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IDEOLOGICAL AGGRESSION AND INTERNATIONAL LAW: SOVIET AND RUSSIAN *MALIGN INFLUENCE WITHIN LEGAL DOMAINS* (MILDS)

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This article offers a trans-disciplinary legal analysis of the evolution of aggression under international law. It asserts Soviet leadership in the establishment of the definition, but notes that some proposed conceptions of the Soviet theory were not officially adopted. This research also analyzes the 2019 work of Doctor Chernichenko of the Russian Federation and his assertion that the Soviet notion of ***ideological aggression*** *should be resurrected given the unique and propagandistic tendencies of 21st century interstate conflict.* ***Ideological aggression*** *was originally a Soviet proposal first introduced to the United Nations Special Committee on the Question of Defining Aggression in 1953. This study asserts that any attempt to implement such a concept will be dangerous and particularly damaging to the rule of law, both domestically and internationally. Such a concept will offer practitioners a method to avoid responsibility for international transgression by claiming,* ***inter alia****, primacy in the employment of* ***ideological aggression****. This concept will also offer justification in the dismantling of coveted principles such as freedom of the press and freedom of speech. Those who employ such tactics do so duplicitously; simultaneously cherishing and subverting the international norms and principles that the greater international community holds dear. Finally, it will offer the practitioners of* ***Malign Legal Operations****, also known colloquially as lawfare, yet another instrument with which they may contain and exploit competitors under the auspices of international law. This amounts to* ***Malign Influence within Legal Domains*** *(MILDs), which is the ultimate form of asymmetry. The motives behind such a proposal to resurrect* ***ideological aggression*** *must be dually understood before any discourse surrounding* ***ideological aggression*** *may proceed in a serious manner.*

Keywords: Malign Influence within Legal Domains, Lawfare, Malign Legal Operations, International Law, Aggression, Ideological Aggression, Great Power Competition, Malign Influence.

The state's assertion of its interests should not be carried out by perversion or violation of international law.
S. V. Chernichenko

In the Spring of 2019, Doctor Stanislav Valentinovich Chernichenko[1] of the Institute of State and Law of the Russian Academy of Scientists published an article in *the Eurasian Journal of Law* titled "Ideological Aggression as the Use of Force in International Law" (Chernichenko, 2019). His research referenced the definition of aggression as ultimately put forth in the United Nations General Assembly Resolution 3314 (XXIX) of 1974. His premise was that certain particularities of the definition were left out in 1974, thus weakening the internationally accepted notion of aggression. To highlight these missing aspects, Dr. Chernichenko recalled proposals from the Union of Soviet Socialist Republics (hereinafter USSR or Soviet Union) to the United Nations Special Committee on the Question of Defining Aggression (The International Law Commission, 1953) from nearly seventy years past. He asserted that the Soviet notion of ***ideological aggression*** was

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"an attack on the information security of the state…a psychological preparation for the violation of peace" (Chernichenko, 2019) and indicated that this concept deserves revisiting given the complexities of 21st century interstate competition. This research seeks to contribute clarity and context to the discourse surrounding this concept, namely that resurrecting this Soviet proposal will have dangerous implications for both domestic and international legal domains. Domestically, *ideological aggression* offers justification for reductions in government transparency, accountability, freedoms of the press, and free speech. Internationally, this concept would offer the Kremlin and other revisionist actors another instrument of *Malign Legal Operations* with which it may contain adversaries, predict and manipulate State's behavior, exploit international norms, and to manipulate narratives for geopolitical gain.

In revisiting the Soviet perceptions of *ideological aggression*, Dr. Chernichenko offered perhaps the most impactful assertion of his article. He claimed that the state-victim of *ideological aggression* has the right to "resort to certain psychological measures of influence on the [it's] population" (Chernichenko, 2019). He noted that this is a potentially dangerous proposition, but it should not stop a state from responding to potential violations of *ideological aggression* under international law. His recollection of aggression from over half a century past is no coincidence, but is most certainly due to Moscow's sense of ownership over the concept itself. The Soviet Union was instrumental in putting forth a proposed definition of aggression years before the United Nations adopted a formal description of the term. In fact, it was under the League of Nations that the Soviets first brought eleven states together in the signing of a formal agreement on the nature of aggression in 1933. It is no wonder that the Russian Federation's leading international legal scholar is reminiscent of these previously proposed solutions. When considered alongside the Soviet Union's behavior at the time, however, it will become clear that the USSR's leadership in establishing international norms for aggression was intended to conceal its blatant violations of sovereignty throughout its near-abroad.

In reality, the Soviet Union consistently manipulated the international legal system in pursuit of its own geopolitical objectives in what amounted to a duplicitous approach to international law. On the one hand, the Soviets upheld strict observance to certain international norms and principles. On the other, however, they exerted Malign Influence within Legal Domains by employing disinformation to shape legitimacy under international law. In this sense, the Soviet Union operated both *within* and *without* the Rules-Based International Order (RBIO), amounting to an ultimate form of asymmetry. As Otto Von Bismarck opined, "We live in a wondrous time in which the strong is weak because of his moral scruples and the weak grows strong because of his audacity." The Russian Federation has adopted much the same approach to international law as its Soviet predecessor, both espousing international norms and universality while at the same time openly flouting them to achieve geopolitical objectives. These norms are perverted through disinformation to distract from its malign influence and malfeasance. Russian *Malign Legal Operations* in Georgia, Crimea, Eastern Ukraine, the Black Sea, and the Arctic are just a few examples of this present-day behavior.

This analysis seeks to explore Dr. Chernichenko's proposal, to review the development of aggression, to explore why the United Nations originally declined to adopt the Soviet notion of *ideological aggression*, and to warn against any attempt at a modern-day resurgence of the concept. This trans-disciplinary research was conducted primarily as an inductive, qualitative analysis of open-source media and government reports in addition to the examination of the applicable instruments of international law. The notion of aggression is reviewed through a historical and evolutive lens while the greater issue of malign influence is considered through a descriptive and conceptual model. In doing so, this article advances two primary arguments;

1. The Soviet Union led 20th century efforts to define *aggression,* to include *ideological aggression*, under international law. This was attempted as a form of disingenuous containment to manufacture a predictable international environment for later exploitation. These *Malign Legal Operations* (MALOPs) continue to this day as the Russian Federation overtly celebrates universality and a strict adherence to international norms while simultaneously contravening the very norms that it purports to uphold and protect.

2. While the principles of *ideological aggression* are not without merit, this Soviet and now Russian notion as a consideration in defining *aggression* under international law is dangerous and unnecessary.

A Brief History of Soviet Leadership in Defining *Aggression*

The formal definition of aggression was agreed upon in 1974 with the United Nations General Assembly Resolution 3314 (XXIX).[2] Of particular note for this discussion is article III, which highlighted specific acts of aggression. This United

[2] See Appendix A.

