

1443rd meeting

Tuesday, 20 November 1973, at 3.35 p.m.

Chairman: Mr. Sergio GONZÁLEZ GÁLVEZ (Mexico).

A/C.6/SR.1443

In the absence of the Chairman, Mr. Shitta-Bey, Nigeria, Vice-Chairman, took the Chair.

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. BRACKLO (Federal Republic of Germany) expressed his delegation's conviction that the formulation of a generally accepted definition of aggression would mark a decisive step towards making world peace more secure. The effort to give substance to the prohibition of the use of force contained in the Charter of the United Nations, while maintaining the rights of the Security Council, coincided with his country's policy, which was directed towards renunciation of force and towards détente. His delegation therefore welcomed the substantial progress made by the Special Committee on the Question of Defining Aggression and its Working Group and contact groups, as well as the willingness to compromise and the firm resolve to find a solution that had been demonstrated by all the members of the Special Committee. There were at the current stage encouraging indications that the Special Committee would succeed in preparing a final draft definition at its next session. Accordingly, his delegation was in favour of extending the Special Committee's mandate for another year and would support the draft resolution submitted to that end (A/C.6/L.957).
2. The consolidated text of a draft definition set out in annex II, appendix A, to the Special Committee's report (A/9019) constituted a good basis for further work, although some important issues remained to be settled and consensus might prove difficult even on what appeared to be drafting questions. The structure was still fragile and must be handled with great care; at the same time, every effort must be made to avoid the pitfalls of easy consensus which resulted from compromising on formulas or from simply putting together formulas which in the final analysis were incompatible with each other. Thus, a legally clear and politically practicable definition of the term "aggression" should contain as few ambiguities and loop-holes as possible if it was not to become the source of new controversies.
3. His Government agreed in principle that the definition should contain a reaffirmation of the provisions of the Charter concerning the right of peoples to self-determination. It advocated the implementation of that right everywhere—including Europe—but considered that the right should be exercised only by peaceful and non-violent means. It therefore believed that reference to that right should not lead to the weakening either of the prohibition of aggression in the narrower sense or of the prohibition of the use of force in the wider sense.
4. Mr. HASSOUNA (Egypt) said that his delegation had demonstrated its great interest in the question of defining aggression by strongly supporting the 1967 Soviet initiative to reintroduce the problem into the international arena. The fact that the task then undertaken by the United Nations was closer to completion than ever before was largely due to the full participation of the countries of Africa, Asia and Latin America in the endeavour. Only a few African and Asian States had been Members of the League of Nations, but their numbers had grown steadily as Members of the United Nations over the years, so that by the late 1960s most of the countries of the third world were full members of the community of nations. They had brought with them the experience and agony of the colonial era which had been founded on conquest and force, and their determined efforts to preserve and strengthen an international legal order based on respect for the territorial integrity, sovereignty and political independence of all States, while upholding the legitimate aspirations of peoples still struggling against aggression, military occupation, colonialism and racism, would undoubtedly be reflected in the final definition.
5. His delegation was most gratified by the progress made at the Special Committee's sixth session in narrowing certain differences of opinion and producing a single text on the basis of the reports of the contact groups and of the drafting group. Much of that success was due to the procedure of informal consultation and discussion.
6. Turning to some substantive aspects of the draft definition, he observed that that document must conform strictly to the provisions of the Charter prohibiting the use of force by one State against the territorial integrity or political independence of another State. Since that general prohibition was clearly laid down in the Charter and in the Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), annex), the need to define aggression did not stem from any ambiguity in existing rules on the non-use of force. Yet apart from constituting a violation of the principle of the non-use of force, aggression also violated the sovereignty, territorial integrity and independence of the victim State and, consequently, the entire contractual nature of the Charter, thus representing a threat to international security. It was therefore essential to prepare a definition of aggression which would emphasize the gravity of the act and would provide guidance for public opinion, individual Governments and the United Nations.

7. His delegation noted with disappointment that no agreement had been reached in the Special Committee on a text for the key article on the right of peoples to self-determination. It should be emphasized that the United Nations had already formally recognized the scope of that right and the conditions for its exercise in provisions of the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV)) and of the Declaration on Friendly Relations. The Organization's consistent recognition of the legitimacy of the struggle of peoples for self-determination, freedom and independence and its invitation to States to support that struggle must be reflected in the definition.

8. His delegation had always held that a definition of aggression would be incomplete unless it provided that territorial acquisition resulting from aggression was to be considered as an act of aggression in itself and that States were under an obligation not to recognize such acquisition. That notion had been included in article 6 on legal consequences of aggression, in conformity with provisions of the Declaration on Friendly Relations and the Declaration on the Strengthening of International Security (General Assembly resolution 2734 (XXV)), both of which stipulated that the territory of a State should not be the object of military occupation or acquisition by another State resulting from the threat or use of force and that no such territorial acquisitions should be recognized as legal. Those fundamental principles were also reaffirmed in many General Assembly and Security Council resolutions.

9. As a sponsor of draft resolution A/C.6/L.957, Egypt commended that text to the Sixth Committee, in the hope that the Special Committee would be able to submit its final report on the question to the Assembly at its twenty-ninth session.

10. Mr. ESSONGUE (Gabon) observed that for many years the Special Committee had been essentially concerned with the complex question of formulating principles to serve as a guide in determining whether or not an act of aggression had been perpetrated. In view of the complexity of the task, delegations should be chary of criticizing the Special Committee's work, but should express satisfaction at the measure of agreement that had been reached on a consolidated text based on draft proposals A, B and C, which the Committee had considered at earlier sessions and which were reproduced in annex I of its report. His delegation would therefore confine itself to making a few general observations.

