

1482nd meeting

Tuesday, 22 October 1974, at 3.15 p.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1482 and Corr.1

AGENDA ITEM 86

Report of the Special Committee on the Question of Defining Aggression (*continued*) (A/9619 and Corr.1)

1. Mr. RIOS (Panama) said that, for reasons of a practical nature, his delegation approved of the draft definition of aggression (see A/9619 and Corr.1, para. 22) in general terms. The proposed text represented a decisive step forward on the long road leading to international peace and security.

2. However, his delegation would like the Committee to clarify further some of the terms used in the draft definition; it would be a good idea, for example, to state expressly in article 3 (*d*) that no provision of that paragraph affected the right of coastal States to take any measures they deemed necessary in maritime areas placed under their jurisdiction or sovereignty. It was important to set forth as clearly as possible the principles and concepts of international law, so as to avoid unilateral interpretations which generally favoured the most powerful. In that connexion, Panama could not easily forget the lessons of a past which continued to weigh on its future.

3. It should be recognized that, although it had its source in the most noble aspirations of man, international law, as it existed today, had been deeply influenced by the Powers which had consolidated their empires through the nineteenth and twentieth centuries. That accounted for certain acts of flagrant injustice which were still committed in the name of international legal order, even though the rules of classical international law were applied and legal formalities were rigorously, albeit superficially, observed.

4. His delegation therefore considered that, although the proposed draft definition represented a notable step forward, it had in it gaps and used concepts which were not sufficiently clear, as in the case already mentioned of the merchant marine, or it passed over in silence situations which, despite their apparent legal validity, in fact constituted permanent aggression against the very existence and personality of a nation. For that reason, without wishing to reopen the debate, his delegation would like the following new subparagraph to be included in article 3: "The permanent or temporary presence of the armed forces of a State, whatever the circumstances explaining that presence, in the territory of another State, without the agreement of the latter or against its express or declared will".

5. He asserted his belief that, sooner or later, a definition formulated in terms similar to those he had just proposed would form part of a more equitable system of international codified law. He reiterated his support for the draft definition which, although it was not likely to arouse enthusiasm, would make it possible to promote the moral

progress of nations in a world in which "international legality" had often merely concealed injustice.

6. Mr. NIYUNGEKO (Burundi) congratulated Guinea-Bissau, Bangladesh and Grenada on their admission to membership in the United Nations.

7. His delegation recognized that the draft definition of aggression was the result of long and arduous negotiations conducted with tact and patience. It shared the satisfaction felt by many other delegations at the result achieved, but nevertheless wished to express some reservations, since the draft did not cover all the elements necessary to deter a potential aggressor.

8. His delegation was convinced, as the ninth preambular paragraph showed, that the adoption of the definition of aggression ought to have the effect of deterring a potential aggressor, simplifying the determination of acts of aggression and the implementation of measures to suppress them, and facilitating the protection of the rights and lawful interests of, and the rendering of assistance to, the victim. Article 1 referred only to armed aggression, and deliberately left other forms of aggression undefined. Articles 1 to 4 were closely interrelated and in reality formed a cohesive whole. Article 4 made it possible for the Security Council to determine that other acts constituted aggression; that was a right accorded to it by the Charter, but it remained to be seen whether the Council would determine that acts not covered in the definition constituted aggression. Article 2 stated that the first use of force was merely *prima facie* evidence, which could be rebutted. In his delegation's view, such *prima facie* evidence should be irrefutable. To permit the Security Council not to determine that the first use of force constituted an act of aggression would be tantamount to saying that it was permitted not to recognize as acts of aggression acts considered as such in the draft definition. Indeed, the acts listed in article 3 as qualifying as acts of aggression were listed subject to and in accordance with article 2. His delegation was pleased that article 7 recognized the right of peoples struggling for their independence to use all means to that end, including armed force. That article in no way contradicted the provisions of article 3 (*g*).

9. The concern of all peace-loving peoples was to deter any act which ran counter to harmony, concord and fraternity. A definition accepted by all nations stood every chance of gaining recognition, but to do so it must be as exhaustive as possible and contain all the necessary elements. His delegation therefore noted with some anxiety the almost deliberate omission of certain forms of aggression, including economic aggression, which was of particular concern to land-locked countries. Certain delegations had felt that it would be too difficult to define that concept, others that it should be left aside because it would

delay by several years the working-out of a draft definition of aggression. Obviously, that concept presented some difficulties, but why leave an examination of those difficulties till later? Economic aggression was subtle in form and sometimes gave rise to armed aggression. For that reason, his delegation thought that the possibility might have been considered of including in the draft a paragraph dealing with that concept. Such a paragraph could be added to article 3 (c) and supplement the list of acts of aggression, or it could be the subject of a separate article. His delegation supported the working paper submitted by Afghanistan and other countries (A/C.6/L.990) with regard to article 3 (c) and it would even have joined the sponsors if it had known the exact wording.

10. In any event, the adoption of the draft definition would represent a step towards peace; the draft would become a useful instrument of service to the international community and, more particularly, the Security Council.

11. Mr. FERNANDEZ BALLESTEROS (Uruguay) stressed the importance of the definition of aggression from the political standpoint, which had been mentioned by the Minister for Foreign Affairs of Uruguay in his statement at the twenty-ninth session of the General Assembly (2240th plenary meeting). His delegation welcomed the successful outcome of the work of the Special Committee, but was not unaware of the imperfections of the draft definition submitted to the Sixth Committee and, in particular, of the absence of a definition of economic aggression. It was to be hoped that that special question would be the subject of the thorough analysis called for by a number of delegations during the debate. To try to apply the same rules to all countries in that respect would be over-idealistic. During the most serious crises, the developed countries had reserves which enabled them to cope with the situation more easily than the less developed countries. Moreover, the protectionist reflex of the developed countries hindered and undermined the progress of small developing countries. Despite the wording of article 4, the provisions of article 8 of the draft definition excluded any thought that the text might cover acts other than acts of armed aggression. However, the very words "definition of aggression" inspired the hope that the draft would be general in scope and would be applied to all forms of aggression.