Nations' definition did not come about by happenstance or snap-committee, but rather over the course of more than half a century of development and consideration. To better understand the UN's ultimate definition, this analysis must begin on June 28th of 1919 with the Covenant of the League of Nations. Article 10 specifically highlights, but fails to define, the notion of aggression. "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" (Yale Law School Lillian Goldman Law Library, 1919). Despite the broad nature of the concept, some of the phrases such as "territorial integrity" and "political independence" will remain as central themes when the term is formally defined. Following this, on August 27th, 1928, the United States and fourteen other nations[3] signed the Briand-Kellogg Multilateral Treaty for the Renunciation of War. "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" (The United States and France et al., 1928). This opening line of the treaty strikes at the issue of aggression, and this document would go on to become the legal foundation for the notion of crimes against peace. The Soviet Union became a signatory member of the treaty just one month later, but took upon itself the responsibility to advance the discussion in determining what, exactly, constituted *aggression*. On July 3rd, 1933, ten countries signed the Convention for the Definition of Aggression in London.[4] It referenced the Briand-Kellogg Pact to highlight that aggression of all forms is prohibited, but noted that no such definition existed to specify what, exactly, constituted an aggressive act.

This effort, which was led by the Soviet Union and took place in their London embassy, deemed 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" (The Soviet Union et al., 1933). Article III of the treaty also referenced an annex, which sought to specify that aggression could not be justified by claiming certain *internal conditions* of a State ("its political, economic or social structure; alleged defects in its administration; disturbances due to strikes, revolutions, counter-revolutions, or civil war") or by citing the *international conduct* of a State ("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"). This same convention was signed on three consecutive days and all-told included eleven of the USSR's neighboring nations. From this point forward, the USSR employed its newfound conceptualization of aggression in a series of Non-Aggression Pacts with its neighboring states. The impetus for the USSR's determination to codify aggression via treaty-sponsorship stemmed from several previous attempts to create an internationally accepted definition for the term. The Soviets submitted a proposal to ban aggression at the conference on Disarmament in 1932, however, other potential state-parties had little interest in attempts to assign such specificity to the term due in part to their own ongoing violations and also due to concerns that being overly-prescriptive in the handling of aggression may give rise to alternate means by which a state's will can be imposed on others. Next, in 1945, the Charter of the United Nations included thirteen articles dealing specifically with "action with respect to threats to the peace, breaches of the peace, and acts of aggression" (Articles 39-51). As with the Covenant of the League of Nations, no specific definition was stated.

It was not until the Nuremberg Trials of 1945-46 that the matter was thrust once again into the international spotlight. It was at this time, in its pursuit of accountability following the crimes of WWII, that the International Military Tribunal was convened and the USSR became a key player in the conceptualization of aggression. *The Charter of the International Military Tribunal – Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis*, otherwise known as the Charter of the Nuremberg Tribunal, was formalized by the USSR, United Kingdom, United States, and France in 1945. It stipulated the specific concepts of crimes against peace, war crimes, and crimes against humanity. Specifically, Article 6 Paragraph (a) specified that crimes against peace involved the "planning, preparation, initiation, or waging of a war of aggression." On November 21st, 1945, before judges

[3] In addition to the United States; Australia, Belgium, Canada, Czechoslovakia, France, Germany, India, Ireland, Italy, Japan, New Zealand, Poland, South Africa, and the United Kingdom. 40 additional states later became signatories, including the USSR.

[4] See Appendix B.

from the USSR, Great Britain, the United States, and France, the American Justice Robert H. Jackson delivered the opening remarks for the prosecution. He opened by lamenting previous failures to codify the term *aggression*. "It is perhaps a weakness in this Charter that it fails itself to define a war of aggression. Abstractly, the subject is full of difficulty and all kinds of troublesome hypothetical cases can be conjured up. It is a subject which, if the defense should be permitted to go afield beyond the very narrow charge in the Indictment, would prolong the Trial and involve the Tribunal in insoluble political issues" (Jackson, 1945). Then, in a nod to previous efforts by the USSR, Justice Jackson thrust the USSR into the forefront of international legal discourse surrounding the term. "One of the most authoritative sources of international law on this subject is the Convention for the Definition of Aggression signed at London on July 3, 1933" (Jackson, 1945). He went on to cite the Soviet Convention for the Definition of Aggression almost verbatim, thereby solidifying the Soviet's leadership in this realm.

Just a few years later, during the United Nations' First Committee of its Fifth Session, the constituents of the Rules Based International Order came together once again to explore the concept of aggression. A principal task of the First Committee was to consider the question of the duties of States in the event of the outbreak of hostilities. On 4 November, 1950, the USSR proposed a draft resolution on the definition of aggression.[5] One may quickly recognize recurring themes in the Soviet conceptualization. This, or similar, definitions had been proposed before, but they had never accumulated the political momentum necessary to continue past the draft resolution stage. In this case, there was much debate, however the USSR garnered enough credibility in these matters from the Nuremberg Trials to warrant a second look. According to the summary record of the 289th meeting, 1st Committee, 5th session of the General Assembly in 1950, the Ukrainian Soviet Socialist Republic was unsurprisingly supportive of the draft resolution. It claimed that the Governments of France and the United Kingdom had been pursuing policies of aggression, thus ensuring that the Soviet definition was not adopted at the 1933 Conference for the Reduction and Limitation of Armaments. The representative of Turkey, however, was skeptical. He stated that an incomplete definition of aggression would enable any future aggressor to find pretexts to justify its actions. The USSR denounced this notion, stating that the draft contained only examples rather than a complete and authoritative library of aggression. The representative of the USSR responded to criticisms of its draft with no uncertain terms;

> "If the United Nations wished to take steps against the aggressor and to assist the victim, it should first define the concepts of aggression and of self-defence... It was the purpose of the United Nations to raise insurmountable obstacles against aggression and to provide for collective sanctions. It was therefore essential to define the concept of aggression, in order to give some guidance to the organs which would have to take collective measures against the aggressor and to assist the victim. Such a definition was also essential in order to prevent an aggressor from attempting to find excuses for his action" (United Nations General Assembly, 1950).

In characterizing opposition to the draft, the Soviets claimed that the proposal was an "embarrassment to those who feared its adoption might tie their hands" (United Nations General Assembly, 1950). The United States, United Kingdom, France, and many other nations did not support the resolution, mostly on the grounds that being overly prescriptive could create more opportunities for violations of the spirit of the resolution than it would prevent. In the end, the decision was made via Resolution 378B that the issue would be referred to the International Law Commission for further review and consideration, which the USSR vehemently opposed. "The USSR draft resolution should not be referred to the International Law Commission because the definition of aggression was a political, not a legal question" (United Nations General Assembly, 1950).

