



Chairman: Mr. Zenon ROSSIDES (Cyprus).

**AGENDA ITEM 89**

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

1. Mrs. MONTIEL (Costa Rica) said that any definition of aggression must safeguard the discretionary powers expressly granted to the Security Council by the Charter and must allow the Council to apply its own criteria.
2. With regard to the elements which should be included in the definition of aggression, the different opinions expressed in the Sixth Committee, although valid, must of course be reconciled with each other.
3. Her delegation took the view that the definition should apply only to States, the term being understood to mean a community possessing national sovereignty independently of its recognition by other States. Because of its ambiguity, the concept of political entities other than States should be discarded; it would entail difficulties of interpretation for the organ applying the definition.
4. With regard to the principle of priority, her delegation endorsed the formulation contained in paragraph 5 of the report of the Working Group of the Special Committee on the Question of Defining Aggression (see A/8419, annex III).
5. On the subject of self-defence, which was an incontrovertible right recognized by the Charter, her delegation felt that the use of force in exercise of that right should not be out of proportion to the aggressive act. Otherwise self-defence could actually constitute aggression.
6. With regard to aggressive intent, not only intentional acts but also acts resulting from a mere mistake or error should be penalized. Moreover, while aggressive intent was an essential element of aggression, there were other elements which should be taken into account in the definition, although by way of illustration rather than exhaustively, so that the Security Council would retain the power to assess the particular circumstances in any given case.
7. Her delegation supported the suggestion of the delegation of Guyana (1269th meeting) for improving the working methods of the Special Committee so as to enable it to complete its task as soon as possible.
8. She thanked the Mexican delegation for its very useful working paper (see A/8419, annex IV), which summed up

the negotiations that had taken place in the Special Committee.

9. Mr. CAPOTORTI (Italy) said that an extension of the Special Committee's mandate seemed justified in view of the efforts made by its members at the 1971 session to work out generally acceptable formulations for the various elements in a definition of aggression. Those efforts were indicative of the common desire to reach agreement, although the results thus far achieved were only modest and there were many difficulties still to be overcome.

10. His delegation noted that the general definition of aggression on which the Working Group had agreed, as indicated in its report, "Aggression is the use of armed force by a State against the territorial integrity or political independence of another State, or in any other manner inconsistent with the purposes of the United Nations", was to a large extent based on Article 2, paragraph 4, of the Charter. That definition necessarily covered the use of armed force in all its forms including indirect forms. If the primary purpose of defining aggression was to deter potential aggressors, the definition should certainly not contain any loop-holes, and it would be dangerous to classify indirect aggression as a less serious violation of the Charter of the United Nations than direct aggression. That point had in fact been expressly affirmed by the General Assembly in its resolution 380 (V).

11. The problem of indirect aggression became more complicated when considered in conjunction with that of self-defence. Some delegations were known to interpret the word "aggression" as having the same meaning in Articles 1, 39 and 51 of the Charter, while others made a distinction between the concept of aggression as set forth in Articles 1 and 39, on the one hand, and in Article 51 on the other, basing their argument on the expression "armed attack" in the English text of Article 51. While his delegation belonged to the former school of thought, it felt that there was no need to resolve the issue, since the problems of interpretation arising from Article 51 should not be confused with the question of defining aggression. Furthermore, the declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, contained in General Assembly resolution 2625 (XXV), provided in its first principle:

"Nothing in the foregoing paragraphs shall be construed, as enlarging or diminishing in any way the scope of the provisions of the Charter concerning cases in which the use of force is lawful."

The Special Committee might proceed on the basis of that provision, which would also help it to avoid other dan-

gerous pitfalls such as an attempt to determine the organs or institutions competent to authorize the use of force and the question of proportionality in cases of self-defence.

12. In his delegation's view, the elements of priority and intent should both be included in the definition. However, neither should be applied automatically, and their specific applicability in a particular instance should be determined by the Security Council.

13. With regard to the legal consequences of aggression and the safeguarding of the right of peoples to self-determination, his delegation considered that the carefully prepared provisions of the Declaration on Friendly Relations should be respected. The relevant provisions or passages in the Declaration could either be reproduced in the definition or expressly referred to; his delegation would favour the latter solution. If, however, that option was not considered by the Committee, and in view of the fact that the legal consequences of aggression and the safeguarding of the right to self-determination were beyond the scope of a definition of aggression, it should be clearly understood that any omission of those points from the definition was without prejudice to the provisions of the Declaration.

