



REPORT OF THE SPECIAL COMMITTEE ON THE QUESTION OF DEFINING AGGRESSION

31 January - 3 March 1972

GENERAL ASSEMBLY

OFFICIAL RECORDS: TWENTY-SEVENTH SESSION

SUPPLEMENT No. 19 (A/8719)

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INTRODUCTION

1. At its 1939th plenary meeting, on 25 September 1971, the General Assembly decided to include in the agenda of its twenty-sixth session the report of the Special Committee on the Question of Defining Aggression on the work of its session held at United Nations Headquarters in New York from 1 February to 5 March 1971. 1/ The Assembly also referred this report to the Sixth Committee, which considered it at the 1268th to 1276th and 1281st meetings, held between 26 October and 15 November 1971. 2/ At its 1999th plenary meeting, on 3 December 1971, the General Assembly adopted resolution 2781 (XXVI), which reads as follows:

"The General Assembly,

"Having considered the report of the Special Committee on the Question of Defining Aggression on the work of its session held in New York from 1 February to 5 March 1971, 3/

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

"Considering that it was not possible for the Special Committee to complete its task at its session held in 1971,

"Considering that in its resolutions 2330 (XXII) of 18 December 1967, 2420 (XXIII) of 18 December 1968, 2549 (XXIV) of 12 December 1969 and 2644 (XXV) of 25 November 1970 the General Assembly recognized the widespread conviction of the need to expedite the definition of aggression,

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

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

"1. Decides that the Special Committee on the Question of Defining Aggression shall resume its work, in accordance with General Assembly resolution 2330 (XXII), as early as possible in 1972;

1/ Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 19 (A/8419).

2/ Ibid., Twenty-sixth Session, Annexes, agenda item 89, document A/8525.

3/ Ibid., Twenty-sixth Session, Supplement No. 19 (A/8419).

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

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

2. In accordance with this resolution, the Special Committee on the Question of Defining Aggression, whose composition is given in paragraph 2 of its report on the work of its 1968 session, 4/ met at United Nations Headquarters in New York from 31 January to 3 March 1972. All of the States members of the Special Committee were represented: Algeria, Australia, Bulgaria, Canada, Colombia, Cyprus, Czechoslovakia, Ecuador, Egypt, Finland, France, Ghana, Guyana, Haiti, Indonesia, Iran, Iraq, Italy, Japan, Madagascar, Mexico, Norway, Romania, Sierra Leone, Spain, Sudan, Syrian Arab Republic, Turkey, Uganda, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Yugoslavia and Zaire. The list of representatives attending the 1972 session was issued under the symbol A/AC.134/INF.1.

3. At its 93rd meeting, held on 2 February, the Special Committee elected the following officers:

Chairman: Mr. Zenon Rossides (Cyprus)

Vice-Chairmen: Mr. Ion Datcu (Romania)
Mr. Gonzalo Alcívar (Ecuador)
Mr. Erik B. Wang (Canada)

Rapporteur: Mr. Aly Ismail Teymour (Egypt)

4. The session was opened on behalf of the Secretary-General by the Legal Counsel of the United Nations. The Director and other members of the Codification Division of the Office of Legal Affairs served as the secretariat of the Special Committee.

5. At the same meeting, the Special Committee adopted the following agenda:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.
5. Consideration of the question of defining aggression (General Assembly resolutions 2330 (XXII), 2420 (XXIII), 2549 (XXIV), 2644 (XXV) and 2781 (XXVI)).
6. Adoption of the report.

4/ Ibid., Twenty-third Session, agenda item 86, document A/7185/Rev.1.

6. At its 94th meeting, on 3 February, the Special Committee decided to re-establish a Working Group composed of the following members: Cyprus, Czechoslovakia, Ecuador, France, Ghana, Italy, Mexico, Spain, Syrian Arab Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, and the Committee's Rapporteur. It was understood that the members of the Special Committee who were not members of the Working Group could take part in the Group's work, but not in its decisions. The Group was instructed to help the Special Committee in the fulfilment of its task by formulating an agreed or generally accepted definition of aggression to be submitted for consideration by the Special Committee and, in case it was unable to reach such a definition, to report to the Special Committee its assessment of the progress made during the session, indicating the points of agreement and of disagreement. It was also invited to report periodically to the Special Committee on the progress of its work.