12. From the legal standpoint, the draft definition submitted to the Sixth Committee was the result of a compromise, and his delegation considered it acceptable on the whole. Some delegations had pointed out that when adopted the definition would have the legal force of guidelines addressed to the Security Council, which would retain all its discretionary power in the matter of determining aggression. There was some ambiguity on that point, since there appeared to be no thought of changing the provisions of the Charter regarding the role of the Security Council in that field. It was true that, if the General Assembly approved the text of the draft definition, the Security Council would not be able to disregard it in any attempt to determine aggression. However, his delegation would have liked the draft resolution in which the Sixth Committee recommended the adoption of the draft definition by the General Assembly to specify that the definition would be binding on the Security Council, without thereby

affecting the powers conferred on the Council by the Charter.

13. It was also clear that the provisions of the draft definition were part of and must be interpreted within the general framework of international law and that the main criterion to be followed was that of the illegality of the act of aggression. That was what should be stressed in particular with regard to article 3 (d) of the draft. The concept of an attack used in that paragraph could in no way refer to the use of armed force in a situation of self-defence. As had been stressed at the Third United Nations Conference on the Law of the Sea, the sovereignty of a coastal State gave it the authority to ensure by all possible means the exercise of its jurisdiction over its territory, air space and waters. The development of the law of the sea must be taken into account in the characterization of an act of aggression and his delegation shared the point of view expressed by the coastal States. It was prepared to endorse the suggestion made by the Kenyan delegation at the 1474th meeting, provided that it did not go against the consensus achieved.

14. He wondered whether there was any difference between the English and Spanish versions of the text of article 3 (d). The English words "marine and air fleets" seemed to have a broader meaning than the Spanish words "*flota mercante o áerea*".

15. His delegation hoped that the adoption of the draft definition by the General Assembly would represent a new step towards international peace.

16. Mr. GUERRERO (Philippines) said that, like other delegations, including that of Uruguay, his delegation had some difficulties with article 3 (d) of the draft definition. The first of those difficulties was due to the form of the text and, more specifically, to the discrepancies between the English, Spanish and French versions. The English version used the words "marine and air fleets", which had a general meaning, whereas the Spanish text referred to "*flota mercante o áerea*" and the French text referred to "*la marine et l'aviation civiles*", both of which were considerably more specific than the English words. He considered that, in that particular context, the English adjective "marine" was dangerously imprecise, when, to take examples which came immediately to mind, words such as "merchant marine" and "civil airlines" were available.

17. Moreover, his delegation was concerned that article 3 (d) might be interpreted as a totally unacceptable limitation on a sovereign State's jurisdiction over its territorial waters and air space. His delegation feared that the text might be used to characterize as an act of aggression and to condemn as such the perfectly legitimate and indisputable exercise by a State of its sovereign right to ensure its security, safeguard and conserve its natural resources, ensure their use and enjoyment for its people, whose natural heritage those resources were, and protect them from wanton pollution and exploitation by taking the necessary measures to arrest and seize, by armed force, if necessary, vessels or aircraft which might, without permission, intrude into its waters or air space.

18. If it was proposed to add to the draft decision of the Special Committee a new provision designed to clarify and restrict the scope of article 3 (*d*) in the way indicated above, his delegation was prepared to support such an initiative. It was prepared to act in a similar way, if, to that same end, it was proposed to add a new subparagraph to article 6 or to introduce to that effect a foot-note to article 3, or if it was proposed that the Committee or the General Assembly should reach agreement on an interpretation along those lines.

19. If such efforts failed, his delegation would be in favour of the adoption of the draft definition of the Special Committee, on the clear understanding that, in accordance with article 8, all the provisions of the text were “inter-related and each provision should be construed in the context of the other provisions”; that, in accordance with article 6, nothing in the definition “shall be construed as in any way enlarging or diminishing the scope of the Charter including its provisions concerning cases in which the use of force is lawful”; and that, consequently and in particular, nothing in article 3 of the definition could in any way detract from, diminish, render illegitimate or condemn as an act of aggression the exercise by a State and, specifically, an archipelagic State like the Philippines, of its inherent right to ensure respect for all elements of its national legislation in the national territory, air space and waters, including straits, declared by its Constitution and laws to be within the limits of its sovereignty and under its jurisdiction.

20. Mr. GANA (Tunisia) said that it was the climate of détente within the international community which had enabled the Special Committee to adopt by consensus the draft definition submitted to the Committee. His delegation was fully aware of the extremely fragile nature of the balance achieved between divergent views. The draft of the Special Committee was the best that could have been expected in a political context which, despite everything, had not augured well for the success of such an initiative. His delegation also recognized the importance of the draft as an instrument which might discourage possible aggressors, enlighten the Security Council and strengthen its role in the maintenance of international peace and security and contribute effectively to the progressive development of international law and the codification of a collective system of security based on law.

21. The preamble rightly referred to the main goals of the United Nations and reaffirmed the role of the Security Council in the maintenance of peace, as well as the right of peoples to self-determination, freedom and independence.

22. His delegation wished to stress the restrictive nature of the definition given in article 1, which seemed to refer to States only as parties to a conflict and as the perpetrators of only one form of aggression, namely, the use of armed force. It was fortunate that, in article 4, it had been specified that the list of acts of aggression enumerated was not exhaustive. The words “in contravention of the Charter” in article 2 limited the scope of the definition even more and might enable the aggressor to justify its act on the plea that it had not contravened the principles of the Charter.

