



Chairman: Mr. Zenon ROSSIDES (Cyprus).

AGENDA ITEM 89

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

1. Mr. TUTU (Ghana) regretted that in spite of the work done by the members of the Special Committee on the Question of Defining Aggression it had been impossible to find generally acceptable texts for all the principles discussed.
2. Since the Charter did not make a distinction between direct and indirect aggression, and the mandate of the Special Committee was simply to define aggression, the Special Committee should confine itself to evolving a general definition that would adequately reflect the concept of aggression as contained in the Charter. It had become evident from the debates in the Special Committee that the majority of its members agreed that at the current stage of its work it should not concern itself with defining "indirect aggression" because of the difficulty of finding a precise definition and because of the time-consuming process of obtaining a consensus. His delegation felt that if the words "direct or indirect" and "overt or covert" in the general definition of aggression which appeared in the report of the Working Group to the Special Committee in 1970¹ were replaced by the phrase "however exerted" (referring to armed force), which appeared in brackets in the definition proposed by the Working Group in its report (see A/8419, annex III, para. 3) it should be further qualified to mean armed force necessitating recourse to self-defence as enunciated in Article 51 of the Charter.
3. In order to avoid any confusion, the Special Committee should agree that the word "aggression" as used in the Charter meant "armed attack"; otherwise an explanatory note to that effect would have to be inserted in the Special Committee's future reports. The Sixth Committee should be able to resolve the difficulty once and for all.
4. The Special Committee appeared to have agreed that the principle of priority should be embodied in the definition. His delegation had no difficulty in supporting that decision, but it considered that care should be taken to ensure that the onus of proof would be on the accused and not on the victim State and that the presumption of the culpability of the aggressor should be rebuttable. Moreover, the principle should not be applied automatically and the Security Council should determine the facts in each individual case. His delegation therefore believed that the reference to the functions and powers of the Security Council, which appeared in paragraph 2 of the Soviet Union draft (*ibid.*, annex I, draft proposal A) and the reference to the powers and duties of the Security Council which appeared in paragraph 5 of the 13-Power draft (*ibid.*, draft proposal B), should be included in the general definition of aggression.
5. Regarding the principle of political entities other than States, he again stressed that the definition should apply to all sovereign and independent States, whether they were Members of the United Nations or not. Otherwise the Special Committee would be obliged to find a precise definition of "State" and "political entity", and that was outside its mandate. Moreover, the notion of "political entity" was not embodied in the Charter, which had no provision for making the existence of a sovereign State dependent on its recognition by other States. His delegation therefore welcomed the fact that the Working Group had agreed that the definition should refer to States only and not to political entities as in the six-Power draft (*ibid.*, draft proposal C). He considered that it would be superfluous to annex to the definition an explanatory note defining the term "State" as used in the Charter.
6. He regretted that for lack of time the Working Group had been unable to examine the concept of proportionality in detail and he hoped that the Special Committee would benefit from the views of the Sixth Committee on that principle. His delegation was of the opinion that the concept of proportionality should not be included in the definition in the context of the right of self-defence; its inclusion would put the victim State at a disadvantage in deciding the intensity or the degree of force to be used in exercising that right. Proportionality might perhaps be applied in the case of indirect armed attack, or in breaches of the peace, which were less urgent. In any case, Article 51 of the Charter recognized the right of self-defence as an inherent right without any restriction whatsoever. It was impossible to stretch the meaning of that Article to include proportionality. His delegation believed that the concept of proportionality, at least in the context of the right of self-defence, had now become obsolete.
7. Turning to the question of aggressive intent, he said that his delegation supported the majority view of the members of the Special Committee that, since aggressive intent was necessarily implied in any act of aggression, it was not necessary to include the principle in the definition. His delegation was likewise unable to accept the view that the element of intent was not necessarily subjective and was generally inferred from the objective circumstances of the

¹ See *Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 19, annex II, para. 4.*

offence. It also considered that the principles of priority and of aggressive intent could not be placed on the same footing. The element of intent became irrelevant when the Security Council determined that a certain State had been the first to use armed force against another State. One of the main purposes of defining aggression was to restrain would-be aggressors, the inclusion of the element of intent in such a definition would in fact permit an aggressor State to seek to justify its action. The burden of proof should always be on the aggressor and not on the victim State, and that legal principle could not be applied in the context of aggression unless the element of intent was excluded from the definition.