14. With regard to the list of acts to be included in the definition and the question of political entities other than States, his delegation believed that it should not be too difficult to find compromise solutions. For instance, the idea of annexing an explanatory note to the definition to cover the question of political entities was an interesting one. The list of acts to be included in the definition should of course be compatible with the scope of the definition itself.

15. His delegation wished to emphasize that the Special Committee, in approaching its task, should never lose sight of the fact that aggression was only one aspect of the current state of insecurity in international relations. That was an acknowledged fact. Other no less serious causes of that situation were the existence of disputes for which no effective means of settlement had been found, the existence of threats to peace and, above all, the lack of collective measures to repel aggressors and assist States which were the victims of aggression. Emphasizing the importance of the Declaration on the Strengthening of International Security, contained in General Assembly resolution 2734 (XXV), he noted that the formulation of a definition of aggression was only one aspect of the general overhaul which the international community needed to make.

16. He said that no definition of aggression could bind the Security Council in determining a particular case of "aggression". That was a second acknowledged fact which had been established by the history of the previous 26 years. No definition could make the Council into a judicial body; it was and remained an organ of security. Without detracting from the Council's discretionary powers of appraisal, a definition should be prepared, within the framework of the Charter, which would give it guidance. The powers of appraisal which the Council exercised in connexion with any situation representing a threat to peace would also help to guard against the possibility of a fairly flexible definition being distorted by an aggressor.

17. Mr. ENGO (Cameroon) recalled that, when it had been decided to take up the issue of the definition of aggression, his delegation had questioned<sup>1</sup> the wisdom of reconsidering the subject at a time when the international political climate was far from conducive to it, and had observed that there were other more urgent tasks and that the Sixth Committee was not, in its opinion, the most appropriate organ to consider a possible draft definition. It remained convinced that international peace depended on the political will of States and that it would be more appropriate for States to pay greater respect to the principles of the Charter and to consolidate the links which bound them together. Rules of law were at best no more than guides, whether for individuals or for States, and it would be wrong to believe that the cause of peace could be furthered by working out new rules. Furthermore, the various generally accepted juridical instruments at the disposal of the international community were quite adequate for its needs. The real cause of the problem lay in the persistent violation of the existing rules by certain régimes such as the racist régimes of South Africa and Southern Rhodesia and the imperialist Government of Portugal, whose activities were detrimental to peace and international understanding. The parties to the current international disputes were fully aware of the provisions of the Charter and knew that the Charter upheld the right of peoples to self-determination, condemned the use of force and interference in the affairs of others, prescribed the pacific settlement of disputes, and conferred on the Security Council the primary responsibility for maintaining peace and international security. Yet those troublemakers persisted in violating the provisions of the Charter. A definition of aggression would in no way change that state of affairs.

18. In any event, the Security Council could only establish that an act of aggression had been committed in the light of the particular circumstances. The types of aggression with which the Council had had to deal were extremely varied: the use of force to deprive colonial peoples of their right to self-determination, to violate the territorial integrity and political independence of a State or, again, to intervene in the internal affairs of another State. The best guide for the Security Council would therefore be its own jurisprudence. The Council's difficulties were due, above all, to the fact that some States, in pursuit of their own selfish interests, prevented it from doing its work properly.

19. His delegation had however tried, in a spirit of co-operation, to give an impartial hearing to delegations which appeared to attach more importance to the question of defining aggression than it did itself. Unfortunately, it was unable to share the optimism of those who believed that the Special Committee was on the verge of completing its work. The large number of draft proposals before the Special Committee revealed the extent of the differences which still separated delegations. His delegation could therefore not support the resolution of the Special Committee (*ibid.*, para. 66) to the effect that it resume its work in 1972. The Special Committee could either be dissolved temporarily or permanently, or its work could be suspended for a period of time. His delegation for one felt

<sup>1</sup> See *Official Records of the General Assembly, Twenty-fourth Session, Sixth Committee*, 1167th meeting.

that, in view of the limited value of the Special Committee's work and the cost involved, the second solution should be adopted: the Special Committee's work should be suspended for two years so as to allow States time for further reflection and perhaps informal consultations. If those consultations produced a draft text which was generally acceptable, the General Assembly could lift the suspension. Such a decision would be justified because of the need to reappraise the whole question of the definition of aggression and the changes which had recently taken place in the United Nations, *inter alia*, the admission of the People's Republic of China.

