



UNITED NATIONS  
GENERAL  
ASSEMBLY



Distr.  
GENERAL

A/8171  
19 November 1970  
ENGLISH  
ORIGINAL: ENGLISH/FRENCH

Twenty-fifth session  
Agenda item 87

REPORT OF THE SPECIAL COMMITTEE ON THE  
QUESTION OF DEFINING AGGRESSION

Report of the Sixth Committee

Rapporteur: Mr. Hisashi OWADA (Japan)

CONTENTS

	<u>Paragraphs</u>	<u>Page</u>
I. INTRODUCTION . . . . .	1 - 4	3
II. PROPOSAL SUBMITTED TO THE SIXTH COMMITTEE . . . . .	5 - 6	3
III. DEBATE . . . . .	7 - 37	5
A. OPINIONS EXPRESSED ON CERTAIN GENERAL ASPECTS OF THE QUESTION OF DEFINING AGGRESSION . . . . .	8 - 13	5
B. OPINIONS EXPRESSED ON THE CONTENT OF THE DEFINITION . . . . .	14 - 37	8
1. <u>The definition and the power of             the Security Council</u> . . . . .	14 - 15	8
2. <u>Political entities to which the             definition should apply</u> . . . . .	16 - 17	9
3. <u>Acts proposed for inclusion in             the definition</u> . . . . .	18 - 25	10
4. <u>The principle of priority</u> . . . . .	26 - 27	13
5. <u>Aggressive intent</u> . . . . .	28 - 29	14
6. <u>Legitimate use of force</u> . . . . .	30 - 33	16
7. <u>The right of self-determination</u> . . . . .	34 - 35	17
8. Legal consequences of aggression . . . . .	36 - 37	18
IV. VOTING . . . . .	38	20
V. RECOMMENDATION OF THE SIXTH COMMITTEE . . . . .	39	20

/...

## I. INTRODUCTION

1. Pursuant to General Assembly resolution 2549 (XXIV) of 12 December 1969, the Special Committee on the Question of Defining Aggression reconvened at the United Nations Office at Geneva from 13 July to 14 August 1970 in order to resume its work in accordance with General Assembly resolution 2330 (XXII) of 18 December 1967, and prepared a report covering the work of its 1970 session.<sup>1/</sup>
2. At its 1843rd plenary meeting, on 18 September 1970, the General Assembly decided to include in the agenda for its twenty-fifth session the item entitled "Report of the Special Committee on the Question of Defining Aggression", and allocated it to the Sixth Committee for consideration and report.
3. The agenda item was considered by the Sixth Committee at its 1202nd to 1209th and 1211th to 1214th meetings held between 16 October and 3 November 1970. At the 1202nd meeting, on 16 October 1970, Mr. Ofstad, the representative of Norway, and Rapporteur of the Special Committee on the Question of Defining Aggression, introduced the Special Committee's report.
4. At its 1209th meeting, on 28 October 1970, the Sixth Committee decided that its report on the agenda item should contain a summary of the principal juridical views expressed during the debate, the financial implications of such a summary having previously been brought to its attention in accordance with General Assembly resolution 2292 (XXII).

## II. PROPOSAL SUBMITTED TO THE SIXTH COMMITTEE

5. At its 1211th meeting, on 29 October, the Sixth Committee had before it the following draft resolution, which was introduced by the representative of Cyprus on behalf of Algeria, Bulgaria, the Byelorussian Soviet Socialist Republic, the Central African Republic, Cyprus, Czechoslovakia, Ecuador, Ethiopia, Ghana, Guyana, Haiti, India, Iran, Kenya, Kuwait, Libya, Madagascar, Mali, Mexico, Morocco, Poland, Romania, Sierra Leone, Southern Yemen, the Sudan, Syria, Tunisia, Uganda, the Ukrainian Soviet Socialist Republic, the Union of Soviet Socialist Republics, the United Arab Republic and the United Republic of Tanzania (A/C.6/L.799):

---

<sup>1/</sup> Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 19 (A/8019).

