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COMMITTEE ESTABLISHED UNDER GENERAL ASSEMBLY  
RESOLUTION 1181 (XII) (QUESTION OF  
DEFINING AGGRESSION)  
Third session

COMMENTS BY GOVERNMENTS ON THE QUESTION OF  
DEFINING AGGRESSION

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## INTRODUCTION

1. The Committee established under General Assembly resolution 1181 (XII) (Question of Defining Aggression), on 9 April 1962 at its second session, adopted a resolution (A/AC.91/3) asking the Secretary-General to request States admitted to the United Nations since the first session of the Committee in 1959 to submit their views on the question in conformity with paragraph 2 of General Assembly resolution 1181 (XII) of 29 November 1957, and to renew the request to the other Member States to submit their views. The Secretary-General therefore by circular letter requested the views of Members.
2. The present document reproduces the views expressed, prior to 12 March 1965, in response to the Secretary-General's request. The Governments of Burundi, Dahomey, Ecuador and the United Kingdom of Great Britain and Northern Ireland have so far transmitted statements of their views; the Governments of Kuwait and Upper Volta have replied that they have no comments to make for the present. Any further statements received will be published as addenda to this document.

1. BURUNDI

Note verbale from the Ministry of Foreign Affairs,  
dated 1 March 1965

[Original: French]

The concept of aggression

I. The notion of aggression

The word "aggression" is a concept that is at once clear and nebulous - or at any rate elastic and elusive.

The juridical meaning of the term involves political associations and psycho-sociological judgements which make a precise definition difficult.

Its meaning must therefore be sought in a dynamic context, by a series of steps. In this note, we shall adopt the method of approximation and gradation.

(1) The notion of aggression is based on that of international responsibility. It presupposes a dispute concerning territorial jurisdiction and a violation of sovereignty.

As a first approximation, then, there is a relationship between two or more States involving at least an element of conflict or giving rise to a situation of conflict which could degenerate into a breach of the peace or of the state of peace.

It implies the existence, as parties to the conflict, of an aggressor and a victim of aggression.

Around this notion gravitate a host of concepts which it is extremely important to distinguish one from another, in view of their subtlety, ambiguity and liability to be confused. Aggression falls midway between the concept of provocation and that of the state of war. It goes beyond the simple notion of the unfriendly act and merges with that of the act of belligerency. It straddles between the notion of the act of hostility, which initially is unilateral, and that of the act of war or belligerency, which is complex and reciprocal. It may result from a material circumstance or a prior juridical act. These notions are related and form a progression or continuous sequence of increasing complexity, in which the later stages can include the earlier stages.

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(2) The unfriendly act

By this term we mean any deed or act on the part of one State which, with respect to another State, constitutes at least a breach of the "comitas gentium" and at the most a breach of international law, without any bellicose intention underlying the deed or act in question.

In this category may be grouped all breaches of international decorum and courtesy. It may also include all deeds or acts constituting interference or meddling, and all deeds or acts violating the principle of equality among States, or harming good-neighbourly relations.

Merely by way of illustration, the following acts or situation may be cited:

Alliance with the traditional adversary or potential enemy;

Reprisal measures disproportionate to the seriousness of the initial unfriendly act;

Measures of retortion going beyond the limits of mere reciprocity;

All impudent and vexatious acts: campaigns of denigration, etc.

(3) The hostile act or act of enmity

Under this heading may be grouped all deeds or acts of a serious nature with a warlike intention behind them.

Technically, the hostile act is synonymous with provocation. The latter presupposes moral responsibility at least on the side of the party guilty of provocation. It consists of a calculated deed or act in which the provoking party, after creating a situation inviting a retaliatory act, makes a hypocritical show of desisting solely in order to avoid being held responsible.

In other words, the State guilty of provocation is the State which, without resorting to war, through its acts, manoeuvres or attitude incites one or more States to take the initiative in opening hostilities.

Figuratively speaking, it could be said that the provoking party is he who places the bomb but avoids setting it off himself. He is the moral architect of war, he who prepares its ingredients, puts fuel on the fire and thus plays the part of a catalyst in provoking the reaction. The notion of a hostile act being thus clarified, the acts which can constitute a provocation are manifold. They are all steeped in a particular psychological atmosphere, a kind of war psychosis, as in the expression "cold war", or the threat of war.