23. Article 2 was the result of a compromise between the supporters of priority and the supporters of intent. His delegation was of the opinion that priority should have pride of place over intent. Taking into account the difficulties that might arise from the introduction of a subjective element, his delegation considered that the State first using force committed an act of aggression and thus incurred responsibility for the act, and that, in order to determine such responsibility, there was no need to seek any element of intent. Otherwise, the aggressor might be able to find a justification for its act. The burden of proof must always lie with the aggressor, not with the victim, and that legal principle could not be applied in the context of aggression unless the element of intent was ruled out. It should, however, be noted that the possibility of invoking the subjective element was maintained by the words “*prima facie*” and the words “other relevant circumstances” contained in article 2. Since the Security Council could use those terms to determine the relative gravity of acts and, thus, draw a distinction between an act of aggression and an act of self-defence, and not to absolve an aggressor, but to establish the responsibility of the aggressor and of the instigators of the act of aggression more on the basis of motive than intent, his delegation could only support such an attitude, which it considered to be in conformity with truth and law.

24. Article 3 contained a non-exhaustive list of acts of aggression, including cases of indirect aggression. His delegation was glad that the non-exhaustive nature of that list had been specified in the following article. It considered that article as reflecting a general desire among States for progressive development of international law and hoped that it was a first step towards the recognition of other forms of indirect aggression, such as economic aggression. His delegation wished to stress that article 3 (*d*) could not be interpreted as restricting in any way whatever the right of a sovereign State to apply its national legislation to its territorial waters and air space and to take the necessary measures to protect its security and natural resources.

25. He had no special comments to make about articles 4, 5 and 6, except to note that article 5, second paragraph, made an artificial and pointless distinction between aggression and a war of aggression. The expression “war of aggression” destroyed the harmony of the text and was unnecessary.

26. The right to self-determination, freedom and independence of peoples deprived—forcibly or by other more indirect means—of that right, reaffirmed in article 7, was an inalienable and sacred right. Tunisia, which had been deprived of that right many times in its history, firmly supported the peoples who could not enjoy that right and assured them of its unconditional support. His delegation affirmed that those peoples had the right to struggle to recover their freedom and independence by all means at their disposal, including the use of armed force. In so doing they would be acting in accordance with the inherent right of self-defence embodied in Article 51 of the Charter and in conformity with the relevant General Assembly resolutions, including resolution 3070 (XXVIII), in which the Assembly reaffirmed “the legitimacy of the peoples’ struggle for liberation from colonial and foreign domination and alien subjugation by all available means, including armed strug-

gle” and resolution 3103 (XXVIII), adopted on the proposal of the Sixth Committee, concerning the basic principles of the legal status of the combatants struggling against colonial and alien domination and racist régimes.

27. Subject to the preceding remarks, his delegation was prepared to support the draft definition if it was adopted, as his delegation hoped, by consensus. It might wish to speak again on the question if necessary.

28. Mr. VARELA (Costa Rica) said that, like most of the speakers who had preceded him, he accepted the fact that the provisions of article 3 of the draft definition were not exhaustive but only enumerative. His delegation considered that it was impossible to adopt another solution because it was difficult to reach a simple and univocal definition and because man, throughout his history, had proved his capacity constantly to devise new means of aggression not only individually but also collectively. The definition recommended by the Special Committee, as it stood, with its gaps and imprecisions, was nevertheless adequate and acceptable because it left it to the Security Council to take the final decision pursuant to the provisions of the Charter and that decision, in accordance with the provisions of article 8, should be construed in the context of other norms in force.

29. His delegation considered that the draft definition under consideration should be welcomed for the simple reason that it was the first time for more than 50 years that it had been possible to reach a consensus on the definition concerning such an important and delicate question, and that a great contribution had thus been made to international law and to the efforts which were being made by the United Nations to maintain peace. On the practical level the definition helped to establish security and to create the feeling of “knowing where things stood” which facilitated relations within the international community and constituted an invaluable tool for the Security Council when it had to consider specific cases. Moreover, in accordance with the most lofty principles of the Charter, the draft definition maintained and affirmed the principles of territorial integrity and the self-determination of peoples on which peaceful coexistence between States was based.

30. He had listened attentively to the relevant observations made by the speakers who had preceded him, including the representatives of Chile, Madagascar and Peru in their statements at the 1474th meeting, especially on the subject to the exercise of sovereignty and the application of internal law, particularly with regard to article 3 (*d*) of the draft definition. He considered that the spirit of that provision did not prevent the legitimate exercise of territorial jurisdiction in national air or sea space in conformity with international treaties and internal law, and also considered that the draft definition, in conformity with its article 6, in no way prejudiced the principle of self-defence embodied in Articles 51, 52 and 53 of the Charter.

31. His delegation, which recalled that Costa Rica, after having been involved in a serious dispute, had accepted the decision of the body responsible for ensuring peaceful coexistence in the region, urged all members of the Committee to vote in favour of the draft definition submitted by the Special Committee.

32. Mr. WISNOEMOERTI (Indonesia) said that he was very pleased that the Special Committee had succeeded in completing a draft definition of aggression, a difficult endeavour in which the international community had been engaged for 50 years. The draft definition, if adopted, would strengthen the role of the maintenance of international peace and security entrusted to the United Nations by the Charter. The definition would provide guidance for the Security Council in determining the existence of acts of aggression and it would also be useful for the international community as a deterrent to potential aggressors.

33. As other delegations had already observed, the draft definition reflected a delicate balance which had been achieved through the goodwill and spirit of compromise shown by the members of the Special Committee. His delegation, as a member of that Committee, was well aware of the complexity of the problems relating to the definition, and it particularly wished to express its gratitude to the Chairman of the Special Committee for the efforts he had made. However, the draft definition, as it represented a compromise solution, contained certain ambiguities and short-comings which the Sixth Committee had to deal with.

34. The general definition contained in article 1 was acceptable to his delegation, as it included the concept of sovereignty as one of its basic elements and was consistent with the principle of renunciation of the use of force embodied in Article 2, paragraph 4, of the Charter; it was the understanding of his delegation that the concept of territorial integrity contained in article 1 of the draft definition included territorial sea and air space. It also approved of the principle of priority contained in article 2 which aimed, *inter alia*, at deterring States from resorting to force to achieve their objectives. At the same time that article recognized that no definition of aggression could undermine the power granted to the Security Council under Article 39 of the Charter to determine whether aggression had been committed in any specific case, and the Security Council could in that respect take into account “other relevant circumstances”.