I. DRAFT PROPOSALS BEFORE THE SPECIAL COMMITTEE

7. The Special Committee had before it the three main draft proposals submitted to it at its 1969 session, namely, the draft of the Union of Soviet Socialist Republics (A/AC.134/L.12), the new 13-Power draft (A/AC.134/L.16 and Add.1 and 2) and the six-Power draft (A/AC.134/L.17 and Add.1). The texts of those three draft proposals are reproduced in annex I to the present report.

8. At the 95th meeting, on 1 March 1972, the Special Committee also had before it a draft resolution (A/AC.134/L.38) submitted by Czechoslovakia, Mexico, Romania and the Syrian Arab Republic, the text of which read as follows:

"The Special Committee on the Question of Defining Aggression,

"Bearing in mind General Assembly resolutions 2330 (XXII) of 18 December 1967, 2420 (XXIII) of 18 December 1968, 2549 (XXIV) of 12 December 1969, 2644 (XXV) of 25 November 1970, which recognized the need to expedite the definition of aggression,

Bearing in mind also that in its resolution 2781 (XXVI) of 3 December 1971 the General Assembly considered the urgency of bringing the work of the Special Committee to a successful conclusion and the desirability of achieving the definition of aggression as soon as possible,

Noting with satisfaction the progress so far achieved in formulating individual elements of a definition of aggression during the session of the Special Committee held in 1972,

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

Recommends that the General Assembly, at its twenty-seventh session, invite the Special Committee to resume its work in 1973."

9. At the 98th meeting, on 2 March, the sponsors of the foregoing draft resolution orally revised their text as follows:

(a) By inserting as preambular paragraph 3 the following text:

"Expressing the view that the achievement of a generally acceptable definition of aggression depends upon the willingness of all members of the Special Committee to act in a spirit of mutual understanding and accommodation,";

(b) By deleting in former preambular paragraph 3 the words "with satisfaction".

10. At the same meeting, the representative of Australia submitted an oral amendment, accepted by the sponsors, to substitute the word "recognized" for "acceptable" in the new preambular paragraph 3.

11. At the 95th meeting, the representative of Guyana submitted the following proposal (A/AC.134/L.39), which was withdrawn at the 98th meeting:

"Given the irreconcilable principles contained in the draft definitions of aggression before the Special Committee that the Special Committee pronounce itself, by vote if necessary, on that text, which should be used as the basis of future efforts towards arriving at a generally acceptable definition of aggression."

II. REPORT OF THE WORKING GROUP

12. The Working Group submitted a report (A/AC.34/L.37 and Addenda 1 and 2) for the consideration of the Special Committee. The report included, as annex I, a "Summary of the report of the informal negotiating group established by the Working Group" and, as annex II, draft proposals and comments concerning certain elements of a definition of aggression submitted during the current session, respectively, by: (a) Australia, Canada, Italy, Japan, the United Kingdom of Great Britain and Northern Ireland and the United States of America; (b) the Syrian Arab Republic; (c) the Union of Soviet Socialist Republics; (d) Czechoslovakia; (e) Romania; (f) Algeria, Colombia, Cyprus, Ecuador, Egypt, Ghana, Guyana, Haiti, Indonesia, Iran, Iraq, Madagascar, Mexico, Sierra Leone, Spain, the Sudan, the Syrian Arab Republic, Uganda, Uruguay and Yugoslavia. The report of the Working Group, together with its annexes, is reproduced in annex II to the present report.

13. The report of the Working Group was considered by the Special Committee at its 95th to 98th meetings, held on 1 and 2 March 1972. The views expressed at those meetings are reflected in the corresponding summary records (A/AC.134/SR.95 to 98). At its 98th meeting, the Special Committee approved the report of the Working Group.

III. RECOMMENDATIONS OF THE SPECIAL COMMITTEE

14. At its 98th meeting, on 2 March, the Special Committee adopted unanimously the draft resolution submitted by Czechoslovakia, Mexico, Romania and the Syrian Arab Republic (A/AC.134/L.38) as revised (see paragraphs 9 and 10 above), which read as follows:

"The Special Committee on the Question of Defining Aggression,

"Bearing in mind General Assembly resolutions 2330 (XXII) of 18 December 1967, 2420 (XXIII) of 18 December 1968, 2549 (XXIV) of 12 December 1969 and 2644 (XXV) of 25 November 1970, which recognized the need to expedite the definition of aggression,

"Bearing in mind also that in its resolution 2781 (XXVI) of 3 December 1971 the General Assembly considered the urgency of bringing the work of the Special Committee to a successful conclusion and the desirability of achieving the definition of aggression as soon as possible,

"Expressing the view that the achievement of a generally recognized definition of aggression depends upon the willingness of all members of the Special Committee to act in a spirit of mutual understanding and accommodation,

"Noting the progress so far achieved in formulating individual elements of a definition of aggression during the session of the Special Committee held in 1972,

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

"Recommends that the General Assembly, at its twenty-seventh session, invite the Special Committee to resume its work in 1973."

