



Chairman: Mr. Erik SUY (Belgium).

**AGENDA ITEM 88**

**Report of the Special Committee on the Question of  
Defining Aggression (continued) (A/8719)**

1. Mr. WARREN (Canada) recalled that, at the previous session, his delegation had expressed the view that, given the continuation of a spirit of co-operation and mutual accommodation, the Special Committee would have a good chance of achieving a break-through in 1972 on the basis of what he had called the middle ground between the three draft definitions, and had pledged the flexibility of Canada and the other sponsors of the six-Power definition (see A/8719, annex I, draft proposal C) in the search for mutually acceptable solutions to unresolved issues. The 1972 session of the Special Committee had, however, been disappointing. While agreement had been reached on a few minor points, such as the question of political entities other than States, for which the six-Power compromise formula was accepted, and while there seemed to be a basis for agreement on the right of peoples to self-determination, the most difficult problems were still unresolved, namely those of priority and aggressive intent, the indirect use of force and the legitimate use of force.

2. The Canadian position on those unresolved questions was set out in the six-Power proposals contained in annex II, appendix B, section A, of the Special Committee's report (A/8719). Those proposals, while preserving certain basic principles of the utmost importance to his delegation, were sufficiently flexible to form a basis for general agreement. However, the other groups at the 1972 session of the Special Committee had not displayed the same spirit of conciliation. There were no issues which could not be resolved to the mutual satisfaction of all groups, given the will to find accommodation on all sides. It had, after all, been possible to agree upon 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 bore directly on the issues that were causing difficulty in defining aggression.

3. At the end of the 1972 session of the Special Committee, his delegation had not opposed the unanimous recommendation that the Special Committee should resume its work in 1973 (*ibid.*, para. 14). It had, however, reserved the right to reconsider, at the current session of the General Assembly, the utility of such a course. It had hoped that, between the end of the Special Committee's session and the consideration of its report in the Sixth Committee, the

informal consultations proposed in paragraph 15 of the report would be held with a view to overcoming existing differences and difficulties. Unfortunately, however, no informal consultations had been initiated.

4. His delegation was firmly convinced that it would only be possible to arrive at a definition of aggression by focusing on essential general principles, without trying to overburden any definition with detailed positions that related to particular situations of fact and to the special and perhaps transitory circumstances affecting relations between certain countries. Nor should more than that be expected of a general definition of aggression, since it was for the Security Council to decide in any particular case whether an act of aggression had been committed.

5. While his delegation had no illusions regarding the Special Committee's chances of achieving better results in 1973 than in 1972, it was willing to participate actively in the work of that body if the majority of delegations wished it to be reconvened in 1973. If it was so decided, it agreed with the representative of Uganda that there should be a reasonable interval between the end of the current session of the General Assembly and the beginning of the 1973 session of the Special Committee in order to permit delegations to take a fresh look at their positions and initiate informal consultations.

6. In spite of the slow rate of progress which that implied, the Special Committee must move forward by consensus, since it was crucial that the definition of aggression should command general support and, in particular, the support of all the permanent members of the Security Council; otherwise, it would run the risk of being ignored or distorted.

7. If no progress on the issue was achieved in 1973, the General Assembly should re-examine its priorities and consider carefully whether to allow a certain breathing space during which countries could take stock and perhaps try to bridge their differences through informal negotiations.

8. Mr. NYAMDO (Mongolia) said that the Special Committee had made considerable progress at its 1972 session, mainly thanks to its Working Group's informal negotiating group—a summary of whose report appears in annex II, appendix A to the report of the Special Committee—which had enabled the various positions to be brought closer together. He particularly welcomed the fact that agreement had been achieved on the inclusion in the definition of various acts of aggression, and trusted that the remaining differences of opinion could be overcome with goodwill on the part of all concerned.

9. With regard to the general definition of aggression given by the informal group, his delegation did not think it desirable to include the words "however exerted", since they were too vague. It had, however, no objection to the list of acts of aggression proposed for inclusion provided it was clarified in certain respects.

10. On the question of priority and aggressive intent, a compromise could no doubt be reached. Of the two alternatives currently proposed, his delegation preferred the first, which it thought better balanced. However, it thought the Czechoslovak proposal on the principle of priority (*ibid.*, annex II, appendix B, sect. D) particularly well-conceived.

11. His delegation agreed that the definition must declare armed aggression to be contrary to the Charter of the United Nations, according to which only the Security Council had the right to use force in order to defend the cause of peace. Express mention should, however, be made of the cases in which recourse to armed force was legitimate, namely, self-defence and the exercise by dependent peoples of their right to self-determination. The formula that had been put forward in that connexion by a group of States could serve as a good basis for agreement. Finally, it was also possible that a compromise might be reached on other points, including the principle of proportionality.

