefront of defining aggressive war, both internally and through international bodies.

CHAPTER 9

CONCLUSION

It is the easiest method of writing history well to people it with complete heroes and authentic villains. Not only are such characters artistically invaluable when found, but the discovery of them is actually assisted by the restful process of ignoring evidence. The task of examining evidence is irksome; and its reward is the risk of losing one's hero and almost certainly of losing one's villain.

British Historian F. A. Simpson¹

The Soviet Union and the Russian Federation practiced manipulation or exploitation of the international legal system to supplement military and political objectives, or lawfare, via the definition of aggression and aggressive war, from 1933 through 1999. Though also practiced by others, the Soviet Union and the Russian Federation stand out through their use of lawfare earlier and with a greater degree of consistent strategic implementation. They continued to operate on a dual front, both legally in international bodies and through international treaties, and illegally or quasi-legally, through manipulation or exploitation of the system to supplement their military agenda. The consistent definition for aggression and aggressive war lent a degree of predictability to future actions of other states and international bodies such as the UN. The Soviet Union and Russian Federation used the structure they were instrumental in setting up consistently to serve their political and military purposes.

The strategic implementation of non-aggression treaties to set the stage for future military action by the Red/Soviet Army or to restrict action from other armies was practiced repetitively

¹ Ilya Gaiduk, *The Soviet Union and the Vietnam War*, 246, citing FN 256 F.A. Simpson, *Louis Napoleon and the Recovery of France* (London, 1960).

by the Soviet Union with states such as Finland, Latvia, Estonia, Poland and others. The preconceived binding of other countries, such as those of the Warsaw Pact, to enable the Soviet Union to intervene militarily and at least auspiciously claim it was in adherence to international law and treaty obligations demonstrated the dominion the Soviet Union had over the use of lawfare as a true supplement to military action. Scenarios such as the use of the definition of aggression and aggressive war by the jurists at Nuremberg and continuing propagation before international bodies such as the UN were not, taken by themselves, uses of lawfare. They were an example of strategic employment, within a legal context, to set the stage of their use later to supplement military strategy. The combination of lawfare with propaganda or media manipulation was also perfected by the Soviet Union as evidenced in both Korea and Vietnam.

Grigorii Ivanovich Tunkin, in a paper presented at the III Anglo-Soviet Symposium on Public International Law held at the University of London on 20-22 March 1989, summed up the Soviet, and soon to be Russian Federation, interpretation of international law. “The creation of norms of international law is the process of bringing the wills of States into concordance. The content of the will of a State is its international legal position, which constitutes part of the foreign policy position of the State. In the course of forming new norms of international law there occurs the bringing into concordance of the international legal positions of States, bringing their wills into concordance relative to the content of rules of behavior and recognizing them to be legally binding.”² Tunkin went on to remind us that international law served as a means to program the behavior of states. It made up a “normative system making it possible to foresee the reaction of other actors in the inter-States system to particular actions of a State.”³

² G.I. Tunkin, “On the Primacy of International Law in Politics,” in William E. Butler, ed. *Perestroika and International Law*, (Martinus Nijhoff Publishers: Dordrecht/Boston/London, 1990), 5-6.

³ Ibid., 7.

A primary tool of the Soviet Union to control behavior of these states was the treaty. The progenitor of this form of lawfare as it concerns aggression and aggressive war is the definition put forth by Maxim Maximovich Litvinov at the 1933 Conference for the Reduction and Limitation of Armaments. It declared the aggressor as the state that was first to declare war, invade via armed forces, bomb, or blockade another state. Specifically, it described situations that could not be used as justification: the internal situation of a given state, which included political or economic issues, alleged mal-administration, danger to foreign residents, revolutionary or counter-revolutionary movements, strikes or the establishment or maintenance of a political, economic or social order.

Both preceding and subsequent to this the Soviet Union negotiated several non-aggression treaties with neighboring states. The treaty with Finland, signed 21 January 1932, contained language forbidding aggressive action against each other. It also restricted either party from becoming a party to a treaty hostile to the other. The treaty with Latvia, signed 5 February 1932, also contained these prohibitions but further codified that neither state was to take part in treaties aimed at economic or financial boycott against the other. The pact of non-aggression with Poland, signed 25 July 1932, further added that should one of the parties be attacked by a third state, the other party to the treaty agreed not to aid the aggressor or become party to an agreement openly hostile to the other. The most prevalent and often cited treaty culminated in London on 3 July 1933. The Convention for the Definition of Aggression (London Convention) between the Soviet Union, Romania, Afghanistan, Estonia, Latvia, Persia, Poland and Turkey incorporated the language of all the treaties previously defining aggression in order to obviate any pretext for its use or justification. In the interest of general peace it sought to codify both specific examples of aggression and those instances that would not qualify as justification for

aggressive action. This document was referenced both at Nuremberg and virtually reproduced in the 1974 General Assembly Resolution 3314 (XXIX).