15. At its 99th meeting on 3 March 1972, the Special Committee recommended, at the suggestion of the Chairman, that, in the period between now and the twenty-seventh session of the General Assembly, the members of the Special Committee carry on informal consultations with a view to overcoming existing differences and difficulties, and devote their utmost efforts to ensuring the success of their common task.

ANNEX I

DRAFT PROPOSALS BEFORE THE SPECIAL COMMITTEE

A. Draft proposal submitted by the Union of Soviet Socialist Republics (A/AC.134/L.12)

The General Assembly,

Basing itself on the fact that one of the fundamental purposes of the United Nations is to maintain international peace and security and to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace,

Noting that according to the principles of international law the planning, preparation, initiation or waging of an aggressive war is a most serious international crime,

Bearing in mind that the use of force to deprive dependent peoples of the exercise of their inherent right to self-determination in accordance with General Assembly resolution 1514 (XV) of 14 December 1960 is a denial of fundamental human rights, is contrary to the Charter of the United Nations and hinders the development of co-operation and the establishment of peace throughout the world,

Considering that the use of force by a State to encroach upon the social and political achievements of the peoples of other States is incompatible with the principle of the peaceful co-existence of States with different social systems,

Recalling also that Article 39 of the Charter states that the Security Council shall determine the existence of any threat to the peace, breach of the peace or act of aggression and shall decide what measures shall be taken in accordance with Articles 41 and 42 to maintain or restore international peace and security,

Believing that, although the question whether an act of aggression has been committed must be considered in the light of all the circumstances in each particular case, it is nevertheless appropriate to formulate basic principles as guidance for such determination,

Convinced that the adoption of a definition of aggression would have a restraining influence on a potential aggressor, would simplify the determination of acts of aggression and the implementation of measures to stop them and would also facilitate the rendering of assistance to the victim of aggression and the protection of his lawful rights and interests,

Considering also that armed aggression is the most serious and dangerous form of aggression, being fraught, in the conditions created by the existence of nuclear weapons, with the threat of a new world conflict with all its catastrophic consequences and that this form of aggression should be defined at the present stage,

Declares that:

1. Armed aggression (direct or indirect) is the use by a State, first, of armed force against another State contrary to the purposes, principles and provisions of the Charter of the United Nations.

2. In accordance with and without prejudice to the functions and powers of the Security Council:

A. Declaration of war by one State, first, against another State shall be considered an act of armed aggression;

B. Any of the following acts, if committed by a State first, even without a declaration of war, shall be considered an act of armed aggression:

(a) The use of nuclear, bacteriological or chemical weapons or any other weapons of mass destruction;

(b) Bombardment of or firing at the territory and population of another State or an attack on its land, sea or air forces;

(c) Invasion or attack by the armed forces of a State against the territory of another State, military occupation or annexation of the territory of another State or part thereof, or the blockade of coasts or ports.

C. The use by a State of armed force by sending armed bands, mercenaries, terrorists or saboteurs to the territory of another State and engagement in other forms of subversive activity involving the use of armed force with the aim of promoting an internal upheaval in another State or a reversal of policy in favour of the aggressor shall be considered an act of indirect aggression.

3. In addition to the acts listed above, other acts by States may be deemed to constitute an act of aggression if in each specific instance they are declared to be such by a decision of the Security Council.

4. No territorial gains or special advantages resulting from armed aggression shall be recognized.

5. Armed aggression shall be an international crime against peace entailing the political and material responsibility of States and the criminal responsibility of the persons guilty of this crime.

6. Nothing in the foregoing shall prevent the use of armed force in accordance with the Charter of the United Nations, including its use by dependent peoples in order to exercise their inherent right of self-determination in accordance with General Assembly resolution 1514 (XV).

