
All recourse to violence in the relations between states constitutes war; all war is aggression; and all aggression (save response to prior aggression) is illegal. This is the position of Georges Scelle as set forth in 1934 and maintained unchanged since that date; and it is this position, defended at various times by many other scholars and, with greater or less modification, by various states, that the author of the prize-winning Legal Control of International Conflict has undertaken to examine in the volume under review. He has done so with characteristic thoroughness and acuteness. The book opens with a critical history of attempts under the League of Nations and the United Nations to define aggression and, in this way, to provide an automatic test for the application of collective sanctions; and it goes on to examine from several points of view the possibility and desirability of using “aggression” as the key concept in the legal framework for the maintenance of world order. (The United Nations Charter, in Article 39, treats equally threats to the peace, breaches of the peace, and acts of aggression.)

Much of the literature concerning aggression in international law assumes that members of the United Nations today have given up all self-enforcement rights save that of self-defense. According to this view, any resort to violence that is not in self-defense or in pursuance of a U.N. decision constitutes aggression and is illegal. Specifically, articles 2(3) and 2(4) are often interpreted to this effect.

By referring to the Charter’s text itself, to the travaux préparatoires, and to the terms of reservations to the Kellogg-Briand Pact and similar sources, Professor Stone establishes at least the arguability of the contrary position. Making use of the leeway thus gained, he questions the plausibility of the assumption that signatories meant to outlaw resort to force “regardless of any wrongs or dangers which provoked it”1 and in the absence of United Nations action to enforce the Charter provisions.

Although Professor Stone does not use the device, his analysis could have been cast in the framework long ago provided by John Locke. In the state of nature, according to Locke, man was not unbound by law, but he was free to enforce the law of nature for himself. He had the right to execute the law. This right he would relinquish if three great wants of the state of nature were supplied. These wants were (1) an “established, settled, known law, received and allowed by common consent to be the standard of right and wrong”2 (2)

1. P. 95.
a known and indifferent judge with authority to settle disputes according to the law, and (3) effective sanctions for the judge's decisions. In the international realm, surely these deficiencies have not been wholly removed. Suppose the judge (the Security Council, for instance) refused to make a judgment? Or suppose he is unable to enforce his judgment? Under such circumstances, can nations any more than individuals be assumed to have given up all authority to vindicate their rights? The Security Council with its Great Power veto and even the General Assembly with its practice of bloc voting may be no more than a caricature of an "indifferent judge"; while the failure of the United Nations to enforce either its Resolution establishing the boundaries of Israel or those which called upon the Soviet Union to withdraw its troops from Hungary stand as constant reminders that the third as well as the second of Locke's prerequisites is sadly lacking.

What of the "settled and received law" itself, without which the other elements can not operate? What is the law as to propaganda broadcasts which incite to assassination and revolution? What remedy does the law provide against chronic border raids? What are the legal rights and wrongs of our position and that of Nationalist China with respect to Quemoy and Matsu? In the absence, then, of the three prerequisites, can states be assumed to have surrendered their right of self-enforcement? And if not, how can they invariably be held guilty of aggression if they resort to violence?

But Locke did not live in the nuclear age. Today, it may be argued that the horror of war is so great that men and states should settle for order without insisting on justice. When the argument is put in this way, however, it becomes immediately clear that, whatever should be the case, the fact is that they have not done so and are not ready to do so. If they were insistent upon subordinating justice to order, no state would resist violence with violence. Either states are willing to risk even thermonuclear war in defense of their rights or they are confident that such war will not result—that the condition is one of "atomic stalemate." Whichever be the premise, the result is the same: modern nations have not totally abjured self-executed force as an instrument of international policy.

