



Chairman: Mr. Zenon ROSSIDES (Cyprus).

AGENDA ITEM 89

Report of the Special Committee on the Question of
Defining Aggression (*continued*) (A/8419)

1. Mr. CASTREN (Finland) thanked the Chairman and the Rapporteur of the Special Committee on the Question of Defining Aggression and the Chairman of the Working Group established by the Special Committee who had assumed a very heavy burden. He noted, however, that despite praiseworthy efforts the progress achieved had been fairly modest.
2. Finland, which was a member of the Special Committee, had already made known its position on the controversial points during the meetings of the Special Committee and in the Sixth Committee itself. It would therefore confine its remarks to questions of method. It wished first of all to emphasize that the efforts made to define aggression should be continued and that accordingly the Special Committee should be invited to resume its work in 1972; his delegation hoped that with goodwill and the necessary spirit of conciliation a satisfactory result would be achieved. The fact that gave grounds for optimism was that at the twenty-fifth session of the General Assembly it had proved possible to reach agreement concerning resolution 2625 (XXV) containing the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, which had settled some problems closely linked to the question of aggression.
3. His delegation thought that, instead of trying to resolve difficulties by decisions taken by majority vote, the Special Committee should follow the example of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, which had taken all its decisions unanimously. It was doubtful what value and use a definition of aggression would have if, for example, one or more of the permanent members of the Security Council had opposed it. The use of working groups to try to settle controversial questions seemed to be a good method. The members of the Working Group established at the 1971 session of the Special Committee had been able to reach agreement on several paragraphs of the preamble of the definition and to submit a joint text of some operative paragraphs (see A/8419, annex III) in which, however, because of divergences of views, some words had had to be put in square brackets. It was essential, first, to try to work out generally acceptable formulae, in order to eliminate the square brackets, and then to find compromise solutions regarding the questions the inclusion of which in the definition was still controversial. Some secondary points might, moreover, be left to the discretion of the United Nations organ responsible for dealing with cases of aggression since, with a few exceptions, all Governments thought that a definition of aggression was intended to guide that organ without binding it absolutely in each particular case. It was agreed, too, that the acts of aggression listed in the definition should be considered to have been included as examples and that the list could be added to, if necessary. Although an incomplete definition was less satisfactory in some ways, it had the advantage of being more flexible and probably more practical.
4. Mr. PINTO (Ceylon) expressed his appreciation to the Special Committee and its officers for the work they had done during the 1971 session. He pointed out that Ceylon had been among the members of the Sixth Committee which had given unqualified support to General Assembly resolution 2330 (XXII) establishing the Special Committee and he noted that the work of the Special Committee resembled the work of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, both in its nature and complexity. In fact, the work of those two Committees should be regarded as complementary. One of them had managed to bring its work to a successful conclusion the previous year and his delegation was convinced that the second would soon do the same.
5. A definition of aggression could contribute towards the formation of an enlightened public opinion, it could be a yardstick against which to measure the conduct of States and it could serve as a warning to any potential aggressor. Moreover, such a definition would offer protection to States against the arbitrary characterization of any use of force as aggression. In any event, it was essential to formulate a text which would be accepted by the great majority of States, if not by all. His delegation was therefore among those which, as indicated in paragraph 20 of the Special Committee's report (A/8419), thought that the only way of arriving at an acceptable and lasting definition of aggression was by means of consensus. However, it also thought that it was not necessary to apply that method to all aspects of the Special Committee's work, in particular to those which were of relatively minor importance.
6. Although he regretted that the three draft proposals reproduced in annex I of the report could not be supported unreservedly by his delegation in their present form, he noted from the report of the Working Group in annex III that progress could be made towards satisfactory compromises by merging in a single text the best elements of

each draft. He also particularly appreciated the publication, as annex IV, of a very valuable working paper prepared by the Mexican delegation to sum up the stage reached in the negotiations of the Special Committee.

7. For its part, his delegation would like to make a few points of a general nature. First, it urged the members of the Special Committee not to allow the political aspects of their task to make them forget the scientific techniques and standards of drafting that were traditional to the Sixth Committee. In particular, it would not seem to be very useful to include in the definition such expressions as “the use of armed force contrary to the purposes, principles and provisions of the Charter of the United Nations” or “act committed in violation of the Charter” since that would beg the whole question. What should be produced was a balanced, scientifically conceived and precisely formulated definition, which would not introduce any subjective elements but which could be applied as far as possible by reference to objective criteria. Lastly, it was essential that the definition should indicate clearly that the concept of aggression did not cover the use of force by dependent or colonial peoples in the exercise of their right to self-determination in accordance with General Assembly resolution 1514 (XV).