8. In respect of acts constituting aggression, he pointed out that the Working Group had made some progress in preparing texts dealing with a subject so difficult. If the work of the Special Committee on that subject was to be effective, it should not be asked to prepare a text on the "indirect use of force"; it should concentrate instead on acts constituting direct aggression. Care should be taken not to confuse the concept of "breach of the peace" with that of "armed attack" or "aggression". The Working Group's report had cited as examples of acts constituting aggression acts which, in fact would only result in a breach of the peace unless they had been of such intensity as to necessitate recourse to self-defence, in which case they would pose an imminent danger to life and property as well as to the existence of a State. Similarly, his delegation was unable to support the inclusion of the texts proposed, in paragraph 14 of the Working Group's report, under the sub-headings "Other acts of armed force" and "Maintenance of armed forces in another State", since the former seemed unduly vague and the latter would amount to interference in the internal affairs of sovereign States in their bilateral treaty agreements.

9. His delegation noted with regret that for lack of time the Working Group had been unable to discuss the principle of the right of peoples to self-determination. Since the main work of the Special Committee was to define aggression, in their words the illegal use of armed force, it should also consider situations in which the use of force was legitimate, in particular, the inalienable right of colonial peoples to oppose by force any attempt to deprive them of their right to self-determination. The Soviet Union and the 13-Power drafts alike embodied that principle, and his delegation urgently urged all the members of the Sixth Committee to support its inclusion in the definition.

10. The Working Group seemed to have agreed that States should not recognize territorial gains resulting from aggression and that those who committed aggression should bear the responsibility. As his delegation saw it, the only problem in respect of that principle was to decide in which part of the definition it should be mentioned, since its omission would make any definition of aggression inadequate.

11. With regard to organization of work, his delegation noted with regret that the Special Committee, for lack of time, had frequently been unable to consider all the topics on its agenda or those it had assigned to its Working Group. There were three ways of solving that problem: (a) the Special Committee could refer certain principles, preferably

those on which there was a near consensus, to its Working Group, which could make a thorough study of them with a view to reaching a definitive decision; (b) the time allotted to the Special Committee could be increased by five working days, to enable it to make a detailed examination of the texts drawn up by its Working Group; (c) the general debate which took place at the beginning of each session of the Special Committee could be eliminated since the positions of all delegations were currently well known. His delegation was in favour of adopting solution (a), if necessary combined with solution (c). It would appreciate the views of other members of the Sixth Committee on those proposals.

12. Mr. TAMMES (Netherlands) noted with satisfaction that the Working Group had agreed on certain important issues, in particular that the general definition of aggression should reflect the concept of aggression contained in the Charter. That concept in turn should be interpreted in the light of the general rule contained in article 31 of the Vienna Convention on the Law of Treaties,² i.e. it should have the ordinary meaning to be given to the terms of the Charter in their context and in the light of its object and purpose. The Special Committee had discussed the context of the term "aggression" by comparing it with such concepts as breaches of the peace or the use of force. The purpose of the term had been studied in the light of its function in the security system of the Charter. One of the essential elements in that system was the Security Council which, as stated in Article 25 of the Charter, could not exceed the powers accorded to it under the Charter. Of course, the practice of the Security Council could contribute to the interpretation of the Charter, but it seemed difficult to maintain, as the Working Group had done in paragraph 12 of its report to the Special Committee the previous year,³ that the Security Council had fullness of power under the Charter to extend the definition of aggression while, at the same time, presenting for the guidance of the Council a definition of aggression also derived from the Charter.

13. The definition of aggression must include the subject of aggression, i.e. the aggressor, the object of aggression, i.e. the victim, and the nature of the act of aggression. With regard to the subject of aggression, the principles of the Charter, and in particular Article 2, paragraph 6, were applicable only to States, which in the absence of any other indications must be defined in the sense of general international law, i.e. as those political entities which met certain well-known factual criteria. When a State met those criteria, no question of recognition arose. Until the Working Group produced the explanatory note envisaged in paragraph 8 of its report of the current year his delegation would interpret in the light of the foregoing remarks the relevant part of the definition proposed by the Working Group in paragraph 3 of its report, namely: "Aggression is the use of armed force . . . by a State". On the other hand, the object of aggression, i.e. its victim, might include political entities other than States, as recognized in the

² 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.39/27, p. 289.

