

inal character of an act of aggression, but it might affect the consequences of aggression. Unfortunately, it appeared that a certain amount of confusion persisted within the Special Committee as to that distinction between intent and motive.

57. He supported the recommendation that the Special Committee should be authorized to hold a further session in 1974 and hoped that it would complete its work at that session. A definition of aggression was of the utmost importance to enlighten international public opinion; it would greatly facilitate the task of those whose duty it was to determine acts of aggression.

58. Mr. APRIL (Canada) said that the position of his delegation on the substance of the various aspects of defining aggression was well known and had been stated by the Canadian representative at the sixth session of the Special Committee. Accordingly, on the current occasion he would confine his remarks to the question of renewing the Special Committee's mandate.

59. He noted with satisfaction that the Special Committee had made some progress at its sixth session. It was regrettable, however, that after so many years of discussion and negotiation that Committee had

not yet managed to reach an agreement on the basis of a consensus. The progress that had been achieved was due in large measure to the Chairman of the Working Group, who had been instrumental in maintaining a favourable climate for the discussions. Despite the new political climate of 1973 and the high quality of the debates, it would not have been reasonable to expect the issue to be finally resolved in a few weeks. It was to be hoped that the various groups and countries which had undertaken to redefine their respective positions at the sixth session would continue their efforts in that direction. If they did so, it was not inconceivable that the Special Committee would complete its work at the next session, thus ending a debate which had already gone on for too long. Canada was prepared to continue working within the Special Committee to achieve, on the basis of a consensus, an acceptable compromise which would respect the vital interests of each country and each group of countries. Accordingly, in view of the progress made at the sixth session, his delegation considered that the mandate of the Special Committee should be renewed once again.

*The meeting rose at 1.10 p.m.*

## 1441st meeting

Monday, 19 November 1973, at 3.30 p.m.

Chairman: Mr. Sergio GONZÁLEZ GÁLVEZ (Mexico).

A/C.6/SR.1441

### AGENDA ITEM 95

#### Report of the Special Committee on the Question of Defining Aggression (*continued*) (A/9019, A/C.6/L.957)

1. Mr. SANDERS (Guyana) said that the Special Committee on the Question of Defining Aggression had made great progress at its 1973 session and many delegations attending the session, including his own, had felt that given an extra week or so the Special Committee might have been able to reach agreement on a complete text. When the Special Committee resumed its work, it would be best to start at the point where it had left off and not to re-examine the issues already settled, to which compromise solutions had been found. If it continued in the spirit of open-mindedness and statesmanship which had prevailed at the sixth session, he was confident that the next session of the Special Committee would be its final session.

2. Turning to draft resolution A/C.6/L.957, which his delegation had been asked to introduce on behalf of the sponsors, he drew attention to the preamble, which noted the progress so far achieved by the Special Committee, stated the belief that such progress made it a practical possibility for the Special Committee to elaborate a generally acceptable draft definition of aggression at its next session and also noted the common desire of the members of the Special Committee to continue their work on the basis of the results

achieved. The operative part contained a request to the Secretary-General to provide the Special Committee with the necessary facilities and services, a decision to include the item in the provisional agenda of the twenty-ninth session of the General Assembly, and a decision that the Special Committee should resume its work early in 1974 with a view to completing its task and to submitting to the General Assembly at its twenty-ninth session a draft definition of aggression. Although the general wish has been for the Special Committee to meet at Geneva, the sponsors had decided to leave the venue blank until they had more ample information as to the availability of services at Geneva and possible dates.

3. The CHAIRMAN announced that Austria, the Byelorussian SSR, Canada, Egypt, the German Democratic Republic, Iran, Liberia, Panama, Senegal, the Sudan and the Ukrainian SSR were to be added to the list of sponsors of draft resolution A/C.6/L.957.

4. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) said that his delegation attached great importance to the elaboration of a generally acceptable definition of aggression because it believed that such a definition would contribute to the fulfilment of one of the fundamental purposes of the Charter—the maintenance of international peace and security. Such a definition would have a restraining influence on a potential aggressor and would promote the protection of the lawful rights and interests of countries which

were the victims of aggression. It would also facilitate the work of the Security Council in adopting effective measures against an aggressor in accordance with the requirements of the Charter.

5. The improved political climate in the world and the growing acceptance of the principle of the peaceful coexistence of States with different social systems had had a positive effect on the work of the Special Committee, which had made substantial progress at its most recent session. Agreement had been reached on a number of basic elements in the definition of aggression, such as the fact that the definition must be based on the Charter of the United Nations, and must, above all, include a provision prohibiting the use of armed force, which was the most dangerous form of aggression. Agreement had been reached with regard to the preamble of the definition, the list of acts constituting aggression and other important provisions. The consolidated text of the reports of the contact groups and of the drafting group of the Special Committee (see A/9019, annex II, appendix A) was, on the whole, a generally acceptable basis for the elaboration of a final definition of aggression.