11. A fundamental question sprang to mind in connexion with the right of peoples to self-determination. Were peoples which were fighting to regain their freedom, struggling for survival and, consequently, exercising the legitimate right of self-defence thereby perpetrating aggression and, if so, what kind of aggression? Since article 5 of the consolidated text gave a partial reply to that question, his delegation could support it.

12. It should be borne in mind that aggression was not necessarily territorial, as it would appear from the Special Committee's report, but could also be political. Examples of political aggression were cases where a

State provoked a coup d'état in another country, where a statesman was assassinated by the agents of another State, or where a State conducted an international propaganda campaign against another State. The Special Committee should take that aspect of aggression into account.

13. Without being unduly pessimistic, his delegation believed that it would be difficult to find a definition of aggression which would indeed be a product of the universal will, since in the final analysis it would be for the Security Council to pass judgement on each individual case. Nevertheless, Gabon was in favour of the resumption of the Special Committee's work in 1974 and had become a sponsor of draft resolution A/C.6/L.957.

14. Mr. CHARLES (Haiti) said that his delegation welcomed the considerable progress that had been made towards reaching a definition which would contribute greatly to the maintenance of international peace and security. It was a fact that, despite the prohibition of any recourse to violence in international relations under the Charter of the United Nations, certain States continued to use force as an instrument of their foreign policy.

15. His delegation could generally support the preamble of the consolidated text, which largely restated the relevant provisions of the Charter, but also introduced three new ideas in the fifth, eighth and ninth paragraphs. With regard to the fifth paragraph, his delegation was glad that aggression had been described as the most serious and dangerous form of the illegal use of force; it also welcomed the explanations of the value of a definition of aggression in the eighth and ninth paragraphs. The seventh paragraph, on territorial inviolability, had been taken from draft proposal B, submitted by the 13 Powers, of which Haiti had been a sponsor; that provision was particularly important, since contravention of the Charter was a material factor of the international offence known as aggression. His delegation was prepared to accept the sixth paragraph, reaffirming the duty of States not to use armed force to deprive peoples of their right to self-determination, freedom and independence, although it would have preferred much stronger wording for that clause.

16. Haiti unreservedly supported article 1 of the consolidated text and considered that the words "however exerted" should be retained, since they could only serve the interests of those who were most vulnerable to aggression. It could also support article 2 on priority and aggressive intent, particularly since a compromise had been reached on that text. With regard to article 3, his delegation especially welcomed the inclusion of subparagraph (g), concerned with indirect aggression, because that was the form of aggression most often used against small countries such as his own. Although the acts of international brigandage referred to in the subparagraph usually failed owing to lack of popular support, they placed a heavy burden on the meagre public funds of small countries.

17. His delegation had no objection to article 4 and believed that article 5, on the right of peoples to self-determination, could be opposed only by those who

used foreign domination and military occupation as instruments of their foreign policy. Haiti considered that peoples struggling for freedom and independence were in a permanent state of self-defence. Article 6, on the legal consequences of aggression, correctly set out the legal principle, common to all national legislations, that all crimes involved the criminal responsibility and, in some cases, the civil responsibility, of the perpetrator. His delegation considered that aggression should be qualified as a serious crime against international peace, in conformity with the fifth preambular paragraph. The second paragraph of that article, condemning territorial acquisition resulting from aggression, was also important and might serve as a deterrent to potential aggressors. His delegation's interpretation of article 7 was that the use of force was lawful only in the case of self-defence referred to in Article 51 of the Charter or when force was used under the authority of the Security Council. It was regrettable, however, that the article did not go further to limit the use of force by regional organizations, since such a provision might have helped to put an end to the abusive interpretation of Chapter VIII of the Charter that had marked the 1960s.

18. His delegation had co-sponsored draft resolution A/C.6/L.957, recommending the renewal of the Special Committee's mandate, in the hope that a definition of aggression could be adopted at the next session of the General Assembly.

19. Mr. OWADA (Japan) noted with satisfaction the substantial progress made by the Special Committee at its sixth session. He attributed the success of the session to the working methods employed, namely the formation of informal contact groups where frank discussions were held in a very constructive atmosphere. The new climate prevailing in the Special Committee should greatly facilitate the efforts to draft a universally acceptable definition which could provide the Security Council with helpful guidance in determining the existence of an act of aggression under Article 39 of the Charter.

20. Despite the progress made, some important points still remained to be settled. Thus, no general agreement had been reached on article 2, and there was still a divergence of views with regard to article 3, subparagraph (g), and article 5. There had been no agreement on the content of article 6, and further efforts would have to be made to complete the drafting of article 1. At its sixth session the Special Committee had not had enough time to examine the consolidated text in detail or to consider fully some of the suggestions submitted to the Working Group. Thus, much remained to be done before a final text could be accepted as representing the consensus view.

21. Inasmuch as his country's position on the substantive issues had been stated at past sessions of the General Assembly and, in particular, at the sixth session of the Special Committee, he would confine his remarks to a few specific points to which his delegation attached considerable importance.

22. The question of priority and intent, which formed the subject of article 2, was one of the central problems to be solved before arriving at a satisfactory definition of

aggression. In further efforts to draft an acceptable and useful definition of aggression, there must be an attempt to strike a proper balance between the question of priority (the objective element) and the question of intent (the subjective element). In view of the apparent confusion in past discussions, he wished to emphasize that, with regard to the question of intent, the point at issue was the intent to carry out an act of aggression, or the purpose of the act, and not the motives therefor. His delegation hoped that this point would be kept in mind in the future discussions.