12. He wished to state that his delegation unreservedly supported the method of work adopted by the Special Committee at the previous session and was in favour of the reconvening of that body in 1973.

13. Mr. BROMS (Finland) said that his delegation, which had been taking part in the work of the Special Committee since 1968, had been sorry to find at the end of the 1972 session that it was still not possible to arrive at a consensus on the definition of aggression. It must, however, be recognized that progress had been made, especially during the meetings of the informal negotiating group. Still more important, perhaps, was the fact that the latest report afforded a clear view of the issues which were still causing difficulties. His delegation wished to stress that, in its opinion, the legal aspects of the problem could not be separated from its political aspects. The Special Committee could not, therefore, be asked to submit a draft definition based solely on legal considerations. In the field in question, experience showed that it was not easy to achieve an agreement between legal experts belonging to different schools and often inspired by different motives. Recourse to a majority vote would not make things any easier, and the cause of the United Nations would certainly not be advanced by the outvoting of delegations which had the right of veto in the Security Council. It should be remembered that the definition of aggression was one of the most important and difficult problems of international law.

14. A look at the report showed that, in the general definition of aggression proposed by the informal negotiating group (*ibid.*, annex II, appendix A, sect I), only two expressions had been left within brackets. With regard to the first of those expressions, "however exerted", the

removal of the brackets depended on whether or not it was decided to include in the definition a provision relating to the indirect use of force. As the inclusion of such a provision appeared likely, the bracketed expression should not present any real problem. With regard to the word "sovereignty", his delegation thought that it would be inadvisable to deviate from the text of Article 2, paragraph 4, of the Charter and that, although some delegations wished to retain the word, it would be better to delete it. It was also not necessary to add a sentence to clarify the meaning of the term "territorial integrity". Every specialist in the international law knew that territory included territorial waters and air space. However, should it not be possible to convince those who insisted on the inclusion of those additions, retaining them would not destroy the balance of the definition but would merely weaken it from the legal point of view.

15. What he had just said proved that several contested points did not in fact present any insurmountable problems.

16. With regard to the acts proposed for inclusion, his delegation saw no need in subparagraph (b) to refer to "weapons of mass destruction", since the text already included the words "the use of any weapons". But one must concede that that addition, even if not necessary from the legal or political point of view, would not spoil the definition.

17. Subparagraph (e) again raised a question which was essentially a verbal difference of opinion. His delegation preferred the word "agreement" to "permission" and the word "termination" to "revocation", but did not feel that the differences on those points were insurmountable.

18. There were other questions concerning which the informal negotiating group had not reached general agreement. With regard to the indirect use of force, two alternative texts were presented. Upon close examination, it seemed that it would be possible to combine them in a fruitful way. In his delegation's view, the two alternatives were distinguished merely by a difference of emphasis. Alternative 1 laid the main stress on the position of the State victim of indirect aggression, whereas alternative 2 emphasized the duty of States to refrain from participating in any way in acts of indirect aggression. In actual fact, the two aspects were complementary. It might help to supplement the provisions concerning that point with the following text: "The Security Council may, however, in a particular case, refrain from the determination of an act of aggression if the act concerned either in regard to intent or extent is too minimal to justify such action".

19. The question of the legal uses of force raised some major difficulties, because the division of powers between the principal organs of the United Nations was at stake. It should be possible to reach a compromise solution in that regard on the basis of the principle that the definition of aggression should not be formulated so as to change the relationship between the Security Council and the General Assembly.

20. As to the questions of priority and aggressive intent, alternative 1 referred exclusively to the principle of priority, whereas alternative 2 included a combination of the two principles and also a list of six purposes proving aggressive intent. That list, as was shown by the wording of the last point, was non-exhaustive and did not appear to be indispensable. Perhaps a compromise solution could be reached on the basis of alternative 2 by adding an adverb to stress the fundamental importance of the principle of priority.

21. The two alternatives concerning the right of peoples to self-determination should not present any great difficulties, inasmuch as all members of the informal negotiating group had acknowledged the need to include a special guarantee in that respect in the definition of aggression.

22. With regard to the legal consequences of aggression, the three formulations in section A appeared to be merely verbal variations on the same theme. The principles set forth in section B were acceptable to his delegation, but it did not seem to be necessary to retain the words in brackets. What was needed was to condemn any act of aggression and to make it clear that no territorial gains or special advantages resulting from aggression would be recognized.

23. His delegation wished to stress that the differences of opinion were no longer as great as before. The Special Committee had reached a stage where the end of its work was in sight. It should meet again in 1973 and could be expected to make further progress if a flexible attitude prevailed among its members. The Special Committee should concentrate from the very beginning on the delimitation of existing differences. The definition of aggression should not be too extensive but should be sufficiently comprehensive. The Special Committee should also bear in mind that the definition on which it was working need not be valid forever and that it might need revision at a future date, e.g. in the light of developments in means of warfare. The Special Committee should also bear in mind that the purpose of drafting the definition was not to solve all major legal and political problems which quite naturally came up in connexion with the discussion of various aspects of aggression.