6. The preamble of the consolidated text was, in principle, satisfactory, and his delegation also had no objection to the text of article 1, although it considered that the inclusion of the words in brackets would unduly broaden the concept of aggression in a manner inconsistent with the Charter of the United Nations. Article 2 was a compromise formulation dealing with the questions of priority and aggressive intent. The essence of the principle of priority was to deny States the possibility of committing aggression under the pretext of a preventive war or the "theory" of a provoked attack. His delegation also endorsed, in principle, article 3 and supported article 4, which reaffirmed the powers of the Security Council under Articles 39, 40 and 42 of the Charter. The inclusion of article 5, which his delegation was prepared to accept, clearly and unambiguously emphasized the inalienable right of peoples under colonial domination to resort to force in order to free themselves from colonial oppression and to receive support and assistance in their struggle for national independence. That right was based on Article 51 of the Charter. His delegation had no objection to the substance of article 6 but considered that the blank space should be filled with the words "a crime", so that those guilty of aggression could be brought to justice and sternly punished. Considering the Charter to be one of the fundamental international legal instruments for combating threats to the peace and acts of aggression, his delegation would welcome the inclusion of a provision along the lines of article 7, according to which all of the relevant provisions of the Charter should be taken into account in connexion with the definition of aggression.

7. The work of the Special Committee at its sixth session gave his delegation every reason to believe that, with a spirit of goodwill, mutual understanding and business-like co-operation, the remaining differences regarding the draft definition could be quickly overcome and the work of the Special Committee concluded at its next session. Accordingly, his delegation

supported the recommendation that the Special Committee should be invited to resume its work early in 1974, as had been proposed in draft resolution A/C.6/L.957. Delaying the completion of that work would only have a negative impact on the cause of peace and the security of peoples.

8. With regard to the Special Committee's procedure, experience had shown that progress could best be made on the basis of consensus, taking into account the views of all delegations. That procedure would furthermore facilitate the adoption and implementation of the definition as an instrument of international law.

9. Despite the trend from "cold war" to *détente* in international relations, acts of aggression and bitter international conflicts were still far from being a thing of the past. The consolidation of peace required putting an end to conflicts and nipping acts of aggression in the bud wherever they might occur. The speedy completion of the Special Committee's work would be an important contribution to that end.

10. He thanked the authors of draft resolution A/C.6/L.957, which his delegation found eminently satisfactory, and recalled that his delegation had also become a sponsor.

11. Mr. GOERNER (German Democratic Republic) noted with satisfaction that the Special Committee had achieved considerable progress at its 1973 session. For the first time the General Assembly currently had before it a draft containing all the essential elements of the definition of aggression. The success achieved by the Special Committee was all the more remarkable in view of the fact that efforts to define aggression dated back half a century, to the proposal by the Soviet Union in 1933 for the conclusion of a convention defining aggression. His delegation fully agreed with the fifth preambular paragraph of the consolidated text, which stated that aggression was the most serious and dangerous form of the illegal use of force being fraught, in the conditions created by the existence of all types of weapons of mass destruction, with the possible threat of a world conflict with all its catastrophic consequences. For that reason, a convention on the definition of aggression was especially urgent.

12. Furthermore, the adoption of a definition of aggression would have a restraining influence on a potential aggressor and would simplify the determination of acts of aggression and the implementation of measures to stop them.

13. An important pre-condition for a definition of aggression was that its contents should fully correspond to the Charter of the United Nations, that it should concentrate on the decisive criteria and that it should be worded precisely, leaving no room for misinterpretation. His delegation was of the view that the consolidated text in essence met those requirements.

14. His delegation agreed with the fundamental stipulation of article 1 that the decisive criterion for the determination of aggression was 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. Since that general stipulation was explained by the following articles, the words in brackets in article 1 were not necessary and could even lead to misinterpretation. In the interest of a clear general definition, it would be better to delete those words. Moreover, the concept of a "group of States" mentioned in the explanatory note on article 1 was extraneous to the definition of aggression. In international law, a State bore the sole responsibility for its actions and could not be made responsible for the actions of another State. The concept of collective guilt or collective responsibility of a group of States was foreign to international law and could give rise to numerous complicated questions as to who should decide, and how, whether a State belonged to a group of States. In determining aggression, the decisive factor was whether the State concerned had committed certain acts which must be characterized as aggression according to articles 2, 3 and 4. Therefore the concept of a "group of States" was not justified in a definition of aggression.

15. Article 2 was a key provision in the draft since it dealt with the question of priority and aggressive intent. Although the determination as to whether an act of aggression had been committed must be made in the light of all circumstances in each individual case, his delegation attached special importance to the principle of priority which, as the representative of Iraq had already explained (1440th meeting), derived directly and logically from the Charter of the United Nations. The stipulation of article 2 according to which the Security Council might in conformity with the Charter conclude that a determination concerning *prima facie* evidence would not be justified in the light of other relevant circumstances, constituted an important pre-condition for determining the actual aggressor. That would rule out attempts to justify aggression by counterfeit attacks, such as that against the Gleiwitz radio station which Nazi Germany had used as a pretext in its aggression against Poland. On the whole, the existing wording of article 2 appeared to be a balanced compromise, taking into account the legitimate interests of all sides.