³ See *Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 19*, annex II.

Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,⁴ and as agreed by the Working Group. In paragraph 21 of its 1970 report, the Working Group had rightly made the point that, when the object of aggression was a State, the aggression could also be directed against its armed forces, ships and aircraft outside its sovereign space. With regard to the nature of the act of aggression, no Article of Chapter VII of the Charter made any distinction between acts of aggression on one hand and threats to the peace and breaches of the peace on the other. If one of those three notions was given a broad definition, the effect might be to extend the powers of the Security Council beyond the limits set by the Charter. Such an effect, however, would not necessarily follow from a restrictive definition. Great care was therefore required for the description of the nature of the act of aggression, which was why the Special Committee had made little progress on that subject.

14. His delegation took the view that the question of the nature of the act of aggression could not be resolved without first dealing with two general questions: that of the direct or indirect nature of aggression, and that of the subjective or objective elements involved.

15. With regard to the first question, paragraph 26 of the Special Committee's report indicated that there had been no fundamental objection to the idea that the definition should be limited to the use of armed force, but that according to some representatives the forms of aggression other than armed force should be defined at a later stage. The Charter used both the terms "act of aggression" and "armed attack". For the time being, the Special Committee had not advanced beyond the recognition that, although all armed attack was aggression, not all aggression manifested itself in the form of armed attack.

16. With regard to the subjective and objective elements involved in aggression, his delegation concurred with the view of the Working Group in paragraph 11 of its 1971 report that there was no aggression without aggressive intent. Clearly it would be useful to work out certain practical criteria, which was what the Special Committee had attempted to do by trying to define aggressive intent in terms of the purposes and objectives in the mind of the aggressor, and not merely by the directly discernible symptoms of that intent. However, such a definition of aggressive intent was likely to be too vague. In connexion with the concept of priority, it seemed somewhat contradictory to affirm that aggression was an act committed by a State which had so acted first, and at the same time to consider aggression as a reaction to a previous aggression.

17. Since his country was not a member of the Special Committee, he had had to rely heavily on the reports of the Working Group with respect to the areas of agreement reached, although he shared the reservations expressed by the delegation of Guyana at the 1268th meeting. He hoped that the many constructive elements presented in the reports would one day be amalgamated in a text worthy of half a century of endeavour.

⁴ See General Assembly resolution 2625 (XXV), annex.

18. Mr. ZOTIADIS (Greece) said that the disagreements and differences in the three draft proposals submitted to the Special Committee should not be allowed to mask the progress made by the Special Committee in the field of application of the five principles on which it had been working since 1969. He would like to express his delegation's views on those principles. In the first place, he was pleased to note that most members of the Special Committee agreed that any definition of aggression should safeguard the discretionary powers of the Security Council and relate to "armed attack" as that term was used in the Charter. To be useful in the field of international peace and security, any definition of aggression must be based on the Charter, while at the same time amplifying and elaborating its principles. Secondly, his delegation agreed that it was necessary to arrive at a definition of aggression that had the widest possible support of Member States, without which it would have little political or legal value. Thirdly, it should be clarified that any employment of armed force by one State against another for any purpose other than national or collective self-defence constituted aggression and was therefore a crime against the peace and security of mankind. That formulation had long been accepted by the International Law Commission in article 2, paragraph (3), of its Draft Code of Offences against the Peace and Security of Mankind.⁵ Fourthly, while any definition of aggression should be based on the concept of the discretionary power of the Security Council, that power should not be accepted as exclusive: Article 24 of the Charter conferred on the Security Council only "primary responsibility" for the maintenance of international peace and security. Fifthly, his delegation believed that the principle of priority was fundamental to any objective and realistic definition of aggression. It noted with great interest the statement in paragraph 31 of the Special Committee's report that "No representatives appear to have objected to the inclusion of the principle of priority in the definition of aggression."

19. Turning to the points on which the members of the Special Committee had had difficulty in reaching a consensus, he pointed out that the political entities to which the definition should apply could only be States which were the normal subjects of international law. The recognition or non-recognition of a State had no place in the definition, since non-recognized States, like recognized States, were capable of committing aggression or being victims thereof.