8. There was another aspect of the question to which his delegation would like to draw attention. The three draft proposals defined aggression as an act committed by one State against another State. It should be remembered, however, that the United Nations and conferences organized by it had adopted declarations under which certain areas which were the common heritage of mankind could be used exclusively for peaceful purposes and should be explored and exploited only for the benefit of mankind as a whole. Such areas included outer space, and the sea-bed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction. Similarly, although its scope was more limited, mention should be made of the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof. In that connexion, he also referred to the following instruments which were of a slightly different character since they covered areas which were within, or potentially within, the sovereignty of States: the Antarctica Treaty, the Treaty of Tlatelolco and the declaration on the denuclearization of Africa of the Organization of African Unity. Moreover, the Government of Ceylon had proposed the inclusion in the agenda of the General Assembly of an item which sought to make the Indian Ocean a zone of peace.¹ He wondered, therefore, whether the concept of aggression should be limited to acts committed against one or more States. His delegation, for its part, would prefer the General Assembly to declare that that concept covered also the use of force by one or more States in a manner incompatible with any régime whatsoever established by the international community in respect of areas which were outside the limits of national jurisdiction or which fell within the limits of national jurisdiction but had been expressly isolated from the arms race or any particular form of the arms race. Even if the instruments establishing those régimes contained provisions applicable to violations and machinery for the settlement of disputes,

¹ See A/8492

the inclusion of that point in the definition of aggression would give additional publicity to, and strengthen, efforts at demilitarization.

9. His delegation hoped that the members of the Special Committee would try to define more clearly the expression “use of force”. He wondered whether that expression should be interpreted as being synonymous with “armed attack” or whether there was justification for holding that it should also cover the emplacement or deployment of offensive weapons ready for use. It was permissible to think that the mere deployment of such weapons in an area which was beyond the limits of national jurisdiction and which, for example, had been declared a zone of peace would constitute an aggressive act.

10. Mr. EL REEDY (Egypt) said that the efforts of the international community to formulate a definition of aggression were closer to achieving their objective than ever before, largely because most of the countries of the third world had participated in the work. It was only normal that the bitter experiences and agonies they had suffered during the colonial era should drive them to labour with patience and determination to promote an international legal order based on respect for the territorial integrity, sovereignty, and political independence of all States and at the same time capable of accommodating the legitimate aspirations of the peoples of Africa and Asia still struggling against aggression, colonialism, racism and foreign intervention.

11. The progress made by the Special Committee at its four sessions was highly encouraging, and particularly the fact that those States which had long been sceptical of the Special Committee’s chances of success had submitted a draft definition that had enabled it to tackle the substance of the problem. The establishment of the Working Group had also been useful in advancing the work of the Special Committee in a concrete fashion.

12. Nevertheless, any careful study of that work and of the various draft definitions used as a basis for discussion thus far revealed that there were many points of principle still to be settled. It would be most useful if the Sixth Committee could bring those issues into the open.

13. Various problems facing the Special Committee centred around the relationship between the concept of aggression and the general principle of the prohibition of the use of force, as well as exceptions to the general prohibition under the Charter of the United Nations. Both the scope and the content of those problems were clearly set down in various provisions of the Charter and the Declaration on Friendly Relations. In his delegation’s view, the Special Committee had to abide by those rules, which could be summed up as prohibiting the use of force in international relations, with the exception of force used by the Security Council to maintain or restore peace, or used in self-defence in case of armed attack.

14. An act of aggression, however, besides violating the principle of non-use of force, violated the sovereignty, territorial integrity, and personality of the State that was the victim, infringed the contractual character of the Charter, and posed a threat to international security. Hence the need to work out a definition of aggression which

would bring into focus the gravity of the act and provide guidance for world public opinion and the States Members of the United Nations. In doing so, however, it was important not to tamper with the pertinent rules of the Charter restricting the use of force by States, and in his delegation's view, some of the notions and formulations suggested to the Special Committee entailed that danger, in particular the attempt to introduce the notion of "aggressive intent" into the definition and to widen the scope of the Charter's rules on the legitimate use of force.