16. Article 3, which characterized various actions as acts of aggression, should be read together with article 4, which pointed out that the enumeration of acts of aggression in article 3 was neither exhaustive nor did it prevent the Security Council from refraining from the determination of an act of aggression if the act concerned was too minimal to justify such action. Article 3, subparagraph (f) required further careful study, and in subparagraph (g) the words "or its open and active participation therein" should either be formulated more precisely or deleted.

17. Article 5 was of particular importance inasmuch as it enunciated the right of peoples under military occupation or any other form of foreign domination to use force and to receive support and assistance in order to exercise their inherent right to self-determination. Colonial rule and other forms of oppression constituted a permanent aggression against the peoples being oppressed. Therefore, resistance against those

forms of oppression was an act of self-defence. Any support and assistance rendered to people struggling for independence and self-determination was in accordance with the Charter and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (resolution 2625 (XXV), annex), as well as other General Assembly resolutions. His delegation supported the inclusion of article 5 in a convention on the definition of aggression.

18. With regard to the legal consequences of aggression, his delegation was of the view that aggression constituted a crime against international peace and entailed the political and material responsibility of the guilty State. Neither territorial acquisition nor special advantage resulting from aggression was lawful or could be recognized as such. Although there had been divergent views as to the characterization of aggression, there was general agreement that aggression differed from other violations of international law by its extraordinary gravity. Indeed, the League of Nations had designated aggression as the gravest international crime. His delegation therefore considered it justified to describe aggression as a "crime" against international peace.

19. His delegation derived great satisfaction from the progress achieved by the Special Committee, which made it a practical possibility for the Committee to elaborate a generally acceptable draft definition of aggression at the next session. As a socialist State in the centre of Europe which had declared the safeguarding of peace to be the principal aim of its foreign policy, the German Democratic Republic would welcome such a definition. On the basis of the historical fact that twice in the century wars of aggression had started from German soil, the German Democratic Republic, as a German State, felt especially obliged to support the efforts to work out a definition of aggression with a view to preventing it in the future. In its view, the current political situation, which was characterized by *détente* in international relations, offered particularly favourable possibilities for the conclusion of a definition of aggression on the basis of consensus. Accordingly, his delegation supported the recommendation that the General Assembly should invite the Special Committee to resume its work early in 1974 and hoped that that work could quickly be brought to a successful conclusion. His delegation endorsed draft resolution A/C.6/L.957, of which it had become a sponsor.

20. Mr. NYAMDO (Mongolia) said that his delegation welcomed the Special Committee's report on its sixth session (A/9019), which showed that great goodwill and strenuous efforts, as well as highly efficient working methods, had led to the elaboration of a consolidated text of a draft definition of aggression. That success was largely due to the mutual understanding created by unofficial negotiations in the contact groups and to the favourable atmosphere which had prevailed throughout the session.

21. His delegation considered that the preamble to the consolidated text satisfactorily fulfilled the purpose

of setting out the contents and aims of the definition, by stating that the suppression of acts of aggression was one of the fundamental purposes of the United Nations, reaffirming the duty of States not to use armed force to deprive peoples of their right to self-determination, freedom and independence and to settle their international disputes by peaceful means in order not to endanger international peace, security and justice and stressing the need to define aggression as the most serious and dangerous form of the illegal use of force, being fraught with the possible threat of a world conflict with all its catastrophic consequences. Mongolia fully shared the conviction expressed in the preamble that the adoption of a generally acceptable definition would have a restraining influence on a potential aggressor, would simplify the determination of acts of aggression and the implementation of measures to stop them and would also facilitate the protection of the lawful rights and interests of the victim and the rendering of assistance to the victim. Convergence of opposing views on the preamble and its almost unanimous acceptance had had an important influence on bringing different opinions on other clauses of the definition closer together.

22. His delegation had no particular objection to the general definition of aggression in article 1, although it believed that the words "however exerted" should be omitted, because they were open to different interpretations. It welcomed the compromise that had been reached on the complex problem of the determination of aggression. The principles of priority and aggressive intent, referred to in article 2, were indeed important criteria for determining acts of aggression. While the principle of priority was decisive in the matter, the article rightly reflected the power of the Security Council to determine the existence of an act of aggression in the light of the relevant circumstances.

23. The list of acts constituting acts of aggression, set out in article 3, was clearly not exhaustive, and the Special Committee had wisely included a separate article 4 specifically stating the non-exhaustive character of the list. It was to be hoped that the differences and reservations which still prevailed with regard to article 3 could be eliminated through further negotiations. On the other hand, his delegation noted with satisfaction that the Special Committee had included in the definition article 5 on the right of peoples to self-determination.

24. It was regrettable that there was still a blank space in article 6 concerning the legal consequences of aggression and that there was even a proposal that the definition should not contain any clause on the subject. Since the General Assembly had on more than one occasion qualified aggression as a crime against international peace and since that description appeared in the Declaration on Friendly Relations, there would seem to be no difficulty in inserting the word "crime" in the blank space in article 6. Finally, article 7 on the legal uses of force was acceptable to his delegation.