35. The fact that the acts of aggression enumerated in article 3 were not exhaustive was acceptable to his delegation, but it had reservations with regard to subparagraph (*d*), which created ambiguity because it did not define the maritime zone or the air space to which it was applicable. Such a provision would create a situation in which a State exercising its sovereignty in its territorial sea and air space and also its sovereign rights in the maritime zone within its national jurisdiction, and taking legitimate measures against foreign marine or air forces engaged in unlawful activities in that maritime and air space might be accused of committing an act of aggression. The formulation of article 3 (*d*) might endanger the sovereignty and territorial integrity of a coastal State and his delegation had therefore made reservations on the matter which were in annex 1 of the report of the Special Committee. His delegation wished to reaffirm that nothing in article 3 (*d*) should prejudice or affect the rights of a coastal State to enforce its laws and regulations in the maritime zone or air space within the limits of its national sovereignty and jurisdiction. Many other delegations had expressed similar doubts regarding the formulation of article 3 (*d*). The Committee should take that into account and seek a

solution which would remedy those short-comings. With regard to article 3 (g), his delegation considered that the text should be more explicit in defining indirect aggression, since the indirect use of force could have consequences which were as destructive as direct aggression. Nevertheless subparagraph (g) was acceptable to his delegation as a compromise. However, his delegation made it clear that that paragraph should be read in conjunction with the principle that no State or group of States had the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other State, as contained 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 (General Assembly resolution 2625 (XXV), annex) and with article 7 of the definition, which affirmed respect for the right to self-determination, freedom and independence. Moreover, the word "substantial" in paragraph 3 (g) was ambiguous, as it was understood that all the acts qualified as acts of aggression in the draft definition should be "substantial"; the word was therefore unnecessary.

36. His delegation welcomed article 5, in particular the third paragraph, which reaffirmed the principle of international law according to which any territorial acquisition resulting from the threat or the use of force was inadmissible and should not be recognized.

37. Mr. AL-HADDAD (Yemen) expressed his satisfaction with the text of the preamble to the draft definition submitted by the Special Committee. Since it represented a compromise, the definition was not entirely faultless, but it would provide useful guidelines for the Security Council in exercising the powers conferred upon it regarding the determination of the existence of an act of aggression.

38. His delegation noted with regret that the scope of the definition had been restricted through the deletion, in article 1, of the expression "however exerted" in the consolidated text of the reports of the contact groups and of the drafting group of the Special Committee in 1973.¹ It also considered article 3 (d) to be superfluous and deplored the fact that aggression had not been qualified as a crime against humanity under international law. On the other hand, the provisions of article 7 were highly satisfactory, as they reaffirmed the right of peoples to self-determination, freedom and independence, in conformity with the Charter of the United Nations and resolutions of the General Assembly.

39. Mr. SOGLO (Dahomey) said that the people of the third world were the least satisfied with the draft definition of aggression which had been drawn up. Those peoples had experienced aggression in the form of slavery, the pillage of their lands and property, and the destruction of their cultures and civilizations. They were still experiencing it, as they were the helpless victims of economic exploitation. They were therefore in the best position to provide the most accurate and complete definition of aggression; but those who were afraid of such a definition had opposed it, thus making the work of the Special Committee very difficult. Nevertheless, in view of the results it had

achieved, his delegation could not but join very sincerely in the unanimous tribute paid to the Special Committee for having spared no effort to draw up a definition acceptable to all. That was an important contribution to the cause of peace, despite the gaps and ambiguities other delegations had already pointed out. It would have been worth while to dwell on the practices of multinational corporations, to define the manoeuvres of certain national agencies against the political independence of States and to speak in appropriate terms of how *apartheid* constituted a crime against humanity and a permanent state of aggression.

40. Some delegations had expressed satisfaction at the fact that the definition of aggression had been drawn up in accordance with the letter of certain provisions of the Charter. Delegations had been requested not to upset the difficult and precarious balance achieved by the Special Committee. His delegation would heed that appeal. Nevertheless, it was worth asking whether the ultimate purpose of the Organization was merely to determine the current state of affairs and to accept it. Was it not also its duty to establish a basis for a more just world and to abolish, *inter alia*, certain principles that were no longer justified in the view of the majority of delegations? In that connexion, many speakers had failed to mention the fact that the question of the review of the Charter was also on the Committee's agenda (item 95) and that special attention would be given to the nature and importance of the prerogatives of the Security Council. His delegation felt that one of the weaknesses of the draft definition lay in the wording of the second and fourth preambular paragraphs and the first part of article 6, which confirmed the existing prerogatives of the Security Council. In modern times, hardly any war of aggression continued unless it received the prior approval or served the purposes of one of the great Powers. Under such circumstances, a definition that was nothing but a simple recommendation by the General Assembly, to be freely interpreted by the Security Council, did not fully achieve the desired goal.

41. His delegation also felt that article 3 (d) did not restrict the right of States to repel any violation of the waters under their jurisdiction. It was most satisfied with the inclusion of article 7, because any provision aimed at obtaining freedom was to be regarded as sacred.

42. Since the definition contributed to the codification of international law, his delegation would have liked it to be perfect; however, it would go along with the consensus that seemed to have been reached, inasmuch as the draft represented a first step on the way to a global definition of aggression.

43. Mr. EUSTATHIADES (Greece) said that his country, which had not participated in the work of the Special Committee, had followed the effort to define aggression with great interest. Greece, a loyal advocate of the peaceful settlement of international disputes, had always made a scientific contribution to international law. From the time of the League of Nations the name of Nicholas Politis had been associated with a draft definition of aggression. Later on, in the International Law Commission, Mr. Spiropoulos had been associated with the preparation of the draft Code of Offences Against the Peace and Security of Mankind. It was precisely because that draft had raised problems related

¹ See *Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 19*, annex II, appendix A.

to the definition of aggression that it had not yet been adopted by the General Assembly.