These treaties allowed the Soviet Union to control the situation during the buildup to WWII to some degree. Most of these treaties were concluded with neighboring states, with the objective of building a *cordon sanitaire* against outside invasion. This set the stage for the first examples of the Soviet Union violating these treaties when the situation justified it – from their perspective.

On 23 August 1939, the Soviet Union signed the Molotov-Ribbentrop Pact, with the secret protocol regarding the boundaries of Poland, in direct contravention to the treaty the Soviet Union signed with Poland just seven years earlier. This treaty bought the Soviet Union time against Germany at the expense of the Polish state. The excuse proposed by the Soviets was the collapse of the Polish government under the German army, danger to “brother Slavs,” and self-determination of the people of Poland since they were annexed illegally in 1921. Though these justifications were quasi-legal, they played well in the media.

Finland was the next state that had a non-aggression pact with the Soviet Union to see it violated by the Red Army during the Winter War. When the Finnish government refused to negotiate terms that the Soviet government thought necessary to secure their defense against possible invasion, the Red Army moved in. The result was the first time the League of Nations branded a state the aggressor. The Soviet Union, though formally labeled the aggressor and expelled from the League of Nations, ended up with what they wanted initially, possibly re-enforcing a valuable lesson in the art of lawfare.

Undaunted, the Soviet Union took the lead in the next phase of the use of the definition of aggression as a form of lawfare, this time against the individual. The target was the Nazi

leadership at the Nuremberg Trial. Years prior to the trial at Nuremberg, the Soviets set the stage through domestic prosecution. This was followed by well-prepared, well-stated and well-received arguments of the Soviet jurists at Nuremberg. As a result, not only was the individual charge of Crimes Against Peace codified, the stature of Soviet influence on international law took a leap forward.

Though the coordination between the US and Soviet jurists at Nuremberg was generally good, the Cold War placed them at odds. Korea was the first and most blatant instance of the Soviet use of lawfare to generate propaganda against an opponent. Initially, involvement in the Korean War was tentative on the part of the Soviet Union. Documents show the Soviet government warned the North Koreans of the problems of attacking the South and specifically of the probability of drawing the United States into the fray. Most importantly, lawfare took the form of propaganda against the US rather than massive Soviet troop participation.

Initially, the Soviet government took aim at the UN Security Council that had allowed the “police action” into what they termed an internal conflict in their absence. The Soviet Union continued its efforts to declare the US the aggressor for interfering in internal affairs of a state in the world media. The Soviet Union also continued its work on international committees on the definition of aggression, proposing the definition espoused in the London Convention to international bodies in 1951, 1952, 1954 and 1956.

Despite the propaganda and lawfare practiced in the early 1950s, 1956 saw the Soviet Union use the treaty it signed with Hungary and the Warsaw Pact as justification to intervene to keep a political regime in place and quell an internal revolution, both clearly codified by the Soviet government as reasons that do not amount to justification for aggression. Having just peacefully “allowed” Poland to quell its own riots, the Soviet government possibly felt

threatened by the possibility of setting a precedent for states of the Warsaw Pact withdrawing and forming their own, non-Soviet controlled governments. The Soviet government used the Warsaw Pact as justification to say that its troops were allowed to be used for collective defense at the request of the Hungarian government on 23 October 1956.

In 1957 the General Assembly finally declared that the Soviet Union likely violated Hungary's political independence, a committee of jurists, formed to investigate, declared that the Soviet Union also likely violated its own definition of aggression as well. However, as we have seen in the past, the result was not exceptionally detrimental to the Soviet Union. It ended up with its candidate in place for the foreseeable future.