24. Mr. ALVAREX TABÍO (Cuba) said that the Special Committee was continuing to encounter substantial difficulties despite the fact that the problem of defining aggression was more pressing than ever and that wars of aggression were being waged by ever more cruel and refined means and methods, involving the extermination of civilians and the destruction of the environment. Although some of the obstacles the Special Committee faced were of an objective character most of them, by virtue of the very complexity of the question, were of a subjective character and resulted from the negative attitude of certain Powers which regarded any definition dealing with the problem in all its aspects as an impediment to the military undertakings they were engaged in under the pretext of self-defence.

25. Nevertheless, the Special Committee had made some progress, having, in particular, reached agreement on a

two-part formulation, wherein a general objective definition was followed by a descriptive list of typical acts of armed aggression. His delegation was not opposed to that scheme, provided that the list did not imply a modification of the fundamental concept of armed aggression nor an extension of the concept of self-defence beyond the limits provided for in the Charter of the United Nations. In that connexion it should be noted that too much stress was laid on the inherent nature of self-defence, as if it were not provided for in Article 51 of the Charter.

26. Although his delegation had already had the opportunity to make known its views on the matter, it would like to make a few clarifications. With regard to the general definition, although it was true that certain differences had been settled there was still no agreement properly speaking. There were also still divergent views on specific points, such as the problem referred to as "indirect aggression", the principle of priority, the legal consequences of aggression, the right of peoples to self-determination, as well as questions concerning proportionality and the legitimate use of force.

27. As for "indirect aggression", his delegation was not opposed to seeking a formulation to cover the various forms of aggression not involving the use of armed force, but it categorically rejected the use of such ambiguous words as "terrorism" and "subversion", which had a reactionary ring and were likely to cut both ways and, in particular, to be used to justify acts of aggression against small countries under the guise of self-defence. Moreover, the list of typical acts of aggression should include a reference to the use of force in violation of the fundamental rights of peoples to sovereignty and territorial integrity. One should also not forget economic aggression, in particular its most serious form, namely, the economic blockade, to which Cuba had been subjected since the triumph of the revolution of 1 January 1959, in defiance of the fundamental principles which had led to the establishment of the United Nations.

28. With regard to the principle of priority, it was not enough to say that it would be given "due regard". Priority was a constituent element of aggression, referred to implicitly in Article 51 of the Charter. Weakening that principle could lead to endorsement of what was termed preventive self-defence. According to Article 51, self-defence was an action taken in response to "armed attack". The Article explicitly referred to "armed attack" and not to aggression in general, direct or indirect, or to threats of aggression or acts or incitement jeopardizing international peace. The definition should not therefore contain any ambiguous formula which could serve as a pretext for pleading the right of self-defence in cases where the act committed was in fact an act of aggression, of which recent history offered many examples.

29. His delegation had also raised objections on the question of proportionality. If what was involved was a concept of municipal criminal law, its inclusion in the definition could serve as a pretext for extending the concept of self-defence beyond the limits provided for in Article 51 of the Charter. Adoption of the criterion of proportionality

could lead to a restriction of the scope of Article 51, inasmuch as modern international law recognized the right of self-defence only in the event of armed attacks, not in the event of aggression of any kind.

30. As it had said on a number of occasions, his delegation could not accept any definition recognizing the legitimacy of the use of force by regional organizations or by virtue of regional agreements without the authorization of the Security Council, because that could only weaken the very clear provisions of Article 53 of the Charter.

31. The use of force was, on the other hand, legitimate when dependent peoples were fighting for recognition of their fundamental rights. To deny that right would be to disregard logic and history, because there were very few States represented in the Sixth Committee that had not attained their independence by armed struggle.

32. With regard to the so-called "aggressive intent", his delegation was opposed to including that concept in the definition, thereby confusing the concept of intent with that of motive. It was obvious that intent was a constituent element of any crime and that aggression was an international crime. The act of committing a crime implied that its perpetrator had the intention of committing it, regardless of the motive for which he committed it. For example, the bombardment of the territory of a State was, whether viewed subjectively or objectively, a typical act of aggression, whatever the motive for it. The wording of paragraph IV of the six-Power draft (*ibid.*, annex I, draft proposal C) implied, moreover, that an act of aggression committed by one of the means listed in section B of that paragraph was legitimate if the purpose for which it was committed was not included among those listed in section A. The peoples of Latin America had a long memory, and they had not forgotten the whole series of interventions which had taken place in the Caribbean region, on the pretext of defending the lives and property of aliens residing in the countries which had been the victims of aggression.