- B. Draft proposal submitted by Colombia, Cyprus, Ecuador, Ghana, Guyana, Haiti, Iran, Madagascar, Mexico, Spain, Uganda, Uruguay and Yugoslavia (A/AC.134/L.16 and Add.1 and 2)

The General Assembly,

Basing itself on the fact that one of the fundamental purposes of the United Nations is to maintain international peace and security and to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace,

Convinced that armed attack (armed aggression) is the most serious and dangerous form of aggression and that it is proper at this stage to proceed to a definition of this form of aggression,

Further convinced that the adoption of a definition of aggression would serve to discourage possible aggressors and would facilitate the determination of acts of aggression,

Bearing in mind also the powers and duties of the Security Council, embodied in Article 39 of the Charter of the United Nations, to determine the existence of any threat to the peace, breach of the peace, or act of aggression, and to decide the measures to be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security,

Considering that, although the question whether aggression has occurred must be determined in the circumstances of each particular case, it is nevertheless appropriate to facilitate that task by formulating certain principles for such determination,

Reaffirming further the duty of States under the Charter of the United Nations to settle their international disputes by pacific methods in order not to endanger international peace, security and justice,

Convinced that no considerations of whatever nature, save as stipulated in operative paragraph 3 hereof, may provide an excuse for the use of force by one State against another State,

Declares that:

1. In the performance of its function to maintain international peace and security, the United Nations only has competence to use force in conformity with the Charter;

2. For the purpose of this definition, aggression is the use of armed force by a State against another State, including its territorial waters or air space, or in any way affecting the territorial integrity, sovereignty or political independence of such State, save under the provisions of paragraph 3 hereof or when undertaken by or under the authority of the Security Council;

3. The inherent right of individual or collective self-defence of a State can be exercised only in case of the occurrence of armed attack (armed aggression) by another State in accordance with Article 51 of the Charter;

4. Enforcement action or any use of armed force by regional arrangements or agencies may only be resorted to if there is decision to that effect by the Security Council acting under Article 53 of the Charter;

5. In accordance with the foregoing and without prejudice to the powers and duties of the Security Council, as provided in the Charter, any of the following acts when committed by a State first against another State in violation of the Charter shall constitute acts of aggression:

(a) Declaration of war by one State against another State;

(b) The invasion or attack by the armed forces of a State, against the territories or another State, or any military occupation, however temporary, or any forcible annexation of the territory of another State or part thereof;

(c) Bombardment by the armed forces of a State against the territory of another State, or the use of any weapons, particularly weapons of mass destruction, by a State against the territory of another State;

(d) The blockade of the coasts or ports of a State by the armed forces of another State;

6. Nothing in paragraph 3 above shall be construed as entitling the State exercising a right of individual or collective self-defence, in accordance with Article 51 of the Charter, to take any measures not reasonably proportionate to the armed attack against it;

7. When a State is a victim in its own territory of subversive and/or terrorist acts by irregular, volunteer or armed bands organized or supported by another State, it may take all reasonable and adequate steps to safeguard its existence and its institutions, without having recourse to the right of individual or collective self-defence against the other State under Article 51 of the Charter;

8. The territory of a State is inviolable and may not be the object, even temporarily, or military occupation or of other measures of force taken by another State on any grounds whatever, and that such territorial acquisitions obtained by force shall not be recognized;

9. Armed aggression, as defined herein, and the acts enumerated above, shall constitute crimes against international peace, giving rise to international responsibility;

10. None of the preceding paragraphs may be interpreted as limiting the scope of the Charter's provisions concerning the right of peoples to self-determination, sovereignty and territorial integrity.

C. Draft proposal submitted by Australia, Canada, Italy, Japan, the United Kingdom of Great Britain and Northern Ireland and the United States of America (A/AC.134/L.17 and Add.1 and 2)

The General Assembly,

Conscious that a primary purpose of the United Nations is to maintain international peace and security, and, to that end, to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace,

Recalling that Article 39 of the Charter of the United Nations provides that the Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security,

Reaffirming that all States shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered,

Believing that, although the question of whether an act of aggression has been committed must be considered in the light of all the circumstances of each particular case, a generally accepted definition of aggression may nevertheless provide guidance for such consideration,

Being of the view that such a definition of aggression may accordingly facilitate the processes of the United Nations and encourage States to fulfil in good faith their obligations under the Charter of the United Nations,

Adopts the following definition:

I. Under the Charter of the United Nations, "aggression" is a term to be applied by the Security Council when appropriate in the exercise of its primary responsibility for the maintenance of international peace and security under Article 24 and its functions under Article 39.

