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RESOLUTION 1181 (XII) (QUESTION OF
DEFINING AGGRESSION)
Third session

Comments by Governments on the Question
of Defining Aggression

Addendum

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5. CONGO (Democratic Republic of)

Note Verbale from the Permanent Mission to the United Nations dated 10 March 1965

[Original: French]

I. THE PRINCIPLE OF DEFINING AGGRESSION

A number of States have been considering whether or not it is possible to give a definition of aggression that would be acceptable, if not to all Member States, at least to the majority of them, including the permanent members of the Security Council.

In the opinion of this Government, the work done so far which has been brought to its attention demonstrates that, although there are insurmountable difficulties in the way of finding a universally acceptable definition, a generally acceptable definition is possible.

The Government of the Democratic Republic of the Congo sincerely believes that the work of the Special Committee established by United Nations General Assembly resolution 895 (IX) will eventually make it possible to draw up a definition of aggression acceptable to the majority of States, a majority which would of necessity include the permanent members of the Security Council.

The optimism of the Government of the Democratic Republic of the Congo is of course limited to the question of defining conventional aggression, and not atomic aggression.

In atomic warfare, the fundamental nature of aggression is such that the question of defining it, and even of condemning it, appears in an entirely different light. Indeed, making the first move or taking the initiative in beginning military operations, which is an essential feature of aggression, is the first principle of atomic warfare.

In the latter case, self-defence does not exist since there is no question of the victim surviving. In atomic strategy, to strike first is the only thing that gives any sense to the operations undertaken. It is this possibility that the potential adversary might take the initiative in an atomic strike which intimidates and acts as a deterrent to any other aggression.

Atomic counter-attack as an action of self-defence under the terms of Article 51 of the Charter is conceivable only in so far as the aggressor's total

first strike does not achieve all its objectives, in other words, in so far as some means of counter-attack remain at the disposal of the victim. It is one of two things: either this atomic counter-attack is possible, in which case there will be no aggression; or else it is not, in which case there can be no self-defence.

Thus the way to prevent atomic aggression is not by means of a definition of such aggression with a view to ensuring its condemnation, but by means of the supervised destruction of all atomic weapons and their launching devices. The path to be followed is therefore that of atomic disarmament.

With regard to conventional warfare, on the other hand, a start can perfectly well be made by defining aggression in order to prevent it or to penalize it more easily. Our observations will therefore bear exclusively on aggression committed by conventional means and not by atomic weapons.

II. METHOD OF DEFINITION

The Democratic Republic of the Congo is in favour of the adoption of a method which will make it possible to know in advance whether a specific act could possibly fall into the category of acts of aggression.

It is well that the aggressor should know in advance that its action might provoke the intervention of the Security Council under the terms of Articles 41 and 42 of the Charter of the United Nations, just as it is useful that the victim should be assured in advance of the legality of its self-defence under the terms of Article 51 of the Charter.

This organ, whose task it is to apply the Charter, has powers of interpretation inherent in the whole question of the implementation of the written provisions by some pre-established standard. In this regard, however, it must be recognized that the Council has powers of interpretation that go a little further; in other words, the Council must be allowed to take into account the circumstances accompanying the action in question in order to decide whether or not it is a case of aggression.

Indeed, it is obvious that the intention of the State committing an act of aggression or the aim pursued by such a State should necessarily be taken into account in determining the nature of its action. A crossing of the frontier, even an intentional crossing, by local forces does not necessarily constitute an act of aggression. On the other hand, a major concentration of forces at the frontier may constitute a threat to peace. Aims must therefore be disclosed and intentions revealed by an examination of the circumstances, the facts and all available data.

Thus the inflexibility of a restrictive enumeration, combined with consideration of the antecedents, is to be rejected as a valid method of defining acts of aggression, since it would give the would-be aggressor the hope of finding loopholes in the process of the Security Council's application of the abstract text to the actual facts of the case.

The method which would combine the definition with an illustrative list could, however, be retained. Such a system could serve as an indispensable guide to the international organ whose task it is to pass judgement on actions referred to it, while at the same time allowing it to consider their true significance, since the attitude of such an organ could be influenced to a considerable, even decisive, degree by the circumstances accompanying such actions.