23. With regard to article 3, subparagraph (d), a proposal had been made to delete the reference to "marine and air fleets". It was the view of his delegation that it would be wise to retain those words. For countries such as his own, the safety of marine transport was vital to their very existence, and an armed attack of a serious nature against their marine fleet would be as much an act of aggression as an invasion of their territory. That point had been made by the representative of Ghana at the preceding meeting. Moreover, an attack on marine and air fleets was not dissimilar in nature and in effect to the blockade of ports by armed forces, an act which had been included among the acts of aggression.

24. As to the word to be inserted in the blank space in article 6, five alternative formulas had been proposed, some of which fell more properly within the scope of international penal law. In that connexion, it should be noted that the International Law Commission was currently examining the question of State responsibility; there must be no contradiction between the formulation in the Special Committee's text and the future result of the work being carried out by the International Law Commission. Accordingly, he suggested that the first part of article 6, which related to the question of State responsibility, should be deleted.

25. In view of the extreme importance of the question of defining aggression and the great complexity of some of the points involved, his delegation considered it absolutely essential that agreement on the definition should be reached on the basis of consensus. Considering the progress already made, it would appear to be possible to reach a consensus in the near future using as a basis of further examination, the consolidated text prepared by the Special Committee. His delegation therefore supported the recommendation that the General Assembly should invite the Special Committee to resume its work in 1974, on the understanding that the remaining problems would be thoroughly discussed and settled in a satisfactory manner on the basis of consensus.

26. Mr. KOLESNIK (Union of Soviet Socialist Republics) expressed satisfaction that the Special Committee was approaching the completion of its work on the definition of aggression. The work of the Special Committee at its sixth session had been facilitated by the general improvement in the world political climate as a result of the efforts of peace-loving forces, the peace initiatives of the Soviet Union in Europe and other regions of the world and the end of the Viet-Nam war. Although the Special Committee had not adopted a final text, it had succeeded not only in reaching agree-

ment on certain very complex elements of the definition but also in preparing for the first time a preliminary consolidated text. With a few changes, it should be possible to complete the draft and present a final text to be approved by the General Assembly at its twenty-ninth session. The Special Committee itself had stated that the progress it had achieved made it a practical possibility to elaborate a generally acceptable draft definition of aggression at its next session.

27. The Special Committee's flexible and efficient method of work had greatly contributed to its success. The Special Committee had wisely decided to set up a Working Group and a number of informal contact groups where serious differences of view could be settled in an atmosphere of co-operation. The Special Committee's approach of seeking agreement and mutually acceptable formulations was the only correct approach. A generally acceptable and workable definition of aggression could not be arrived at by voting, but only by taking decisions on the basis of consensus, with due regard for the interests of all groups of States.

28. The preliminary draft definition of aggression prepared by the Special Committee at its sixth session consisted of a preamble and an operative part; in other words, it had been drafted in the form of a General Assembly resolution in accordance with the agreement reached by the Special Committee at its first session. His delegation endorsed that agreement, which was based on recognition of the auxiliary purpose the definition would serve as a guide to the Security Council in determining acts of aggression.

29. The Special Committee had unanimously adopted the draft preamble which, as his delegation had stressed, was an essential foundation for a number of key elements of the operative part of the definition. Of particular importance was the fifth preambular paragraph relating to weapons of mass destruction, which had been based on a provision in draft proposal A submitted by the Union of Soviet Socialist Republics and a further proposal submitted at the sixth session by the delegation of Ghana, for whose initiative the Soviet delegation was grateful. The adoption of that paragraph had removed a serious obstacle impeding agreement on the definition of aggression. Thus, the work on the preamble had been brought to a satisfactory conclusion.

30. Turning to article 1 of the consolidated text, he noted that the Soviet Union and many other members of the Special Committee had considered that the general definition must conform to the provisions of Articles 2, 39 and 51 of the Charter of the United Nations. A number of delegations, however, had insisted on the inclusion of the word "sovereignty" in the general definition. In a spirit of co-operation and compromise, his delegation had accepted that amendment, on the understanding that in characterizing the use of armed force against the sovereignty of a State as aggression, the elements of territorial integrity and political independence must be taken fully into account. With regard to the disputed words in brackets, the inclusion of which had been advocated by the sponsors of draft proposal C, submitted by the six Powers, his delegation considered that the phrase in question unnecessarily broadened the scope of the concept of

aggression and hoped that the sponsors would take account of the majority view in the Special Committee and not insist on the retention of those words.

31. With regard to article 2, the Special Committee had successfully struck a balance between the principle of priority, which had been emphasized in the USSR and the 13-Power draft proposals, and the principle of aggressive intent, which had been advocated by the authors of the six-Power draft. One remaining deficiency of the existing text could be removed by replacing the words "in contravention of the Charter" by the words "as set out in this definition" or by including a reference to article 3.

32. The list of acts proposed for inclusion (article 3) had been discussed at virtually all the sessions of the Special Committee, and general agreement had been reached on subparagraphs (a)-(d) before the sixth session. Subparagraphs (e), (f) and (g) were new provisions introduced at the sixth session. Although his delegation had not objected to their inclusion, it was of the view that they should be studied further. Subparagraph (e) did not reveal any new characteristic of an aggressive act and was fully covered by subparagraph (a). If his delegation understood subparagraph (f) correctly, the subject of that subparagraph was the complicity of States or joint participation in aggression whereby one State provided armed forces and the other State provided a staging area for perpetrating an act of aggression against a third State. However, according to the literal meaning of subparagraph (f), the responsibility for the aggression rested exclusively with the State which placed its territory at the disposal of another State. His delegation was not entirely happy with the wording of subparagraph (g), which dealt with the question of indirect aggression. As currently formulated, the subparagraph was open to a broad interpretation according to which not only the sending of armed bands but also the rendering of assistance to such bands might be regarded as aggression. That might in practice legitimize the right to make a pre-emptive strike and would also deny the generally recognized right to assist national liberation movements. In his delegation's view, indirect aggression required the presence of a direct link between the sending of the armed bands and the State sending them and a certain degree of intensity of the actions of such bands so as to be comparable to the other acts of aggression listed in the definition.