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By way of illustration, the following acts may be mentioned:

- (a) Measures prejudicial to the economy of another State (acts directed against material wealth):
  - Blockades, boycotts, embargoes;
  - Confiscation and plunder of the property of another State or of its inhabitants;
- (b) Minor violations of territorial integrity and sovereignty:
  - Frontier violation: land, waters, air space (boarding and seizing of ships, over-flights);
  - Acts constituting subversion ...
  - Acts of espionage;
- (c) Acts against the nationals of a State:
  - Expulsion, arbitrary imprisonment, acts of violence ...
- (d) Unilateral comminatory acts:
  - Ultimatums;
  - Threats, etc. ...

All these acts bring about a state of tension, the eventual outcome of which is an explosion of conflagration. They form the material and psychological fabric of war. They are the prelude to it.

(4) The warlike act or act of belligerence

This is the act of force or the act of war in the strict sense, designed for the sole purpose of starting a war. It may consist in a trial of strength or a surprise or sudden attack. It may also be expressed in the legal procedure of a formal declaration of war. It is true aggression - the act or deed bringing about the war. It is the act of the aggressor, who, so to speak, ignites the powder, thus assuming material responsibility for the opening of hostilities. Provocation represents the necessary but not sufficient condition for the opening of hostilities, aggression is both its necessary and sufficient condition, its sine qua non.

Figuratively speaking, the aggressor is he who adds the drop that causes the glass to overflow, as against the provoker who fills the glass. The provoker prepares the explosive mixture; the aggressor detonates it.

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In short, the aggressor is he who launches the first attack, who takes the initiative in beginning hostilities, the author of the initial act, he who makes war inevitable independently of whether he is in a position of self-defence or not, or whether he claims that he is waging a defensive war. The distinction is not as clear-cut as this, however, since the first attacker may also be the provoker. The notion of aggression, therefore, does not necessarily have a moral connotation but it does not exclude that connotation.

Acts constituting aggression are many and varied. One might note, for purposes of discussion, the following:

Declaration of war;

Direct attack (bombardment ...)

Alliance with the declared enemy;

Breach of neutrality;

Co-operation with the enemy (alliance with the declared enemy, benevolent neutrality, logistic support);

Invading, overrunning, annexing or occupying a territory, etc. ...

#### (5) The state of belligerency

This expression describes a state of affairs and delimits the theatre of operations between clearly defined belligerents, with the possibility of extension, irrespective of who bears the initial responsibility. It is actual armed struggle - an international armed conflict, with all the features of war (offensive, retreat, counter-offensive, etc. ...).

## II. View of the Government of Burundi

(1) The term "aggression", in view of its very serious implications, must be defined with great exactitude.

It has often caused confusion and has given rise to many difficulties. In fact, the concept is still somewhat beclouded by the element of subjectivity. On the side of the State which considers itself to be the injured party, the concept has often served as a pretext for war under the pious cloak of self-defence.

It has thus become a means of justification. The Government of Burundi would therefore wish this concept to be defined unambiguously and distinguished quite

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clearly from provocation, which consists of a series of preparatory acts, as shown by the analysis above.

It would therefore be well to exclude definitions which extend the scope of this term in such a way as to obscure its meaning or connotation - for example, definitions which would embrace alleged serious non-compliance with an international obligation, such as to justify the use of force in response, or certain presumptions of aggression which would cover alleged wrongs committed, the refusal to sign an armistice, the rejection of jurisdictional competence, failure to observe a war moratorium, etc. ...

(2) The Government of Burundi considers that it would be expedient to adopt the procedure of enumeration in order to throw the greatest possible light on the concept in question.