44. The draft definition submitted by the Special Committee had certain weaknesses, but it was important not to upset its balance, because it represented a landmark on the road to the maintenance of peace and security in the world. The draft was particularly significant because representatives of the third world had taken part in its preparation. It was the result of collective efforts and necessarily reflected compromises on several points.

45. Political reasons should not be adduced to minimize the value of the draft; it would certainly fill some gaps. Indeed, the absence of a definition did not explain the existence of aggression in modern times. Aggression could not be banished from the international scene until all nations took to heart the principles of the Charter and had recourse in every case to peaceful methods for the settlement of international disputes. But the definition could help to ensure that Governments adopted a peaceful approach, inspired by a desire to maintain peace, on the one hand, and, on the other, the fear of social reaction as expressed by public opinion and the attitudes of the competent bodies.

46. The maintenance of international peace was too serious a matter to allow for the luxury of having a legal text that might be perfect but would not pursue any practical objective. One of the practical purposes of a draft definition was to discourage potential aggressors. That purpose could be better accomplished if the constituent elements of aggression could be properly defined. In that regard, the text proposed was more or less satisfactory. Obviously, no State would be willing to admit to an act of aggression and every effort must be made to avoid loop-holes.

47. The draft definition should also serve as a guide to the competent international organs. That had been recognized by the League of Nations and by the General Assembly of the United Nations when it stated, in resolution 599 (VI) of 31 January 1952, that it was possible and desirable to define aggression by reference to the elements which constituted it and that it would be of definite advantage if directives were formulated for the future guidance of such international bodies as might be called upon to determine the aggressor. It should be stressed that the draft would have an even broader scope: it would facilitate the other activities of those bodies and be useful to other organs.

48. The definition would be of considerable assistance to the Security Council in determining the existence of acts of aggression. Certain delegations had questioned the usefulness of the definition in that connexion, and had stressed the political opportunism of the bodies concerned. Of course, the existence of such opportunism could not be denied and the text of the draft did not in fact overlook it. The Charter itself had not made the conclusions of the Security Council an automatic process. It had allowed for discretionary powers. Thus, article 4 of the draft provided that the Security Council might determine that other acts, in addition to those enumerated in article 3, constituted aggression under the provisions of the Charter. Article 2 allowed the Security Council to take into account "other

relevant circumstances" and also to conclude that a determination that an act of aggression had been committed would not be justified, particularly if the acts concerned or their consequences were not of sufficient gravity. That same clause allowed for reference to the notion of aggressive intent. The concern for preserving the powers of the Security Council had been pressed so far that, despite article 8, which stipulated that the provisions of the draft were interrelated, article 3 expressly—and uselessly, in his opinion—reserved the provisions of article 2. However, although it did not attempt to modify the powers of the Security Council, the draft definition did try to define them to some extent, since the definition of aggression included the basis for an interpretation of the concept of aggression, mentioned but not defined in the Charter.

49. If the definition was to serve only as a guide to the Security Council in determining the existence of acts of aggression, its usefulness would be limited. The Security Council had never yet determined that an act of aggression had been committed and that attitude did not seem to be due to the absence of a definition of aggression. The Security Council was hardly likely to change its attitude in future.

50. The draft would therefore be much more valuable in cases other than those involving the determination that an act of aggression had been committed.

51. Firstly, the concern of the Security Council was not to condemn the aggressor but to make recommendations or to decide on measures to be taken to maintain or restore international peace and security. In such cases, it would necessarily take into consideration the definition of aggression, which might prove useful in the course of the work not for determining the aggressor, but for the substance and content of such recommendations and measures. The expression "*prima facie*", which appeared in article 2, could possibly be deleted. The expression was superfluous for the purpose of having the Security Council determine who was the aggressor, in view of the provisions of the Charter and of the draft itself. The provisions of article 3 were adequate, and it was not necessary to refer to the notion of presumption.

52. Secondly, the first use of armed force by a State, in the cases envisaged in article 3, justified self-defence. The victim would not wait to fight until the aggressor had been duly determined. The fact that the draft did not expressly mention the right of self-defence did not invalidate that right. In any case, particularly where the Security Council had not yet been called in or had not made a recommendation or taken a decision, the definition of aggression would contribute toward the application of Article 51 of the Charter, regarding self-defence.

53. Thirdly, the General Assembly, in similarly applying Articles 10, 11 and 14 of the Charter, could not ignore a definition of aggression it had itself adopted.

54. Fourthly, particularly the General Assembly, together with other bodies, reflected or influenced international public opinion the value of which was recognized and which would be formed, taking into account the definition of aggression.

55. Finally, in addition to the principal organs of the United Nations, States, in particular those linked by regional mutual assistance agreements, would benefit by the definition of aggression. The right of self-defence, which was sanctioned by international law and by the Charter, was closely connected with the definition of aggression. Moreover, the existence of an act of aggression called for recourse to machinery for consultations between States parties to a mutual assistance agreement, with a view to the exercise of their collective right of self-defence. In such cases, too, a definition of aggression would be useful.

56. Given the many possible applications of the definition of aggression, in cases other than those where the Security Council would have to determine who was the aggressor, it was important to improve it as much as possible, without weakening its content. His delegation therefore wished to propose the following amendments.

57. In article 1, the phrase “, as set out in this definition” was imprecise, and might give the impression that the intended reference was to the definition contained in article 1. His delegation proposed that it should be replaced by the following words: “by means of one of the acts mentioned in Article 3”, or possibly by “as set out in the definition contained in this declaration”. Explanatory note (a) contained a necessary clarification, but explanatory note (b), which referred to the concept of a “group of States”, far from providing a clarification, was likely to cause complications. He therefore doubted the advisability of including it.

58. Article 2 rightly proclaimed the principle of priority, on the basis of which the use of armed force justified the exercise of the right of self-defence. As he had previously stated, he considered the words “*prima facie*” unnecessary. Moreover, he proposed that article 2 should be divided into two sentences, the first concerning the objective criterion, and the second establishing the discretionary power of the Security Council.