Czechoslovakia was to see the same reaction on 20 August 1968 as Hungary did, when it attempted to implement a series of reforms during the Prague Spring. In violation of the non-aggression pact between the Soviet Union and Czechoslovakia signed on 4 July 1933 and the Warsaw Pact, the Soviet Union again tried to couch the invasion in terms of an invitation by the Czech government. This led to the Brezhnev Doctrine, which gave a name to the policy of intervention when a socialist country attempted to leave the fold.

The 1960s and 1970s saw an increase in the use of propaganda as a function of lawfare against the United States both in the 1962 Cuban Missile Crisis and the Vietnam War. Vietnam was another example of limited Soviet military involvement but huge Soviet use of propaganda branding its opponent the aggressor for intervening in the internal affairs of another state. Of primary importance during this period for our purposes, was the 14 December 1974 adoption of General Assembly Resolution 3314 (XXIX), defining aggression. It adopted the London Convention language to a large part, listing the acts that qualify as aggression and those that do

not qualify as justification for aggression. Unfortunately, as a resolution it does not have the force of law and has only been referred to by reference to parts of the definition subsequently.

The weakened position of the United States after Vietnam, combined with a strong belief in the Brezhnev Doctrine, culminated in the Soviet invasion of Afghanistan on 24 December 1979. Conversations between the government officials prior to the invasion not only outlined very relevant reasons for not invading militarily but explicitly detailed how these actions could be construed as aggression by their own definition. A treaty of Friendship, Goodneighborliness and Cooperation was negotiated between the two and signed on 5 December 1978. Of particular relevance in this document was the emphasis of relations being based on the UN Charter. Again, though, despite this treaty and the reasoned arguments otherwise, the Soviets invaded. This war did not go as the others had and the troops withdrew in 1989 without gaining a firm hold on the government or policies of Afghanistan. Although the UN considered the actions on many occasions, there was no formal designation of aggression against the Soviet Union.

The collapse of the Soviet Union and establishment of the Russian Federation redirected attention inward. Using the logic that Chechnya was part of the Russian Federation, therefore something to be handled internally, troops moved in on 1 December 1994. The first Russian intervention into Chechnya lasted almost two years. The most relevant part of this was the change in the use of the terms aggression and aggressive war to the humanitarian aspects of the invasion. The UN comments were couched in terms implying a humanitarian violation of the Russian Army against the Chechen people. Shortly thereafter, the NATO led humanitarian intervention into Kosovo became the latest example of a growing international emphasis on the result of the intervention instead of the act itself.

Though Marxist-Leninist terms were gone, and the excuse to support interventions to suppress counter-revolution in other socialist countries no longer existed, the primary reasons used during Soviet times such as an invitation by the government, self-determination of a nation's people, and self-defense are still viable today.

The individual definition of aggression was codified by the Draft Code of Crimes Against Peace and Security of Mankind in 1996, changing substantially from the General Assembly 3314-like language of its 1991 version. The definition of aggression also hit another roadblock with the International Criminal Court (ICC). In order to win consensus on the Rome Statute, it was decided to place Crimes Against Peace or aggressive war under the authority of the ICC but to put off its definition until no earlier than 2009. The Russian Federation put forth the definition based on the individual definition at Nuremberg as the definition they proposed for adoption by the ICC in 1999. There was, and is, ongoing debate regarding reference to a list of acts constituting aggression such as those listed in General Assembly Resolution 3314 (XXIX), determination of a state as the aggressor by the Security Council and non-state actors. However, the initial proposal remained consistent with what Igor Lukashuk called the correct definition as codified in 1996.

The Soviet and Russian Federation approach to defining aggression have changed little since 1933,⁴ and as Robert M. Cassidy found, the “Soviet and Russian Federation forces exhibited more continuity than change” as well.⁵ These premises confirm the consistent, continuous and calculated use of international law and particularly treaties as a form of

⁴ For another review of the period of the 1920s through 1969 see William E. Butler, Section 2. “Soviet Concepts of Aggression,” Chapter III, in M. Cherif Bassiouni and Ved P. Nanda, eds., *A Treatise on International Criminal Law*, Vol. 1 Crimes and Punishment. (Springfield, Ill.: Charles C. Thomas, 1973), 182-197.

⁵ Cassidy, “Russia in Afghanistan and Chechnya,” 50. In fact, he noted that the same officer that commanded the invasion on Czechoslovakia led the initial invasion of Afghanistan. Cassidy’s premise was that the Russian forces failed to adapt to a different type of warfare from the Soviet period into the later years.

asymmetrical lawfare used to manipulate or exploit the international legal system to supplement military and political objectives over the period from 1933 - 1999. The premises also confirm the other aspect of the duality of consistent and continuous espousal of the definition of aggression and aggressive war legally to international bodies.