33. Whether or not a definition of aggression existed, it was beyond doubt that aggressors would always find good reasons to justify their belligerent enterprises. A definition would, however, enable the Security Council to exercise its discretionary powers within a juridical framework. There should not be any confusion between discretionary powers and arbitrary powers, and the Security Council, whatever its powers might be, could never exercise them without the sanction of the Charter.

34. Mr. TOURÉ (Guinea) recalled that at the previous session of the Assembly his delegation had stressed the concern of small countries like his own at the major Powers' avidity for and multiform attempts at reconquest. On that occasion it had mentioned by name certain aggressor countries and had received the reply that the question of defining aggression was too technical for political considerations to be brought in. It was true that the Committee did not wish to be political; it was seeking to establish rules applicable to international relations impartially. It should not, however, be forgotten that a right was engendered by

the politics which shaped it and which eventually derived protection from it. The real reason why the Special Committee was making so little progress was that it had become bogged down with inextricable political considerations. If the legal experts of which it was composed had kept strictly to the plane of law, they would already have been able to submit a technical definition of aggression. However, without a radical change in the Special Committee's methods of work, it would probably have made hardly any progress in its work by the end of its next session. In any event, the definition of aggression in its final form would be adopted having regard to the political views that were expressed in the General Assembly.

35. Guinea, which still bore the traces of the aggression of which it had been the victim on 22 November 1970, felt obliged to stress the need for finding a definition of aggression quickly. It could not remain silent in face of the aggression committed by the racists of Pretoria in Zimbabwe, by the Portuguese colonialists in Angola, Mozambique and Guinea (Bissau) and by Israel in the Middle East. It could not pass over in silence the threat which today still menaced many African countries. Those countries which had experienced Nazi atrocities should be alert to the ideological and cultural extensions of nazism. The indifference which had led mankind to the edge of the abyss in 1939-1945 should not allow the seeds of war and destruction with which the present-day world was teeming to burst into life once again. Terrorism, piracy and other manifestations of despair were but the sequels of unpunished acts of aggression or wars in which the victors had disregarded justice.

36. His delegation would make its comments on the Special Committee's report in the light of the foregoing considerations. With regard to draft proposal A in annex I, the expression "contrary to the purposes, principles and provisions of the Charter of the United Nations", in paragraph 1, even when supplemented by the enumeration of the acts constituting aggression in paragraph 2, was inadequate. On the other hand, his delegation believed that draft proposal B submitted by the 13 Powers was the one most likely to receive the widest, if not unanimous, support. The general definition given in paragraph 2 contained the elements which were essential for an acceptable definition and which were, moreover, contained also in each of the other two drafts. Paragraph 3 also appeared to generate no objections. It was when an effort was made to make the definition more specific that the divergencies of views emerged which had led to the retention of all three of the main drafts. His delegation would prefer that, at the end of paragraph 9 of the 13-Power draft, the expression "giving rise to international responsibility" should be replaced by the expression "shall be condemned and shall give rise to international responsibility". With regard to draft proposal C, it did not seem essential to specify in article III that "the use of force . . . pursuant to authorization by competent United Nations organs does not constitute aggression", because that was self-evident. The ends and means enumerated in paragraph IV of that draft might serve to enrich the general definition contained in the 13-Power draft proposal.

37. The report of the informal negotiating group brought some new and useful elements to the work of the Special Committee. The alternatives appearing therein did not seem incompatible and subsequent work should make it possible to reconcile them. With regard to the legal consequences of aggression, his delegation felt that the formulations retained were too weak and that it would be preferable to replace the last sentence by the text proposed at the end of the report.

38. His delegation was prepared to contribute to the best of its abilities to the work on a definition of aggression. It was in favour of the 13-Power draft proposal and wished once again to express its confidence in the Special Committee.

39. Mr. JOUEJATI (Syrian Arab Republic) noted that the work of the Special Committee represented a valuable contribution to the effort to lay down clear-cut rules of international law on the question of aggression. Although the wide divergencies of opinion which still existed were to be regretted, it should be recognized that, if the question had not been a complex and controversial one, it would not have been necessary to establish a special body to deal with it. It was through the confrontation of viewpoints that law progressed. In that regard, it was regrettable that the Special Committee had relatively little time at its disposal by comparison with the magnitude of the task entrusted to it. Lack of time had prevented the Working Group from submitting a report that was a true synthesis of its work.

40. Some confusion had been introduced by the fact that some acts which might more correctly be termed breaches of the peace, intervention or border incidents had been assimilated to aggression. Armed attacks against sovereign States were, in the minds of some, placed on the same footing as acts of resistance to occupation. The Special Committee had been established at a time when the fundamental principles of the Charter were violated, populations were expelled by force from their land and sometimes massacred, the territory of sovereign States was occupied and the right of peoples to self-determination was opposed by force. Those were the scourges of the times, and it was the Special Committee's task to find a remedy for them by preparing a definition of aggression that would exclude any possibility of legitimating unlawful uses of force by hypocritical justifications.