"The General Assembly,

"Having considered the report of the Special Committee on the Question of Defining Aggression on the work of its session held in Geneva from 13 July to 14 August 1970,

"Taking note of the progress made by the Special Committee in its consideration of the question of defining aggression and on the draft definition, as reflected in the report of the Special Committee,

"Considering that it was not possible for the Special Committee to complete its task, in particular its consideration of the proposals concerning a draft definition of aggression submitted to the Special Committee during its sessions held in 1969 and 1970,

"Considering that in its resolutions 2330 (XXII) of 18 December 1967, 2420 (XXIII) of 18 December 1968 and 2549 (XXIV) of 12 December 1969 the General Assembly recognized the widespread conviction of the need to expedite the definition of aggression,

"Considering the urgency of defining aggression and the desirability of achieving this objective as soon as possible,

"Noting also the common desire of the members of the Special Committee to continue their work on the basis of the results achieved and to arrive at a draft definition,

"1. Decides that the Special Committee on the Question of Defining Aggression shall resume its work, in accordance with General Assembly resolution 2330 (XXII), as early as possible in 1971;

"2. Requests the Secretary-General to provide the Special Committee with the necessary facilities and services;

"3. Decides to include in the provisional agenda of its twenty-sixth session an item entitled 'Report of the Special Committee on the Question of Defining Aggression'."

Subsequently Cambodia, Guinea, Hungary, Indonesia, Yemen and Yugoslavia joined the sponsors of the draft resolution.

6. At the 1213th meeting, on 2 November 1970, the sponsors submitted a revised draft (A/C.6/L.799/Rev.1), in which the fifth preambular paragraph had been replaced by the following:

"Considering the urgency of bringing the work of the Special Committee to a successful conclusion and the desirability of achieving the definition of aggression as soon as possible".

/...

### III. DEBATE

7. The trends of the opinions expressed in the Sixth Committee are summarized below under appropriate headings.

#### A. OPINIONS EXPRESSED ON CERTAIN GENERAL ASPECTS OF THE QUESTION OF DEFINING AGGRESSION

8. Most of the representatives who spoke expressed the view that the formulation of a definition of aggression would help considerably towards the maintenance of international peace and security. It was said that in addition to contributing to the progressive development of international law, especially with regard to the principle of the non-use of force in international relations, a legal definition of aggression would make it possible to consolidate the mechanism of collective security based on the Charter, a mechanism which turned not only on the prohibition of the use of force but also on the right of self-defence and the power of the Security Council; a clear demarcation between aggression and the right of self-defence could assist the Security Council in determining the existence of an act of aggression and help to ensure that adequate measures were taken and international disputes were settled peacefully as a result. It was also observed that a legally precise and generally acceptable definition of aggression would not only dissuade potential aggressors but also protect States against the arbitrary characterization of the use of force automatically as aggression. In the view of some representatives a definition would also assist the international community in fixing responsibility for illegal use of force falling within its terms. Several representatives stressed the urgency of defining aggression and the desirability of achieving this objective as soon as possible. It was said that, since the General Assembly stated such urgency in resolution 2549 (XXIV) of 12 December 1969, nothing had occurred to change the situation; on the contrary, the need for the definition had become even more urgent in the light of the debates which had taken place at the present Assembly session and in order to complete such texts as the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States and the draft Code of Offences against the Peace and Security of Mankind, as well as other international legal instruments on security matters. It was also stated that the speedy formulation

/...

of a definition of aggression was of particular concern to small- and medium-sized countries and to newly-independent countries whose economic and social progress depended on the maintenance of international peace and security.

9. On the other hand, some representatives expressed doubts about the usefulness of a definition of aggression. The view was also expressed that there was no urgency for achieving a definition of aggression shortly after the adoption by the General Assembly of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, which already contained provisions relating to the prohibition of the use of force, self-determination and legal consequences of aggression. It was noted in this connexion that the Security Council could act under Chapter VII of the United Nations Charter without the finding of an act of aggression, and indeed too great an emphasis on a definition might hinder its efforts to deal with the matter. It was also said that the nature of the subject and the present political climate made it advisable to defer the question of defining aggression for a year or two.