25. The Mongolian delegation had come to several conclusions on the subject. In the first place, the different positions of States on the definition had drawn considerably closer; secondly, the theories of sceptics

concerning the impossibility of defining aggression had been refuted and the international community was unequivocally in favour of a definition; thirdly, an important factor in overcoming difficulties in reaching agreement had been the prevailing view in the Special Committee that the definition should conform strictly to the Charter of the United Nations and should be based on its provisions; fourthly, the international climate had been propitious for the Special Committee's work; and lastly, the members of that body were animated by a great willingness and a common desire to complete their work. Accordingly, his delegation believed that a generally acceptable definition of aggression could be adopted in the near future and would support the recommendation that the Special Committee should be invited to resume its work early in 1974.

*Mr. Šahović (Yugoslavia), Vice-Chairman, took the Chair.*

26. Mr. ALVAREZ TABIO (Cuba) said that the report of the Special Committee showed that serious progress had been made in the elaboration of a generally acceptable definition, although certain aspects of the complex problem of developing a general theory of aggression had not been satisfactorily resolved. His delegation was not opposed to a mixed type of definition including, in addition to a general and objective definition, a list of typical acts of armed aggression which would not be exhaustive, but indicative, and whose purpose would be neither to restrict the original concept nor to extend the scope of self-defence beyond the limits established in the Charter. Much had been said about the inherent right of self-defence in an attempt to invest the concept with an independent legal status enabling it to operate outside the framework of the Charter. However, while no one denied the fact that self-defence was an inherent and inalienable right of individuals and States, from the point of view of international law, it was fully embodied in Article 51 of the Charter.

27. The definition should reflect the distinction contained in Article 2, paragraph 4, of the Charter between the use of force against the territorial integrity or political independence of any State and the use of force in any other manner inconsistent with the purposes of the United Nations. However, while the use of force in the former case was clearly recognized as a form of aggression, it was to be feared that the illegality of the other uses of force referred to might be subordinated to the subjective factor of the purposes of the aggressor. In that respect Cuba totally disagreed with the idea of so-called "aggressive intent". It was clear that there could be no crime without guilt. Equally clear was the fact that the commission of an illegal act implied awareness of the wilful violation of a duty and of the consequences of such an act. As a result, there was no need to include aggressive intent in the definition of aggression for the simple reason that awareness of the criminal nature of an act was always present in conduct objectively described as aggression. The intention to commit aggression was implicit in the act itself, whatever the motive or purpose, and it would be absurd to place the burden of

proof on the victims of aggression or the Security Council. Intent, in other words, motive or purpose, was a factor which merely modified responsibility for aggression, and could in no circumstances exclude such responsibility. In that connexion, the attempt made in the six-Power draft proposal (*ibid.*, annex 1, sect. C) to make an act of aggression conditional upon motive or purpose was unacceptable. In order for the use of any of the means described in paragraph IV, subparagraph B, of that proposal to constitute an illegal act, it would be necessary for them to be used for one of the purposes listed in paragraph IV, subparagraph A. Therefore, the conditions laid down in that subparagraph would operate by exclusion as causes of aggressive conduct. In other words, the illegality of the act would depend upon its ultimate motives. However, by a similar process of reasoning, if it were assumed that the motives were noble, the act itself might be defended on those grounds, which would imply that the end justified the means. His delegation totally rejected such a view.

28. The principle of priority was a constituent element of aggression and was also determinant with regard to self-defence, which was justified as a reaction to an armed attack. It was necessary to avoid subjective considerations which might lead to acceptance of the concept of preventive self-defence, and to stress the element of priority, which was found implicitly in Article 51 of the Charter. Consequently, article 2, as drafted by the Special Committee, by subordinating priority to the purposes of the States involved, did not provide greater legal security but gave aggressors the opportunity to justify their illegal acts. The Latin American countries were well aware of the crimes which had been committed as a result of such theories.

29. With reference to the problem of legal uses of force, those uses included enforcement measures. International law would fulfil its purposes to the extent that it allowed specially designated bodies to take enforcement measures to restore legal order and prohibited any State or group of States from assuming the role of international policeman. In that connexion, the Security Council alone had the authority to determine the existence of an act of aggression or a breach of international peace, and to apply the necessary sanctions, and was the only international body which could lawfully use force. Cuba therefore could not accept any definition which attempted to authorize the use of force under regional agreements or by regional bodies. Nor could it accept ambiguous formulas which did not dispel the doubts raised about the interpretation of the clear provisions of Article 53 of the Charter. In particular, article 7, as drafted by the Special Committee, might be interpreted in such a way as to lend support to efforts to vest authority in, for example, the Organization of American States, to act independently of the Security Council. On more than one occasion attempts had been made to assimilate the precise concept of "armed attack" to the deceptive formula of the Inter-American Treaty of Reciprocal Assistance, signed at Rio de Janeiro in 1947,<sup>1</sup> according to which OAS could use enforcement

measures, including the use of armed force, when confronted with any act or situation which endangered the peace of the continent. Moreover, a regional arrangement could not be binding on a State which was not, or had ceased to be, a party to such an arrangement, in accordance with Article 52 of the Charter, which referred specifically to Members of the United Nations entering into such arrangements or constituting such regional agencies.

