CONVENTION ON THE PROHIBITION OF MILITARY OR ANY OTHER HOSTILE USE OF ENVIRONMENTAL MODIFICATION TECHNIQUES

Letter dated 15 November 1976 from the Permanent Representative of Mexico to the United Nations addressed to the Secretary-General

I have the honour to transmit to you, attached hereto, the text of the Working Paper which the Government of Mexico is submitting under item 45 of the agenda of the thirty-first session of the General Assembly, entitled "Convention on the prohibition of military or any other hostile use of environmental modification techniques". I would request you to have this text circulated as a General Assembly document.

(Signed) Ambassador Roberto de ROSENZWEIG DIAZ
Permanent Representative of Mexico to the United Nations
Working paper on the scope of a prohibition of military or any other hostile use of environmental modification techniques

The Government of Mexico considers that the wording of article I of the draft Convention on the Prohibition of Military or any Other Hostile Use of Environmental Modification Techniques, which originated in the identical drafts submitted to the Conference of the Committee on Disarmament in August 1975 by the delegations of the United States and the Soviet Union, is completely unacceptable. The Mexican Government is convinced that, if the aim is to enable the General Assembly of the United Nations to recommend that draft to Member States, it will be essential to omit the limitative clause "having widespread, long-lasting or severe effects". That would ensure that the provisions of paragraph 1, although very inferior to those of the original Soviet text of 1974, do not entail the slightest risk of legitimizing many acts of environmental war.

The relevant paragraphs of the statement made on 1 November 1976 by the Secretary for Foreign Affairs and Chairman of the delegation of Mexico on the occasion of the opening of the general debate in the First Committee on the disarmament items are reproduced below.*

* English text based on the interpretation from the Spanish.
"The draft convention on the prohibition of military or any other hostile use of environmental modification techniques prepared this year by the Working Group of the Conference of the Committee on Disarmament has as its immediate background the identical proposal submitted in August 1975 by the Soviet Union and the United States of America. In view of the importance some delegations will doubtless wish to attach to this draft at the present session of the General Assembly and the statement of the previous speaker, it is evident that that when I wrote the words I have just read I was being prescient. In order to clarify some important aspects of the question it may perhaps be appropriate for me briefly to review its origins.

"The United States and the Soviet Union dealt with the subject of environmental warfare in one of the summit meetings, as they were called, held in Moscow a little more than two years ago. In the joint communiqué issued on 3 July 1974 the two super-Powers recognized that the use of environmental modification techniques for military purposes could have wide-spread, lasting and serious effects on human welfare and that therefore effective measures should be agreed upon in order to avoid the dangers of the use of such techniques. Further, they decided to hold meetings to achieve those purposes."
"In September of that year, at the request of the Soviet Union, an item was included in the agenda of the twenty-ninth session of the General Assembly entitled 'Prohibition of action to influence the environment and climate for military and other hostile purposes which are incompatible with the maintenance of international security, human well-being and health'. In the explanatory memorandum requesting inclusion of the item, the Minister for Foreign Affairs of the Soviet Union wrote, inter alia, the following:

'In the opinion of the Soviet Government, present-day conditions require that the activities of the United Nations should concentrate on the study of ways and means to consolidate and expand the positive processes taking place in the world of today, to back up political détente by military détente and achieve new concrete results in the field of the limitation of the arms race and disarmament.

'The Soviet Union believes that an important step in this direction would be the prohibition of action to influence the environment and climate for military and other purposes incompatible with the maintenance of international security, human well-being and health.

'For many centuries mankind has been seeking to discover how to influence natural elements in a positive way, and mitigate the deleterious effects of natural disaster. At present, with this end in view, many States are carrying out scientific research and practical work in an attempt, for example, to create artificial rain, disperse clouds, etc. Activities in this field, pursuing peaceful and constructive ends, should, of course, be encouraged and welcomed in every way. However, the results of this research could also be used for destructive military purposes, and thus present an extreme danger to world peace, and to human well-being and health.

'It is urgently necessary to draw up and conclude an international convention to outlaw action to influence the environment for military purposes.'

(A/9702, p. 2)

I emphasize the reference to outlawing any such action because those words are the key to the original Soviet proposal. Later, together with 23 other delegations, the Soviet Union submitted a draft resolution annexed to which was a draft convention the first article of which read as follows:
Each of the Parties to this Convention undertakes not to develop meteorological, geophysical or any other scientific or technological means of influencing the environment, including the weather and climate, for military and other purposes incompatible with the maintenance of international security, human well-being and health, and, furthermore, never under any circumstances to resort to such means of influencing the environment and climate or to carry out preparations for their use."

"There can be no doubt that the all-embracing scope of the prohibition contemplated in the Soviet draft resolution was the main reason for the favourable welcome given to it by the General Assembly. In point of fact, resolution 3264 (XXIX) was adopted by 126 votes in favour and none against, with only five Members abstaining, of which the United States was one."
"Apparently that country's abstention was due to the fact that the United States Executive had not as yet reached a conclusion on whether the prohibition was to be complete or partial, although it was inclined to accept the view of the Defence Department advocating limited prohibition."

"On the other hand, it should be recalled that the United States Senate, on 11 July 1973, had declared itself in favour of an all-encompassing prohibition. On that date, the upper house of the Congress, by an overwhelming majority, adopted resolution 71, in which it requested the United States Government to seek the agreement of other Governments on a treaty that would prohibit the use anywhere of any form of environmental or geophysical modification as an instrument of war.