This issue found little momentum in the International Law Commission, which ultimately included the notion of aggression in the offences listed in its draft Code of Offenses against the Peace and Security of Mankind, but again failed to offer a specific definition. This task was not fully considered until the United Nations General Assembly's Resolution 688 of December 20th, 1952. It was at this point that a special committee of fifteen members[6], to include the USSR, was established to officially submit draft definitions of aggression. The result was the Report of the Special Committee on the Question of Defining Aggression (hereinafter Special Committee), which included a revised Soviet draft of the term which included a novel

[5] See Appendix C.

[6] Bolivia, Brazil, China, Dominican Republic, France, Iran, Mexico, Netherlands, Norway, Pakistan, Poland, Syria, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, and the United States of America.

concept; *ideological aggression*.[7] The USSR's leadership with respect to defining aggression would continue long after the Union had collapsed. The 2010 amendments to the Rome Statute defining the *crime* and *act* of aggression utilized the same verbiage and definitions originally championed almost a century earlier by the USSR (The International Criminal Court, 2010).

The Soviet notion and the **Russian recollection of *Ideological Aggression***

In 1953, the USSR submitted its definition of aggression as a draft resolution to the Special Committee, and it included several new concepts not previously captured in its earlier proposals. This came about thanks to the work of the Special Committee, whose task it was to not just define aggression but to conduct a thorough analysis of the necessity of such a term and to explore all relevant forms of aggression. As a result, the Soviet draft specifically included indirect aggression, economic aggression, and ideological aggression. While the verbiage was new, the conceptualizations were anything but. The issue of indirect or non-military aggression had been discussed at-length in previous sessions of the General Assembly. This includes documents such as Resolution 381 in November of 1950, which was an effort to "condemn all propaganda against peace and recommend the free exchange of information and ideas as one of the foundations of good-neighborly relations between the peoples." Examples of such activity included;

> (1) "Incitement to conflicts or acts of aggression
> (2) Measures tending to isolate the peoples from any contact with the outside world, by preventing the Press, radio, and other media of communication from reporting international events, and this hindering mutual comprehension and understanding between peoples;
> (3) Measures tending to silence or distort the activities of the United Nations in favour of peace or to prevent their peoples from knowing the views of other States Members" (The United Nations General Assembly, 1950).

China, Bolivia, and Mexico also submitted drafts for consideration by the International Law Commission, however none were as robust as the USSR's proposal and all harkened back to earlier Soviet definitions. In fact, the opening remarks of the Commission's report indicated that its very creation stemmed from the UNGA's referral of the Soviet's definition for further analysis. The Commission's report was 19 pages in length, and included a healthy discussion of the varying types of proposed forms of aggression. According to the Soviet draft resolution[8], acts of ideological aggression are those which;

> (a) encourage war propaganda,
> (b) encourage propaganda in favor of using atomic, bacterial, chemical and other weapons of mass destruction, and
> (c) promote the propagation of fascist-Nazi views, of racial and national exclusiveness, and of hatred and contempt for other peoples.

Critics of this concept included the United States, Great Britain, and Sweden. The principle U.S. concern was that "a pretext for attacking the freedom of the press might thereby be afforded. Aggressors undoubtedly used psychological methods. It could even be said that there was a psychological or ideological element in every aggression. The acknowledgement of such a fact did not, however, authorize anyone to state that any activity that might affect the views of men was aggression. It would be going too far to speak of ideological aggression. It would also distort the idea of aggression properly so-called by weakening the scope of the term and diminish its usefulness" (The International Law Commission, 1953). The United Kingdom added that the concepts of indirect, economic, and ideological measures did have merit, but did not have a clear place in accordance with the U.N. Charter. Article 2, Paragraph 4 of the Charter[9] made it clear that the use of force (i.e. armed aggression) was the principle concern and that the Charter offered no specific reference to ideological or economic aggression. This was reinforced by Article 51, which noted[10] that the right to self-defense was specifically of concern to "armed attack." Sweden, in turn, stated that anything included in the definition could later be used as a pretense for self-defense under Article 51, which could create a very dangerous precedent; "If, as is the case in the most recent Soviet draft definition, 'aggression' is to include 'indirect aggression', 'economic aggression' and 'ideological aggression,' it obviously follows that a right to self-defence by armed force is enjoyed, for example, when a State prevents another State from exploiting its natural resources or promotes

[7] See Appendix D.

[8] See Appendix D.

[9] "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." (UN Charter, Art 2 Para 4).

[10] Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations.

propaganda of fascist views, etc. Such an extension of the concepts of aggression and self-defence would, in the Government's opinion, be undesirable" (United Nations General Assembly, 1954).

Mr. Morozov, the USSR's representative, responded by highlighting "how exceptionally dangerous for international peace and security were the encouragement of war propaganda," and that "if the General Assembly adopted the USSR proposal, peace would be consolidated and the authority and role of the United Nations in maintaining international security would be enhanced" (The International Law Commission, 1953). Argentina agreed with this Soviet notion, suggesting that a definition must encompass the full range of possibilities; "Any definition adopted should be sufficiently broad to include not only the classical concept of armed aggression but other forms also, and particularly indirect forms, such as economic and ideological aggression, in which arms are not employed" (United Nations General Assembly, 1954).

In concluding its report, there was still some consternation over the very existence of a specific definition for *aggression*, never mind what it or any mention of *ideological aggression* should entail. This discussion continued for more than two decades until the UNGA's Resolution 3314 of 1974 codified the term. In the end, the U.N. utilized much of the exact verbiage proposed in previous Soviet definitions. The notion of *ideological aggression*, however, was left out.

In 2019, this definition was evoked by Dr. Chernichenko, the leading international legal scholar of the Russian Federation. "Discussing the issues of mutual penetration of ideology and politicization, we should pay attention to the problem of *ideological aggression*. For some period, the term has seemingly been forgotten. It is time to recall the Soviet proposal for a broad definition of aggression put forward at the UN in 1953" (Chernichenko, 2019). This notion, he opines, concerns the aggressive attack on the information security of the state, or also stated as;

> "'psychological preparation for the violation of peace'... Often its purpose is to achieve an outcome that, for whatever reason, cannot be obtained through armed aggression (e.g., destabilization of the situation in the country) or to create a moral and political climate conducive to subsequent armed aggression. Here we especially often see that the political and ideological components of the action of the state, which resorts to ideological aggression, are welded together. Ideological pressures can be called informational encroachment on the safety of the victim, thus posing a threat to peace" (Chernichenko, 2019).

