



Chairman: Mr. Paul Bamela ENGO (Cameroon).

AGENDA ITEM 87

**Report of the Special Committee on the Question of
Defining Aggression (continued) (A/8019)**

1. Mr. NARKHUU (Mongolia) said it was disappointing—and ironical, at a time when acts of aggression were still common—that the Special Committee on the Question of Defining Aggression had been unable to produce an agreed draft definition. While it would not automatically prevent acts of aggression, a generally accepted definition would be of moral and political value, since it would establish law and order in international relations and confirm that aggression was an international crime. In addition, it might discourage potential aggressors and it would enable the Security Council to take more vigorous and effective measures. The Mongolian delegation therefore attached considerable importance to the task of defining aggression, although it was well aware of the difficulties, since the question was a political as well as a legal one and views differed on both the form and the substance of the definition.
2. The principle of priority was a simple and objective criterion for determining the existence of aggression and should be included in the definition. That principle was in keeping with the provisions of the Charter of the United Nations which implicitly prohibited the first use of force. On the other hand, the concept of aggressive intent was subjective and the existence of such intent was extremely difficult to prove. It would therefore not be appropriate to use that concept in the definition. The right of dependent and colonial peoples to use armed force in order to achieve self-determination, sovereignty and territorial integrity should be clearly stated in the definition; such a statement would be in conformity with the purposes of the Charter and the relevant resolutions of the United Nations. With regard to the consequences of aggression, it was essential to include a clause to the effect that territory acquired by aggression should not be recognized. Occupation of the territory of another State following aggression was contrary to the principle of territorial integrity and was tantamount to continued aggression, as had been seen in the Middle East. In view of their disastrous effects, weapons of mass destruction should be mentioned in the definition. His delegation believed that the USSR draft (see A/8019, annex I, draft proposal A) and the thirteen-Power draft (*ibid.*, draft proposal B) contained the necessary elements and could serve as a basis for future work.
3. The consensus method would be the most suitable procedure for the adoption of the definition, which should command the support of all the members of the Sixth Committee, including the permanent members of the Security Council. His delegation supported the recommendation of the Special Committee that the General Assembly invite the Special Committee to resume its work as early as possible in 1971 (see A/8019, para. 147).
4. Mr. PRANDLER (Hungary) said that the work of the Special Committee had made some progress, considering the vain attempts made for forty years to define aggression, and the 1967 debates, when a number of delegations had seen no need for and no possibility of defining aggression. The Hungarian delegation welcomed the readiness of those delegations to co-operate in the search for a satisfactory solution, which would greatly contribute to the effectiveness of international law and of the United Nations. The increasing co-operation in the progressive development of international law was a logical outcome of the joint efforts to seek peace and of adherence to the principles and provisions of the Charter.
5. His delegation agreed that the definition should refer to the use of armed force as the most essential element of aggression. Indirect aggression was difficult to define, and the Special Committee should concentrate on the direct forms of aggression, on the clear understanding that the scope of the definition would later be broadened to cover aggression in all its forms.
6. The USSR draft rightly emphasized the objective principle of priority, which was an essential element in the definition. Failure to state that criterion would sanction “preventive wars”, which violated international legal order and constituted a threat to international peace.
7. His delegation had reservations about including in the definition the subjective concept of aggressive intent. There could be no such intent in certain uses of force recognized as permissible under the Charter: self-defence in the face of armed attack, enforcement action by or with the authorization of the Security Council, and liberation of oppressed peoples and safeguard of their right of self-determination. Nevertheless, the concept could be included in order to meet the views of certain delegations, provided other essential principles were not sacrificed.
8. The definition should safeguard the discretionary power of the Security Council to determine whether an act of aggression had been committed. Yet a statement reaffirming that power, such as the one contained in paragraph I of the six-Power draft (see A/8019, annex I, draft proposal C) would not replace a definition of aggression. In regard to the argument that other United Nations organs were

competent to determine the existence of an act of aggression and to take measures to maintain international peace and security, the Hungarian delegation could not accept any solution alien to the spirit and letter of the Charter.