30. Self-defence was a second case in which the use of force was justified. Under Article 51 of the Charter, the right of self-defence was limited to action undertaken in response to an armed attack. It should be stressed that that provision did not refer to direct or indirect aggression, nor to a threat of aggression or acts or situations which might endanger peace, but to armed attack. It was not therefore possible to accept ambiguous formulas which might serve as a pretext to justify aggression committed under the cloak of some organization.

31. A third example of the legal use of force was the case of peoples under colonial or foreign domination using armed force to conquer their independence and freedom. The right to use force in such circumstances, as well as to request and receive assistance in the process, was implicitly embodied in the Charter and had been recognized by various General Assembly resolutions, in particular resolution 1514 (XV). As to the legal consequences of aggression, there was no doubt that under existing international criminal law, aggression constituted an international crime against peace which gave rise to both criminal and civil responsibility.

32. He said that his delegation supported the recommendation to invite the Special Committee to resume its work in 1974.

33. Mr. CRISTESCU (Romania) commended the Special Committee on its report and noted with satisfaction the progress made toward the elaboration of a generally acceptable definition of aggression. Although the texts prepared had not yet produced a consensus, the results of the Special Committee's work during its sixth session had been substantial.

34. With reference to the consolidated text, he said that it was too early to express a general opinion on the preamble, the final elaboration of which should be postponed until agreement had been reached on the formulation of the definition. However, since the right of peoples to self-determination constituted one of the foundations of international law which should be protected by any definition of aggression, his delegation considered it essential to reaffirm in the preamble the duty of States not to resort to force with a view to depriving peoples of that right, or of their freedom and independence. His delegation also attached great importance to the reaffirmation in the preamble of the principle that the territory of a State should not be violated by being the object, even temporarily, of military occupation or of other measures of force taken by another State.

35. The general definition of aggression in article 1 should be made clear and unequivocal. He therefore considered it essential to include in the definition the

<sup>1</sup> United Nations, *Treaty Series*, vol. 21, No. 324 (a), p. 93.



wording proposed by his country, namely "in any form" and "inconsistent with the principles and purposes of the Charter". At the same time, his delegation agreed with the majority of the members of the Special Committee that sovereignty should be mentioned as one of the things which could be violated by an act of aggression, and that the article should be accompanied by the explanatory note to the effect that the term "State" was used without prejudice to questions of recognition or to whether a State was a Member of the United Nations, and included the concept of a group of States.

36. With reference to article 3, concerning the acts proposed for inclusion, he reiterated his delegation's proposal that the definition should include a provision on the prohibition of weapons of mass destruction and another provision declaring that a State committed an act of aggression if it allowed another State to use its territory for the purpose of committing aggression against a third State. In addition, he considered that the additional text proposed in the reports of the contact groups and drafting group, reading "No consideration of whatever nature, whether political, economic, military or otherwise, relating to the internal or foreign policy of a State, may serve as a justification for aggression as herein defined" should be included in article 4. He also suggested that the word "crime" should be included in the blank space within brackets in article 6.

37. On the subject of article 7 concerning legal uses of force, his delegation considered the exercise of the inherent right of self-defence in accordance with the Charter of the United Nations was the only case in which the use of armed force was legitimate.

38. In general, the definition of aggression should be in complete concordance with the basic principles of international law as defined in the Declaration on Friendly Relations. The definition should enunciate in a non-limitative manner acts involving the use of force, the danger of which was continually increasing as a result of the enlargement of military arsenals. It should be oriented towards the need to condemn at the international legal and political levels the illegal use of force in any form in relations between States, and facilitate the identification and suppression of such acts in order to strengthen international peace, security and legality.

39. He expressed the hope that the Special Committee would resume its work and complete the elaboration of a definition during its 1974 session.

40. Mr. BESSOU (France) said that since the establishment of the Special Committee his delegation had actively participated in its work in the hope that a compromise solution could be found to the problems which were still a subject of disagreement. As the report of the Special Committee showed, substantial progress towards that goal had been achieved at its sixth session, although the long-awaited final compromise had failed to emerge.

41. The question of priority and of aggressive intent was one of the main stumbling-blocks impeding the

work of the Special Committee. Some delegations considered that the principle of priority alone would not suffice to establish the objective existence of an act of aggression, and must be combined with the criterion of aggressive intent. The view of those delegations, which was not shared by his own, was that not every use of armed force was contrary to the Charter, and that in cases where the use of armed force was contrary to the Charter, it could not for that reason alone be qualified as an act of aggression. Other factors should be taken into account, including motive. There could only be an act of aggression when the Security Council had established that such a determination was justified. That was the subjectivist theory of aggression.