Although much has happened since the definition of aggression was posed to the ICC in 1999, much has remained the same. Eduard Solovyev, director of the Theory of Policy Sector of the World Economic and International Relations Institute, Russian Academy of Sciences, reiterated the current position:

"The emphasis on Russia's support of the basic points of international law is interesting. International law has suddenly appeared as a sort of substitute for ideology. We no longer profess liberalism, democracy or any other sort of 'ism.' We are in favour of the law and in favour of peace throughout the world - and are ready to cooperate on this plane with all people of good will. This is the concept of 'armed neutrality' for the de-facto multipolar world which is being formed. True, there is one flaw here. It is clear that international law is a conventional system, and moreover, an evolving one. Our task is not only to preserve the museum-like inviolability of the basic principles of international law, but also to be in a position to make a competent evaluation of the need for changes. Here the concept is maximally terse - 'to assist in the codification and progressive development of international law, above all, that which is implemented under the aegis of the UN.'⁶

This statement could have been made by Litvinov regarding the League of Nations or any subsequent Soviet jurist regarding the UN. The use of international law for political and military purposes is not a new concept for the Russians. It is a tried and true system of lawfare and it is doubtful if the Russian Federation will change its approach in the near future. As we approach the deadline to define aggression in the Special Working Group on the Crime of Aggression, we can expect the Russian Federation representative to be leading the charge.

⁶ "Experts Note Changes In Russia's Foreign Policy Approach." Text of report by popular Russian newspaper *Moskovskii komsoomolets* on 22 July [Report by Andrei Iashlavskii, citing opinions of Russian political experts: "We Are No Longer a Great Power" #21 BBC Monitoring, Johnson's Russia List 2008-#138, 25 July 2008.

GLOSSARY OF ABBREVIATIONS AND ACRONYMS

- CPSU – (*Kommunisticheskaiia Partiiia Sovetskogo Soiuza*) Communist Party of the Soviet Union
CC CPSU – (*Tsentral'nyi komitet*) Central Committee of the Communist Party of the Soviet Union
CIA – Central Intelligence Agency (US)
Comintern – (*Kommunisticheskii internatsional*) Communist International
CZ RF – (*Sobranie zakonodatelstva Rossiiskoi Federatsii*) Collection of Legislation of the Russian Federation
DRA – Democratic Republic of Afghanistan
DPRK - Democratic People's Republic of Korea
G. A. Res. – General Assembly Resolution
ICC – International Criminal Court
ILC – International Law Commission
Izvestiia – *Izvestiia Sovetov Narodnykh Deputatov*, News of Soviets of People's Deputies of the USSR
KGB – (*Komitet gosudarstvennoi bezopasnosti*) State Security Committee
Krasnaia Zvezda – Red Star, published by the Ministry of Defense
LNTS – League of Nations Treaty Series
London Conference – The International Conference on Military Trials, 26 June – 8 August 1945
London Convention – Convention for the Definition of Aggression, signed 3 July 1933
NATO – North Atlantic Treaty Organization
PDPA – People's Democratic Party of Afghanistan
Pravda – “Truth,” published by Central Committee of the Communist Party of the Soviet Union prior to 1991
PRC – People's Republic of China
Politburo – (*Politicheskoe buro*) Political Bureau of the Central Committee of the Communist Party
RFE/RL – Radio Free Europe/Radio Liberty
ROK – Republic of Korea
RSFSR – (*Rossiiskaia Sotsialisticheskaiia Federativnaia Sovetskaia Respublika*) Russian Socialist Federal Soviet Republic
SALT – Strategic Arms Limitation Talks
SEATO – Southeast Asia Treaty Organization
SWGCA – Special Working Group on the Crime of Aggression
TASS – (*Telegrafnoe Agentstvo Sovetskogo Soiuza*) Telegraph Agency of the Soviet Union
UKFS – British Foreign State Papers
UN – United Nations
UNTS – United Nations Treaty Series
USSR – (*Soiuz Sovetskikh Sotsialisticheskikh Respublik*) Union of Soviet Socialist Republics
XDIA – Bibliographic reference to Arnold Toynbee, *Documents on International Affairs 1939-1946*, vol.1, 1951.

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