15. With regard to aggressive intent, his delegation agreed, of course, that there could be no aggression without aggressive intent. However, that truism in no way justified the introduction of intent as an element in the definition, particularly suggested in the six-Power draft (*ibid.*, annex I, draft proposal C). By enumerating the purposes which could be considered as revealing aggressive intent, the six-Power draft definition risked creating the impression that any act committed for a purpose not expressly included in the list did not constitute aggression. The Special Committee should concentrate rather on identifying the objective elements which constituted aggression. A solution could surely be found which would rule out cases where an act of force was committed by accident or by mistake.

16. Moreover, the words "The term 'aggression' is applicable . . . to the use of force in international relations . . . by a State against the territorial integrity or political independence of any other State, or in any other manner inconsistent with the purposes of the United Nations" in paragraph II of the six-Power draft might be taken to mean that force could be used in achieving the purposes of the United Nations as defined in Article 1 of the Charter, which would of course be a false interpretation. Admittedly, the words were included in Article 2, paragraph 4, of the Charter, but only to emphasize that force should not be used in international relations; and to insert those words in a general definition of aggression might well blur the Charter rules regarding the non-use of force.

17. With regard to the legitimate use of force, Article 51 of the Charter established clearly that the use of force in self-defence came into play only in the event of armed attack against the State. The Article could be incorporated bodily into the definition. It was unfortunate, therefore, that some of the texts suggested to the Special Committee did not tally with Article 51, and avoided reference to it. One of the sponsors of the six-Power proposal even contended that the right to self-defence was not dependent on Article 51 of the Charter and was not limited by it. His own delegation did not believe that that view was shared by the other sponsors of the proposal and it emphasized that a definition not totally based on Article 51 would run the risk of encouraging the use of force in violation of the provisions of the Charter.

18. At the present stage, his delegation cautioned the Committee against any attempt to loosen the restrictions on the use of force as established in the Charter. The whole purpose of defining aggression was to reinforce those restrictions and ensure respect for them. For the same reasons it would be wise not to create two kinds of aggressions, direct and indirect, overt and covert. Such

classifications could introduce into the concept of aggression certain acts not even involving the use of force. Such acts usually involved intervention, and while illegal under the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty contained in General Assembly resolution 2131 (XX) did not amount to aggression. Expansion of the concept of force might inadvertently result in condoning the present tendency to use force on the pretext of self-defence.

19. Concerning other problems facing the Special Committee, he said in reference to paragraph 14 of the report of the Special Committee's Working Group (*ibid.*, annex III) that in his delegation's view the most serious act of aggression was invasion or attack on the territory of a State by the armed forces of another State, and the occupation of that territory. To condone such acts was tantamount to going back to the colonial era and renouncing the law of the Charter in favour of the law of conquest. The fact that occupation and annexation followed the act of aggression did not alter the fact that armed attack had been committed, and his delegation associated itself with those countries which urged the Special Committee to include the notions of occupation or annexation of the territory of a State by force in the definition of aggression. The General Assembly at its twenty-fifth session had adopted two important declarations: the Declaration on Friendly Relations and the Declaration on the Strengthening of International Security. Both declarations proclaimed the illegality of all military occupation resulting from the use of force in contravention of the provisions of the Charter and all territorial acquisition resulting from the threat or use of force.

20. His delegation was glad to see that an overwhelming majority in the Special Committee favoured the inclusion in the definition of the principle of non-recognition of any territorial acquisition by force. That principle was in keeping with the collective security system established by the Charter to protect the sovereignty, territorial integrity, and political independence of States. It must be applied from the moment when force was used against the territory of any State until the termination of aggression through the restoration of occupied or annexed territory to the injured State. The obligation of non-recognition had recently been stressed by the International Court of Justice in its advisory opinion on Namibia of 21 June 1971.² His delegation urged the few delegations still opposed to the inclusion of the principle of non-recognition in the definition to review their attitude and accept the view of the large majority of the members of the Special Committee.

21. It was unfortunate that entire peoples were still being denied their right to self-determination in violation of both the spirit and the letter of the Charter and the Declaration on Friendly Relations. He hoped that the legitimacy of the struggle of those peoples would be proclaimed and that account would be taken of it in the solutions found for the problems connected with the notions of "political entities

² See *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 16.*

other than States” and the “right of peoples to self-determination”.

22. He hoped that the Special Committee would take account in its deliberations of a number of pertinent instruments, in particular the Declaration on Friendly Relations, and that it would succeed in improving its

working methods, bearing in mind among other things the observations made by the delegation of Guyana at the 1268th meeting. He also hoped that the People’s Republic of China would be able to take part in the work of the Special Committee.

The meeting rose at 4.15 p.m.