59. In article 3 the words “shall . . . qualify as an act of aggression” could be replaced by the simpler “shall . . . constitute an act of aggression”, in view of the presence of the clause “subject to and in accordance with the provisions of article 2”.

60. Article 5, second paragraph, provided that “A war of aggression is a crime against international peace”. However, as other delegations had observed, an act of aggression could threaten international peace and security without necessarily constituting a breach of the peace. It would therefore be preferable to replace the words “A war of aggression” by “Any act of aggression”. Some delegations had rightly proposed that the sentence “Aggression gives rise to international responsibility” in the same paragraph should be replaced by “Any act of aggression gives rise to international responsibility”. With or without that amendment, article 5, second paragraph, laid down the principle of international responsibility. Some delegations had criticized the provision as being superfluous in the light of other relevant international instruments. In his view, a breach of an international commitment—in the case at hand, the Charter—gave rise to international responsibility without the need for any express statement to that effect. However,

his delegation considered that it might be useful to specify that an act of aggression gave rise to international responsibility. In any event, once the definition was adopted, it would probably be possible to resume consideration of the draft Code of Offences against the Peace and Security of Mankind. Article 5 had the merit of not prejudging the nature of the responsibility, which could devolve not only on the State, but also on the individual.

61. He noted with satisfaction the reservation contained in article 7 concerning the right to self-determination.

62. The definition would definitely be useful to all States, and especially small States. It did not deal with purely academic hypotheses. Cyprus, for example, had lately been the victim of aggression and of acts which clearly fell within the scope of the definition of aggression. It was deplorable that the deeds of a country whose delegation had stated its agreement with the draft definition should be at variance with the words of its representatives. The situation prevailing in Cyprus was a vivid example of the problem facing the Committee, and it was regrettable that solemn legal texts could be completely ignored in some quarters. The attack on and invasion of Cyprus, although temporary, were unlawful and deserved condemnation as genuine acts of aggression in accordance with the seventh preambular paragraph and article 3 (a). It should also be borne in mind that according to article 5 no territorial acquisition or special advantage resulting from aggression was or would be recognized as lawful.

Mr. Broms (Finland), Vice-Chairman, took the Chair.

63. Mr. CHAILA (Zambia) pointed out that aggressive war and armed attack were the main, though not the only, categories of illegal use of force. Armed aggression was identical with armed attack, but, on the whole, the concept of aggression was broader than that of armed attack. The concept of aggression included psychological, economic or indirect aggression. Therefore, in establishing whether a State had committed an attack or armed aggression against another State, account should be taken of the following factors: military character of the action, intention of the aggressor, use of force and seriousness of the situation, and the priority principle.

64. Currently the most common type of aggression was economic aggression, particularly against land-locked countries such as Zambia, which could not survive without access to the sea. His country was surrounded by racist and illegal régimes which were applying policies designed to destroy its economy. Those régimes had threatened the use of military force, and committed acts of provocation against it. The Security Council had been requested to consider the situation, and in resolution 326 (1973) had condemned the conduct of those régimes.

65. With reference to the draft articles, his delegation considered that article 1 laid too much emphasis on armed force. However, it noted with satisfaction the inclusion of the words “or in any other manner inconsistent with the Charter of the United Nations”, which it understood to mean that the closure of access routes to the sea, acts of provocation, blackmail and threats to use military force constituted acts of aggression. Article 2 was satisfactory,

but the principle of priority would not be relevant in cases in which aggression did not involve the use of armed force. Article 3 (c) mentioned the blockade of the ports or coasts of a State by the armed forces of another State, a provision which was relevant only to coastal States, although every State had a right of access to the sea. The Committee should ask itself what would happen if a country's routes of access to the sea were blocked and whether the blockade of Zambia's routes of access to the sea did not constitute an act of aggression. His delegation regretted that the Special Committee had not taken into account Security Council resolution 326 (1973) on that subject. It shared the views expressed at the 1479th meeting by the representative of Afghanistan, and would support the working paper submitted by that delegation (A/C.6/L.990). It did not feel that the modification of article 3 (c) would jeopardize the consensus reached by the Special Committee.

66. His delegation commended the Special Committee for its remarkable achievement; it was convinced that the definition of aggression would contribute to the codification of international law.

Mr. Šahović (Yugoslavia) resumed the Chair.

67. Mr. ROSSIDES (Cyprus), exercising his right of reply at the invitation of the Chairman, said that the Treaty of Guarantee of 1960² did not provide for possible intervention by force in the internal affairs of Cyprus. Article IV of the Treaty stipulated that the parties undertook to consult together with respect to the representations or measures necessary to ensure observance of the Treaty. The purpose of those provisions was to protect the independence and territorial integrity of Cyprus. However, not only had Turkey made use of force, but it had also violated the Treaty for the manifest purpose of dismembering the territory of Cyprus and annexing it. Following two successive invasions in July and August 1974, Turkey was occupying 40 per cent of the territory of the island. Turkey had therefore violated both Article 2, paragraph 1, of the Charter, according to which the Organization was based on the principle of the sovereign equality of all its Members, and paragraph 4 of that Article, which prohibited the use of force.

68. Even if such acts were authorized by the Treaty of Guarantee, they would be in direct conflict with the Charter, Article 103 of which provided that in the event of a conflict between the obligations of the Members of the United Nations under the Charter and their obligations under any other international agreement, the former should prevail. Turkey could not therefore rely on the Treaty of Guarantee to justify its action. Moreover, even before the Charter had been drawn up, eminent jurists had set forth the thesis, reflected in Article 78 of the Charter, that no treaty could in any way restrict the sovereignty of a State. It was therefore abundantly clear, according to the international law on which the international legal order depended, that the ferocious invasion of Cyprus and all the inhuman acts which had followed it were condemnable in law for a multiplicity of reasons.