II. The term "aggression" is applicable, without prejudice to a finding of threat to the peace or breach of the peace, to the use of force in international relations, overt or covert, direct or indirect, by a State against the territorial integrity or political independence of any other State, or in any other manner inconsistent with the purposes of the United Nations. Any act which would constitute aggression by or against a State likewise constitutes aggression when committed by a State or other political entity delimited by international boundaries or internationally agreed lines of demarcation against any State or other political entity so delimited and not subject to its authority.

III. The use of force in the exercise of the inherent right of individual or collective self-defence, or pursuant to decisions of or authorization by competent United Nations organs or regional organizations consistent with the Charter of the United Nations, does not constitute aggression.

IV. The uses of force which may constitute aggression include, but are not necessarily limited to, a use of force by a State as described in paragraph II.

A. In order to:

- (1) Diminish the territory or alter the boundaries of another State;
- (2) Alter internationally agreed lines of demarcation;
- (3) Disrupt or interfere with the conduct of the affairs of another State;
- (4) Secure changes in the Government of another State; or
- (5) Inflict harm or obtain concessions of any sort;

B. By such means as:

(1) Invasion by its armed forces of territory under the jurisdiction of another State;

(2) Use of its armed forces in another State in violation of the fundamental conditions of permission for their presence, or maintaining them there beyond the termination of permission;

(3) Bombardment by its armed forces of territory under the jurisdiction of another State;

(4) Inflicting physical destruction on another State through the use of other forms of armed force;

(5) Carrying out deliberate attacks on the armed forces, ships or aircraft of another State;

(6) Organizing, supporting or directing armed bands or irregular or volunteer forces that make incursions or infiltrate into another State;

(7) Organizing, supporting or directing violent civil strife or acts of terrorism in another State; or

(8) Organizing, supporting or directing subversive activities aimed at the violent overthrow of the Government of another State.

ANNEX II

REPORT OF THE WORKING GROUP

1. The Working Group, which was reconstituted in accordance with the decision taken by the Special Committee at its 94th meeting, held on 3 February 1972, held 14 meetings between 4 and 29 February under the chairmanship of the representative of France.
2. During the first phase of its work, the Group based its discussions on the report of the 1971 Working Group, reproduced in annex III of the report of the Special Committee on its last session. a/ The Working Group began its work by a brief exchange of views on the general definition of aggression and on the principle of priority dealt with in paragraphs 3 to 6 of the report of the 1971 Working Group. It then considered in greater detail the principle of proportionality, the legal consequences of aggression and the right of peoples to self-determination, which are dealt with in paragraphs 19 to 24 of the report of the 1971 Working Group.
3. In the intervals between formal meetings of the Working Group, informal negotiations were held with a view to overcoming the difficulties which had arisen and reaching generally acceptable compromise solutions on the various elements of the definition. At its meeting on 24 February, the Working Group had before it a report submitted on behalf of an informal negotiating group by Mr. González-Gálvez, representative of Mexico, who had acted as the group's Chairman. At the same meeting, the Working Group decided to use that report as a basis for discussion. After a brief exchange of views, the Working Group, at its meeting on 25 February, decided, owing to lack of time, to take note of the report and to transmit it as it stood to the Special Committee for consideration. The Working Group took this decision because it felt that the report constituted a step forward in the process of formulating a generally acceptable definition of the concept of aggression and therefore warranted the attention of the Special Committee.
4. The text of the report submitted on behalf of the informal negotiating group is annexed to the present report. The Working Group decided that proposals submitted to it by delegations should also be annexed to its report.

a/ Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 19 (A/8419).

APPENDIX A

SUMMARY OF THE REPORT OF THE INFORMAL NEGOTIATING GROUP ESTABLISHED BY THE WORKING GROUP

The informal negotiations were carried out on the understanding that the acceptance of one or several of the elements of the definition was subject to the over-all formulation of the definition of aggression in view of the interrelation which exists between the different elements. Furthermore, only some elements were discussed. Therefore, the present report does not reflect the position of the various delegations as regards other elements which an acceptable definition should contain.

I. There was general agreement that the definition of aggression should include the following texts:

General definition of aggression

Aggression is the use of armed force /however exerted/ by a State against the territorial integrity /sovereignty/ or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations.

It was proposed that the following text be added:

The term "territorial integrity" includes territorial waters and air space.

Acts proposed for inclusion

Any of the following acts, regardless of a declaration of war, shall constitute an act of aggression:

(a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;

(b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons /including weapons of mass destruction/ by a State against the territory of another State;

(c) The blockade of the ports or coasts of a State by the armed forces of another State;

(d) An attack by the armed forces of a State on the land, sea or air forces of another State; a/

a/ It was unanimously approved on the understanding that there should be a clause on minor incidents.