Be reminded that this argument from Locke is mine, not Stone's. He weaves a finer mesh. With meticulous care, in the light of linguistic analysis and of historical attempts to give content to the term, he probes the problems of defining "aggression." Indeed, although he chose a different course, he might have begun with Webster: "A first or unprovoked attack, or act of hostility." What difficulties, what morasses lurk in that innocent-appearing word, "unprovoked"? And "hostility"—something "having or showing ill will." Already, we are entangled in matters of intent and of justification. These obstacles are not enough to render fruitless the enterprise of definition, but they would seem to dash to the ground any hope of thereby securing a simple, self-applying,

4. See id. at 400.
mechanical test that will both distinguish the innocent from the guilty and rally the active support of the world to the aid of the victim.

In fact, attempts at definition, as Stone classifies them, range from the most general to the most specific. The more concrete seek to enumerate, exhaustively, acts which constitute aggression. The paradigm of this approach was provided by the Soviet draft definition of 1933: it amply illustrated the difficulty of anticipating the future, for it specifically provided that justification for attack could not be based upon such international situations in a given state as revolutionary or counterrevolutionary movements, or the establishment or maintenance in the state of any political, economic, or social order. Shades of Hungary! More fundamentally, the shortcoming of this kind of definition is the impossibility of ensuring that all properly inculpating acts have been included. It was such a definition that Sir Austen Chamberlain called a “trap for the innocent and a signpost for the guilty.”

Opposed to the enumerative type of definition are those that are cast only in general terms. The Netherlands proposed: “Aggression is the threat or use of force by a State or government against the territorial integrity or political independence of another State or against a territory under international regime in any manner, whatever the weapons employed and whether openly or otherwise, for any reason or for any purpose other than individual or collective self-defense against such a threat or use of force or in pursuance of a decision or recommendation by a competent organ of the United Nations.” With its inclusion of the threat of force as a justifiable basis for action in self-defense, this definition rather points to problems of interpretation than solves them. The proposed definition of Professor Quincy Wright, advocate of the aggression test, is subject to the same fatal objection.

Between these two extremes, one finds innumerable “mixed” definitions, supplementing general statements with nonexhaustive enumerations. The enumerations are open-ended with respect either to acts of inculpation or of exculpation or of both; and mixed definitions tend to suffer from the faults of both the pure types. No definition that does not require interpretation is possible, so the argument runs; interpretation is rudderless without reference to a full factual context judged against a background of theory. Moreover, regardless of the actual possibility of judging on any other basis, the attempt to judge would run counter to the “inevitable tendency to frame a judgment on the merits,” and would fail to engage the moral convictions of member states.

Here, the lawyer is helpless in the face of political and ethical divergences. Definitions that would point to cases of aggression on which all would agree can surely be framed. But the easy cases are not the important ones. At this point, one hears echoes of the controversy between Professors Fuller and Hart.

5. P. 52.
7. P. 156.
as the terms "core" and "penumbra" enter the discussion. Stone lines up with Fuller on this issue: the penumbra not only overshadows the core; it reduces it to insignificance. The role of the judge cannot be made mechanical; it can scarcely be hedged in.

Stone himself does not pursue the argument in terms of general legal theory. Always with an eye for the concrete, he chooses to speak rather of the "due process" analogy. Generally speaking, reasoning from municipal law to international law is weak, so lacking is the international order in effective organs of enforcement and legislative adjustment. In so far as there is a parallel, however, it is to be found in such concepts as "due process" and "lack of due process." In developing this analogy, Stone not only accepts the Frankfurter line, as opposed to that of Black: he adds a point, if not a dimension, to the analysis. Sound judgment in due process cases, he maintains, "requires the Court to examine the full ambit of the situation under judgment," while "resort to short cuts by the interposition of more precise advance criteria may obstruct, distort, and even frustrate this examination by arbitrarily cutting off the range of relevance."

Two points here demand at least passing notice. Perhaps one of the very differences that Stone notes between the municipal and international orders is pertinent: the weakness of the international judicial organ may provide an argument in favor of hedging its discretion somewhat, even at the expense of excluding possibly relevant contextual material. Moreover, this contention gains force if we are considering a "mixed" definition that, in effect, sets up rebuttable presumptions for the international interpreting agency. Of this, more anon.