10. A number of representatives felt that the Special Committee had made encouraging progress in the three years since its establishment, considering the vain attempts made for forty years to define aggression, and the 1967 debates in the General Assembly, when a number of delegations had seen no need for and no possibility of defining aggression. It was noted with satisfaction that all the groups of States represented in the Special Committee had submitted draft proposals and demonstrated their desire to arrive at a generally acceptable definition; the work of the Special Committee at the 1970 session had enabled the sponsors of the various draft proposals to clarify their positions and the gap between different points of view had been narrowed. Moreover, in the opinion of some representatives, the area of agreement that had emerged from the Special Committee's 1970 session was much wider than was indicated in its report, which could only record official positions. All these positive results were said to give grounds for hoping that the Special Committee might be able to complete its work successfully. A large majority of the representatives who spoke therefore supported the proposal that the Special Committee should resume its work as early as possible in 1971.

/...

11. In the opinion of some representatives, however, the progress made by the Special Committee warranted neither optimism nor pessimism. It was said that a few common factors which had emerged from the Committee's 1970 session concerned only the less difficult questions, and on the whole, the results of the session were rather poor, the only encouraging factor being that the discussions had taken place in an atmosphere of co-operation and goodwill. One representative suggested that the Special Committee's work might be suspended until 1973 and the Secretary-General might be requested to seek comments and proposals from Member States. Another representative considered that the Committee's mandate should not be renewed unless it was assigned a specific task of submitting to the next session of the General Assembly conclusions recommending a compromise between the various tendencies which would serve as a basis for a generally acceptable definition of aggression.

12. With regard to the procedure to be followed in preparing and adopting a definition of aggression, several representatives maintained that such a definition must be capable of attracting overwhelming support among the Members of the United Nations; in other words, it must be a consensus definition; the process of working by consensus might be slow but it could have rewarding results. The view was also expressed that unanimity of Member States, including all the permanent members of the Security Council, would be essential in order that the definition should provide a useful guidance for the Security Council in discharging its responsibility. It was argued that, since the definition of aggression was not only a juridical task but also an important political question, the Special Committee should spare no effort to reach the broadest possible agreement; the Special Committee should retain the consensus method, which would be the most suitable procedure for the adoption of the definition.

13. Other representatives were also in favour of working for unanimity and fully recognized the value of a mutually agreed text, but they nevertheless believed that, if unanimity could not be achieved, the Special Committee should vote on controversial matters, so that a draft definition that commanded a large majority of its members could be produced; a very wide majority in the Special Committee would be a sufficient basis for submitting a draft definition to the General Assembly, which could then consider whether a unanimous decision was necessary.

/...

In the opinion of some representatives, it was unrealistic to try to adopt a definition of aggression by consensus. Besides, it was not essential that the definition should be acceptable to the permanent members of the Security Council; there could be no question of accepting any veto in the progressive development of international law; a definition approved by a large majority of States would constitute a weighty legal basis which could not be ignored by the United Nations bodies responsible for maintaining international peace and security.

#### B. OPINIONS EXPRESSED ON THE CONTENT OF THE DEFINITION

##### 1. The definition and the power of the Security Council

14. As to the question of the definition of aggression and the powers of the Security Council, many representatives observed that any definition should in no way curtail or fetter the Council's discretionary powers under Article 39, that is, its freedom of judgement in determining whether any specific situation involved an act of aggression. The definition would simply be used by the Security Council as one of many legal sources to draw on in its work; it was not to be automatically applied by that organ. In the opinion of some representatives since the discretionary powers of the Security Council were of a political character, it would not be logical to impose a binding definition of aggression on the Council. It was considered doubtful if the General Assembly, which was only empowered to make recommendations, could restrict the powers of the Security Council; any definition adopted by the Assembly, it was said, could never enjoy binding legal force, even though it would have a definite moral value for public opinion and for the Security Council.