20. The notion of aggressive intent was too subjective in character to be included in the definition of aggression. The question was whether or not a State had been a victim of aggression, irrespective of the motives of the aggressor State. If motives other than self-defence were to be taken into consideration, the prohibition of the use or threat of force contained in Article 2, paragraph 4, of the Charter would have no meaning.

21. The concept of proportionality was an excellent criterion for determining whether an action was defensive or aggressive.

22. The types of aggression to be included in the definition must include such acts as infiltration by armed

⁵ See *Official Records of the General Assembly, Sixth Session, Supplement No. 9*, para. 59.

bands, utilization of terrorism and subversion and any other indirect use of armed force intended to violate the political independence and territorial integrity of a State.

23. Finally, no definition of aggression could serve the cause of peace and security if it failed to recognize the legal consequences of aggression. A complete definition must therefore include provisions on the international responsibility of the aggressor and the inadmissibility of any territorial or other gains resulting from aggression.

24. In view of the usefulness of producing a definition of aggression and of the progress made by the Special Committee, the Greek delegation was in favour of the Committee's resuming its work as early as possible in 1972.

25. U SAN MAUNG (Burma) said that the progress made by the Special Committee at its 1971 session had been less than might have been wished because of fundamental differences still existing within the Special Committee on the subject of the various elements to include in a definition of aggression. His delegation felt, however, that in view of the spirit of goodwill shown by the members of the Special Committee, the latter might well arrive at a consensus definition in the not too distant future.

26. Summarizing his delegation's position on the substance of the issue, he said it was both desirable and possible to define aggression; any definition produced should embody the notions of both direct and indirect use of force such as organizing, supporting or directing armed bands or irregular forces that infiltrate into the territory of another State; the principle of priority or "first use" should be included in the definition in the case of direct armed aggression, but it must not be regarded as the only determining factor; and the principle of great-Power unanimity on certain questions considered by the Security Council should not be extended to the question of defining aggression.

27. His delegation regarded the concept of aggressive intent as an important element in the definition that should be borne in mind in conjunction with the principle of priority. It was aware, however, that the lack of objectivity inherent in that notion was likely to give rise to serious difficulties in regard to the question of proof.

28. It was essential to include among the acts constituting aggression invasion, occupation or annexation of territory and the use of weapons of mass destruction. The definition should also include such indirect uses of force as sending armed bands, mercenaries and saboteurs into the territory of another State, and carrying out, directing, assisting or encouraging acts of incursion, infiltration, terrorism, violent civil strife or subversive acts against another State.

29. Proportionality, which had a direct bearing on the exercise of the right of individual or collective self-defence under Article 51 of the Charter, must also be borne in mind in formulating the definition of aggression.

30. His delegation supported the resolution adopted by the Special Committee (see A/8419, para. 66), under which the General Assembly would invite it to resume its work in 1972.

31. Mr. FARUKI (Pakistan) said it was encouraging to find that areas of agreement could now be identified, as was clear from the Working Group's report annexed to the report of the Special Committee. Areas of disagreement still remained, however, in regard to the three main draft proposals, submitted by the Soviet Union, by 13 Powers, and by six Powers. Some of the points of difference appeared to reflect differences in political outlook, and it seemed unlikely that they could be resolved in the foreseeable future.

32. In his delegation's view, representatives should concentrate on the areas of agreement, with a view to producing an interim declaration defining aggression which would fulfil the requirements as to coherent form referred to by the representative of Guyana at the 1268th meeting. Thus it would be useful to set out without delay the consensus that existed in regard to the most obvious categories of aggression, instead of dwelling on others which seemed incapable of definition because of the subtle ways by which an aggressor might seek to achieve his object.

33. The delegation of Pakistan gave a warning against the danger, in drafting a text, of attempting to spell out all possible circumstances which would imply that any circumstances not expressly included had been deliberately excluded. The best definition was not necessarily the lengthiest.