It would be a great mistake to leave the impression that Stone is content with destructive criticism, or that his position is wholly defeatist. If peace is to be preserved, indeed if utter annihilation is to be avoided, U.N. organs must be able to act quickly. But he takes the position that the answer is not to pursue the phantom of a mechanical aggression test. Rather, it is to concentrate on preventing or checking breaches of the peace. Fire prevention and fire extinction are the key tasks. Punishment of arsonists may or may not follow; but penalty cannot be made so certain that the prospect of it will be much of a deterrent.

In consonance with modern criminology, Stone would apply a utilitarian rather than a retributive theory in the international order. Once a breach of the peace has been checked, all efforts should be bent not necessarily toward re-establishing the status quo ante but toward removing the causes of the original breach and creating a situation in which tensions are diminished. To find a solution that all parties would accept as just is usually impossible. One must be content with partial solutions, with adjustments that reduce the sensed injustice below the boiling point. The theory underlying Stone's recommendations, then, is both utilitarian and pragmatic. Retribution should be minimized;

and the search for general solutions and especially for solutions cast in general terms should give way to a case-by-case approach.

This argument is persuasive but inconclusive, if not paradoxical. The process of empathy, as Edmond Cahn has so ably argued, does tend to facilitate agreement of senses of justice, or at least of injustice, in concrete situations where feelings are engaged and the complete contextual situation is open to view. But the parallel between the municipal order and the international order breaks down at this point. In the former, a particular case may engage the feelings and stimulate the glands without enlisting biased personal interest. In international conflicts, however, both the sentiment of patriotism and national interest are likely to be powerful rivals to the sense of injustice. From this point of view, agreement may more easily be obtained on the abstract level than in the concrete. To be sure, the problem of securing adherence in a particular case to a principle accepted in the abstract remains unresolved.

Other considerations join with the barriers to harmony in concrete instances to suggest that a need persists for defining aggression before the event. If senses of injustice are to be soothed, it may well be that the idea of retribution—retribution for aggression, in this instance—cannot be entirely ignored. Moreover, if breach of the peace is the sole test for international intervention, a high premium is placed upon committing such breaches. Since disturbance is the only way to get action, and if the action is to be directed at relieving tension, the logical course for the dissatisfied nation is to create tension-building and even aggressive disturbances. Surely, if this pattern of conduct is to be checked, some notion of aggression will have to be used, even though it be applied after the peace-restoring intervention rather than before.

Impelled by this line of thought to have a second look at the possibilities of minimizing disagreement on the aggression notion, one thinks of tentative definitions, of definitions creating presumptions yet not purporting to give definitive answers. Such an approach should minimize the hazard of the unforeseen circumstance and remove the premium otherwise placed upon ingenious evasion. Pursuing this line, one naturally turns to a mixed type of definition with considerable emphasis on enumeration and more specifically, on priority of direct attack. There is always something appealing about the "first-man-to-cross-the-frontier" idea, which was the essence of the Soviet draft of 1933. It may be worthwhile to give some thought to the objections raised against it. Granted that one state may injure another without invading, bombarding, or blockading it, is there no adequate defensive recourse short of resorting to such acts themselves? And in cases where there is not, is that fact in itself not indicative of such relative military weakness that counter-attack is likely to be ineffective? Is it entirely without significance that, since 1933, the clearest examples of behavior constituting aggression under the Soviet test have been provided by Germany against Poland, against Russia, and against the United States; by Russia against Finland and against Hungary; by Japan against the United States; by North Korea and Communist China against South Korea; and by Britain and France and Israel, against Egypt in 1956?
While it is apparently the last example especially which convinces Professor Stone of the inadequacy of any test of aggression that does not take into account the whole context of the situation and the rights and duties as they appear in the light of this context, one must consider what happened in this instance. Without recourse to any definition of aggression, those who attacked were forced to withdraw unconditionally. Even assuming, arguendo, that Stone is right in condemning the deterrent action that was taken, is it not significant that it was taken without reliance upon the concept of aggression, is it not doubtful whether anything “worse” would have been done if an agreed definition of aggression had been in existence, and was the world reaction not evidence of some moral agreement with respect to the conduct in question?