This technique of enumeration was used at the Disarmament Conference in 1933 and has been repeated in a number of peace treaties, in the following well-known terms:

"The aggressor in an international conflict shall, subject to the agreements in force between the parties to the dispute, be considered to be that State which is the first to commit any of the following actions:

"(1) Declaration of war upon another State;

"(2) Invasion by its armed forces, with or without a declaration of war, of the territory of another State;

"(3) Attack by its land, naval or air forces, with or without a declaration of war, on the territory, vessels or aircraft of another State;

"(4) Naval blockade of the coasts or ports of another State;

"(5) Provision of support to armed bands formed in its territory which have invaded the territory of another State ..."

We note that the same procedure is used in Article 13 of the Covenant of the League of Nations and Article 36 (3) of the United Nations Charter, defining the competence of the world Court on the basis of the distinction between political disputes, which are not amenable to judicial settlement, and legal disputes, which are so amenable, bringing into operation the optional clause concerning compulsory jurisdiction.

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(3) To explore the question thoroughly, it would be necessary to specify, by way of illustration, the acts constituting aggression in the case of each of the three categories of warfare:

Land warfare;

Maritime or naval warfare;

Aerial warfare.

(4) The Government of Burundi would like to draw attention to the nature of disputes with regard to aggression. According to the established distinction, such disputes are political disputes and therefore not amenable to judicial settlement. Disputes concerning aggression would be settled as follows:

(a) For States Members of the United Nations which have subscribed to the optional clause of compulsory jurisdiction: the International Court of Justice would be competent - this argument is derived from the following provisions describing the scope of the clause:

1. Any question of international law;

2. The existence of any fact which, if established, would constitute a breach of an international obligation.

(b) For Members which have not subscribed to the clause, the traditional means of political settlement remain valid (direct consultations, good offices, mediation, inquiry), including action by the Security Council, the organ responsible for world peace, to bring about a settlement.

(c) The International Court of Justice may, in accordance with the customary conditions and procedures, give advisory opinions. It could be given broad powers for making a judgement. Thus a body of precedent could be built up.



## 2. DAHOMEY

Note verbale from the Ministry of Foreign Affairs,  
dated 22 February 1965

[Original: French]

### I. Definition of aggression

It seems difficult to draft a definition whereby the notion of aggression could be precisely delimited.

Of the various formulas suggested by the members of the Special Committee and by delegations to the ninth session of the United Nations General Assembly, the so-called "general" definition appears to be the most desirable, since the notion of aggression is a complex one and a great many different acts may constitute aggression. Moreover, the so-called "general" definition has the great advantage of allowing a certain margin of judgement in each specific case.

This flexibility is not present in the so-called "enumerative" definition, which is so rigid that it is likely to prove to be either too restrictive or too extensive. The aim, however, should be to reduce the risk of "getting around" the definition of aggression by new methods and to refrain from qualifying as aggression acts which, by their nature, do not in themselves constitute aggression.

### II. The various forms of aggression

Since one of the purposes of the United Nations is to "maintain international peace and security" (Chapter I, Article 1 (1), of the Charter), the notion of aggression should not be understood to mean solely "armed aggression". The Charter should be interpreted liberally and from that point of view it will be seen from Article 39 that armed aggression is only one instance of a breach of peace. Although the use of armed force is the most violent example of aggression and its most classic form, there are nevertheless other forms of aggression which produce the same result, namely, a breach of the peace.

Any restrictive interpretation of the Charter would have the effect of encouraging certain States to engage in acts which violate the territorial integrity or political independence of other States.

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(1) Economic aggression. Political independence is closely linked with economic independence and it has become a platitude to say that political independence is an empty word unless it is accompanied by a measure of economic independence.

At the present day, economic aggression is the most common form of aggression. It assumes a disguised form but it has the same effect as armed aggression. By adopting coercive economic measures and by using economic pressures, the industrialized countries could imperil the economic and hence the political independence of the developing countries. That form of aggression is contrary to certain principles recognized by the United Nations.

It may for example be considered that economic aggression takes place when State A, being the first to act, takes economic steps likely to jeopardize the economic independence of State B and to destroy its economic life, or when it takes steps to prevent State B from exercising permanent sovereignty over its natural wealth and resources or when it imposes an economic blockade against State B.