20. Mr. BLIX (Sweden) said that although his delegation still doubted the usefulness of a definition of aggression, it was ready, if the majority wished, to approve the efforts of the Special Committee which had already had some valuable legal results such as the elucidation of the concept of proportionality. Yet it should be recognized that one unfortunate consequence of the decades of failure to define aggression was that further work had been suspended on several important legal matters, namely the formulation of the principles of international law recognized in the Charter of the Nürnberg Tribunal and in the judgement of the Tribunal,<sup>2</sup> the draft code of offences against the peace and security of mankind<sup>3</sup> and the question of an international criminal jurisdiction.<sup>4</sup> Several developments seemed to indicate that it would be possible, at least to some extent, to resume work on those questions without awaiting a definitive definition of aggression.

21. Firstly, in connexion with agenda item 49 entitled "Respect for human rights in armed conflicts", which was scheduled to come up shortly in the Third Committee, the question had been raised whether a code of war crimes and an international criminal court should be established. His Government had come out positively on those two points (see A/8313), and thought that if agreement on the establishment of an international criminal court were to prove unattainable, it would nevertheless be desirable to try to obtain some form of international presence at all proceedings instituted by parties to armed conflicts against any person for war crimes. The time might also have come to resume consideration of those matters by requesting the International Law Commission to undertake a study.

22. Secondly, events of recent years had shown that war crimes and crimes against humanity were merely a part of international criminal law. Hijacking and acts of violence against diplomats constituted—and perhaps in the near future, wilful pollution and traffic in narcotics would also constitute—international crimes for which States could prosecute or extradite those responsible, and he considered that a definition of aggression should not be allowed to stand in the way of work on the definition of such international crimes.

23. His delegation was not proposing any resolutions on resumption of work on those subjects, but it hoped that the report of the Sixth Committee would refer to the sugges-

tion. He also hoped that the Third and Sixth Committees would in some manner be able to combine their work on human rights in armed conflicts, or else the item might be re-allocated to the Sixth Committee the next session.

24. Mr. KHRISHNADASAN (Zambia) felt that a definition of aggression was required for three reasons: it would have a deterrent effect on possible aggressor States by informing international public opinion; it would serve as a guide to the Security Council in the exercise of its functions under Articles 39, 41 and 42 of the Charter and to the General Assembly in the exercise of its functions under Articles 10, 11 and 14; and it would specify all cases of the legitimate use of force. From that point of view the text of the general definition of aggression worked out by the Working Group (see A/8419, annex III, para. 3) provided a constructive base for further work since it was in keeping with the provisions of Article 2, paragraph 4, of the Charter. It was unfortunate that the Special Committee had restricted the concept of aggression to the use of armed force. His delegation hoped that at a later stage the members of the Special Committee would recognize the need to retain the concept of economic aggression. It also believed that the suggestion of the representative of Ceylon (1269th meeting) to the effect that the definition should include the use of force in violation of the international régime of certain areas merited attention. Moreover the Charter itself clearly indicated in Articles 41 and 39 that the armed attack referred to in Article 51 was only one form of aggressive act. It was of course the responsibility of the Security Council to determine, in the circumstances of each particular case, whether an act of aggression had occurred. The discretionary powers of the Security Council were thus maintained and some parts of the definition merited closer attention.

25. With regard to political entities other than States, his delegation thought that a definition should not include that concept, which was basically political and had not been defined with any precision. If the purpose was to ensure that the definition of aggression was given the broadest application in international relations, that could be achieved by the compromise solution in paragraph 6 of the Working Group's report for 1970,<sup>5</sup> namely by annexing an explanatory note to the definition to the effect that the term "State" included States whose statehood was disputed.

26. The principle of priority should play an essential role in determining the aggressor, provided that the circumstances of each particular case were considered by the appropriate organ.