41. The slow progress of the Special Committee's work was due, *inter alia*, to the fact that a number of its members preferred to disregard important decisions taken by the United Nations, for example, the Declaration on the Granting of Independence to Colonial Countries and Peoples, the Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations and the Declaration on the Strengthening of International Security, all of which justified the struggle of peoples to oust the occupiers of conquered territories and exercise their right to self-determination.

42. His delegation considered that the Special Committee should be authorized to continue its work and requested to

tackle the fundamental causes of insecurity and injustice which endangered the solidarity of the international community. It should also endeavour to define the legal consequences of aggression, in particular regarding the status of occupied territories and the responsibility of the aggressor.

43. His delegation believed that the 13-Power draft proposal formed a good working basis and that the Special Committee could improve it still further with a view to achieving a consensus. Failing unanimity, there seemed to be no other solution but to follow the rule of the majority, as suggested by the representatives of Cyprus and Iraq.

44. It would perhaps be as well to give the Special Committee more specific and more urgent terms of reference, while allowing it some latitude regarding procedure, so that no one could accuse the United Nations of failing in its task of stating the law in order to ensure that justice prevailed.

45. Miss VEGA PAREZ (Peru) said it was clear from its report that the Special Committee had reached a turning-point in its work: it was no longer denied that a definition of aggression would provide a legal basis for establishing the existence of acts which were contrary to a rule of *jus cogens* and that it was essential to keep intact the powers devolving on the Security Council concerning the maintenance of international peace and security.

46. The notion of aggression had originally been perfectly clear: the use of armed force by one State against another State. It was condemned under the general principles of the law, because it was seen to be contrary to universal ethical standards. The absence of a judicial power competent to deal with disputes between States and the absence of a positive legal rule explained why, until quite recently, aggression had been regarded as an act to be condemned, without being termed unlawful. It was only in the twentieth century, when the international community had gradually become aware of itself, that aggression had been prohibited and condemned as a violation of the legal rules governing international peace and security. That was the origin of the efforts to define the notion more precisely. A definition of aggression could only help the cause of peace with which all States were concerned.

47. The growing interdependence of States in their economic, political and cultural relations explained why interference by a State in the affairs of another State in those areas was of such importance that it could sometimes be termed an act of aggression. The Special Committee was concerned with armed aggression, which was the essence of aggression; but it should not be forgotten that certain actions whose immediate purpose did not appear to be aggression in the classic meaning of the term could have equally disastrous results, as in the case of indirect aggression and, more precisely, economic aggression. The Special Committee on Latin American Co-ordination in its resolution 9 (XII) of 1971, concerning economic and political measures restricting the exercise of the sovereign rights of developing countries, had reaffirmed that any act

by which the developed countries tried to interfere with decisions taken by the developing countries in the exercise of their sovereignty constituted a violation of the accepted standards and principles of international law. That body had also recently decided to draw up a charter of economic rights and obligations which might serve as a legal basis for improving international economic relations, with due regard to the interests and problems of the developing countries. On similar lines, the United Nations Conference on Trade and Development, in its resolution 46 (III),<sup>1</sup> had endorsed the principle that every country had the sovereign right freely to dispose of its natural resources and that any external pressure brought to bear on the exercise of that right was a violation of the principles of self-determination of peoples and non-intervention which, if pursued, could constitute a threat to international peace and security.

48. Her delegation commended the members of the Special Committee and supported its recommendation that the General Assembly should invite it to resume its work in 1973 (A/8719, para. 14).

49. Mr. CEAUSU (Romania) said that the Special Committee had made further progress at its 1972 session, mainly because of the consensus reached on certain formulations and the reconciliation of the positions of Member States on controversial questions. On the whole his delegation supported the texts which had been completed and wished to draw attention to certain aspects which were essential in a definition of aggression. In order that the general definition of aggression should be as precise and comprehensive as possible, so that an aggressor could not interpret it as justifying his action, it would be desirable to include in the text submitted by the informal negotiating group wording such as "in any form whatsoever"—as his delegation had suggested to the Working Group (*ibid.*, annex II, appendix B, sect. E)—so that the definition would cover ever use of force. The definition of aggression should state that it was the duty of all States not to use weapons of mass destruction, or threaten to use them, against anyone or in any circumstances. It should also include in the list of acts of aggression the use of foreign armed forces stationed in the territory of a State, in violation of the provisions of any agreement concluded for that purpose between the respective States, and any extension of their presence in the territory in question beyond the termination of the agreement.