42. Most delegations, on the other hand, considered that the principle of priority should be sufficient to justify the presumption that an act of aggression had occurred. His delegation had supported that position. In order for the formulation of the principle of priority to be acceptable it must indicate unequivocally that any State which was the first to use force should be regarded as having committed an act of aggression—subject to the clause on minor incidents—and that such use of force justified the exercise of the right of self-defence provided for in Article 51 of the Charter. The formulation should also enable the Security Council to refuse to qualify such an act as an act of aggression, taking into account its powers under the Charter. But it should be made clear that if the matter was not brought before the Security Council, or if the latter could not take a decision, then the objective existence of an act of aggression would be presumed to have resulted from the use of armed force by the State which took the initiative.

43. Such should be the basis for the consideration of article 2 in the Special Committee's future work. There seemed to be agreement that the use of armed force constituted *prima facie* evidence of an act of aggression. His delegation accepted the idea of presumption to the extent that it made it possible to establish the objective existence of an act of aggression. Although he understood the reasons underlying the rejection of the idea of a list of criteria of aggressive intent, and was opposed in principle to the consideration of motive, his delegation could accept a reference to the notion of aggressive intent, not as a consistent element of the offence, but as one of the circumstances which the Security Council might use in determining whether or not an act should be qualified as an act of aggression. Therefore, while the substance of article 2 was acceptable, its wording should be reviewed, and an attempt made to clear up two ambiguities.

44. First, the text would be considerably improved if there were two separate sentences making it possible to distinguish between the objective existence of an act of aggression as determined by applying the rule of priority and the Security Council's power of review of that *a priori* determination. The expression "in contravention of the Charter" should be deleted, to the extent that it implied that a use of armed force which, according to an interpretation of the

Charter which his delegation rejected, was not contrary to the Charter would not constitute an act of aggression.

45. The question of indirect aggression was the second key problem involved in formulating an acceptable definition of aggression. Some States considered it inappropriate to define rigidly the link between the receiving State and armed bands. The mere fact that a State received, organized, encouraged or assisted armed bands which committed incursions should be regarded as an act of aggression. The extreme view was that the mere fact that a State made its territory available to armed bands should be regarded as an act of aggression. On the other hand, many delegations, including his own, considered that aggression should not be regarded as having occurred unless first, the activities of a State were involved—otherwise the case would fall outside the scope of the definition of aggression—or second, an invasion of another State took place involving the use of a sufficient degree of armed force by the armed bands.

46. In a spirit of compromise his delegation was prepared to support the current text of article 3, subparagraph (g), and in particular the notion that the responsibility of the State would be entailed when armed bands acted in its name. It also supported the addition of a reference to the “open and active participation of the receiving State” in the sending of such armed bands. But it could not accept the idea that the mere fact that the receiving State organized, helped to organize or encouraged the formation of armed bands constituted an act of aggression, independently of whether or not it also participated in sending them on the incursions. Nor could his delegation accept *a fortiori* that by making its territory available to such armed bands a State committed an act of aggression.

47. Finally, he had no observations to make concerning articles 4, 5 and 7, which seemed satisfactory as they stood. On the other hand, he reminded the Sixth Committee of his delegation’s well-known misgivings concerning the usefulness and wording of article 6, and said that its final position in that connexion would be adopted in the light of efforts to achieve compromise on other points.

48. Mr. KLAFFKOWSKI (Poland) said that, although his country was not a member of the Special Committee, the Polish delegation had on several occasions expressed its views on the principal aspects of the definition of aggression. Accordingly, he would limit his statement to some general remarks.

49. In the first place, it was most gratifying to note that the Special Committee had succeeded in agreeing on a consolidated text, based on the three draft proposals which it had considered at earlier sessions and which were reproduced in annex I of its report: the USSR draft, the 13-Power draft and the 6-Power draft. Although the definition had not yet been finalized and was not yet generally acceptable, it was obvious that different positions had drawn closer together and that the Committee had made undeniable progress. In that connexion, the contribution of the Codification Division of the United Nations Legal Department should be stressed; special thanks were due to the

Secretariat for the document entitled “Definition of Aggression. A Select Bibliography”.<sup>2</sup>

50. Secondly, he drew attention to the statement in paragraph 12 of the report that “The atmosphere was much better and much more willingness was demonstrated to find a compromise definition; this change of atmosphere would bear its fruits and it was imperative that its momentum be maintained to accomplish the task of the Committee”. The new political climate of 1973, referred to by the Canadian representative at the preceding meeting, had made it possible to solve outstanding problems and to overcome existing obstacles. Thus, the comments set out on pages 18 to 21 of the report and the proposals submitted to the Working Group which appeared on pages 22 to 28 should not give rise to any insurmountable difficulties.

51. Thirdly, his delegation wished to stress once again the manifest advantages that the adoption of a definition would hold for the progressive codification of international law, for the strengthening of international security and for ensuring international legality. Whereas the report showed that the necessity of such a definition had been recognized, reality showed that the definition was not only indispensable, but also possible, especially in the existing international circumstances. The Eastern European group had particularly emphasized the importance of the definition, because the countries of that region had been the victims of aggression. Poland therefore associated itself with the proposals made in the statements of the representatives of those countries in the current debate.