15. In the opinion of several other representatives, however, the definition ought to be worded in such a way as to prevent the Security Council from taking arbitrary decisions, although the definition should in no way affect the powers conferred on the Council by the Charter. It was stated that once the General Assembly had adopted a definition, based strictly on the Charter or uncontested principles of international law, it would be binding on all bodies, including the Security Council; thus, if all the conditions set forth in the definition were fulfilled, the Council would be bound to affirm the existence of an act of

/...

aggression and take the appropriate action under Articles 41 or 42 of the Charter; on the other hand, the Security Council should not be limited to the list of acts in the definition and it should be free to determine the existence of an act of aggression in all cases not fully covered by the definition. The opinion was also expressed that the list of acts constituting aggression should be preceded by a statement to the effect that they were listed without prejudice to the full powers of the Security Council as provided in the Charter - which should not be taken to mean that the Council had the right to add other acts to the list. Certain representatives felt that reference to the Security Council's powers was irrelevant to the definition; the General Assembly, as well as the Security Council, would automatically be guided by any definition that might be produced.

2. Political entities to which the definition should apply

16. Some representatives maintained that the definition of aggression should be applicable to any author of an aggression; for the victim of an aggression it was irrelevant whether the aggressor was a State or some other political entity. It was also said that it should not be possible to argue that, by reason of the disputed status of a particular political entity by or against which force had been used, that use of force did not constitute aggression. Certain representatives supported the suggestion that an explanatory note should be annexed to the definition to the effect that the term "States" included those whose statehood was disputed.

17. Several representatives were, however, opposed to the inclusion in a definition of aggression of the idea of political entities, an idea which was alien to the Charter. Such inclusion, in their view, could encourage a restrictive interpretation of the term "State" and blur the distinction between international conflicts and civil wars. In that connexion, it was stressed that the definition of aggression should be based on the concept of the State in international relations, without making the existence of the State dependent on the recognition of its statehood by other States. Moreover, such inclusion would encourage certain States to prevent the exercise of the right of peoples

/...

to decide their own future by labelling national liberation movements as "Aggressors" and invoking the self-defence argument against them. It was also pointed out that, if the term political entities was intended to cover States whose statehood is in dispute, then relevant rules already existed in international law and the issue had no place in a definition of aggression.

### 3. Acts proposed for inclusion in the definition

18. A number of representatives expressed the view that the practical way of achieving a definition of aggression was by dealing first with direct armed aggression, which constituted the gravest threat to international peace and security at the present time, leaving the question of other forms of aggression to a later date. It was said that while it should not be difficult to agree on what constituted the most serious and obvious cases of armed aggression against which a victim State could exercise the right of self-defence, to try to draw up a definition of aggression in the widest sense would raise many difficulties which would hold up the work too long; since many crimes had been committed in the name of self-defence, it was urgent to ascertain which acts entitled States to take defensive actions in its name. Most of those representatives also specified that they attached great importance to the question of indirect aggression. It was stated that indirect aggression was of particular interest to small countries, particularly vulnerable to that form of aggression, and to countries still under colonial domination, which were frequently the victims of it; armed aggression could assume two forms, direct or indirect, although it was difficult to find a precise criterion for affirming whether a case of indirect aggression was or was not armed aggression under the terms of Article 1 of the Charter. In this connexion, the decision of the Soviet Union to delete from its draft<sup>2/</sup> the words "direct or indirect" was welcomed by some representatives, who appealed to the sponsors of the six-Power draft<sup>3/</sup> to make a similar concession.

19. On the other hand, several representatives maintained that any definition of aggression must cover all uses of force, whether or not they were "direct".

---

<sup>2/</sup> Ibid., annex I, section A.

<sup>3/</sup> Ibid., section C.

It was said that the labels "indirect aggression" for covert forms and "direct aggression" for overt armed attack were at variance with the Charter and only the six-Power draft fully covered all forms of aggression; to the victim, infiltration of terrorists and armed bands and acts of sabotage were no less direct, no less illegal and no less a breach of the peace than the same acts when committed by regular military forces; the most serious threats to international peace and security at the present time stemmed from the less direct and less overt uses of force; a partial definition covering only so-called "direct" aggression would not be consistent with the Charter and would not therefore be acceptable.