"In 1975, the Conference of the Committee on Disarmament discussed the question of prohibition of environmental warfare and, in August of that year, held informal meetings with experts on the subject. At the end of that month the delegations of the United States and the Soviet Union submitted two identical drafts of the convention which I mentioned earlier and which were a real surprise to many. Despite the fact that a number of delegations had spoken in favour of a complete prohibition, the first paragraph of article I of those proposals read as follows:

'Each State Party to this Convention undertakes not to engage in military or any other hostile use of environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage or injury to another State Party.' \(\text{\textit{CCD/471}}\)

"In its resolution 3475 (XXX), of 11 December 1975, the General Assembly requested the Conference of the Committee on Disarmament to continue its negotiations on the text of a convention on the prohibition of environmental warfare,

'bearing in mind existing proposals and suggestions, as well as relevant discussion by the General Assembly'.

That last phrase was included in the resolution in order to respond to the concern of a number of delegations that did not want the negotiations in the Disarmament Committee to lead towards a partial prohibition.

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"The delegations participating in the work of the Conference of the Committee on Disarmament failed this year to agree on the text of the convention, and an effort was made to disguise that lack of agreement. However, as we gather from a reading of paragraphs 375-387 of the report of the Conference of the Committee on Disarmament, as well as the records of its 727th plenary meeting, there exists among the members of the Committee a strong current of opinion against a number of fundamental provisions contained in the draft convention appended to the report.

"In this connexion, I wish to stress that although we feel that the new text of article V prepared by the Working Group, particularly the addition that provides for the convening of a consultative committee of experts for the purposes set forth therein, represents appreciable progress, it cannot in any way allow us to forget the very severe dangers inherent in the provisions of article I of the identical drafts submitted by the Soviet Union and the United States in August of 1975, provisions which, in fact, are also identical to those contained in the draft at present before the First Committee.

"In the light of the original Soviet text which I quoted a few moments ago, an all-encompassing text as far its prohibitions are concerned, and categorical and unequivocal in its concepts, the article I which is now proposed to us by the super-Powers is in every respect inadequate and ambiguous. To illustrate what I have termed the 'severe dangers' of the new provisions, suffice it to draft this article in positive terms, a form which would be equivalent, from the legal point of view, to the text submitted and which would thus read as follows:

'Each State party to this Convention shall be entitled to engage in military or any other hostile use of environmental modification techniques as the means of destruction, damage or injury to another State Party, provided that such techniques do not have widespread, long-lasting or severe effects.'

"The dangers inherent in this, practically speaking as well as from the legal standpoint, can be judged even more clearly if we bear in mind the explanations of the scope of the phrase 'environmental modification techniques' included in article II, in accordance with which that expression would include, inter alia, the deliberate manipulation of natural processes to produce earthquakes, tidal waves, various sorts of cyclones and hurricanes, or to modify the condition of the ozone layer, the ionosphere or the oceanic currents.

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"We consider it extremely alarming that anyone can think of legitimizing in an international convention such monstrous acts as those, as long as they do not have 'widespread, long-lasting or severe effects', particularly if we take into account the fact that in the definition of such effects there will always, inevitably, be a very significant subjective element.

"Moreover, we have to take into account the fact that, among the effects of environmental warfare techniques that are allowed because they are not considered sufficiently 'widespread', those that would cover an area of less than several hundred square kilometres would, according to the clarifications of the super-Powers responsible for the draft, be included; and among those that would also be tolerated because they do not fall within the definition of 'long-lasting' given us by the super-Powers would be those of a duration of less than 'several months or of about a season'.

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"What I have just said becomes even more serious if we consider that in this matter we are legislating on a subject, the modification of the environment for military purposes, which is virtually virgin territory and therefore any multilateral instrument that might emerge would constitute a precedent of incalculable consequences for the evolution of human rights in a field which is immensely important for the future of mankind.

"For all the reasons I have just given, my delegation considers it indispensable that we delete the qualification, 'having widespread, long-lasting or severe effects'. The provisions of paragraph 1 of article I, although far inferior to those of the original Soviet text that I have just read out, would then be acceptable to us because the paragraph would then read:

'Each State Party to this Convention undertakes not to engage in military or any other hostile use of environmental modification techniques as the means of destruction, damage or injury to any other State Party'.

"If, unfortunately, the two super-Powers continued to be reluctant to include in their joint proposal the modification I have just explained and if it were contended that the General Assembly at its present session should approve that text with its present wording, then in spite of its goodwill the Mexican delegation would be unable to support this. We frankly refuse to vote for any effort to give legitimacy, in an instrument supposedly aiming at disarmament, to such monstrous acts of war as those that I have just defined.

"What was said here a few moments ago by the United States representative leads me to think that perhaps that argument may not, in fact, be raised. Indeed, if I understood him correctly, the position of the United States delegation is that all phenomena, without any limitation, that are listed in article II are to be absolutely prohibited under the convention.

"If that be the case, the solution is perfectly simple. It lies not in making declarations here or in referring to memorandums of agreement but merely in deleting that phrase 'having widespread, long-lasting or severe effects'. The remedy is simple and is the only legal way of solving this problem. So eminent a jurist as Mr. Mertin certainly

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knows that both the Permanent Court of International Justice that functioned between the two world wars and the International Court of Justice have said that when the text of a treaty or convention makes sense it is not justifiable or acceptable to seek interpretations in other documents.

"To anyone who may have examined the draft convention that is submitted for our consideration here it becomes obvious that as it stands its meaning is clear but unfortunately its meaning is the one I have dwelt on at length in my statement. If we want it to mean the absolute prohibition of such action, the remedy is simple and is the only legal remedy: to omit the qualifying clause."