(e) The use of armed forces of one State which are within the territory of another State with the agreement /permission of/ the receiving State, in contravention of the conditions provided for in the agreement /permission/ or any extension of their presence in such territory beyond the termination /or revocation/ of the agreement /permission of the receiving State/.

It was proposed that in (e) the word /revocation/ be replaced by /expiring or revocation/.

General part

In this definition, the term "State" is used without prejudice to questions of recognition or to whether a State is a member of the United Nations and includes the concept of a "group of States".

Questions regarding which several proposals were examined in the informal negotiations without having reached general agreement

II. The following proposals were submitted:

Indirect use of force

Alternative 1

The sending by a State of armed bands, irregulars or mercenaries which invade the territory of another State in such force and circumstances as to amount to armed attack as envisaged in Article 51 of the Charter.

When a State is victim in its own territory of subversive and/or terrorist acts by armed bands, irregulars or mercenaries organized or supported by another State, it may take all reasonable and adequate steps to safeguard its existence and its institutions, without having recourse to the right of individual or collective self-defence against the other State.

Alternative 2

Every State has the duty to refrain from organizing, or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State.

Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force.

Indirect use of force and minor incidents

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.

Legal uses of force, including the question of centralization

Alternative 1

Nothing in this definition 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.

No consideration of whatever nature, whether political, economic, military or otherwise, relating to the internal or foreign policy of a State, may serve as a justification for aggression as herein defined.

Alternative 2

1. According to the Charter, only the United Nations /through the Security Council exercising its primary responsibility for the maintenance of international peace and security/ has the authority /competence/ to use force in the performance of its functions to maintain international peace and security. However, under the Charter, the use of force is also legitimate in the case referred to in paragraph 2 hereof, or when it is undertaken subject to the provisions of Article 53 of the Charter.

2. The inherent right of individual or collective self-defence of a State can be exercised only in case of the occurrence of armed attack /armed aggression/ by another State in accordance with Article 51 of the Charter.

Questions of priority and aggressive intent

Alternative 1

Without prejudice to the powers and duties of the Security Council, under Chapter VII of the United Nations Charter, to determine the existence of any act of aggression, it shall be presumed that an act referred to in paragraph _____ of the definition constitutes aggression if it was committed by a State which so acted first.

It was proposed that the concept of "rebuttal" be included.

Alternative 2

Without prejudice to the power of the Security Council, under Chapter VII of the United Nations Charter, to take into account all the circumstances of each particular case in determining the existence of any act of aggression, due regard shall be given to the questions whether an act referred to in...was committed by a State which so acted first and whether it was committed with any of the following purposes:

- (1) To diminish the territory or to alter the boundaries of another State;
- (2) To alter internationally agreed lines of demarcation;
- (3) To disrupt or to interfere with the conduct of the affairs of another State;

- (4) To secure changes in the Government of another State;
- (5) To inflict harm or to obtain concessions of any sort;
- (6) Or otherwise to violate the territorial integrity or political independence of another State.

The right of peoples to self-determination

Alternative 1

None of the preceding paragraphs may be interpreted as limiting the scope of the Charter's provisions concerning the right of peoples to self-determination, sovereignty and territorial integrity.

Alternative 2

None of the preceding paragraphs shall be interpreted as limiting the scope of the Charter's provisions concerning the equal rights and self-determination of peoples as elaborated in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

Among other suggestions made, it was proposed to add at the end of alternative 1 the following:

"; or as preventing the use of armed force by dependent peoples in order to exercise their inherent right of self-determination".

Legal consequences of aggression

The following formulations were proposed:

- A. 1. Aggression, as defined herein, constitutes a crime against international peace giving rise to responsibility under international law.
- 2. A war of aggression constitutes a crime against the peace, for which there is responsibility under international law.
- 3. Include in the general definition of aggression at the beginning, after the word "aggression", "which is a crime against peace".
- B. The territory of a State is inviolable and shall not be the object, even temporarily, of military occupation or of other measures of force taken by another State /on any grounds whatever/ /resulting from aggression/. No territorial gains /acquisition/ or special advantages resulting from aggression shall be recognized.

It was proposed that the words "as legal" be added after the word "recognized". On the other hand, it was suggested that the last sentence be replaced by the following:

"Any territorial gains /acquisition/ or special advantages resulting from aggression shall be null and void."