20. In the opinion of some representatives, the definition of aggression should, at the present stage, cover only the use of force, without qualifying it as "direct" or "indirect"; in this respect paragraph 2 of the thirteen-Power draft<sup>4/</sup> was satisfactory. It was stated that the proposed definition of indirect aggression could not be exhaustive; it should therefore include a minimum list of the most serious cases of aggression under Articles 39 and 51 of the Charter; it would be possible to include the sending of armed bands by one State into the territory of another, and also to consider certain cases of indirect aggression which would constitute acts of aggression as defined in Article 39 but would not give rise to the right of self-defence as defined in Article 51. Also, certain representatives said that they were willing to support a more general definition referring to the use of "armed force, however exerted".

21. Some representatives considered that the definition should cover various other forms of aggression such as economic, financial, political, cultural or ideological pressures, although the value of inclusion of such forms was contested by other representatives. It was felt that the definition should mention a form of aggression whereby a State made its territory available to another State for the purpose of an armed attack against a third State, and that it should also contain a paragraph designed to prevent a State from invoking any consideration relating to another State's internal or foreign policy to justify the use of force against the latter.

---

<sup>4/</sup> Ibid., section B.

22. Some representatives were of the opinion that a declaration of war was intrinsically an act of aggression; although a declaration of war did not necessarily coincide with the commencement of hostilities, it was a patent manifestation of the existence of belligerent intent; it seemed dangerous and realistic for the State against which war had been declared to be forced to wait for an actual attack before taking defensive measures. Other representatives felt that a declaration of war did not necessarily constitute an act of aggression per se, but on the grounds of its formal legal consequences and its intrinsically serious nature, it should constitute an important element to be taken into account in determining the commission of an act of aggression. On the other hand, however, it was observed that a declaration of war was not necessarily relevant to the existence of aggression; it might be made long after the commencement of hostilities, for purely judicial or administrative reasons, in which case neither its existence nor its timing was indicative of aggression or aggressive intent.

23. In the opinion of some representatives, weapons of mass destruction should be expressly mentioned in a definition of aggression, since their use was not only a direct aggression but a violation of human rights. Other representatives thought that a reference to the use of weapons of mass destruction should be made only for information; they represented a way of committing aggression, not a constituent element of it. It was observed that the employment of such weapons might raise the question of the proportionality of an act and thus affect the burden of proof of justification; its mention in the definition was therefore acceptable, but the words "weapons of mass destruction" needed definition. It was also noted that the view appeared widely shared in the Special Committee that the definition should not rule out the possibility of nuclear weapons being used in self-defence against an attack by an aggressor using conventional weapons.

24. Several representatives considered that invasion, attack, military occupation and annexation of territory belonging to another State constituted flagrant acts of aggression which should be incorporated in any definition. However, the view was expressed that military occupation and annexation were essentially consequences either of the legitimate use of force or of acts of aggression and that they should not therefore be included in the definition.

25. Several representatives stressed that any definition of aggression should include a mention of infiltration into the territory of a State by irregular forces or armed bands, subversion, terrorism or other indirect uses of force intended to violate the political independence and territorial integrity of a State, while other representatives felt that such acts did not present a danger to peace so serious as direct aggression and an attempt to define such acts would run into many difficulties. In that connexion, it was noted that one of the sponsors of the thirteen-Power draft suggested the possible addition of the infiltration of armed bands to the list of acts of aggression.

4. The principle of priority

26. The introduction of the concept of priority into the definition of aggression did not seem to meet, in principle, with any opposition. Different views were, however, expressed regarding the degree of importance which should be accorded to that concept in the definition. On the one hand, it was observed that the principle of priority, which was sanctioned by many international instruments and was based directly on the provisions of the Charter and in particular on Article 51, constituted the only objective criterion applicable in determining the aggressor; it laid the burden of proof on the State which attacked first and raised a presumption that the State which attacked first was the aggressor; its purpose was to prevent States from committing acts of aggression in the guise of preventive wars. It was also stated that the principle of priority formed the fundamental criterion; that criterion was applied in all systems of municipal law and should take a prominent place in any objective and realistic definition of aggression. Furthermore, it was difficult to formulate a definition of aggression without referring to the principle of priority; although it was not, perhaps, the only valid principle, it was certainly the most important to be applied; since armed aggression was the most serious form of aggression, the definition should embody that principle, which should be the main criterion in determining the aggressor in an international conflict. On the other hand, the view was expressed that the principle of priority should figure in the definition only as one element among others. In many cases, an automatic application of that principle would lead to surprising results. Because of the difficulty of

/...

determining the facts, the definition should not include prior resort to force as an unqualified general criterion of automatic application, for every case should be judged on its merits and the priority of resort to force was only one of the elements of an act of aggression, although an important element; if the concept of priority were to be included in the definition, the latter would have to be drafted in such a way that the Security Council would be able to consider all the relevant aspects of a case before reaching a conclusion.