52. Fourthly, an analysis of the report demonstrated the legal character of the consolidated text. Of the nine paragraphs of the preamble to the draft definition, five referred to the Charter of the United Nations, and five of the seven operative articles also contained such references. That served as evidence of the links between the Charter, the draft definition of aggression and the entire international machinery involved in the adoption of the definition and in its subsequent implementation.

53. Since the Special Committee had never been so close to achieving its goal, the Polish delegation would support draft resolution A/C.6/L.957 recommending that that Committee should be invited to resume its work early in 1974.

54. Mr. ROSENSTOCK (United States of America) said that the Special Committee’s report reflected the most productive and encouraging session yet held by that body and that the juridical nature of the current debate and the absence of attempts to restate earlier positions were also gratifying. The consolidated text in annex II, appendix A, to the report commanded wide support. Although significant progress had been made on the difficult questions of priority and aggressive intent, his delegation considered that article 2 continued to place a rather simplistic over-emphasis on the question of who had fired the first shot. It was true that the provision now recognized to some degree that determination of an act of aggression could only be made in the light of all the relevant circumstances,

<sup>2</sup> ST/LIB/32.

but there was still room for improvement in striking the correct balance between the first use of armed force and the many other circumstances, including intent, which must be taken into account. In that connexion, a distinction should be made between a violation of Article 2, paragraph 4, of the Charter and a determination that an act of aggression had been committed under Article 39: both gave rise to international responsibility, but the function and purpose of Article 39 differed significantly from those of Article 2, and to blur that distinction could only lead to confusion.

55. With regard to the list of acts which might constitute aggression, his delegation considered that the accuracy of the list would be improved by fuller inclusion of the wording of the Declaration on Friendly Relations with regard to covert uses of force by one State against another. Reference to so-called indirect use of force could only confuse the issue. The Special Committee had been right to include a provision stating that the list of acts was not exhaustive and recognizing the relevance of the principle *de minimis non curat lex*. Moreover, more express emphasis on the Security Council's discretion to take action under Chapter VII of the Charter seemed to be in order. The Council's recent expeditious action supported the view that seeking to determine the identity of the aggressor was not necessarily the best way of obtaining the required results. Indeed, at a stage when the goal of defining aggression seemed to be in sight, the Sixth Committee should not be diverted into arid debates as to who was the aggressor when the real need was to implement the collective security machinery, rather than to apportion blame. With any other approach, the Sixth Committee's work could hinder rather than further the cause of world peace.

56. The many years spent on the question of defining aggression bore witness to the complexity of the task. It was difficult enough to interpret Article 39 of the Charter correctly, and the task was not facilitated by partial descriptions of the possible legal consequences of a determination by the Security Council that an act of aggression had taken place. If there had been no London Charter, no Nürnberg Tribunal, no General Assembly resolutions accepting the underlying principles of the Nürnberg and Tokyo Tribunals and no article on wars of aggression in the Declaration on Friendly Relations, there might have been some merit in the argument that, although it was not strictly necessary to include those consequences in the definition, the Assembly should not miss a unique opportunity to comment on them; but in view of the wealth of existing precedent the argument for including the provision was unconvincing. Similarly, the inclusion of the provision on territorial acquisition was an unnecessary complication in view of the existence of a more explicit and broader provision on the subject in the Declaration on Friendly Relations. The same applied to proposals for a detailed elaboration of the inherent right of self-defence.

57. His delegation believed that the outstanding issues mainly related to drafting and that those differences could be eliminated during one more session

of the Special Committee. It therefore supported the extension of the Committee's mandate for another year.

*Mr. González Gálvez (Mexico) resumed the Chair.*

58. Mr. GARCIA ORTIZ (Ecuador) said that, although a few thorny issues remained outstanding, the Special Committee, of which his country was a member, had for the first time succeeded in producing a single draft definition commanding a wide measure of agreement.

59. In his delegation's opinion, article 1 satisfactorily stated the general concept of aggression; although that text might not be regarded as a definition properly so called, it would suffice for the time being to pave the way for a definition. Moreover, it had the merit of objectivity, since it made no reference to motive or intent. His delegation considered that the words in brackets, "however exerted", should be retained.

60. Priority was certainly the most important criterion for establishing a presumption of aggression, and that principle was correctly set out in article 2. Nevertheless, his delegation was concerned at the fact that under that article the very definition of aggression was subject to the decision of the Security Council; it did not wish to cast doubt on the Council's competence, but would submit that the political factors which were bound to intervene might lead to pragmatic and casuistic decisions. It also considered that the final phrase, "including, as evidence, the purposes of the States involved", should be deleted.

61. The same objection applied to article 4, which gave the Security Council similar decisive powers. The final text of the definition must be as precise as possible, and a logical addition would be a provision establishing an international penal tribunal having the powers currently attributed to the Security Council in the matter. The list of acts in article 3 obviously could not be exhaustive, but his delegation believed that specific reference should be made to economic aggression, either in the list or in a separate provision.