33. The Special Committee was very near to reaching agreement on article 5 relating to the right of peoples to self-determination, which his delegation considered to be an essential provision of the definition.

34. Agreement in principle had also been reached with regard to legal consequences of aggression (article 6), which was a most important part of the definition. The USSR draft proposal, as well as the 13-Power draft proposal, defined aggression as a crime against the peace, following the precedent established in such international instruments as the Charter of the Nürnberg International Military Tribunal and the Declaration on Friendly Relations. Those who had opposed the designation of aggression as a crime had put forward various arguments, none of which were

convincing inasmuch as the responsibility referred to in article 6 was responsibility "under international law".

35. The Special Committee had also reached agreement on an article concerning the legal uses of force (article 7). Some representatives had objected to the unnecessarily general character of that formulation, a view which his delegation could not share. The Special Committee had rightly decided to include a specific reference to the Charter in article 7.

36. For many years the Soviet Union had persistently advocated the drafting of a definition of aggression. As early as 1933, the Soviet Union had made such a proposal at the Disarmament Conference held in 1932-1933 under the auspices of the League of Nations¹ and had concluded non-aggression pacts with a number of neighbouring States. The Soviet Union had made new proposals on that subject in 1953 and 1959. Thus it was clear that the elaboration of a definition of aggression had been a constant element of Soviet foreign policy. The Soviet Union believed that a definition of aggression would play a positive role in preventing military conflicts and strengthening the principles of peaceful coexistence in relations between States.

37. It was universally recognized that the question of defining aggression was an urgent matter, since it was of vital interest to all the peoples of the world and, in particular, the peoples of the developing countries of Africa, Asia and Latin America. The absence of a clear definition of aggression served the purposes of those who violated the Charter, disregarded the decisions of the Security Council on the withdrawal of forces from occupied territories and encroached on the freedom and independence of peoples. Therefore, any attempt to delay the work of the Special Committee, particularly in the current final stage, would only help those forces attempting to place obstacles in the way of the emerging trend towards the easing of international tensions.

38. In that connexion, he felt obliged to comment on the statement by one speaker at the preceding meeting, who had addressed himself not so much to the question of defining aggression as to the foreign policy of the Soviet Union and had, in his usual manner, made a slanderous and demagogic attack on the USSR. His statement could be taken seriously only by credulous and naïve persons who were not aware of the true facts. The peoples of the world could not be deceived by demagogic rhetoric; they saw very well who was helping them in the struggle to win national independence and freedom and who supported them in their struggle against aggression. The speaker in question had referred to the need to take objective facts into account. That was also the position of the Soviet delegation. However, the objective facts confirmed that the country in whose name the representative in question had spoken, had been one of the very small minority of States which had voted against General Assembly resolution 2936 (XXVII) on non-use of force in international relations and permanent prohibition of the use of nuclear weapons. That country was at present objecting to the reduction of the military budgets of the permanent members of the Security Council by 10 per cent and

the allocation of part of the funds thus saved to meet the needs of the developing countries. In the Sixth Committee the speaker in question had voiced opposition to the definition of aggression.

39. That speaker had attempted to misrepresent the foreign policy of the Soviet Union, even going so far as to accuse the Soviet Union of aggressive intentions. Such allegations could only be prompted by morbid suspicion or a wish to distort the facts. While proclaiming its devotion to socialism and peaceful coexistence, that country was endeavouring to sap the cohesiveness of the socialist countries and was encouraging heightened aggressiveness on the part of the military blocs and the economic interests of the capitalist States. While claiming to be an advocate of disarmament, that country tried to block every effort to limit and control the arms race and, in defiance of world public opinion, was continuing to poison the atmosphere with nuclear tests. While affirming its support for the just struggle of the Arabs to regain the lands seized by the aggressor and to restore a just peace in the Middle East, that country at the same time did its utmost to discredit the assistance rendered to the victims of aggression by their most faithful friends—the Soviet Union and the other countries of the socialist community. That country refused to support the Arabs in the Security Council and had abstained in voting on resolutions favourable to the Arabs, thus helping not the victims of aggression but the aggressor and its supporters.

40. That country continued to press ridiculous territorial claims against the Soviet Union, claims which the Soviet delegation categorically rejected. The leaders of that country persistently repeated the trite fabrications of anti-communist propaganda concerning the "Soviet threat" and, rejecting any reasonable proposals for a settlement and the proposal for the conclusion of a non-aggression treaty between the USSR and China, continued to keep its people at an artificial fever pitch of military preparedness and war psychosis. The far-fetched fabrications concerning the "Soviet threat" made one suspect that the real aim was to divert the attention of their people from the domestic problems of the country.

41. The Soviet Union and other countries sincerely interested in drafting a definition of aggression proceeded from the premise of the necessity to complete that task as expeditiously as possible and considered that the definition of aggression could be an important instrument for combating the aggressive attempts of militaristic and reactionary forces. His delegation emphatically rejected the allegation that only the Soviet Union and other socialist countries were interested in drafting a definition of aggression. As the discussion in the Sixth Committee had shown, the overwhelming majority of the international community was interested in solving that complex and difficult problem. The slanderous fabrications of the speaker in question only played into the hands of those forces which opposed the relaxation of international tensions and wanted to spread seeds of hostility and hate between peoples.