Furthermore, it was pointed out that the principle of priority could not be unconditionally accepted without implying a controversial interpretation of the right of self-defence recognized in Article 51 of the Charter; moreover, it was not the task of the Special Committee to define the scope of that right; the Special Committee could not elaborate a good definition of aggression if, in the process, it sought not merely to define the right of self-defence but to do so in a way which would be interpreted by many States as circumscribing that fundamental right.

27. One representative, while stating that he favoured the principle of priority, raised the query whether or not a distinction should be made in the definition between acts of aggression proper and border incidents. In his view, a border incident should not entail the type of reaction appropriate to an armed attack. He therefore suggested that the words "in an international conflict" should be inserted before the word "first" in the relevant paragraphs of the USSR and the thirteen-Power draft proposals.

##### 5. Aggressive intent

28. A number of representatives were opposed to including the element of intent in the definition of aggression. Reference was made to the principle of priority, embodied in the USSR and the thirteen-Power drafts, and to the element of intent, embodied in the six-Power draft, and the view was expressed that no subjective element of any kind should be introduced into the definition of aggression. That did not mean that priority would be the sole determining factor in deciding whether or not aggression had been committed; the fifth preambular paragraph of the thirteen-Power draft and the sixth preambular paragraph of the USSR draft both stated that all circumstances had to be taken into account in

/...

each particular case: in other words, there was no automatic application of the principle of priority and the powers and duties of the Security Council were in no way diminished. On the other hand, it was stated that the element of priority was apparently irreconcilable with the element of intent; it was therefore unacceptable to place the two elements on the same footing in the definition, even though it was conceivable that the Security Council might take into consideration expressions of intent by the States involved; however, the lack of aggressive intent could not establish the innocence of a State that had been the first to commit an act of aggression. Furthermore, it was pointed out that the idea that an act of aggression could be unintentional was inconceivable; intent was intrinsic to aggression; motive was an altogether different concept, which should not be included in the definition sought. The view was also expressed that including the concept of intent in the definition of aggression would have the effect of placing the burden of proof on the victim; furthermore, it would enable the aggressor to take shelter behind the definition in order to deny that he had had any aggressive intent. In addition, it was observed that the concept of aggression led to the theory of just and unjust wars, which was a medieval theory; since the Charter referred only to acts and not to motives, the inclusion of that concept in the definition would be unacceptable, since the purpose of the definition was to restrain aggression, not to provide justification for it, and to give effect to the Charter, not to restrict its application.

29. On the other hand, some representatives maintained that the definition of aggression should take into account the element of intent, which in their view would be one of the most important elements in determining whether or not aggression had occurred. If intent were not recognized as an element of aggression, a limited, erroneous or unauthorized attack could unjustly be labelled as aggression. It was pointed out that that element, which was referred to by implication in operative paragraph IV A of the six-Power draft, was also implicit in the other drafts submitted to the Special Committee; furthermore, the element of intent was not necessarily subjective: it was generally inferred, especially in criminal law, from the objective circumstances of the offence.

6. Legitimate use of force

30. According to some representatives, any definition of aggression should acknowledge that the use of force in the exercise of a State's inherent right to individual or collective self-defence did not constitute aggression. It was recalled that it had been recognized at the San Francisco Conference that the use of arms in self-defence remained admitted and unimpaired and that that principle had been enshrined in Article 51 of the Charter. A literal reading of that Article showed that individual or collective self-defence was an "inherent right", which therefore did not arise from the Charter and was not limited by any provision of the Charter; that right existed until the Security Council had taken the measures necessary to maintain international peace and security. Other representatives said that efforts should be made to establish the limits of the right of self-defence vested in States by virtue of Article 51 of the Charter, in order to prevent any possible ambiguity between any kind of military action and an aggression in the proper sense of the word. It was maintained that not all breaches of the peace would give a State the right to self-defence. A State could exercise that right only if force had been used, and not merely threats.