27. The element of aggressive intent could only be construed in the sense of a deliberate act as distinct from one due to accident or mistake. But the concept of aggression implied aggressive intent, and there was some doubt as to whether it was necessary to mention such a subjective element in a definition of aggression.

28. There were several reasons for including a provision concerning the use of force by peoples in exercise of their right to self-determination. Respect of that right was one of

<sup>2</sup> *Ibid.*, Fifth Session, Supplement No. 12, para. 97.

<sup>3</sup> *Ibid.*, Sixth Session, Supplement No. 9, para. 59.

<sup>4</sup> *Ibid.*, Fifth Session, Supplement No. 12, paras. 128-145.

<sup>5</sup> *Ibid.*, Twenty-fifth Session, Supplement No. 19, annex II.

the aims of the Charter and had been the subject of some of the most important resolutions adopted by the General Assembly. Firstly, the legitimacy of recourse to armed force by dependent peoples fighting for their liberation, though stemming from the notion of self-defence embodied in Article 51 of the Charter, should be affirmed beyond all doubt. Secondly, the lack of such a provision would make it possible to accuse States of complicity in an act of aggression if, in pursuance of their obligations, they gave material support to such dependent peoples. Lastly, States from whose territories peoples launched their struggle for self-determination needed unequivocal endorsement by the international community.

29. A definition of aggression should also include a provision on the legal consequences of aggression. The relevant paragraphs of the draft of the Soviet Union (see A/8419, annex I, draft proposal A) and the 13-Power draft (*ibid.*, draft proposal B) and the Declaration on Friendly Relations could serve as a basis for future discussion of that question.

30. His delegation recommended that the Special Committee should adopt a flexible and pragmatic approach to its work. He endorsed the comments made on that subject by the representative of Guyana, in particular the suggestion to set up several working groups. He associated his delegation with those who hoped that the People's Republic of China would be able to take part in the work of the Special Committee.

31. Mr. GONZALES GALVEZ (Mexico) recalled that his country's position on the work of the Special Committee was set out clearly in the 13-Power draft. His delegation had also submitted to the Special Committee a working paper for the purpose of facilitating identification of points of agreement and differences of opinion remaining after the first three sessions of the Committee; that document was contained in annex IV of the Committee's report.

32. World public opinion had a strong influence on the development of international affairs, and in that connexion the definition of aggression would constitute an indirect but effective deterrent to acts of aggression. Nevertheless the basic function of the definition would without any doubt be to supply a legal basis, within the framework of the United Nations, to eliminate the lack of precision and the subjective nature of political judgements.

33. There was some disagreement as to whether Chapter VIII of the Charter could be applied to regional agencies established for the defence of one specific region or if such agencies were subject only to Article 51, which dealt with the question of collective security. That distinction was an important one, for States linked in collective defence covenants exercised their right without the authorization of the Security Council, to the extent, of course, that armed aggression had occurred, whereas in the case of regional agreements the authorization of the Security Council was required in order to apply enforcement action. It should however be pointed out that modern legal theories were not concerned with whether an organization was a regional agency, but were more interested in determining whether an act of that organization was an act of self-defence or enforcement action. That approach made it possible to classify regional agencies by their acts.

34. With regard to the right of self-defence of regional agencies, the individual right under Article 51 of the Charter could be exercised collectively, but only if an armed attack occurred. All other acts, however reprehensible, did not, under the Charter's provisions, justify the exercise of the right of self-defence; the victim could only try to have the aggressor condemned by an international body and request the application of enforcement action. He nevertheless thought that that general principle could be mentioned in the definition of aggression in order to cover situations which could be considered as genuine armed aggression.

35. The foregoing indicated the difference between collective self-defence and enforcement action. Collective self-defence was a reaction against armed aggression, whereas the purpose of enforcement action was to maintain international peace and security.

36. The question arose whether a distinction could be established in regard to the authorization required of the Security Council for a regional agency to apply enforcement action or to use force. Although the Charter did not technically define enforcement action, the conclusion to be drawn from the views of eminent writers and the opinion handed down by the International Court of Justice on 20 July 1962<sup>6</sup> on the subject of expenses of the Organization was that before it could be regarded as enforcement, action must necessarily embody the following elements: first of all, there must be an element of coercion by an authority against a State; secondly, action similar to that covered by Chapter VII of the Charter involved the use of force and resort to para-military measures such as breaking off diplomatic and economic relations; thirdly, the purpose of enforcement action must be to forestall or put an end to threats to peace, breaches of the peace and acts of aggression. Finally, enforcement action came within the jurisdiction of the Security Council.