(2) Ideological aggression. This is a very complex concept. The dissemination of War propaganda or the promotion of racist propaganda is certainly to be condemned. Does it, however, justify the use of armed forces in self-defence under Article 51 of the Charter? The answer must be "no". While it is true that the excesses of ideological propaganda may bring about a breach of the peace and the same effects as armed aggression, the use of armed force in self-defence cannot be established as a principle. The same defensive measures cannot be envisaged in the case of both armed aggression and ideological aggression.

(3) Other forms of indirect aggression. Among other forms of indirect aggression, mention should be made of the encouragement of subversive activities against another State, assistance to and arming of organized bands against another State, incitement of the local population to revolt against the State authorities, etc. ...

Such acts are in violation of the principles of respect for the sovereignty of States and non-intervention in their internal affairs.

III. The connexion between a definition of aggression and the maintenance of international peace and security

The definition of aggression would be very useful for the maintenance of international peace and security. To begin with, it would enlighten world public opinion on this concept and exercise a preventive influence on potential aggressor States. Such a definition, however precise and comprehensive, will always leave loopholes, but since the rule of law is essentially evolutionary, it will be necessary to make some adjustments from time to time. A definition would contribute to the progress of international law and to the development of the principles enunciated in the Charter.

IV. Questions raised by the insertion of a definition of aggression in the Code of Offences against the Peace and Security of Mankind and by its application within the framework of an international criminal jurisdiction

It would be desirable for the definition of aggression to be embodied in the Code of Offences against the Peace and Security of Mankind. Certain problems arise, however: any given case of aggression might be brought both before the Security Council, which bears primary responsibility for "the maintenance of international peace and security" (Article 24 of the Charter) and an international criminal jurisdiction. This twofold recourse is likely to result in totally contradictor                      those two organs.

A definition of aggression would contribute greatly to the development of international law and would fill a major legal gap in accordance with the old adage Nullum crimen, nulla poena, sine lege. It would make it possible to avoid debates and controversy such as those which took place in connexion with the Nuremberg Military Tribunal and the Tokyo War Crimes Tribunal.

3. ECUADOR

Note verbale from the Ministry of Foreign Affairs,  
dated 14 January 1965

[Original: Spanish]

The Ministry of Foreign Affairs is pleased to inform the Secretary-General that it regards the task entrusted to the Committee as one of fundamental importance and therefore hopes that the proposed meeting can be held on the date suggested and that the Committee's deliberations will enable it to clarify the various factors relating to the definition of aggression.

4. UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Letter from the Permanent Mission to the United Nations  
dated 3 March 1965

/Original: English/

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While in principle not averse to a definition of aggression, Her Majesty's Government have always doubted whether it is possible to evolve a satisfactory definition which would not oversimplify the issue or leave loopholes which would by implication exonerate acts not expressly included in the definition. Moreover, the insuperable difficulties in the way of securing a generally acceptable definition of aggression have been amply demonstrated by the complete lack of progress made by the General Assembly and by the Special Committees on the Question of Defining Aggression since the issue was first raised in 1950.

Her Majesty's Government consider, moreover, that it is relevant to draw attention to the study now being undertaken by the Sixth Committee and by the Special Committee on Principles of International Law concerning Friendly relations and Co-operation among States, which includes a study of the prohibition contained in Article 2(4) of the United Nations Charter on the threat or use of force. Her Majesty's Government consider that much valuable and useful progress has been achieved as a result of this study in giving further content and more precise definition to this principle. They therefore believe that it is both unnecessary and undesirable for another Committee to undertake a largely, though not entirely, similar task, but one which experience has shown cannot prove successful. It is unnecessary since it would in part duplicate the study now going forward in the Sixth Committee in the context of the item concerned with friendly relations and co-operation among States. It is undesirable since, by reopening old controversy about the question of defining aggression, it could prejudice the prospects of success for the study by the Sixth Committee of principles concerning friendly relations and co-operation among States.

Her Majesty's Government are, therefore, of the opinion that the Committee established under General Assembly resolution 1181 (XII) (Question of Defining Aggression) should as a result of its forthcoming meeting make a recommendation that it now be wound up and that the item concerned with defining aggression no longer be placed upon the agenda of future sessions of the General Assembly.

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