69. According to article 3, subparagraphs (a), (b) and (c) of the draft definition of aggression, invasion or attack by

the armed forces of another State, bombardment by the armed forces of a State against the territory of another State, and the blockade of the ports constituted acts of aggression. Moreover, article 5 stated that no consideration of whatever nature could serve as a justification for aggression. Turkey had therefore violated all those provisions and had failed to fulfil the international obligations incumbent on it under the Charter of the United Nations and under other treaties and conventions, in particular the Geneva Conventions of 1949 for the protection of war victims. In that connexion, it was true that Turkey had sought to denounce those Conventions, in spite of the denials made by the representative of Turkey. But, as was explained in the articles in *The New York Times* and the *Manchester Guardian*, such a denunciation was invalid because it was stipulated in article 142 of the Convention relative to the Treatment of Prisoners of War of 12 August 1949³ that a denunciation made at a time when the denouncing Power was involved in a conflict was of no effect until peace had been concluded and until operations connected with the release and repatriation of persons protected by the Convention had been terminated.

70. Mr. GÜNEY (Turkey) said that, first of all, he would like to welcome the representative of Greece with whom he had had the pleasure of working in the European Committee on Legal Co-operation. Replying next to the comments made by the representative of Greece, he stressed that Greece was the instigator of an act of aggression which sought completely to destroy the Turkish Cypriot community and which had endangered the territorial integrity and sovereignty of Cyprus. In that connexion, he quoted certain passages from the statement made by Archbishop Makarios at the 1780th meeting of the Security Council. Archbishop Makarios had stated on that occasion that the Greek military régime had pitilessly violated the independence of Cyprus and that, after the coup d'état, the agents of the Greek régime in Cyprus had appointed as President a well-known killer. The Greek military régime, the Archbishop had continued, had established and supported a terrorist organization whose avowed aim was the union of Cyprus with Greece and whose members called themselves "unionists". He, the Turkish representative, thought that there was no need to add anything to those quotations. Greece had committed aggression as it was defined in the draft definition of aggression before the Sixth Committee. The Greek Government must reply not to Turkey but to the arguments put forward by Archbishop Makarios himself.

71. The representative of Cyprus had tried to give a subjective interpretation to the Treaty of Guarantee, an interpretation that conformed to the views of the Greek community and its leaders who had never respected the Treaty in question. Any treaty in force was binding on the parties according to the rule *pacta sunt servanda*. To be entitled to give an interpretation of a text, if only in a unilateral and subjective manner, it was necessary to respect the text or at least to have the intention of doing so. Cyprus had not respected article I of the Treaty of Guarantee concerning the maintenance of its independence, its territorial integrity and its security, the obligation not to participate in any political or economic union with any

² United Nations, *Treaty Series*, vol. 382, No. 5475, p. 4.

³ *Ibid.*, vol. 75, No. 972, p. 135.

State, and the prohibition of any activity likely to favour either union with any other State or partition of the island. Turning to certain passages of the statements made by Archbishop Makarios in 1960 and 1964, he pointed out that, although *enosis* had not been achieved at the present time, its aim remained the same.

72. As for article II of the Treaty of Guarantee which stipulated that Greece, the United Kingdom and Turkey recognized and guaranteed the independence, territorial integrity and security of the Republic of Cyprus, it had been flagrantly violated by Greece. The coup d'état organized by the Greek officers in Cyprus and planned in Athens had brought about the crisis. The aim on that occasion had been the complete destruction of the Turkish Cypriot community and it was only when his personal power had been threatened that Archbishop Makarios had appealed to international organizations, for he had never hidden his ultimate aim: the reunion of Cyprus with Greece.

73. In collaboration with the leaders of the Greek Cypriot community, a guarantor of the Treaty of Guarantee had violated article III of that Treaty by planning a coup which sought to annex the island and destroy the Turkish community which, according to the Constitution, had rights equal to those of the Greek community.

74. Turkey, which also was required to safeguard the independence, territorial integrity and security of the Republic of Cyprus, had tried to fulfil those obligations in concert with the other guarantor Powers. It had exhausted all the means provided in the Treaty of Guarantee, without success. It had therefore been forced to act alone with the sole aim of discharging the obligations incumbent upon it. The Republic of Cyprus would have disappeared long ago as an independent State if the categorical opposition of Turkey and the resistance of the Turkish community on the island had not prevented *enosis*.

75. Mr. ROSSIDES (Cyprus), speaking in reply to the representative of Turkey, concerning the statements alleged to have been made by Archbishop Makarios, said that those statements were borne out by history and that Cyprus had always desired union with Greece. Before acceding to independence, Cyprus envisaged not independence but union with Greece, a fact which was no secret for anyone. Subsequently, as a result of objections to this planned union, Cyprus had accepted independence.

76. Furthermore, the Turkish Cypriot community had obtained many advantages, which had given rise to recent events.

77. Archbishop Makarios had been far from working to achieve *enosis* because his disappearance had been planned before the attempt to bring about the union of Cyprus with Greece. In fact, it was Turkey which was trying to dismember Cyprus; that had been the aim Turkey had been seeking in 1964 when it was preparing to invade the island.

78. He also wondered why the Turkish Minister of Foreign Affairs had gone to London to consult the British Government. Did Turkey think that the United Kingdom was

going to join its operations? If not, why had Turkey acted as it did?

79. Mr. GÜNEY (Turkey) stressed that Turkey had not denounced the Geneva Conventions of 1949, that it was still a party to them, and that the representative of Cyprus could not base his statements on newspaper articles written in the light of reports from Greek sources. When anyone wished to know whether a State had denounced a convention, it was necessary to consult the depositary authorities of the convention in question, namely the Swiss Federal Council.

80. He also recalled the inhuman acts committed during the last 11 years against the Turkish Cypriot community and pointed out that any acts based merely on emotions should be avoided.

81. As for the reason why Turkey had not discharged its obligations in 1967, he explained that Turkey had wished to give the Cypriot régime another chance to fulfil the solemn undertaking that it had made under the terms of the Treaty of Guarantee.