42. As the General Secretary of the Communist Party of the Soviet Union, Leonid Brezhnev, had stated at the World Congress of Peace Forces recently

¹ Reproduced in *Official Records of the General Assembly, Seventh Session, Annexes*, agenda item 54, document A/2211, para. 76.

held in Moscow, such a policy did not contribute to the strengthening of peace and security but rather introduced an element of dangerous instability into international life. The Soviet Union would welcome the constructive contribution of China to the improvement of the international atmosphere and the development of peaceful co-operation among States, but that would require a change of policy by the leaders of China themselves.

43. His delegation would support whatever recommendation the Sixth Committee might make that the Special Committee's mandate should be extended so that it could complete its work on the definition of aggression. It was confident that the Special Committee could accomplish that task in 1974 and submit a final draft definition to the next session of the General Assembly.

44. Mr. ROSENNE (Israel) said that, when the General Assembly had decided to resume discussion of the question of defining aggression at the twenty-second, session, his delegation had welcomed that step in the Sixth Committee (1022nd meeting) but had expressed a number of reservations and considerable scepticism. The reservations had related both to the manner in which resumption of that discussion had been proposed and adopted at the time and to the substance of the matter, particularly in the light of certain proposed definitions then current. His delegation had expressed doubts about the value of lists of purported acts of aggression which did not and could not exhaust all forms of aggression. The scepticism had related above all to the practical utility of the endeavour, in the light of the well-known opportunism which characterized the activities of the competent United Nations organs when faced with concrete cases.

45. His delegation continued to think that any attempt to enumerate with great precision what did and what did not constitute an act of aggression could not be comprehensive and that that kind of approach should be eschewed. What was really needed was not a definition of aggression but the sincere determination of the members of the international community to abandon the threat or use of force as an instrument of their foreign policy. Since that was lacking, those engaged in the search for a workable and generally acceptable definition of aggression had to face the very difficult practical problem of achieving a realistic balance between the legitimate requirements of national self-defence and the general international interest in the maintenance of international peace and security within the confines of the Charter. It was not without reason that the San Francisco Conference decided—in the light of structural and conceptual weaknesses of the League of Nations—not to attempt to define the concept of aggression. The title of Chapter VII of the Charter placed the matter in the correct perspective.

46. His delegation had always stressed that the problem of indirect aggression must be squarely faced. A mechanical approach, in terms which would suggest that the competent organs would have little or no discretion, would not contribute to the strengthening of the rule of law or of the United Nations or to the maintenance of international peace and security. It

had been in the light of that approach that his delegation had watched the progress of the Special Committee's work, and, so long as it did not feel that the Special Committee was working along those lines, it had expressed its reservations, where necessary even by vote. 47. It was gratifying to hear that, at long last, a definition of aggression was imminent. The 1973 report of the Special Committee was an important document, which showed that, given goodwill and a readiness to compromise, progress could be achieved in the direction of a generally acceptable definition of aggression. The essential feature was a flexible text.

48. His delegation had some comments to make on the consolidated text of the reports of the contact groups and the drafting group and therefore expected that the record of the Sixth Committee's discussion on the current item would be transmitted to the Special Committee in the usual way and that a provision to that effect would be explicitly or implicitly included in the Sixth Committee's draft resolution on the item, as had been done in the resolutions on the reports of the International Law Commission and the United Nations Commission on International Trade Law.

49. He wished to make a few comments on major questions of principle. Firstly, the recognition, in the preambular paragraphs and in the body of the text, of the special position of the Security Council, in accordance with the Charter, conformed to what had been for his delegation a basic consideration. Whatever reservations it might have from time to time over particular actions of the Security Council did not blind it to the fact that, under the Charter, the Security Council was the organ with primary responsibility in those matters. By the same token, his delegation agreed with the philosophy of that part of the text, to the effect that the proposed definition was essentially a set of guidelines and that, in any concrete case, all of the circumstances must be taken into account. As had been said in the current debate, the definition was a document of an auxiliary character.

50. Secondly, the introduction of the expression "regardless of a declaration of war" in article 3 was also, in his delegation's view, a positive advance. It was a fact that declaration of war as traditionally expounded had become for the most part an outworn formality, more avoided than observed. The present century had seen formal declarations of war which had not been followed by any active hostilities between the parties and where the declaration of war had had little more than a legal significance. There had been other major instances of international hostilities, even on a grand scale, where there had been no formal declaration of war and even where the pretence had been made that there was no state of war. The initial words of article 3 of the proposed definition put that matter in a correct perspective, were in conformity with the letter and the spirit of the Charter, and corresponded to modern realities. In any redrafting of those introductory words, his delegation considered that it would be highly desirable to retain that idea in an appropriate form.

51. Thirdly, some of the other provisions of article 3 were puzzling. For instance, the reference to "blockade"

in subparagraph (c) could not, in that context, imply the formal concept of blockade as set forth in the Declaration of Paris of 1856,² and the text should make that clear. That type of blockade had virtually gone out of use, so that the reference could only be understood as having any relevance to present-day realities if it embraced direct and indirect blockade in whatever form, of whatever extent, i.e. blockade not only in the traditional sense but also all forms of economic warfare, boycott and blockade, by whatever name they were called. The Declaration on the Prohibition of Military, Political or Economic Coercion in the Conclusion of Treaties contained in the annex to the Final Act of the United Nations Conference on the Law of Treaties³ of 1969 might also be of relevance in that connexion. In the same order of ideas, while his delegation welcomed the recognition that indirect aggression stood on the same level as direct aggression, it reserved its position both on the text of subparagraph (g) and on the comments thereon, although it drew attention to the fact that the all too common attitude of passivity towards acts of indirect aggression and terrorism might be found not to have been adequately treated. Indirect aggression, which was one of the most dangerous and provocative forms which naked aggression could assume, was still the most important part of the draft definition on which consensus had yet to be reached. His delegation believed that the viability of the whole endeavour would depend on the successful outcome of the deliberations on that point.