31. It was stated that operative paragraph 4 of the thirteen-Power draft should be amended so as not to diminish the right of self-defence, individual or collective, embodied in Article 51 of the Charter; similarly, operative paragraph 7 of that draft should be reworded, since it gave the impression that the internal measures a State might take to safeguard its existence and institutions were dependent on international permission and were not within its own competence, thus contradicting Article 2, paragraph 7, of the Charter.

32. Some representatives favoured including the principle of proportionality in the definition of aggression. In that connexion, it was observed that an unconditional right of self-defence could not be protective, particularly in the case of small States; the principle of proportionality seemed to provide the only safe guarantee that a defensive action would not turn into aggression; operative paragraph 6 of the thirteen-Power draft, which embodied that principle, was quite reasonable and should be accepted. Other representatives said that the question of proportionality should play little part in the definition of aggression. Over-reaction by the victim did not alter the aggression itself; furthermore, Article 51

/...

of the Charter did not mention the principle of proportionality and placed no limitations upon the means that the victim of armed aggression could use to repel the aggressor. Apart from the difficulty of establishing when the stage of successful self-defence had been reached, the inclusion of the principle would handicap the victim State by obliging it to decide how much force to use to repel the aggressor; moreover, the principle had no basis in modern jurisprudence in the context of self-defence.

33. Some representatives, referring to operative paragraph III of the six-Power draft, observed that the use of armed force by regional arrangements or agencies would be legitimate only if there had been a prior decision to that effect by the Security Council under Article 53 of the Charter. That Article authorized the Security Council to use regional arrangements or agencies where necessary, but no regional enforcement action could be taken without the Security Council's prior authorization; the phrase "consistent with the Charter of the United Nations" in operative paragraph III of the six-Power draft did not suffice to remove the ambiguity introduced into the interpretation of Article 53 of the Charter. The view was also expressed that according to Articles 39 and 42 of the Charter, only the Security Council could decide to resort to enforcement measures involving the use of force; any formula designed to give the General Assembly or regional agencies powers which were not granted to them by the Charter would therefore be unacceptable. It was also felt that operative paragraph 4 of the thirteen-Power draft and operative paragraph III of the six-Power draft should be reworded in order to bring them into line with the provisions of Article 53 of the Charter; enforcement action did not necessarily involve the use of armed force; it consisted basically of the application of sanctions, which might be diplomatic, economic and financial or military in nature.

#### 7. The right of self-determination

34. Many representatives were in favour of including in the definition of aggression a provision envisaging an exception when the use of force was necessary to ensure the exercise of the right of peoples to self-determination. Such a provision was of paramount importance to countries which were prepared to support national liberation movements; colonialism qualified as aggression, and the use of

/...

force by dependent peoples in the exercise of their right to self-determination should not be regarded as an act of aggression. Furthermore, the view was expressed that the use of force to prevent a people under colonial or alien rule from exercising its right to self-determination was a form of armed aggression; in the exercise of that right, the organizing of armed bands and the instigation of civil strife should be considered legitimate means. It was also stated that the definition of aggression should take into account the situation of oppressed peoples, particularly those who were the victims of apartheid and other forms of racial discrimination.

35. On the other hand, some representatives observed that the use of force by colonial peoples was not envisaged in the system established by the Charter and should be excluded from the definition of aggression. In that connexion, it was noted that the question of self-determination and administration of dependent territories had been carefully regulated by the Charter, which had instituted an effective system that did not envisage the use of armed force by dependent territories; furthermore, recognition of the legitimacy of the use of force in order to give aid to dependent and oppressed peoples might provide a pretext for manifest acts of aggression; in view of the universal scope of the right to self-determination, there were many cases in which such abuses might occur. It was also observed that the legal questions raised by the right to self-determination had been satisfactorily solved in the drafting of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, and that it might therefore be questioned whether it was necessary to revert to those questions for the purposes of defining aggression. One representative, while acknowledging that there was no need for the right to self-determination to be mentioned in the definition of aggression, said that he would not oppose the inclusion in the definition of the formulation used in paragraph 6 of the Declaration on the Occasion of the Twenty-fifth Anniversary of the United Nations, adopted by the General Assembly on 24 October 1970 (resolution 2627 (XXV)), on the understanding that the term "appropriate means" used in that formulation meant "means in accordance with the Charter".