50. To define the notion of aggression was in effect also to define the right of self-defence of every State, as embodied in Article 51 of the Charter. To be able to exercise that right effectively, the States Members of the United Nations had conceived the idea of collective security; the right of individual self-defence was thus strengthened by the possibility open to the victim of an armed attack of enlisting the support of the international community under the procedures and conditions laid down in the Charter. In the course of the work of the Special Committee an attempt had

been made to portray other situations in which the use of force was allegedly permitted—for example, in the case of international enforcement action or action under Article 53, paragraph 1, of the Charter. Those were said to be cases of preventive enforcement action. That was a conclusion which his delegation found unacceptable and contrary to the spirit and letter of the Charter. In its opinion, the ban on taking the initiative in the use of force was valid equally for all States and for all international bodies, including the United Nations. Even though Article 1, paragraph 1, of the Charter provided that the United Nations could "take effective collective measures for the prevention and removal of threats to the peace", those measures could not be interpreted as military preventive measures involving the use of force. Articles 39 and 42 of the Charter permitted the use of force only in cases of self-defence. In his delegation's opinion, that was the only case in which contemporary international law allowed the use of force, which was only the expression of the right of self-defence, exercised either individually by the State attacked or collectively through the collective security system of the United Nations. Accordingly, the definition must be made an effective means of sanctioning the right of self-defence against the unlawful use of force. It would also be advisable to avoid any approach that would have the effect of allowing regional agencies to use force against States, irrespective of whether or not there was a victim.

51. A complete definition of aggression should specify in whom the right of self-defence was vested. Experience showed that not only States but also peoples who had been prevented from forming independent States could be subjected to aggression. By virtue of the principles embodied in the Charter, all peoples had the right to determine their political status and to form sovereign and independent States; that presupposed the right of the colonial peoples to resist aggression by the colonial powers—a right recognized and repeatedly confirmed by the United Nations. Those were the reasons that had led his delegation to propose the inclusion in the definition of aggression of a provision on the right of peoples to self-determination (*ibid.*); he hoped that it would soon be possible to arrive at a generally acceptable text.

52. His delegation supported the proposal to use the criterion of priority to distinguish between aggression and exercise of the right of self-defence. All States had the right to respond by force of arms as soon as the act of aggression started, regardless of the intentions or motives of the aggressor, since the victim had no means of ascertaining the aggressor's intentions. The competent bodies of the United Nations could take such motives into consideration in deciding on collective measures, but establishment of the motives of the State which had first used force should not have the effect of absolving that State from responsibility or reversing the positions of the two parties. It was for that reason that Romania had proposed (*ibid.*) that the definition of aggression should include a paragraph stating that no considerations relating to the internal or foreign policy of a State could serve as a justification for the use of armed force against that State by another State or group of States.

<sup>1</sup>See TD III/Misc. 3 and Corr. 1.



Furthermore, the defensive actions of the victim were lawful only in so far as they were aimed at repelling the aggressor. The re-establishment of the situation which had existed before the act of aggression thus marked the limit of self-defence.

53. The definition of aggression should also make provision for the legal consequences of aggression. To that end, Romania had proposed (*ibid.*) the inclusion of a paragraph stating, among other things, that no territorial acquisitions obtained by the use of force should be recognized.

54. Provision should be made for qualifying an act of aggression as a crime against international peace, a step which would tend to discourage potential aggressors and lay the legal foundations for the criminal responsibility of the individuals who had launched the acts of aggression and the international responsibility of the guilty State.

55. In view of the progress made by the Special Committee and the need to produce a definition of aggression at the earliest opportunity, his delegation considered that the Special Committee's mandate should be extended and that that Committee should resume its work as soon as possible in 1973. Romania would participate fully in the search for satisfactory solutions, because it believed that a definition of aggression would strengthen the role of the United Nations by giving it an effective political and legal tool for preventing and averting threats to peace.

56. Mr. BRENNAN (Australia) observed that the outcome of the Special Committee's 1972 session had been as disappointing as that of the 1971 session. Although the informal negotiations had made it possible to reach agreement on some elements of the definition, it should be remembered that acceptance of those elements, which were closely interrelated, was subject to an over-all solution, as noted in the introductory paragraph to the summary of the report of the informal negotiating group (A/8719, annex II, appendix A).

57. Australia, which was a member of the Special Committee and one of the sponsors of the six-Power draft proposal, had always hoped that it would prove possible to adopt by consensus a definition that was fully in accordance with the provisions of the Charter. But it continued to question the necessity or desirability of a definition of aggression, since Article 2, paragraph 4, of the Charter provided sufficient direction to the Security Council in applying Article 39 with regard to the determination of the existence of acts of aggression.

58. At its 99th meeting, on 3 March 1972, the Special Committee had recommended that from then until the twenty-seventh session of the General Assembly its members should carry on informal consultations with a view to overcoming existing differences and difficulties (see A/8719, para. 15). So far as his delegation was aware, no such consultations had taken place, but that procedure might well lead to success.