52. Fourthly, his delegation had some difficulty in appreciating the necessity for an article on the legal consequences of aggression, at least in the form envisaged. There was no doubt that an established instance of aggression would *ipso facto* engage the international responsibility of the State concerned, but he was not convinced that any useful purpose was served by mere repetition of that truism. It was therefore in the law of State responsibility, and not in the search for a definition of aggression, that that aspect of the legal consequences of aggression belonged. The Special Committee must be extremely cautious on that point, especially since the International Law Commission was currently engaged in codifying the law of State responsibility. It had not been the intention of the General Assembly, when it had established the Special Committee, that that body should take upon itself any of the responsibilities of the International Law Commission. On the other hand, it was, to say the least, curious and probably inadmissible, for the article to ignore the one major consequence of aggression which was specifically mentioned in Article 51 of the Charter. A proper formulation of that cardinal aspect was essential.

53. Fifthly, the Special Committee's text seemed to contain some departures from the language of the Charter, for example, in the first and third preambular paragraphs and article 1. It was unclear whether that

was intentional or not. His delegation's position on that point was the same as that which it had adopted on previous occasions, for instance, in connexion with the Declaration on Friendly Relations, namely that the text must not directly or indirectly imply surreptitious amendment of the Charter brought about in a manner inconsistent with the provisions of Articles 108 and 109 of the Charter. The Special Committee should pay special attention to that aspect.

54. Sixthly, with regard to the question of intent, great care was required before one translated concepts of internal law—criminal or civil—into international relations. *Mens rea* was not being dealt with in the technical sense of domestic criminal law, and such an association of ideas was better avoided. That notwithstanding, the Charter did lay down certain circumstances in which the use of armed force was consistent with the Charter. Without involving itself in insoluble questions of motive or intent—and more important, without adopting an anthropomorphic approach utterly unreal in international relations—the definition must take due account of the circumstances in which the use of armed force was permitted by the Charter. What must be avoided was that the definition of aggression should serve as an excuse to render illegitimate that which was permitted under the Charter and under general international law.

55. Clarity as regards the objective being pursued was essential. The search for a definition of aggression would be doomed to utter failure if it were found or even suspected to have been motivated solely by the desire to gain partisan and ephemeral advantage in the light of some immediate situation. The Special Committee's report gave some grounds for hoping that, if that might once have been the case for some of those participating in the work, a broader and more solidly based international approach was now dominant. That was a welcome development, and he expressed the hope that the definition would not be formulated or later construed in such a way as to serve merely the propaganda interests of any one particular country or group of countries or of any one particular segment of United Nations opinion, but would always be regarded as universal and internationalist in approach and concept. Above all, it should be regarded as an instrument designed to restrain violence and not to encourage it, and wherever the language was not absolutely clear on that point, it must be modified. The outstanding instance of that in the existing text was in article 5; but with regard to the text in general, the omission of any reference to Article 51 of the Charter might also be completely misleading on that point.

56. In principle his delegation was in favour of the continuation of the work by the Special Committee on the lines laid down. Difficulties still lay ahead, but it seemed that, with goodwill and patience, a spirit of mutual understanding and accommodation and, if necessary, time, a consensus could be evolved on the definition of aggression, first in the Special Committee and then in the General Assembly itself. His delegation's position on draft resolution A/C.6/L.957 would be determined accordingly. It was for his delegation a matter of indifference where the Special Committee

² See John Bassett Moore, *A Digest of International Law*. 56th Congress, 2nd Session. House of Representatives. Document No. 551. (Washington, Government Printing Office, 1906), vol. VII, p. 561.

³ See United Nations Conference on the Law of Treaties, 1968 and 1969, *Official Records*, (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/26, p. 281.

met, and it would accept whatever was acceptable to the majority. However, he urged that members of the Special Committee should have informal exchanges of views before they next met in order to further the continuing process of reconciling outstanding differences. His delegation would like the sponsors of the draft resolution to confirm that the record of the discussion in the Sixth Committee would be formally transmitted to the Special Committee by the Secretariat, although it would not insist on that being in the draft resolution—a step which would, in principle, be desirable. His delegation also hoped that an analytical report of the current debate would be prepared by the Rapporteur.

57. Mr. JELENIK (Hungary) said that although Hungary was not a member of the Special Committee, the Hungarian Government had always followed the Special Committee's work with keen interest. Since the establishment of the Special Committee, his Government had consistently maintained the view that the definition of aggression was both necessary and possible. It was necessary because the interests of maintaining and consolidating international peace and security urgently required a definition based on general agreement. It was also necessary in order that the United Nations might play a more effective role in the realization of the purposes and principles of the Charter. That the definition was possible was shown by the fact that representatives who had originally held totally opposing viewpoints had already managed to reach agreement on a number of basic questions, while views on a number of other as yet undecided questions were clearly converging.

58. One of the main characteristics of modern international life was the consolidation of political, economic and other relations between States having different social systems. The policy of peaceful coexistence was making headway, and the trend towards détente was gaining ground. His delegation was convinced that the acceptance, as soon as possible, of a definition of aggression would be a major contribution towards making that trend lasting and irreversible. He noted with regret, however, that despite the policy of détente, the threat of aggression had not yet passed.