He also argues that any assertion that armed aggression, as defined in Resolution 3314, is more dangerous than ideological aggression is completely subjective in nature. He was careful to question the ramifications of allowing ideological aggression to enjoy equal footing to armed aggression under the "self-defense" auspices of Article 51 of the UN Charter, because this could create an "unjustified expansion of the concept of self-defense and would essentially enable armed measures to respond to ideological aggression without the authorization of the Security Council (i.e. preventative self-defense)" (Chernichenko, 2019). In light of this admission, Dr. Chernichenko continued to build a case that, while ideological aggression does not constitute armed aggression, it absolutely falls into the category of threats to international peace. In this regard, he references Article 3 Paragraph (a) of the UN's 1974 definition of aggression (UNGA Resolution 3314), which qualifies aggression as, *inter alia*, "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" (United Nations Audiovisual Library of International Law, 1974). While this paragraph does reference armed forces (i.e. "troops"), Dr. Chernichenko notes that nowhere does it specifically state *armed* force or *armed* aggression. "It must be assumed that the use of force refers not only to the use of armed force, but also to the threat of its use, and a kind of informational, ideological process of encroachment (i.e. ideological aggression.)" He builds upon this argument by referencing Article 2 Paragraph 4 of the UN Charter, which states that "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state." It should be noted that this logic is in direct conflict with that of the United Kingdom in 1953. One might recall their previously discussed claims that these exact references to "armed force," which they interpreted specifically to be armed aggression, were precisely why *ideological aggression* is not in-line with the Charter. Regardless, Dr. Chernichenko utilized this reference in his claim that, while *ideological aggression* may not constitute a violation of territorial integrity, it most certainly infringes on the political independence of a state. Finally, in closing his foundational argument, Dr. Chernichenko noted that *primacy* must also apply to *ideological aggression* in the same way that it applies to armed aggression within Resolution 3314. He concluded

that the ideological aggressor is the first to commit the act of ideological aggression.

Given the above case presented by Dr. Chernichenko, he proposed that State-victims should ***not*** have a right to respond physically or in-kind (slander, deception, inflammatory appeals), but that the victim-state may resort to "certain psychological measures of influence on the population, along with the blocking of channels of hostile information" (Chernichenko, 2019). He also noted that these states may unilaterally cease diplomatic relations, stop official contacts, or even take measures of "material impact." All of this being said, Dr. Chernichenko asserted that ideological aggression deserves a "special category" within political considerations of aggression. He carefully noted that only the Security Council has the right "to decide whether or not a State has committed an act of ideological aggression as a threat to international peace" (Chernichenko, 2019).

Malign Influence within Legal Domains (MILDs)

It has been sufficiently established that the USSR took a leading and incredibly influential role in the decades-long 20th century struggle to define aggression under international law. It can also now be said, unequivocally, that the leading international legal scholar of the Russian Federation is recalling previously declined Soviet proposals by highlighting the modern utility of *ideological aggression*. To support the assertion that these conceptions were manipulated by the Soviet and now Russian governments, it is now necessary to review what, exactly, it means to exploit or "malignly influence" a legal domain. With respect to the law, and in this case Public International Law, what will be observed is a dual or mimetic application; the first is a seemingly genuine effort to uphold and support the international norms and institutions that comprise international order. The second to be observed is a simultaneous and *malign* effort to subvert and exploit these same norms and institutions for geopolitical gain. Moving forward, this concept will be referred to as Malign Legal Operations (MALOPs), or "*the exploitation of legal domains by employing disinformation to shape legitimacy, justify violations, escape legal obligations, contain adversaries, and ultimately to advantageously revise the rule of law"* (Fisher, 2019). Specifically, this article deals with MALOPs within Public International Law. For the purposes of this analysis, a subset of this concept will be referred to as *Malign Influence within Legal Domains* (MILDs). Mr. Anton Shekhovtsov of the Free Russia Foundation characterized Malign Influence as "soft coercion, sharp power, mimetic power and dark power with the intent to mislead and confuse democratic nations and their leadership, hence the influence emanating from these approaches is inevitably negative in the normative sense and is termed here as malicious" (Shekhovtsov, 2020). In this case, with the United Nations being an institution built upon democratic principles (The United Nations, 2020), one should note that there may exist such Malign Influence not only against nations, but against institutions such as the United Nations and the Rules-Based International Order itself, as underpinned by international law. With this in mind, it can be said that *Malign Influence within Legal Domains* (MILDs) is *the malicious, coercive, subversive, or duplicitous behavior of a state or entity within or against the domestic or international legal domains concerning a target state, individual, organization, or international institution.*

No respectable introduction to the above concepts can be complete without first becoming familiar with the notion of *lawfare*. There has been a great deal of discourse surrounding this portmanteau of *law* and *warfare* over the past twenty years, particularly since the Russian Federation's invasion of Georgia in 2008 and subsequent invasion of Ukraine in 2014. There has also been a great deal of discourse analysis concerning this term (Fisher, 2019; Volkova, 2019). The first and most popular definition comes from retired Major General Charles Dunlap, who first offered the following definition in 2001 and refined it in 2011; "the strategy of using – or misusing – law as a substitute for traditional military means to achieve an operational objective" (Dunlap, 2011). Dr. Christie Scott Bartman is another international legal scholar whose research in the field of lawfare was foundational to this work. She offered another definition with a focus not just on the military realm, but with particular attention paid to the ultimate pursuit of political objectives with a healthy consideration for propaganda.

> "**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 legally, politically, and equally as important, through the use of propaganda" (Bartman, 2010).

The NATO Supreme Headquarters Allied Powers Europe (SHAPE) Office of Legal Affairs also offered a broad definition in 2019 that considered all instrumental applications of legal domains.

> Legal Operations: "The (ab)use of law by actors to either legitimize their own actions, positively impact their capabilities, or prop-up its strategic interests; or to delegitimize the actions of their opponents, negatively impact their capabilities or undermine its strategic interests."

Ultimately, it was the Council of Europe that highlighted the fundamental problem of *Malign Influence within Legal Domains* in its April 2018 draft resolution 14523 concerning "hybrid warfare";

> "…there is no universally agreed definition of "hybrid war" and there is no "law of hybrid war". However, it is commonly agreed that the main feature of this phenomenon is "legal asymmetry", as hybrid adversaries, as a rule, deny their responsibility for hybrid operations and try to escape the legal consequences of their actions. They exploit lacunas [gaps] in the law and legal complexity, operate across legal boundaries and in under-regulated spaces, exploit legal thresholds, are prepared to commit substantial violations of the law and generate confusion and ambiguity to mask their actions" (The Council of Europe, 2018).

With a foundational understanding of these concepts in place, this analysis may now depart the realm of theory by considering Soviet-Russian leadership in defining aggression, along with the notion of *ideological aggression*, through the lens of *Malign Influence within Legal Domains*.