34. The opinion had been expressed that the question of aggression belonged to the realm of international criminal law; in the view of the delegation of Pakistan, it would be more useful to try to establish analogies with municipal criminal law as already tried out and found effective. The definition of aggression should be so framed as to apply to all situations where an act of aggression had been committed, even if the aggressor took refuge behind the letter of the law while violating its spirit. That consideration was all the more appropriate in that the definition was calculated to be useful to the United Nations organs entrusted with the task of taking effective measures in the event of aggression.

35. His delegation shared the view already expressed by other delegations in regard to the close relationship between the definition of aggression and the Declaration on Friendly Relations. It considered that the two texts should be brought into line and should mutually support each other.

36. Finally, an effort should be made to clear up the question of the purposes of the definition of aggression, as referred to in paragraph 25 of the report of the Working Group. The Special Committee should be able to carry on its task in full awareness of the task entered into, and it would definitely be helpful if the purposes were spelt out.

37. He emphasized that his delegation regarded the question of defining aggression as an urgent one; the Special Committee should therefore be allowed to pursue its task.

38. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) said that although the question of defining aggression had been on the agenda of the United Nations since

the fifth session of the General Assembly, it had only begun to be seriously considered in 1968, following the submission of the Soviet Union, 13-Power and six-Power drafts respectively.

39. It should be noted that the different views had come much closer together in the Special Committee since the 1970 session. If it was to make decisive progress, the Special Committee should concentrate on the concrete elements of the definition of aggression.

40. To that end, he thought that the definition should first of all make reference to the general points contained in Articles 1, 39 and 51 of the Charter, and particularly to the case of armed aggression referred to in Article 51. A clear distinction must also be made between direct and indirect aggression; the two forms must not be placed on the same footing in respect of the exercise of the right of self-defence, which was justified only in the case of direct armed aggression. Indirect aggression had not yet been studied thoroughly; but it was not a vital issue, and the Special Committee could take it up at a later stage.

41. The principle of priority seemed to him an essential element in the definition as pointing the finger unequivocally at the aggressor without allowing him to take refuge behind the pretext of a preventive war or proportionality.

42. Proportionality was referred to in the 13-Power draft, but no account was taken of it in the draft submitted by the Soviet Union, the point being that it was a technical rather than a legal concept, and it was not embodied in modern international law. It did not appear in the Charter and therefore did not apply in particular to the right of self-defence. Nor did it lend itself to precise definition.

43. Turning to the question of the exercise of the right of self-defence, he said that the Soviet Union draft went further than the Charter, since it provided for the use of armed force by dependent peoples in the exercise of their natural right to self-determination. The same point was also made in the 13-Power draft, but not in that of the six Powers, although it was in keeping with General Assembly resolution 1514 (XV) and the Declaration on Friendly Relations. It should also be pointed out that under the six-Power draft, regional organizations could resort to force

without the intervention of the Security Council as laid down in Article 53 of the Charter.

44. With regard to political entities which the six-Power draft bracketed with States, he regarded the concept as vague and ill-defined; the State was the only entity adequately defined in international law by such criteria as its territory and the exercise of its sovereignty. He was therefore not in favour of including the concept of political entities in the definition of aggression.

45. On the other hand, he thought it would be extremely useful to anticipate the legal consequences of aggression, and hence to define them. It should be noted that the Soviet Union draft dealt with that question and also covered the criminal responsibility of individuals. It was essential to unmask those guilty of acts of aggression and to punish them.

46. A comparison of the draft submitted by the Soviet Union and the 13-Power and the six-Power drafts showed that the first was undoubtedly the best basis for a definition of aggression. It listed the most serious acts and included the exercise of the right of self-defence and the legal consequences of aggression. The six-Power draft had serious shortcomings, since it made no provision for recourse to armed force by dependent peoples in the exercise of their natural right to self-determination; it misconstrued the role of the Security Council while giving too much importance to organs and organizations; its definition of acts of aggression was unsatisfactory; and it had nothing to say about their legal consequences.

47. He said that his delegation was in favour of renewing for 1972 the mandate of the Special Committee. An urgent definition of aggression was needed as a contribution to collective peace and security and the development of international law. Acts of aggression were at the moment being committed against the peoples of South East Asia, the Arab countries, and the peoples fighting for their independence in Africa and Asia. It was therefore urgent to produce a definition of acts of aggression and to call the aggressor to account.

The meeting rose at 5.15 p.m.