59. The acts of aggression which had come before the Security Council early in the current year and in the very recent past, in connexion with events in Africa and the Middle East, and the acts of aggression categorically condemned by the General Assembly in its resolution 3061 (XXVIII) on agenda item 107 were further arguments for the need for the United Nations to continue to have as a task of primary importance the prevention of aggression and the curbing of the aggressor. The discharge of that task would clearly be greatly facilitated by a definition of aggression. It seemed that conditions were currently more favourable than ever for the success of work on a definition.

60. The report of the Special Committee on its 1973 session seemed to justify the optimism of those who, despite the complexity of the problem, had firmly believed that it would succeed in its task. His delegation noted with gratification the genuine progress and remarkable results obtained. He congratulated the

members of the Special Committee on the fact that, at its 1973 session, the atmosphere had been much better and that much more willingness had been demonstrated to find a compromise definition.

61. It was thanks to that atmosphere and to the constructive attitude of the members of the Special Committee that the latter had for the first time succeeded in drafting a single text comprising the various proposals relating to the definition. He agreed with those delegations which had stressed the importance of the consolidated text, which constituted a synthesis of the three major draft proposals which had been submitted and was a good reflection of those points on which agreement had been reached. He noted with satisfaction the increase in the number of points on which a consensus or a quasi-consensus had been reached.

62. His delegation's position on the main problems relating to the question of defining aggression were based on considerations of principle and remained unchanged. Accordingly, at the current stage, he would confine himself to a few comments on the consolidated text.

63. In article 1, the term "however exerted" was still bracketed, which showed that there was so far no agreement on the omission or retention of that phrase. His delegation was of the opinion that that phrase should not be included in the general definition of aggression. Its retention would mean equating aggression and other acts constituting violations of the peace, whereas the Charter regarded them as acts of varying degrees of gravity which should be considered in different ways. His delegation could not accept clause (b) of the explanatory note to article 1, whereby the term "State" would include the concept of a "group of States", because that would give an artificial concept of so-called "collective aggression" a place in the general definition of aggression. His delegation believed that it was necessary for the definition to specify the legal consequences of aggression and responsibility for acts of aggression under international law. Acceptance of the concept of "collective aggression" would, however, blur that responsibility and might even make it impossible to establish the international responsibility of the aggressor.

64. The list of acts of aggression in article 3 seemed satisfactory, and he was confident that the differences of view concerning subparagraphs (f) and (g) could be reconciled.

65. His delegation attached particular importance to article 5, concerning the right of peoples to self-determination. It had always believed that a struggle for the inalienable right of peoples to self-determination, against foreign domination and occupation, including the use of force, should be regarded as a legitimate struggle which should not be limited or compromised by any provisions of the definition of aggression.

66. His delegation hoped with confidence and optimism that the Special Committee would successfully complete its work as soon as possible. Conditions seemed propitious for such an achievement. He hoped that the favourable atmosphere which had exerted such a

beneficial influence at the 1973 session would make it possible to bring to fruition the Special Committee's six years of work. His delegation welcomed the Special Committee's statement in the fourth preambular paragraph of the recommendation in paragraph 14 of its report, 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 endorsed the Special Committee's recommendation that the General Assembly should invite the Special Committee to resume its work in 1974. His delegation unreservedly supported draft resolution A/C.6/L.957.

67. Mr. MONTENEGRO (Nicaragua) observed that with the efficient collaboration of the Working Group and the contact groups and with the goodwill of States, the Special Committee had managed to submit a report which gave grounds for hope that a generally acceptable definition of aggression would be formulated in the not too distant future. It was clear from the report that the session had been marked by thorough and dedicated work, conciliation and negotiation. The three draft proposals submitted to the Committee had served as a good working basis for the preparation of the consolidated text of a definition.

68. It was an undeniable fact that all were currently agreed that the acts enumerated in articles 1, 2 and 3 constituted acts of aggression, and that article 4 rightly stipulated that the acts enumerated in the preceding articles were neither exhaustive nor did they prevent the Security Council from refraining from the determination of an act of aggression in accordance with the provisions of the Charter.

69. His delegation could also accept the inclusion in the consolidated text of the reference to the right of peoples to self-determination.

70. His delegation agreed that aggression constituted an international crime against peace, which involved international responsibility and that a definition of aggression would serve not only to deter potential aggressors but also to ensure their denunciation before the international community and the adoption of measures to suppress aggression and to assist its victims and protect their legitimate rights and interests. He stressed the importance attached by his Government to non-aggression. Every case of aggression had its special circumstances, but it was nevertheless desirable to formulate generally applicable norms.

71. The work being done by the international community on the question under consideration unquestionably responded to the deep concern to ensure the maintenance of international peace and security and the adoption of effective collective measures to prevent and eliminate threats to peace and prevent acts of aggression.

72. Mr. SEPAHBODI (Iran) said that the considerable progress made at the 1973 session reflected clearly one of the most productive and encouraging sessions that the Special Committee had had for a long time. The excellent climate of work had contributed to no small extent to the substantial progress achieved. It was thanks to the untiring goodwill of all the delegations

concerned and to their creativeness that the Sixth Committee currently had before it certain proposals which could become the object of a compromise in the future. It was clear from the report that, after many years of hard work, the goal was in sight. For the first time, the General Assembly could be presented with a draft containing all the essential elements for a definition of aggression. That success should be appreciated at its full value, particularly when one considered that efforts to define aggression dated back over 50 years. His delegation felt that there were now very strong indications that that long pursued goal might be achieved at the Special Committee's next session.