37. Although in his opinion that definition of enforcement action was perfectly clear, the sponsors of the 13-Power draft had decided to make express mention of the use of force, since some members still maintained that action not involving the use of force would not be enforcement. It had even been argued that a regional agency could resort to force by setting up peace corps with a view to putting an end to a conflict which had broken out in the region, thus making it possible for regional organs to carry out operations such as the United Nations had undertaken in the Congo and was at the present time carrying out in Cyprus. That notion had fortunately been rejected at the inter-American level, but it deserved close examination by the Special Committee on Peace-keeping Operations set up by the General Assembly, and indeed the Sixth Committee should look into the work of that Committee.

38. It must be recognized that the development of the activities of international bodies and their growing independence in regard to security were due to a number of political factors, first and foremost the ineffectualness of

<sup>6</sup> *Certain expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion of 20 July 1962: I.C.J. Reports, p. 151.*

the Security Council and the lack of imagination shown by the great Powers on numerous occasions.

39. During the general debate, a representative had pointed out the importance a definition of aggression would have if it were adopted in a General Assembly resolution. It should, of course, be noted that General Assembly resolutions were not mandatory either for States or for the Security Council. At the same time there was no doubt that General Assembly recommendations had more force than the mere exertion of moral pressure, and it could not be stated categorically that they had no juridical value. His delegation had pointed out on a number of occasions that at the present time the theory of the sources of international law called for review. The question of the nature, scope and legal effects of General Assembly decisions was an extremely difficult one. But there was no denying that the establishment of rules of international conduct within international bodies already had a palpable influence, even though that sphere was extremely ill-defined for want of uniform criteria on such matters as the scope and value of subsidiary sources of international law and the general principles of law, jurisprudence and theory.

40. Thus, it was impossible to discard *a priori* the idea that a solemn declaration by the General Assembly embodying a definition of aggression, and approved by the overwhelming majority of Member States, could serve as a basis for a general principle of law. Although a General Assembly recommendation was not mandatory in itself, it could in fact take on a juridical value by becoming incorporated into international law.

41. If international law ultimately adopted a definition of aggression, the question arose whether that would not curtail the powers of the Security Council. But it must not be forgotten that action by the United Nations was not designed to restore legal order once it had been upset, but rather to maintain or restore peace. The aim must be to ensure that the United Nations organs as far as possible respected pre-established objectives and general legal principles rather than to place powers of absolute discretion at their disposal. It might be argued that it would then be necessary to review the Charter—which was eminently desirable; but meanwhile there was no doubt that the Security Council and the General Assembly could hardly openly defy a principle clearly established by the General Assembly, even though theoretically they could do so under Article 1, paragraph 1, and Article 39 of the Charter.

42. With regard to the suggestion made at the current meeting by the Swedish delegation concerning respect for human rights in armed conflicts, he thought it would be well to establish a joint committee of the Third and Sixth Committees, as had been done in regard to a question of the imprescriptibility of war crimes.

43. He announced that a draft resolution on the question under consideration would be submitted in the near future. With regard to the various suggestions made to increase the membership of the Special Committee, he thought they should be discussed unofficially, and it would be useful to hold informal consultations before the next meeting.

44. Mr. AL HADAD (Yemen) expressed his appreciation of the remarkable progress made by the Special Committee

at its 1971 session. The question of aggression was of importance to most States, since the majority of them had experienced it in one form or another. His delegation therefore considered that a definition of aggression should not be limited to the use of armed force, but should be sufficiently broad to include other aggressive acts such as the indirect use of force by sending mercenaries or saboteurs into the territory of another State. Such acts constituted a threat to the peace and were certainly acts of aggression under Article 39 of the Charter. The definition of aggression should be based on the principles of the Charter and of the Declaration on Friendly Relations.

45. With regard to the principle of priority, his delegation agreed that it should be included in the definition of aggression, but it shared the view expressed by a number of representatives that the inclusion of that principle in the definition should not prejudice the question of the right of self-defence or acts committed by accident.