APPENDIX B

PROPOSALS SUBMITTED TO THE WORKING GROUP

A. Australia, Canada, Italy, Japan, United Kingdom of Great Britain and Northern Ireland and United States of America; proposals

1. Acts proposed for inclusion

Include in the list of specific acts:

"1. The organization or encouragement of the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State.

"2. The organization or instigation of or assistance or participation in acts of civil strife or terrorist acts in another State, or acquiescence in organized activities within its territory directed towards the commission of such acts."

2. Political entities other than States

Include in the definition the following explanatory provision:

"In this definition the term 'State' is used without prejudice to questions of recognition or to whether a State is a member of the United Nations."

3. The questions of priority and aggressive intent

Include in the definition the following provisions:

"Without prejudice to the power of the Security Council under Chapter VII of the United Nations Charter to take into account all the circumstances of each particular case in determining the existence of any act of aggression, due regard shall be given to the questions whether an act referred to in... was committed by a State which so acted first and whether it was committed with any of the following purposes:

"(1) To diminish the territory or to alter the boundaries of another State;

"(2) To alter internationally agreed lines of demarcation;

"(3) To disrupt or to interfere with the conduct of the affairs of another State;

"(4) To secure changes in the Government of another State;

"(5) To inflict harm or to obtain concessions of any sort;

"(6) Or otherwise to violate the territorial integrity or political independence of another State."

4. Legitimate use of force

Include in the definition the following provision:

"Nothing in this definition 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."

B. Syrian Arab Republic: proposal

The right of peoples to self-determination

Proposed alternative 3

"None of the preceding paragraphs may be interpreted as limiting the scope of the Charter's provisions concerning the right of peoples to self-determination, sovereignty and territorial integrity; or as preventing the use of armed force by dependent peoples in order to exercise their inherent right of self-determination."

C. Union of Soviet Socialist Republics: proposals and comments relating to the summary of the report of the informal negotiating group established by the Working Group

General definition of aggression

In the opinion of the Soviet delegation, the insertion of the words "however exerted" is unacceptable, since this would unjustifiably, and contrary to the United Nations Charter, extend the concept of aggression to acts constituting merely "breaches of the peace".

There is also no reason to insert the word "sovereignty", since its meaning is covered by the concept of "political independence" and, moreover, its inclusion would lead to a distortion of the meaning of Article 2, paragraph 4, of the United Nations Charter.

The Soviet delegation believes that, in the formulation of a general definition of aggression, the terms used in Article 2 of the United Nations Charter should be strictly followed, and it therefore insists on the words "inconsistent with the purposes of the United Nations" or "inconsistent with the purposes and principles of the Charter of the United Nations".

Acts proposed for inclusion

The Soviet delegation considers a specific reference to weapons of mass destruction in subparagraph (b) inappropriate, since this subparagraph refers to the inadmissibility of the use of "any weapons". Striving consistently for a complete ban on the use of weapons of mass destruction, and in keeping with the proposals submitted in 1969, the Soviet delegation might consider some wording such as the following: "including weapons of mass destruction not used in the exercise of the inherent right of self-defence".

With regard to subparagraph (e), the Soviet delegation sees no need to replace the word "agreement" with the word "permission", since, if the latter word were used, the rights of one of the contracting parties would be infringed.

Indirect use of force

The Soviet delegation considers alternative 1 an acceptable basis for broad agreement. On the other hand, it regards as completely unacceptable alternative 2, which is an attempt to extend the concept of aggression to cover practically all cases of interference in the internal affairs of States. While recognizing the illegality of any interference in the internal affairs of other States, the Soviet delegation nevertheless cannot agree to describe such acts, contrary to the provisions of the United Nations Charter, as acts of aggression.

Legal uses of force, including the question of centralization

In the opinion of the Soviet delegation, alternative 1 provides a basis for agreement. According to the United Nations Charter, only the Security Council has the right to use force. The Soviet delegation might, therefore, accept the text of alternative 1 with the following addition:

"Only the Security Council has the right to use force on behalf of the United Nations to maintain or restore international peace."

Alternative 2, relating to the so-called centralization of force, allows an ambiguous interpretation of the United Nations Charter and is therefore completely unacceptable.

As a possible variant of the solution to the problem of the legal uses of force, the Soviet delegation reintroduces for subsequent consideration its 1971 proposal, which reads as follows:

"Acts undertaken in accordance with the Charter of the United Nations to maintain or restore peace, or in the exercise of the inherent right of individual or collective self-defence, do not constitute aggression."