73. Time and again, aggression had been denounced by the United Nations as the gravest of all crimes against peace and security throughout the world. As a member of the Special Committee, his delegation had, on several occasions, expressed its views on various aspects on the definition of aggression. Draft proposal B, submitted by the 13 Powers, which his delegation had sponsored, clearly reflected its position on the item under consideration. He would therefore confine his remarks to procedural questions.

74. There was at the current stage a considerable area of agreement about a consensus definition. The format of the definition was clear. There was agreement that the definition should be composed of a general formulation plus an illustrative enumeration of prohibited and permitted acts. It was likewise agreed that there should be a preamble, and there was no dispute about its general content. It seemed a common view that the Security Council alone should have authority to determine what constituted an act of aggression. A further compromise seemed imminent, combining the principles of priority and intent by allowing the Security Council to take all circumstances into account, including who acted first and the intention of the parties. The text of the general formulation had been agreed upon, with only two relatively minor items remaining in brackets.

75. Taking into account the successful efforts of the United Nations in respect of many more difficult matters, such as the drafting of the Declaration on Friendly Relations, the differences which separated those trying to formulate a definition of aggression did not appear to be irreconcilable. It could be asked, however, what was needed to bring all those efforts to a successful conclusion.

76. His delegation had the impression that if the Special Committee and its Working Group had more time to examine in detail the summary of the informal negotiating group's report set forth in annex II, appendix A of the report of the special Committee at its previous session,⁴ an even wider measure of agreement could be reached. In order to avoid reopening debates on questions which had already been agreed upon, it would perhaps be advisable to endorse the informal group's report formally. Even more informal consultations should be carried on between the interested parties before the next session of the General Assembly.

⁴ *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 19.*

77. To arrive at a consensus definition of aggression after so many years would mark a significant advance in the development of international law. The interdependence of nations, large and small, was increasingly being recognized. The safety of the skies, the seas and the human environment were all matters receiving the urgent and co-operative attention of nations everywhere. The safety of man on earth, his human rights, his health, his economic needs and his well-being all demanded freedom from armed conflict. In carrying out its basic responsibility of preventing the scourge of war, the Security Council was responsible for determining what constituted an act of aggression and for the suppression of such acts. An authoritative definition would aid the Council in discharging its difficult task.

78. His delegation believed that the stage had been reached where the issues remaining to be resolved for the drafting of an agreed definition would not stand as an obstacle to future negotiations. His delegation

shared the optimism of all concerned in thinking that those outstanding matters would be solved in the near future, it was to be hoped at the next session of the Special Committee. His delegation would therefore be fully prepared to support the extension of the mandate of the Special Committee for the year 1974.

79. Mr. LING (People's Republic of China) said that the USSR representative in his statement had made a slanderous attack on the policies of the Chinese leaders. His allegations had been distorted and untrue. His delegation reserved its right to speak in exercise of the right of reply.

80. The CHAIRMAN announced that Gabon, Guinea, India, Mongolia, Nepal and Nicaragua were to be added to the list of sponsors of draft resolution A/C.6/L.957.

The meeting rose at 6 p.m.

1444th meeting

Wednesday, 21 November 1973, at 10.55 a.m.

Chairman: Mr. Sergio GONZÁLEZ GÁLVEZ (Mexico).

A/C.6/SR.1444

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. OULARÉ (Guinea) commended the Special Committee on the Question of Defining Aggression on the substantial progress it had made at its 1973 session, as reflected in its report (A/9019).

2. At a time when tremendous stockpiles of weapons of mass destruction were being amassed and weapons were being used against civilian populations in the Middle East and in Guinea-Bissau, every member of the international community must endeavour to safeguard the peace and do its utmost to consolidate détente. The basic objective of his country and of all African nations which had suffered under colonial domination was national reconstruction and peaceful coexistence with all peoples. However, the avid quest of certain Powers for spheres of political, economic and military influence and the increasing threat of colonial reconquest placed African States in a permanent state of insecurity. The provisions of the Charter of the United Nations enjoining States to respect the sovereignty, independence and territorial integrity of other States in their bilateral and multilateral relations were unfortunately still being subordinated to the selfish interests of certain States which adhered to the anachronistic concept of domination and continued to engage in military action against other sovereign States. His own country had been the object of aggression by a surprise armed attack perpetrated by international imperialism in flagrant violation of all international legal rules.

3. Turning to the report of the Special Committee, he said that his delegation welcomed the substantial changes which had led to the consolidated text in annex II, appendix A. Perhaps the Sixth Committee could resolve the remaining divergences during its current debate. His delegation questioned the effectiveness of article 2. It was clear that the principle of priority was an essential criterion used in all systems of internal law and was therefore essential in a definition of the type under consideration, since it prevented States from committing acts of aggression on the pretext of waging a so-called preventive war. The importance of the article derived primarily from the fact that it recognized the right of every State to use armed force once an act of aggression had been committed. Without wishing to question the competence of the Security Council, his delegation proposed the insertion of a sentence along the following lines in the interests of clarity:

"No consideration concerning the domestic or foreign policy of a State may serve as justification for the use of armed force against that State by any State or group of States."

4. His delegation supported article 5, which was fully in accordance with the purposes and principles of the Charter and General Assembly resolution 1514 (XV) and eliminated any possible ambiguity regarding the interpretation of aggression by certain States:

5. With regard to article 6, his delegation did not share the doubts of certain delegations as to the nature of aggression vis-à-vis international peace, for it considered aggression in any form to be a crime against humanity which must be punished as such. Reference