The Security Council, or the General Assembly of the United Nations if it is considered preferable - for the Government of the Democratic Republic of the Congo does not want to take a rigid position in this respect - whose task it is to say whether or not there is aggression, is, after all, essentially a political and not a judicial body.

Pending the establishment of a code of crimes against peace and humanity and of an international criminal court to put that code into effect, the international community has only a political body, such as the Security Council or the General Assembly, to decide between the conflicting parties, to designate the aggressor and to call for penalties.

Now if a political body cannot be circumscribed and ruled in its actions by rigid texts after the manner of the provisions of a criminal code, neither can it be free, without directives or guidance. It would be just as inadvisable to limit its competence as to allow it full discretion.

A middle way must be found, and it might well be found in a method which would combine the definition with an enumeration which would not be restrictive but illustrative and exemplary.

Such a method of defining aggression is the one favoured by the Government of the Democratic Republic of the Congo.

III. CONTENTS OF THE DEFINITION

On the subject of what the definition should contain and what the enumeration should illustrate, some very interesting and even comprehensive ideas were submitted to the Special Committee. The Government of the Democratic Republic of the Congo does not think that it can add anything useful to the suggestions already made. The ideas likely to gain general acceptance must therefore be chosen from all those which have emerged.

This Government can, however, give the Committee the benefit of its own experience. The tragic events it has experienced since attaining independence, and, which it is still experiencing, have not failed to provide it with some useful ideas about what should be included in the definition of aggression. In the light of its own experience, therefore, it is able to put forward suggestions about two types of indirect aggression or threats to the peace which certain deeds constitute.

(a) Certain activities connected with armed bands, which were mentioned in the revised draft resolutions submitted to the Special Committee by Iran and Panama (A/AC.77/L.9)^{1/} and by Paraguay (A/AC.77/L.7),^{2/} should be included, if not in the definition of aggression, at least in the definition of a threat to the peace which some people, not unreasonably, equate with indirect aggression.

The organization of armed bands in order to engage in incursions, infiltration or operations in the territory of another State, or the toleration, encouragement or assistance of the organization of such armed bands in a State's own territory, must be considered threats to the peace and are cause for the application of Article 39 of the United Nations Charter.

On the other hand, the dispatch of arms, instructors or advisers and particularly volunteers to bands operating in the territory of another State should be considered pure and simple acts of aggression.

(b) The notion of economic aggression, as indirect aggression or a threat to the peace, should also be included.

Any act whereby one State dispossesses another State of its natural resources, its assets or its products sold abroad should be considered an act of economic aggression.

^{1/} See also document A/C.6/L.335/Rev.1.

^{2/} See also document A/C.6/L.334/Rev.1.

In the opinion of the Government of the Democratic Republic of the Congo, the seizure of exports, the withholding of gold or other assets of a State or deliberate efforts to prevent a State from obtaining or regaining its legitimate economic independence are illegal international acts, liable to be referred to the Security Council, in accordance with the Charter of the United Nations.

6. JAPAN

Note Verbale from the Permanent Mission to the United Nations dated 12 March 1965

[Original: English]

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The Permanent Representative of Japan has further the honour to recall that the Government of Japan expressed its views on this question by the note SC/59/62, dated 13 March 1959,^{3/} addressed by the Permanent Representative of Japan to the Secretary-General, and to confirm hereby that these views of the Government of Japan remain unchanged.

7. MEXICO

Letter from the Permanent Mission to the United Nations dated 12 March 1965

[Original: Spanish]

With regard to the advisability of reopening consideration of the question of defining aggression, the Government of Mexico wishes to reaffirm the position it took in the Sixth Committee of the General Assembly and in the Special Committee during the discussions which took place in the past. It considers that it is not only possible but advisable that a definition of the concept of aggression should be drawn up. At the same time, and in view of the fact that there has been no general desire to reopen consideration of the question, the Government of Mexico does not consider that this is an appropriate time to do so.

^{3/} See document A/AC.91/1, pp. 12-13.