"Only the Security Council has the right to use force on behalf of the United Nations to maintain or restore international peace."

"Enforcement actions under regional arrangements or by regional agencies, consistent with the purposes and principles of the United Nations, may be taken only in accordance with Article 53 of the Charter of the United Nations."

Questions of priority and aggressive intent

The Soviet delegation supports alternative 1 as providing a basis for broad agreement.

Alternative 2 weakens the element of priority and unjustifiably emphasizes the element of so-called aggressive intent in the formulation proposed by six Western Powers. The enumeration of the purposes of aggression, in its present form, reflects the point of view of only one group of States and, moreover, essentially leaves a potential aggressor free to act. Alternative 2 is therefore completely unacceptable.

The right of peoples to self-determination

Each of the alternatives only partially reflects the concept of the self-determination of peoples, as set forth in the well-known General Assembly resolution 1514 (XV) of 14 December 1960, and fails to single out as the most important aspect of this problem in the present situation the exercise of the right of self-determination by dependent and colonial peoples.

Nevertheless, the Soviet delegation is prepared to consider the proposed formulations in the context of an agreement that may be reached with regard to the other elements in the definition of aggression.

Legal consequences of aggression

The Soviet delegation is willing to support formulation B, provided that the words "resulting from aggression" or the words "in violation of the provisions of the Charter of the United Nations" are included in the first sentence. The addition of these words appears necessary in the light of the provisions of the United Nations Charter and of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

In addition to the issues dealt with in the document describing the progress of the informal consultations, the Soviet delegation considers it necessary that the definition should refer to the Security Council's right to determine the existence of an act of aggression even when a State takes actions other than those explicitly enumerated in the definition.

The text of such an article might read as follows:

"In addition to the actions enumerated in the preceding paragraphs, other actions by States may be deemed to constitute acts of aggression if in each specific instance they are recognized as such by a decision of the Security Council."

The preambular part of the definition of aggression should contain the text agreed upon at the 1969 session of the Special Committee. This should be supplemented by a provision concerning the purposes served by a definition of aggression.

This provision might be formulated as follows:

"Believing that, although the question whether an act of aggression has been committed must be considered in the light of all the circumstances in each particular case, it is nevertheless appropriate to formulate basic principles as guidance for such determination."

D. Czechoslovakia: proposal

Principle of priority

"Without prejudice to the power of the Security Council under Chapter VII of the United Nations Charter to determine the existence of any act of aggression with due regard to all circumstances of each particular case, it shall be presumed that an act referred to in Article ... of this document constitutes aggression if it was committed by a State which so acted first."

E. Romania: proposals submitted to the Working Group
and to the informal negotiating group established
by the Working Group

1. Draft text concerning the general definition of aggression

"Aggression is the use of armed force in any form, by a State or group of States against the territorial integrity, the sovereignty or political independence of another State or group of States, or in any other manner inconsistent with the purposes of the United Nations."

2. Draft text concerning a paragraph of general scope to be included in the definition

"No considerations of whatever nature, whether political, economic, military or otherwise, relating to the internal or foreign policy of a State may serve as a justification for the use of armed force against this State, by another State or group of States."

3. Draft text concerning the right of peoples to self-determination

"Nothing in the foregoing paragraphs shall be construed as affecting the right of all peoples, in conformity with the principle of equal rights and self-determination of peoples as elaborated in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, to react against, and resist to, any forcible action which would be taken against these peoples by any State and which deprives them of their right to self-determination and freedom and independence."

4. Draft text concerning the legal consequences of aggression

"The territory of a State is inviolable and shall not be the object, even temporarily, of military occupation or of other measures of force taken by another State on any grounds whatever and no territorial acquisitions as well as any other special advantages obtained by the use of force shall be recognized."

F. Algeria, Colombia, Cyprus, Ecuador, Egypt, Ghana, Guyana,
Haiti, Indonesia, Iran, Iraq, Madagascar, Mexico, Spain,
Sierra Leone, Sudan, Syrian Arab Republic, Uganda,
Uruguay and Yugoslavia: comments

The above-mentioned delegations considered the report submitted on behalf of the informal negotiating group, but, owing to lack of time, it was not possible to proceed further. The said delegations believe they have shown a spirit of accommodation during the negotiations and express their willingness to do so in the future. Therefore it was decided:

(a) To take note of the report submitted on behalf of the informal negotiating group;

(b) To reiterate their position on the basis of the 13-Power draft, by whose principles they stand, in regard to the various elements that the definition of aggression should include.

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