59. If the definition was to serve its purpose, namely, to facilitate the implementation of the provisions of the Charter, it must be adopted by consensus, not only in the Special Committee but also in the United Nations itself.

60. Mr. ANOLIN (Philippines) said his delegation attached great importance to the formulation of a definition of aggression. During the five years of its existence the Special Committee had made progress which was encouraging in the light of the vain attempts to define aggression over the past 40 years. At the Special Committee's 1972 session, the draft proposals before it had been clarified by their sponsors and the gaps between different points of view had been narrowed. There was thus every reason to hope that the Special Committee would soon complete its work successfully.

61. He wished to indicate his delegation's position concerning certain points touched on by the Special Committee. His delegation supported the Committee's decision to re-establish a Working Group (*ibid.*, para. 6), since that would make it possible to achieve results more rapidly, especially with regard to delineating areas of agreement and disagreement.

62. It also favoured the holding of informal consultations with a view to overcoming existing differences and difficulties. Furthermore, it felt that the Special Committee should resume its work in 1973.

63. At the United Nations Conference on International Organization in 1945, the Philippine delegation had enumerated the acts which in its view constituted threats to peace or acts of aggression on the part of a given nation. His Government had subsequently stated that it favoured a mixed definition of aggression, combining the advantages of a simple enumeration and a general definition. He was therefore gratified to note that there had been general agreement in the informal negotiating group that a mixed definition should be prepared and that several of the acts enumerated by the Philippine delegation in 1945 should be included in the group's text.

64. It should be noted that the informal group had considered expanding the definition of aggression to include the indirect use of force, although no agreement had been reached on that point. His delegation believed it would be proper to include in the definition any kind of aggression which threatened world peace, especially the cold war and subversion. Of the two alternatives concerning the indirect use of force considered during the informal consultations, alternative 1 had the advantage of stating which specific acts constituted acts of aggression, but it did not seem sufficiently wide in scope. Alternative 2 merely listed, word for word, two of the duties of States set out in the Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States. His delegation would be inclined to support alternative 2 if the duties defined therein were formulated in such a way that failure to perform them would constitute an act of aggression.

65. His Government considered that the principle of priority, whose application had been recommended by the Philippines in 1945, should be included in the definition. That principle, which was sanctioned by many international instruments and was based directly on Article 51 of the Charter, constituted the only objective criterion applicable in determining the aggressor. It would prevent States from committing acts of aggression in the guise of preventive wars. Cases in which the use of force was necessary to ensure the exercise of the right of peoples to self-determination or the regaining of lost territories should not be considered as acts of aggression.

66. His delegation favoured the inclusion in the definition of provisions concerning the legal consequences of aggression. The definition should state clearly that the unlawful use of force entailed the responsibility of States and conferred no rights. The Special Committee should deal with the question of non-recognition of territorial gains obtained by force in the preamble of the definition and not in the operative part, because it concerned the legal consequences of aggression and was not an element of aggression itself.

67. Mr. JOEWENO (Indonesia) said that although the slow advance of the work of the Special Committee—of which Indonesia was a member—was rather dismaying, some progress had none the less been made. For that reason his delegation disagreed with those who questioned the desirability of continuing the work. Furthermore, agreement now seemed to have been reached on certain points: the need to agree on an illustrative enumeration of aggressive acts and acts constituting a legitimate use of force, including the right of self-defence, and the need to avoid altering the powers of the Security Council under Article 39 of the Charter. In addition, there did not seem to be any irreconcilable disagreement regarding the principle of priority and the notion of intent, or the principle relating to the legal consequences of aggression. Lastly, everyone seemed to believe that indirect aggression of a certain magnitude was equivalent to direct aggression. It would therefore appear that the formulation of a definitive text was at hand.

68. Although a definition of aggression was urgently needed, such a definition would not in itself facilitate the solution of peace and security problems or restrain potential aggressors. It would, however, be useful to certain United Nations bodies. There had been no basic changes in his delegation's position. His delegation considered it essential to expand the definition to cover indirect forms of aggression, with the exception of acts relating to the rights of peoples to self-determination. There was a tendency to replace the direct use of force by the indirect use of force, but the latter none the less constituted a serious violation of the Charter. Although it stressed that the definition should cover indirect aggression, the Indonesian delegation would be ready to follow the wishes of the majority if it was thought preferable first to deal with direct aggression and to turn to cases of indirect aggression at a later stage.

69. With regard to the legal consequences of aggression, he was of the opinion that it was both essential and urgent to include in the definition the principles of sanction and of responsibility which already appeared in several international instruments. Acts of aggression were still being committed against the Palestinian people and the Arab peoples and against the peoples fighting for their independence in Asia and Africa; those acts should be brought to an end immediately. Furthermore, mention must be made of the principle of non-recognition of territorial gains resulting from aggression.