Soviet Malign Influence and the Definition of Aggression

Grigorii Ivanovich Tunkin was the Soviet Union's leading international legal scholar. In 1989, he succinctly summarized the Soviet approach to international law by describing in terms of predictability and control; "the creation of norms of international law is the process of bringing the wills of States into concordance… [a] normative system making it possible to foresee the reaction of other actors in the inter-States system to particular actions of a State" (Bartman, 2010). This perception of international norms is telling, and describes what is essentially the pursuit of predictability through international legal mechanisms. The manifestation of this philosophy could be seen in Soviet interactions with its neighbors, or near-abroad. For example, both Finland and then-Russian Soviet Federative Socialist Republic were parties to the Covenant of the League of Nations of 1919. Furthermore, the USSR and Finland were parties to the Soviet-Finnish Non-Aggression Pact of 1932 and 1934, the Kellogg-Briand Pact of 1928, and the Soviet-led London Convention on the Definition of Aggression in 1933. Despite all of this affirmation of mutual respect and good neighborliness, the USSR invaded Finland in late 1939. The purported objective was to create a security buffer around Leningrad, and the Soviets staged an artillery strike on a frontier border-town to manufacture a false-flag *casus belli*. This false pretense was utilized to nullify all previous treaties with Finland. The USSR then established a puppet government, the Finnish Democratic Republic (FDR), which in-turn formally invited the Soviet army into Finland to assist in its internal-conflict. The "Winter War" ended in the Spring of 1940 with The Moscow Peace Treaty, which resulted in the Soviet annexation of 11 % of Finland. Additionally, the Soviet Union was removed from the League of Nations, which would ultimately not survive the world-reordering events of World War II. This example is perhaps one of the most glaring instances of the Soviet Union's duplicitous approach to international law. This scenario would play out repeatedly against Hungary, Czechoslovakia, and Afghanistan in the coming years. Treaties and pacts would be signed as methods of containment in order to ensure predictability until such time that the USSR deemed necessary to, *inter alia*, employ loopholes or twisted interpretations to absolve themselves of its legal obligations, or *pacta sunt servanda*. The primary impetus for these acts were to gain territory or, more commonly, to guarantee the survival of Socialism abroad. Dr. Bartman, through her extensive research on this topic, synthesized the Soviet's ultimate objective in its attempts to lead efforts to define aggression; "With a consistent definition of aggression and aggressive war in place, a degree of predictability could be achieved in regard to future actions of other states and international bodies such as the United Nations. The Soviet Union proves the perfect case study…" (Bartman, 2010).

Russian Malign Influence and the Definition of Aggression

The Russian Federation, while lamenting the failures of the Soviet Union, takes much of the same approach towards international law as its predecessor (Mälksoo, 2015). In 2007, Russian President Vladimir Putin spoke at the Munich Conference on Security Policy in what is today viewed as a turning point in Russia's grand strategy towards the West and its place in the international system. "We are seeing a greater and greater disdain for the basic principles of international law… it is necessary to make sure that international law has a universal character both in the conception and application of

its norms" (Putin, 2007). The very next year, following the Bucharest Summit which included discussions of Georgia's accession into the NATO alliance, Russia invaded Georgia under the false pretense of "aggression and genocide" (BBC News, 2008). According to then-President Medvedev, these crimes against humanity were unleashed by the Georgian Government against South Ossetians. He went on to state that, in the interests of preventing a humanitarian catastrophe, "we therefore had no choice but to take the decision to recognize these two subjects of international law as independent states" (BBC News, 2008). What followed was an armed invasion of Georgia and ultimately the creation of a frozen conflict in the region with an indefinite pause on Georgia's potential inclusion in the NATO alliance. While on one hand the Russian Federation feigned respect for universality and international norms, on the other it showed blatant disregard for the very definition of aggression that it sought to establish.

The Russo-Ukrainian war, initiated in 2014 and still ongoing, is perhaps the most glaring example of contemporary Russia's blatant, albeit cleverly disguised, disregard for these norms. Prior to the outset of the war, Russia and Ukraine were parties to, *inter alia*, the UN Charter (1945), Alma-Ata Accords (1991), Budapest Memorandum (1994), Treaty on Friendship, Cooperation, and Partnership (1997), the Treaty on the Use of the Sea of Azov and Kerch Strait (2003), the Partition Treaty on the Black Sea Fleet (1997), and the Kharkiv Pact (2010). Then, following the ousting of Ukraine's pro-Russian president in 2014 via the "Revolution of Dignity," Russia capitalized on the situation as an excuse to invade and annex the Crimean Peninsula along with the invasion of Eastern Ukraine. President Putin not only claimed that the Ukrainian people asked for his help, but that he was extended a formal invitation. "…and if the people ask us for help, while we already have the official request from the legitimate president, we retain the right to use all available means to protect those people. We believe this would be absolutely legitimate" (Putin, 2014). Finally, in an ultimate bid to justify its violations, President Putin falsely asserted that the Ukrainian revolution dissolved all previous legal obligations between the two nations. "And if it's a revolution, what does that mean? It is difficult for me then to disagree with some of our experts who believe that there is a new state in this territory. Just as it was after the collapse of the Russian Empire, after the Revolution of 1917, a new state emerges. And with this state and in relation to this state, we did not sign any binding documents" (Putin, 2014). This statement, of course, is in direct contradiction to the UN Charter and all of the treaties and non-aggression pacts that recognize Ukraine's sovereignty and existing borders.

The Russo-Ukrainian example shows that the Soviet conceptualization of aggression was less of a contribution to international legal scholarship as it was the disingenuous submission of a manifesto, or playbook, under the guise of prohibition. With respect to article III of the 1974 definition of aggression, the above example satisfies; "invasion or attack," "military occupation," "annexation by the use of force," "bombardment," "blockade," "the use of armed forces of one State which are within the territory of another state with the agreement of the receiving State," and "the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force." Virtually every single provision of this definition was violated against Ukraine. The reason that Russia was able to do so with, barring sanctions, effectively zero measurable response has everything to do with the way in which its Soviet predecessors first introduced the concept.