82. The quotations that he had made were taken from the statements made by Archbishop Makarios after 1960.

83. Mr. EUSTATHIADES (Greece) pointed out that the military coup which had occurred on Cyprus had been condemned both by the Cypriot delegation and the Greek delegation. Thus, since supposedly it was an act of aggression in the eyes of Turkey, he wondered why Turkey did not in its turn condemn its own action in Cyprus. Greece, for its part, had formally declared that it was not seeking the union of Cyprus with Greece.

84. The Security Council had unanimously adopted recommendations requesting the withdrawal of Turkish troops as rapidly as possible. Those recommendations had been ignored, as had been the undertakings assumed by Turkey at the recent Geneva Conference. Turkey was actually using pretexts to carry forward a plan that had been long projected and carefully prepared. However, it could not invoke the Treaty of Guarantee which in no way could be interpreted as authorizing aggression against Cyprus.

85. Mr. GÜNEY (Turkey) said that, regarding plans for annexation, Greece must first reply to the statements of Archbishop Makarios. The intervention of Turkey in Cyprus sought to safeguard the territorial integrity and independence of Cyprus and to ensure the security of the Turkish Cypriot community.

86. Mr. ROSSIDES (Cyprus) said that the newspapers he had quoted were not Greek and that the articles had been written by independent journalists.

87. Mr. GÜNEY (Turkey) said that he questioned the legal value of the newspaper reports mentioned by the representative of Cyprus. It would be better to request the opinion of the depositary of the Geneva Conventions of 1949. As for the allegation that Turkey had not denied the reports, it was true that Turkey had not replied to them but in fact it did not have time to reply to all the allegations and propaganda of the Greek Cypriot community.

88. Mr. EUSTATHIADES (Greece) observed that the Turkish representative had replied only by affirming that Archbishop Makarios was working for the union of Cyprus with Greece. Such a reply was perplexing, for he wondered what explanation could be offered for the fact that the military coup which, according to the representative of Turkey had been designed to annex Cyprus to Greece, had been directed against Archbishop Makarios. In fact, Archbishop Makarios could express only the wishes of the population, the implementation of which had been abandoned. In signing the Treaty of Guarantee, Cyprus and Greece had made an important sacrifice.

89. Moreover, concerning the Geneva Conventions of 1949, the real issue was not in that instance whether those international conventions had been denounced: the important question was the observance of them.

90. Mr. GÜNEY (Turkey) replied that Archbishop Makarios wished to be the architect of *enosis* and that the rug had been snatched from under him.

The meeting rose at 6.30 p.m.

1483rd meeting

Wednesday, 23 October 1974, at 10.45 a.m.

Chairman: Mr. Milan ŠAHOVIĆ (Yugoslavia).

A/C.6/SR.1483 and Corr.1

AGENDA ITEM 86

Report of the Special Committee on the Question of Defining Aggression (*continued*) (A/9619 and Corr.1, A/C.6/L.988)

1. Mr. ROSALES (El Salvador) said his delegation recognized that the draft definition of aggression (see A/9619 and Corr.1, para. 22) was the product of lengthy and delicate negotiations and had noted the concern expressed by some that any alteration of the text could nullify the work accomplished by the Special Committee on the Question of Defining Aggression. Nevertheless, his delegation had certain reservations with regard to the draft definition. First of all, it was regrettable that the definition was almost totally concerned with the concept of direct aggression, leaving out of account acts of indirect aggression such as economic aggression in its various forms and manifestations. In his statement to the General Assembly (2239th plenary meeting), his country's Minister for Foreign Affairs had drawn attention to that short-coming of the definition. The provision made in article 4 of the draft definition for the Security Council to determine that other acts constituted aggression did not remedy that deficiency, since article 1 restricted the concept of aggression to the use of armed force by one State against another. The definition was thus incomplete and the enumeration of acts provided in article 3 included only the obvious categories of armed aggression. The limited scope of the definition reduced its value, although no one could deny that the unlawful use of armed force by a State against the sovereignty, territorial integrity or political independence of another State was a typical form of international aggression. His delegation had particular reservations concerning article 3 (*d*), in which the reference to marine fleets might be interpreted as prejudicing the sovereignty and jurisdiction of coastal States. It should have been made clear that fishing fleets did not fall within the scope of that term. In that regard, his delegation supported the views expressed by the representatives of Ecuador and Indonesia at the concluding stage of the Special Committee's last

session (see A/9619 and Corr.1, annex I). During the present debate many delegations had expressed apprehensions with regard to the wording of article 3 (*d*), and his delegation would support any proposal designed to clarify the meaning of that provision. It could not accept any limitation of the right of coastal States to protect the marine resources within their jurisdiction. He reserved his delegation's right to comment on other provisions of the draft definition, if necessary.

2. Mr. GODOY (Paraguay) welcomed the completion of the draft definition of aggression, which was the culmination of nearly 50 years of effort. Although it was not perfect, the draft definition seemed to be acceptable to a broad majority of States. His country had not been a member of the Special Committee, and he would like to make comments on the draft definition.

3. With regard to article 1, his delegation agreed with the Special Committee's decision to define aggression as, primarily, the use of armed force by a State against another. It should not be forgotten, however, that there were other serious ways of harming the national interests of a country. The phrase "or in any other manner inconsistent with the Charter of the United Nations" was legally imprecise and could give rise to various interpretations, thus complicating the task of the organ responsible for determining the nature and scope of the acts committed. The reference to the use of armed force against the sovereignty of a State was likewise imprecise, since the concept of sovereignty was almost totally intangible. His delegation also had misgivings with regard to the reference to a "group of States" in the explanatory note to article 1. It might be inferred that, where an act of aggression was committed by a State which belonged to such a group, the onus of aggression might also apply to other States in the group even if they had not participated in the act in question.

4. The language of article 2 was entirely appropriate and realistic. It should be emphasized that in determining the existence of an act of aggression the Security Council must