Words, indeed, cannot be substitutes for human judgment, but they can be apt guides. Professor Stone has made an invaluable contribution both in showing the difficulties in the way of defining “aggression” and in attacking the notion that this concept is the key test upon which U.N. intervention to maintain the peace should be made to depend. Perhaps he may later turn to the task of showing how it may nonetheless play an important, even vital, secondary role. The Suez affair, raging as he wrote, provided him with useful arguments for making “breach of the peace” rather than “aggression” the first concern of the United Nations fire brigade. Is it possible that the feelings of even this most temperate scholar were sufficiently stirred by events then current to color his reactions almost to the point of making him wish to banish the concept of aggression from our thinking altogether? He refers to the American action in pressing for British, French and Israeli unconditional withdrawal (weakening not only NATO but also SEATO, he maintains), and contrasts this position with the subsequent Eisenhower Doctrine and movements of the Sixth Fleet in support of that doctrine. To this reviewer, he seems to do less than justice to the distinctions between these actions. He points out that the latter was “as was to be expected, challenged by the Soviet Union as an ‘aggressive’ action of the United States.” It would have been appropriate, in this book especially, to have noted that this charge was inconsistent with the definition of “aggression” submitted by the Soviet Union as recently as 1950.

To recapitulate, the reviewer’s somewhat tentative suggestion is that priority of recourse to violence across a frontier should constitute presumptive aggression. This definition would not be exhaustive. Other items might be enumerated. Nor is there any suggestion that action to check a breach of the peace need await a finding of aggression, or that such a finding when and if made should be the only factor taken into account by the competent organs of the United Nations.

Finally, let one thing be clear: Julius Stone has given us an admirable monograph. This review has not done justice to its scope. Nothing has been said, for instance, of the discussion of the “aggression” concept as applied to individuals in the war-crime trials, or of his consideration of the United Nations Peace Force, with special reference to the authority of the General Assembly.

10. P. 107 n.9.
to make that force permanent (which he doubts). Moreover, it is a special virtue of this book that legal analysis is constantly enriched by an interwoven discussion of political realities. In his debate with Quincy Wright, there is much to support Stone's claim that he, the lawyer, pays more attention to the stuff of international politics than does Wright, the political scientist.

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Given the historical antecedents of the topic of authority and the erudition of the contributors to this symposium, one might predict that here is another academic exercise in the splitting of hairs that have been split before—often by the same authors—and that the tag called “authority” will be pinned to a fantastically varied assortment of twigs on the tree of definition. The prediction is, of course, a sure thing. Some contributors to this volume use the key term in a highly preferential sense, while others strive for designative neutralism. Some limit the meaning of authority to words; others choose some combination of words and deeds, with or without effective power. If the distinguished editor prefers to limit usage to communications “capable of reasoned elaboration,” Jerome Hall neatly calls attention to a context in which an “expert need not give his reasons; indeed, when he gives his reasons he is not functioning as an authority.”

Dozens of plausible distinctions occur throughout the book, no one of which is utterly ridiculous for some conceivable purpose, no one of which is very novel.

Mildly astonishing is the fact that no one devotes himself to a consideration of the strategy of defining such honorific bits of verbal apparatus as “authority.” What are the goals to be postulated to guide this operation? It is possible to detect, lurking in the wings of the symposium discussion, strong motives to invest the conception with formidable overtones and, by denying the claim of some system of public order that it be accepted as genuinely authoritative, to strike a blow for virtue—thus, Friedrich’s remark about “false” authority and Hannah Arendt’s declaration that “authority has vanished from the modern world.”

Is there anything new or worthwhile in this symposium? Definitely, yes. Hannah Arendt’s sweeping re-interpretation of the classical tradition proposes that the Athenians were so devoid of cultural experience with public authority that Plato and Aristotle, searching for persuasive grounds for assigning top

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1. P. 29.
2. P. 63.
3. P. 47.
4. P. 81.