The Dangers of Evoking *Ideological Aggression*

One of the early negotiations of the 1950s *aggression* debate was whether or not to decide on the definition based upon the Soviet proposal through a vote in the General Assembly or to refer the matter to the International Law Commission for further analysis and consideration. While many Western nations favored referral, the Soviet delegation refused to support this endeavor. "The USSR draft resolution should not be referred to the International Law Commission because the definition of aggression was a political, not a legal question" (United Nations General Assembly, 1950). Why, one might wonder, would the Soviet delegation be so interested in keeping the question of aggression within the political domain? The answer was conveniently revealed by Dr. Chernichenko article almost 70 years later; "A state can claim that aggression has been committed against it, but it is only a political statement. It will remain so without the Decision of the Security Council that an act of aggression has indeed been committed. Such political statements can be biased, by the way" (Chernichenko, 2019). The intent, as he explains in detail, is for *ideological aggression* to not take the form of international law but rather that "the line between those measures of ideological pressure that may be attributed to acts of use of force and others less significant is ideally within the purview of the Security Council" (Chernichenko, 2019). He

concludes this discussion of United Nations Security Council's (hereinafter UNSC) involvement with a quip against the then-Ukrainian President as evidence that claims of aggression are merely political statements until affirmed by the UNSC; "Suffice it to name that ever repeated accusations of Russian aggression, which we heard in the speeches of Ukrainian President Poroshenko." The problem with this sentiment is exactly why the Soviet and now Russian governments prefer such an approach. President Poroshenko's 2014 (and subsequent) complaints of armed aggression did not fall on deaf ears. In fact, on March 15th, 2014, the UNSC voted on a resolution concerning this very issue. "The resolution would have reaffirmed Ukraine's 'sovereignty, independence, unity and territorial integrity' and declared that Sunday's referendum which could lead to Crimea's break with Ukraine and union with Russia, 'can have no validity'" (UN News, 2014). The resolution received 13 votes of support, 1 abstention (China), and 1 against. To no surprise, it was the Russian Federation that vetoed the bill, thereby bringing its *Malign Influence within Legal Domains* full circle. As France's Gérard Araud stated after the vote, Russia effectively "vetoed the UN Charter" (UN News, 2014) through its malign behavior and subsequent abuse of veto-power.

This example is precisely why the notion of *ideological aggression* should remain apart from pre-established conceptualizations of aggression. While the notion does have merit, and this analysis is in no way an indictment of Dr. Chernichenko's work, his proposal could quickly and easily be manipulated by the Kremlin. A recent example of this is from 2018, when Alexander Shishkin, a Russian Naval-Engineer, proposed a strategy of *Malign Legal Operations* in the newspaper "Взгляд деловая газета." Turkey's Montreux Convention of 1936 limits access to and from the Black Sea via the Turkey Straits, particularly with respect to Submarine admittance, under Article 12. This applied to the USSR, and subsequently the Russian Federation, which was the Soviet Union's self-declared successor.[11] This has since become a challenge for the Russian Navy given Russia's recent annexation of Crimea and newly acquired port of Sevastopol. To circumvent it, Mr. Shishkin suggested that a manipulation may be possible in order to achieve enhanced combat potential in the Syrian conflict. "Probably, if you wish, you could find loopholes that allow bypassing the provisions of article 12. Say, notify Turkey of the urgent need to repair the black sea boats at Tartus, in Cyprus or in Egypt due to congestion of the Crimean ship repair yards" (Shishkin, 2018). This statement, however, was followed by a warning; "any attempt to violate (bypass) any international agreement will be immediately used against us. It is hardly necessary to provoke Western countries to denounce the Montreux Convention and to develop a NATO base in the Black Sea. Even in Soviet times, Moscow did not attempt to violate all these rules. Submarines of the Black Sea Fleet of the Soviet Navy, which entered combat service in the Mediterranean Sea, in between underwent dock repairs in the Baltics" (Shishkin, 2018). This warning went unnoticed, and within a year the Russian Federation was claiming the need for urgent repairs in order to justify its passage through the Turkish Straits. Article 12 of the Montreux Convention permits southbound transit for Submarines only for such emergency repairs. Upon entering the Mediterranean, however, these submarines turned east to participate in combat operations in Syria rather than west towards their drydocks in St. Petersburg.

In this same sense, there is little doubt that Dr. Chernichenko's article can and will be utilized by the Kremlin to justify the containment of its near-abroad and to levy unfounded accusations against its Western adversaries. This is particularly dangerous given his point of *primacy*, meaning that the first to act shall be labeled the *ideological aggressor*. Given the subjective nature of *ideological aggression*, complex disinformation campaigns could easily craft sufficient narratives for claiming victim-status and a subsequent response. Furthermore, the proposals within Dr. Chernichenko's article leave ample space for the Russian Federation to further alienate its citizens from the neighborhood of nations. This is particularly true considering his comments regarding what responses may be appropriate for the perceived victim-state of ideological aggression, which include "certain psychological measures of influence on the population, along with the blocking of channels of hostile information" (Chernichenko, 2019). This statement is most concerning, due entirely to the slippery-slope that it creates in a State's ability to silence and influence its population. As the United States' representative said in response to the Soviet proposal for ideological aggression in 1953, "a pretext for attacking the freedom of the press might thereby be afforded" (The International Law Commission, 1953).

Dr. Chernichenko noted the potential dangers of this logic in his research, but concluded that it "should not pose an obstacle to the qualification of

[11] The Russian Federation assumed the USSR's international treaties, UNGA vote, UNSC permanent membership, and its embassies abroad.

certain actions as violating international law" (Chernichenko, 2019). One does not require a vivid imagination to realize the damage that a State could do by claiming *ideological aggression* as a pretense for increasing domestic oppression or to fuel campaigns of demagoguery and distrust, either domestically or abroad.

Conclusion

As Lauri Mälksoo opined in his book, *Russian Approaches to International Law*, "it remains possible that when two world leaders from different regions and civilizations meet and refer in their conversations and debates to *international law*, they have historically and culturally different concepts and associations in mind regarding what international law implies" (Mälksoo, 2015). These differences in perception allow revisionists to employ a strategy of duplicity; to both observe and subvert international norms, leaving those sincere but naïve participants of the Rules-Based International Order contained and predictable. In the end, Mälksoo said it best with his observations of what this study refers to as *Malign Influence within Legal Domains*; "The official rhetoric about international law can also have deceptive qualities when the purpose may be to mislead the other or to trump him with his own weapon." With this in mind, it should be clear that the reasons for not adopting the notion of *ideological aggression* were as valid 70 years ago as they are today. This research has shown that a resurrection of this Soviet proposal will most certainly endanger both domestic and international legal domains. *Ideological aggression* offers the perfect justification for authoritarian regimes to limit government transparency, accountability, freedoms of the press, and free speech. Furthermore, this concept permits the practitioners of MALOPS and MILDs to contain adversaries, predict and manipulate States' behavior, exploit international norms, and to manipulate narratives for geopolitical gain.

As stated early in this research, the premise of the Soviet proposal of ideological aggression is not without merit; one can certainly agree that war propaganda is dangerous, that Nazism, fascism, and hatred are threats to humanity, and that psychological pressure intended to elicit the use of chemical, biological, or nuclear weapons is loathsome. The principal concern with this notion, whether adopted as a political consideration or as a matter of international law, is that it will ultimately serve as a more effective sword for malign influencers and revisionists than it will as a shield for the reverent observers of international norms and institutions. This is the objective of *Malign Influence within Legal Domains* (MILDs) and is a result of *Malign Legal Operations* (MALOPs), particularly with respect to the disingenuous legal-containment of adversaries. If it remains unchecked, this mimetic and duplicitous approach to international law by revisionists such as the Kremlin will continue to serve their interests, and theirs alone, as the ultimate form of asymmetry.