62. Ecuador could not but support article 5, on the right of peoples to self-determination. With regard to article 6, it considered that aggression must be characterized as a crime against international peace. That consideration led to the conclusion that an international penal order must be established sooner or later. His delegation further considered that the second paragraph of the article should be replaced by its text proposed to the Working Group of the Special Committee, which appeared on page 22 of the report.

63. The provision on the legal uses of force in article 7 logically restricted such legal uses to those covered by the relevant provisions of the Charter. His delegation considered, however, that the proposed extension of that article was extremely important; it could accept either the wording given immediately after article 7 of the consolidated text or the alternative on page 21 of the report. Indeed, legal justification of aggression was a contradiction in terms; all forms of aggression, whether overt or covert, flagrant or concealed, must be condemned, without any possibility of *a posteriori* justification by fallacious and specious arguments.



64. It was to be hoped that the Special Committee would be given an opportunity to solve the difficult outstanding problems at its next session. As a sponsor

of draft resolution A/C.6/L.957, Ecuador commended that text to the Sixth Committee.

*The meeting rose at 5.45 p.m.*

## 1442nd meeting

Tuesday, 20 November 1973, at 10.55 a.m.

Chairman: Mr. Sergio GONZALEZ GALVEZ (Mexico).

A/C.6/SR.1442

### AGENDA ITEM 95

#### Report of the Special Committee on the Question of Defining Aggression (*continued*) (A/9019, A/C.6/L.957, A/C.6/L.958)

1. Mr. MOUSHOUTAS (Cyprus) said that the Special Committee on the Question of Defining Aggression, of which his country was a member, had achieved considerable progress at its sixth session. His delegation shared the optimism expressed in paragraph 12 of the report of the Special Committee (A/9019) and in the third preambular paragraph of draft resolution A/C.6/L.957, of which it was one of the sponsors. The Special Committee had come close to success but the task undertaken was a difficult one: the Committee was dealing with abstract and general terms and trying to achieve practical results. From the present time until the next session of the Special Committee, its members should continuously re-examine their position at both the national and the group level. It should be borne in mind that the Special Committee had been entrusted with the task of finding a definition of aggression which would be valid not only for the current international situation but for generations to come. Members must be willing to adopt more flexible positions, in a spirit of compromise. As far as the practical aspect was concerned, his delegation proposed that an informal contact group composed of representatives of the States sponsoring the three draft definitions reproduced in annex I of the report, of the Arab States and of States that were not supporting any draft definition, should meet at United Nations Headquarters at such intervals as they might deem appropriate soon after the General Assembly decided on the convening of the seventh session of the Special Committee. His delegation thought that such a contact group, which would base its discussions on the consolidated draft definition in annex II, appendix A of the report, would prove a time-saving device. The Special Committee itself could meet early in 1974, in New York or at Geneva or in any other Member State that might wish to invite it. The efforts made by the international community to draw up a definition of aggression must not be abandoned, for without such a definition the whole basis of legal order would be lacking. A generally acceptable definition of aggression would not only be useful and necessary for the maintenance of international peace and security, but would contribute to the consolidation of the system of international security and would promote the development of international law. It was true that a definition, *per se*, would not

act like magic to prevent aggression, but it would certainly exercise a restraining influence on possible aggressors. The very fact that a consensus could be reached on a definition of aggression would be an indication that the world was determined to abandon the concept of force as an instrument of policy, and the psychological effects would be far-reaching as a factor of peace.

2. New concepts and ideas had been introduced at the sixth session of the Special Committee, in particular in the Working Group, the Chairman of which had been Mr. Broms of Finland, to whom his delegation expressed its profound appreciation.

3. Mr. SINGH (India) thanked the Rapporteur of the Special Committee and the Chairman of the Special Committee's Working Group for the excellent accounts they had given in their statements. At its last session the Special Committee had made some progress towards a definition of aggression. The positions of the delegations had become clearer and many gaps had been narrowed. His delegation hoped that that constructive atmosphere would be maintained and that the Special Committee would be able to submit a draft definition to the next session of the General Assembly. His delegation therefore supported the Special Committee's recommendation that it should resume its work in 1974. At their summit conferences the heads of State or Government of non-aligned countries had consistently emphasized the need to arrive at a definition of aggression as soon as possible.

4. Although his country was not a member of the Special Committee, it had always taken a keen interest in the work of that body and had already made known its views on the question of defining aggression. Referring to the consolidated text, he expressed his delegation's satisfaction that the drafting group appointed by the Working Group had been able to prepare a set of preambular paragraphs for the definition, based on the three draft proposals in annex I of the report. All those preambular paragraphs, with the exception of the sixth and seventh, had received general approval in the Special Committee. The sixth preambular paragraph reaffirmed the duty of States not to use armed force to deprive peoples of their right to self-determination, freedom and independence. His delegation considered that that duty should apply to all forms of the use of force and that there should be a reference to the principle of territorial integrity in that paragraph. It therefore proposed that the paragraph should be amended to read: "Reaffirming the duty of States not to use force to deprive peoples of their right to self-