## 8. Legal consequences of aggression

36. A number of representatives considered that the definition should contain provisions concerning the legal consequences of aggression. It should state clearly

/...

that the unlawful use of force entailed responsibility and conferred no rights. The principle of the non-recognition of territorial gains or any other advantage obtained by force had already been recognized in several international instruments, and recently in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations; similarly, the principle of the responsibility of the aggressor, which was also undisputed, had already been embodied in international practice, for instance, at the Nuremberg and Tokyo tribunals; the USSR draft rightly stated that armed aggression entailed the political and material responsibility of States and the criminal responsibility of the guilty persons. Operative paragraphs 4 and 5 of the USSR draft and operative paragraphs 8 and 9 of the thirteen-Power draft concurred in that respect; however, paragraph 8 of the latter text was both more profound and more precise in that it referred to the inviolability of the territory of a State, which might not be the object, even temporarily, of military occupation or other measures of force; that formula was a worthy contribution to the cause of international law, and might prove generally acceptable if it was specified that it was not only territorial gains obtained by force which should not be recognized, but also "any other special advantage", a concept taken from the USSR draft.

37. On the other hand, other representatives felt that it would not be necessary to include the legal consequences of aggression in the definition. The view was also expressed that the question of non-recognition of territorial gains and the question of responsibility could not be included in the definition without impairing the clarity of the text and the effectiveness of the guidance it was expected to provide; besides, those questions went beyond the Special Committee's mandate and had moreover been dealt with in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations; to reconsider them in the context of the definition could only lead either to repetition or to contradiction. In this connexion, it was suggested that it would be more appropriate to deal with the question of non-recognition of territorial gains obtained by force in the preamble of the definition than in its operative part, since it concerned a legal consequence of aggression and was not an element of aggression itself.

/...

#### IV. VOTING

38. At its 1213th meeting, on 2 November 1970, the Sixth Committee adopted without objection the revised draft resolution (A/C.6/L.799/Rev.1). Statements in explanation of vote were made by the representatives of Australia, Belgium, Canada, France, Israel, Italy, Japan, Liberia, the United Kingdom and the United States.

#### V. RECOMMENDATION OF THE SIXTH COMMITTEE

39. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolution:

Report of the Special Committee on the Question  
of Defining Aggression

The General Assembly,

Having considered the report of the Special Committee on the Question of Defining Aggression on the work of its session held in Geneva from 13 July to 14 August 1970,<sup>5/</sup>

Taking note of the progress made by the Special Committee in its consideration of the question of defining aggression and on the draft definition, as reflected in the report of the Special Committee,

Considering that it was not possible for the Special Committee to complete its task, in particular its consideration of the proposals concerning a draft definition of aggression submitted to the Special Committee during its sessions held in 1969 and 1970,

Considering that in its resolutions 2330 (XXII) of 18 December 1967, 2420 (XXIII) of 18 December 1968 and 2549 (XXIV) of 12 December 1969 the General Assembly recognized the widespread conviction of the need to expedite the definition of aggression.

Considering the urgency of bringing the work of the Special Committee to a successful conclusion and the desirability of achieving the definition of aggression as soon as possible,

---

<sup>5/</sup> Official Records of the General Assembly. Twenty-fifth Session Supplement No. 19 (A/8019).

Noting also the common desire of the members of the Special Committee to continue their work on the basis of the results achieved and to arrive at a draft definition,

1. Decides that the Special Committee on the Question of Defining Aggression shall resume its work, in accordance with General Assembly resolution 2330 (XXII), as early as possible in 1971;

2. Requests the Secretary-General to provide the Special Committee with the necessary facilities and services;

3. Decides to include in the provisional agenda of its twenty-sixth session an item entitled "Report of the Special Committee on the Question of Defining Aggression".

-----