References

Bartman, C. S. (2010). Lawfare and the Definition of Aggression: What the Soviet Union and Russian Federation Can Teach Us. *Case Western Reserve Journal of International Law, 43*(2), 423–445.

BBC News. (2008). Interview with BBC Television – President of Russia. The Kremlin Website. http://en.kremlin.ru/events/president/transcripts/1228

Chernichenko, S. V. (2019). Ideological Aggression as the Use of Force in International Law. *Eurasian Legal Journal, 1,* 21–24. https://eurasialaw.ru/nashi-rubriki/yuridicheskie-stati/ideologicheskaya-agressiya-kak-primenenie-sily-v-mezhdunarodnom-prave

Dunlap, C., J. Jr. (2011). Lawfare Today: A Perspective. *Yale Journal of International Affairs*, *3*(1), 146–154. http://yalejournal.org/wp-content/uploads/2011/01/083111dunlap.pdf

Fisher, B. (2019). The Kremlin's Malign Legal Operations on the Black Sea: Analyzing the Exploitation of Public International Law Against Ukraine. *Kyiv-Mohyla Law and Politics Journal, 5*, 193–223.

Jackson, R. H. (1945). *Opening Statement before the International Military Tribunal*. Nuremberg: The Robert H. Jackson Center. https://www.roberthjackson.org/speech-and-writing/opening-statement-before-the-international-military-tribunal/

Mälksoo, L. (2015). *Russian Approaches to International Law*. *Russian Approaches to International Law*. https://doi.org/10.1093/acprof:oso/9780198723042.001.0001

Putin, V. (2007). Putin Speech and the Following Discussion at the 2007 Munich Conference on Security Policy. Munich. http://russialist.org/transcript-putin-speech-and-the-following-discussion-at-the-munich-conference-on-security-policy/

Putin, V. (2014). Vladimir Putin Answered Questions from Journalists about the Situation in Ukraine. The Kremlin. http://www.kremlin.ru/events/president/news/20366

Shekhovtsov, A. (2020). Conceptualizing Malign Influence of Putin's Russia in Europe. https://www.4freerussia.org/wp-content/uploads/sites/3/2020/04/Maligh-Influence_web_eng-5.pdf

Shishkin, A. (2018). Russian Submarines Are Prevented from Operating in the Mediterranean Sea. Vzhlyad. https://vz.ru//world/2018/5/28/924562.html

The Council of Europe. (2018). Legal Challenges Related to Hybrid War and Human Rights Obligations. https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24762

The International Criminal Court. (2010). International Criminal Court RC/Resolution 6. https://asp.icc-cpi.int/iccdocs/asp_docs/Resolutions/RC-Res.6-ENG.pdf

The International Law Commission. (1953). Report of the Special Committee on the Question of Defining Aggression. *The United Nations Digital Library*. New York. https://digitallibrary.un.org/record/715503?ln=en

The Soviet Union et al. (1933). The London Convention for the Definition of Aggression. https://www.iilj.org/wp-content/uploads/2016/08/Convention-for-the-Definition-of-Aggression-1933.pdf

The United Nations. (2020). Democracy and the United Nations. Retrieved May 4, 2020 from https://www.un.org/en/sections/issues-depth/democracy/index.html

The United Nations General Assembly. (1950). UNGA Resolution 381. New York and Paris. https://digitallibrary.un.org/record/209541?ln=en

The United States and France et al. (1928). The Kellogg-Briand Pact. https://avalon.law.yale.edu/20th_century/kbpact.asp

UN News. (2014). UN Security Council Action on Crimea Referendum Blocked. UN News. https://news.un.org/en/story/2014/03/464002-un-security-council-action-crimea-referendum-blocked

United Nations Audiovisual Library of International Law. (1974). Definition of Aggression. General Assembly resolution 3314 (XXIX). http://legal.un.org/avl/ha/da/da.html

United Nations General Assembly. (1954). Defining International Aggression: The Search for World Peace. United Nations General Assembly Official Records. http://www.derechos.org/peace/dia/doc/dia56.html#332

United Nations General Assembly. (1950). Summary Record of the 389th Meeting, 1st Committee, 5th Session, United Nations General Assembly. https://doi.org/10.1017/S0020818300010821

Volkova, N. (2019). The Minsk Trap: Moscow's Perversion of the Conflict Arbitration Process in Ukraine. *NaUKMA Research Papers. Law*, 4, 73–82. https://doi.org/10.18523/2617-2607.2019.4.73-82

Yale Law School Lillian Goldman Law Library. (1919). The Covenant of the League of Nations. https://avalon.law.yale.edu/20th_century/leagcov.asp

Appendices

Appendix A

United Nations General Assembly Resolution 3314 (XXIX) of 1974

Article I
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; 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.

Appendix B

Convention for The Definition of Aggression[12]	
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. The instruments of ratification shall be deposited by each of the High Contracting Parties with the Government of the Union of Soviet Socialist Republics. As soon as the instruments of ratification have been deposited by two of the High Contracting Parties, the present Convention shall come into force as between those two Parties. The Convention shall come into force as regards each of the other High Contracting Parties when it deposits its instruments of ratification. Each deposit of instruments of ratification shall immediately be notified by the Government of the Union of Soviet Socialist Republics to all the signatories of the present Convention. **Article V** The present Convention has been signed in eight copies, of which each of the High Contracting Parties has received one. In faith whereof the above-named Plenipotentiaries have signed the present Convention and have thereto affixed their seals.