70. Since the definition of aggression must primarily help the Security Council to perform its functions, it should, in so far as possible, be adopted by consensus or at least by the great majority of States and particularly by all the permanent members of the Security Council. That should, however, not be made an essential condition; a definition which did not have the support of all the permanent members of the Council but which was adopted by a substantial majority would none the less have a profound and lasting effect in the international community.

71. The Indonesian delegation supported the renewal of the mandate of the Special Committee, since the progress it had made at its 1972 session warranted the hope that a general agreement could be reached in the near future.

72. Mr. SADEGHI (Iran) said that his delegation, which had already clearly stated its position, would revert to substantive matters later within the Special Committee. The progress made by that Committee during its 1972 session was encouraging in the sense that, through the mechanism of informal negotiations and the activities of the Working Group, the Committee had been able to narrow the gap between the various draft definitions and to enlarge the areas of agreement. However, the progress made was disproportionate to the time spent on the question by the Special Committee, because it was difficult to reconcile the various positions on a matter of such magnitude. No one questioned the need to reach a generally acceptable definition of aggression which would enable the Security Council to judge cases of aggression on the basis of objective legal considerations. Even if the definition did not put an end to all wars of aggression it would certainly play a significant role in the evolution of international law. The development of norms of international conduct would enable the United Nations to fulfil its responsibilities more effectively.

73. As to the procedure to be followed by the Special Committee in the future, the Iranian delegation endorsed the use of informal consultations. In order to resolve the remaining disagreements as to the scope and content of the definition of aggression, every effort should be made, by means of a consensus, to prepare a text for submission to the General Assembly, which would decide whether or not to adopt the text. Meanwhile, it was the Special Committee which must consider the remaining substantive problems and the Iranian delegation supported the recommendation that the Special Committee should resume its work in 1973.



74. Mr. PINTO (Sri Lanka) said that a study of the report of the Special Committee, of which Sri Lanka was not a member, appeared to show that the Special Committee had reached a turning-point in its work and was launched on the road to success. That optimism was based in particular on the summary of the report of the informal negotiating group contained in annex II, appendix A, to the report of the Special Committee, which showed an emerging consensus. However, those hopes were disappointed in appendix B, containing the proposals submitted to the Working Group, where divergencies again appeared. It seemed that, for lack of time, the informal negotiating group had been unable to reach final agreement on certain issues and that several delegations had thought it useful to restate their positions.

75. His delegation had always given its support to the work of the Special Committee. It wished to point out, however, with regard to the very concept of "defining aggression", that a definition was a precise statement of the essential nature of the thing defined. Valuable as it was, the text being prepared by the Special Committee did not meet that standard. And it was not certain that informal negotiations would guarantee a sufficient degree of precision. However, his delegation would urge the Committee to continue its efforts—even if it did not change its approach—so as to reach a final compromise that would receive the support of an overwhelming majority of States, if not unanimous support. Perhaps the result would not be an actual definition but a formulation of the concept of aggression which would be sufficient for the purpose of implementing the Charter.

76. The Special Committee was entrusted with a task involving political concepts and was trying to discharge that task in an objective and legal manner. It was essential that its interpretation of the term "aggression" should make reservations for the cases of use of force in exercise of the right of self-determination in accordance with General Assembly resolution 1514 (XV). In those cases there existed prior aggression by the colonial Power.

77. He recalled the suggestion made by his delegation at the previous session (1269th meeting), concerning the list of acts constituting aggression, when it had proposed that the definition should not be based on force used by one State against the territorial integrity or political independence of another State, as it was in each of the three major draft proposals. A trend had recently emerged towards declaring that certain areas outside national jurisdiction were the common heritage of mankind, to be explored and exploited in the general interest. That trend had taken concrete form in various instruments concerning outer space, the sea-bed and the ocean floor beyond the limits of national jurisdiction, and the prohibition of the emplacement of nuclear and other weapons on the sea-bed and the ocean floor. There was also the Declaration of the Indian Ocean as a zone of peace, which appeared in General Assembly resolution 2832 (XXVI). His delegation had therefore suggested that the Special Committee might include, in the definition of aggression, the use of force by one or more States in any manner incompatible with any régime established by the international community in respect of areas which were outside national jurisdiction of States or which had been expressly excluded from the arms race in all its forms. He merely reminded the Special Committee of that suggestion; if it should be an insurmountable obstacle to the achievement of a compromise, he would not press it.

78. In his statement at the 1346th meeting, the representative of Cyprus had suggested that the Special Committee might adopt, as a basis of discussion, the draft definition before it which enjoyed the widest support and that it should attempt to reach an interpretation of the concept of aggression at its 1973 session. The delegation of Sri Lanka supported that suggestion and hoped that members of the Special Committee would be able to resume their negotiations and achieve the positive result which they were on the verge of reaching.

*The meeting rose at 1.05 p.m.*