46. Aggressive intent was certainly an inseparable part of the act of aggression. A distinction should be made in that respect between premeditated acts and acts committed inadvertently, which did not constitute a crime under criminal law. A criminal act presupposed an element of intent. The definition should make a distinction between acts of aggression and the legitimate use of force in connexion with the right of self-defence and the right to self-determination and freedom.

47. The question of the legal consequences of aggression was fundamental, and his delegation endorsed the Special Committee's suggestion in that respect. He considered that the principle of non-recognition of territorial gains made by force should be included in the definition. The principle had been emphasized by the Security Council in connexion with the Zionist aggression of 1967, and the purpose of the definition of aggression was to protect the territorial integrity and national independence of States.

48. He hoped that the Special Committee would be able to complete its task in the near future.

49. Mr. JAZIĆ (Yugoslavia) said that a satisfactory definition of aggression would be particularly useful for protecting small countries. It would also be helpful to United Nations organs in fulfilling their responsibility for the maintenance of peace and security, as pointed out in the communiqué issued by the Consultative Meeting of Non-Aligned Countries. The various draft proposals before the Special Committee had a number of points in common, and progress had been made. In particular, his delegation was glad to note the consensus in the Working Group that the definition of aggression should be based on the principles of the Charter, and that the list of acts constituting aggression should be accompanied by a statement indicating that the list was without prejudice to the powers of the Security Council. It was also glad to note that there had been no opposition to the idea that the definition should be restricted to the use of armed force. It likewise thought that the proposal by the delegation of Guyana concerning the general part of the definition of aggression deserved consideration. Nevertheless, there were still a number of outstanding differences of opinion on the main issues.

50. With regard to the acts to be included in the definition, his delegation considered that the definition should first and foremost include acts resulting from the use of armed force by one State against another. The General Assembly could then take a decision on the desirability of extending the definition to other forms of aggression.

51. His delegation likewise attached considerable importance to the question of self-defence, and was anxious that the pertinent provisions of the Charter should be interpreted strictly, especially in the case of the so-called right of regional organizations to resort to force.

52. It was gratifying to note that most delegations had recognized the importance of the principle of priority as an objective criterion. Acceptance of that principle clearly did not rule out consideration of other relevant circumstances.

53. The concept of aggressive intent, on the other hand, introduced subjective criteria into the definition and would raise a series of problems. If it was to be incorporated for the sake of compromise, at least it should not be included as the decisive element.

54. The point on which differences of opinion had been most marked was in connexion with indirect aggression, particularly in relation to self-defence. It should be noted that the 13-Power draft was in conformity with the Charter, since it did not establish any distinction between direct and indirect aggression. Quite clearly, acts such as the sending of armed bands or mercenaries into the territory of another State constituted violations of the Charter and therefore should not be excluded from the field of application of the definition. The problem might be solved by stating that self-defence could be proportionate to the

degree of aggression and could be exercised within the limits laid down by the Charter.

55. His delegation considered that any definition should incorporate a number of essential legal and political principles such as the inviolability of territorial integrity, the non-recognition of territorial acquisition by force, and the international responsibility of the aggressor. It considered that the struggle of peoples for freedom and independence could not be treated as aggression; it believed that a solution could be found for a number of difficulties in the text adopted by the General Assembly at its twenty-fifth session, in particular in the Declaration on Friendly Relations; and it noted with interest the suggestion made by the representative of Ceylon (1269th meeting).

56. He favoured the resumption of the work of the Special Committee, and he expressed the hope that the People's Republic of China would take part in its work.

57. Mr. TCHICAYA (People's Republic of the Congo) said that his delegation attached the utmost importance to the question of defining aggression, since his country had adopted a policy of peaceful relations and co-operation with all States, whatever their political or social system. He reserved the right to speak again on the question.

58. On instructions from his Government, he protested vigorously against the recent statement by a delegation that the River Congo was a sort of inland lake constituting an integral part of the territory of Zaire. He thought that such tendentious arguments should be deemed improper; the River Congo was an international waterway forming part of the territory of each of the countries through which it flowed.

*The meeting rose at 12.50 p.m.*