[12] **Parties:** Afghanistan, Estonia, Latvia, Persia, Poland, Roumania, USSR (3 July 1933), Roumania, USSR, Czechoslovakia, Turkey, Yugoslavia (4 July 1933), Lithuania and USSR (5 July 1933)

Appendix C

USSR Draft Resolution on The Definition of Aggression (4 Nov 1950)	
The General Assembly, *Considering* it necessary, in the interests of general security and to facilitate agreement on the maximum reductions of armaments, to define the concept of aggression as accurately as possible, so as to forestall any pretext which might be used to justify it, *Recognizing* that all States have equal rights to independence, security, and the defense of their territory *Inspired* by the desire, in the interests of general peace, to guarantee all nations the right freely to develop by such means as are appropriate to them and at the rate which they consider to be necessary, and for that purpose to provide the fullest possible protection for their security, their independence and the integrity of their territory, and also for their right to defend themselves against aggression or invasion from without, but only within the limits of their own countries, and *Considering* it necessary to formulate essential directives for such international organs as may be called upon to determine which party is guilty of attack, Declares: 1. That in an international conflict that State shall be declared the attacker which first commits one of the following acts: (a) Declaration of war against another State; (b) Invasion by its armed forces, even without a declaration of war, of the territory of another State; (c) Bombardment by its land, sea or air forces of the territory of another State or the carrying out of a deliberate attack on the ships or aircraft of the latter; (d) The landing or leading of its land, sea, or air forces inside the boundaries of another State without the permission of the Government of the latter, or the violation of the condition of such permission, particularly as regards to 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;	2. Attacks such as those referred to in paragraph 1 may not be justified by any arguments of a political, strategic or economic nature, or by the desire to exploit natural riches in the territory of the State attacked or to derive any other kinds of advantages or privileges, or y reference to the amount of capital invested in the State attacked or to any other particular interests in its territory, or by the affirmation that the State attacked lacks the distinguished marks of statehood; In particular, the following may not be used as justifications for attack: A. The internal position of any State; as, for example: (a) The backwardness of any nation political, 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) The establishment or maintenance in any State of any political, economic or social system; B. Any acts, legislation or orders of any State, as for example: (a) The violation of international treaties; (b) The violation of rights and interests in the sphere of trade, concessions or any other kind of economic activity acquired by another State or its citizens; (c) The rupture of diplomatic or economic relations; (d) Measures in connection with an economic or financial boycott; (e) Repudiation of debts; (f) Prohibition or restriction of immigration or modification of the status of foreigners; (g) The violation of privileges granted to the official representatives of another State; (h) Refusal to allow the passage of armed forces proceeding to the territory of a third State; (i) Measures of a religious or anti-religious nature; (j) Frontier incidents. 3. In the event of the mobilization or concentration by another State of considerable armed forces near its frontier, the State which is threatened by such action, shall have the right of recourse to diplomatic of other means of securing a peaceful settlement of international disputes. It may also in the meantime adopt requisite measures of a military nature similar to those described above, without, however, crossing the frontier.

Appendix D

Draft Resolution Concerning Aggression Submitted by the USSR (A/AC.66/L.2/Rev.1)

The Special Committee on the Question of Defining Aggression recommends to the General Assembly the adoption of the following resolution:

Resolution
The General Assembly
Considering it necessary to formulate directives with a view to determining which party is guilty of aggression,

Declares that:
1. In an international conflict that State shall be declared the attacker which first commits one of the following acts:
(a) Declaration of war against another State;
(b) Invasion by its armed forces, even without a declaration of war, of the territory of another State;
(c) Bombardment by its land, sea or air forces of the territory of another State or the carrying out of a deliberate attack on the ships or aircraft of the latter;
(d) The landing or leading of its land, sea or air forces inside the boundaries of another State without the permission of the government of the latter, or the violation of the conditions of such permission, particularly as regards the length of their stay or the extent of the area in which they may stay;
(e) Naval blockade of the coasts or ports of another State;
(f) Support of armed bands organized in its own territory which invade the territory of another State, or refusal, on being requested by the invaded State, to take in its own territory any action within its power to deny such bands any aid or protection.

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

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 propagation of fascist-Nazi views, of racial and national exclusiveness, and of hatred and contempt for other peoples.

5. An act other than those listed in the preceding paragraphs may when committed by a State be deemed to constitute aggression if declared by resolution of the Security Council in a particular case to be an attack or an act of economic, ideological or indirect aggression.

6. Attacks such as those referred to in paragraph 1 and acts of economic, ideological and indirect aggression such as those referred to in paragraphs 2, 3 and 4 may not be justified by any arguments of a political, strategic or economic nature, or by the desire to exploit natural riches in the territory of the State attacked or to derive any other kind of advantages or privileges, or by reference to the amount of capital invested in the State attacked or to any other particular interests in its territory, or by the affirmation that the State attacked lacks the distinguishing marks of statehood.

In particular, the following may not be used as justifications:

A. The internal position of any State, as for example:
(a) The backwardness of any nation politically, economically or culturally;
(b) Alleged shortcomings of its administration;
(c) Any danger which may threaten the life or property of aliens;
(d) Any revolutionary or counter-revolutionary movement, civil war, disorders or strikes;
(e) The establishment or maintenance in any State of any political, economic or social system.

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

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

Бред Фішер

ІДЕОЛОГІЧНА АГРЕСІЯ ТА МІЖНАРОДНЕ ПРАВО: РАДЯНСЬКИЙ ТА РОСІЙСЬКИЙ ПІДРИВНИЙ ВПЛИВ НА ПРАВО

У статті запропоновано міждисциплінарний юридичний аналіз еволюції поняття агресії в міжнародному праві. Автор стверджує про радянську ініціативу з визначення цього поняття, проте зауважує, що деякі запропоновані концепції радянської теорії не були офіційно прийняті. Також у дослідженні проаналізовано статтю російського правознавця С. В. Черніченка «Ідеологічна агресія як застосування сили в міжнародному праві» (2019) та його твердження про те, що радянське поняття ідеологічної агресії потрібно воскресити з огляду на унікальні і пропагандистські тенденції міждержавного конфлікту XXI століття. Поняття ідеологічної агресії було радянською пропозицією, яку було вперше внесено до Спеціального комітету Організації Об'єднаних Націй з питання визначення агресії в 1953 році. С. В. Черніченко наголошує, що будь-яка спроба реалізувати таку концепцію є небезпечною та особливо завдає шкоди верховенству права як всередині країни, так і на міжнародному рівні. Така концепція запропонує практикам спосіб уникнення відповідальності за міжнародний злочин, посилаючись, зокрема, на критерій першості щодо ідеологічної агресії. Це також дасть змогу виправдати демонтаж бажаних принципів, як-от свобода преси та свобода слова. На думку автора, ті, хто використовує таку тактику, діють за подвійними стандартами: одночасно плекають і підривають міжнародні норми та принципи. Зрештою, ця концепція дасть тим, хто застосовує підривні юридичні операції (*Malign Legal Operations*), відомі також як «правовійна», ще один інструмент, за допомогою якого вони зможуть стримувати і використовувати конкурентів під егідою міжнародного права. Це є підривним впливом на право (*Malign Influence within Legal Domains* (MILDs)), який є кінцевою формою асиметрії. Автор статті вважає, що, перш ніж розпочинати стосовно ідеологічної агресії будь-який серйозний дискурс, потрібно усвідомити подвійність мотивів, прихованих за пропозицією щодо відродження цього поняття.

Ключові слова: підривний вплив на право, правовійна, підривні юридичні операції, міжнародне право, агресія, ідеологічна агресія, суперництво великих держав, підривний вплив.

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