9. The USSR and thirteen-Power drafts provided a sound basis for an acceptable definition. In addition to the points already mentioned, they embodied other essential principles: the principle of the non-recognition of territorial gains obtained by force in violation of the Charter; the principle that aggression was a crime against international peace entailing the political and material responsibility of States and the criminal responsibility of the persons guilty of that crime; the principle of the right of dependent peoples to use force in order to exercise their inherent right of self-determination.

10. No quick solution could be expected, since the definition of aggression was not only a juridical task but also an important political question with far-reaching practical consequences. The Special Committee should therefore spare no effort and no expense to reach the broadest possible agreement.

11. Mr. AL-SHARAFI (Yemen) saw certain similarities in the three drafts considered by the Special Committee, which reflected the interests and views of their different sponsors. The establishment of the Working Group illustrated the general willingness to work for a definition acceptable to all or most of the members, but there had not been time for the Group to produce decisive results. It was to be hoped that the spirit of co-operation and goodwill would continue to prevail in the future. The Special Committee should concentrate on defining the concept of armed aggression by one State against another—the most dangerous form. The definition should include the principle of non-recognition of all gains resulting from armed aggression and the principle of priority. A clear and objective definition would help the Security Council and the General Assembly to maintain peace, by enabling them to take speedier decisions. His delegation therefore supported the recommendation of the Special Committee to the General Assembly concerning the resumption of the Special Committee's work in 1971.

12. Mr. JAZIĆ (Yugoslavia) welcomed the progress made by the Special Committee and in particular the efforts of the Working Group. His delegation firmly believed that it was legally possible and politically desirable to adopt a generally acceptable definition of aggression which would assist the United Nations and its competent organs in the fulfilment of their responsibilities under the Charter.

13. The definition should be based on the provisions of the Charter and should not derogate from the discretionary powers of the competent organs of the United Nations, in particular the power of the Security Council to determine the existence of aggression. Although the Charter contained no definition of aggression, Article 2 (4) referred to its most dangerous form, namely the use of force against the territorial integrity or political independence of any State. The Special Committee's task was to define acts of aggression resulting from the use of armed force by one State against another. Once that had been done, it would be

for the General Assembly to decide whether other forms of aggression should also be defined. His delegation believed that at the present stage the definition of aggression should cover only the use of armed force, without qualifying it as direct or indirect, and for that reason it supported paragraph 2 of the thirteen-Power draft proposal.

14. The concept of aggression should be based on objective criteria, which included first of all the principle of priority. With regard to the subjective concept of aggressive intent contained in the six-Power draft, two problems emerged: first, how to establish the existence of aggressive intent in order to determine whether or not an act of aggression had been committed; and second, whether the alleged existence of aggressive intent could serve as an excuse for launching a surprise attack or preventive war. Clearly the use of subjective criteria gave rise to difficulties, although that did not exclude the possibility of their being taken into consideration.

15. A list of acts of aggression could either include all conceivable acts or be restricted to the most obvious examples. His delegation considered that it would be appropriate to list some of the more drastic cases, but that the list should be non-exhaustive and without prejudice to the full powers of the Security Council. Invasion or attack by armed forces, military occupation, even temporary, or annexation of territory belonging to another State constituted flagrant acts of aggression which should be incorporated in any definition.

16. His delegation attached the utmost importance to the strict interpretation of the provisions of the Charter concerning self-defence. Above all, in accordance with Article 53 (1) no enforcement action should be taken under regional arrangements or by regional agencies without the Security Council's authorization. Any attempt to go beyond the provisions of Article 51 could only lead to dangerous violations of the fundamental sovereign rights of a State, whether outside a given regional organization or a member accused of violating regional discipline. As stated in the seventh preambular paragraph of the thirteen-Power draft, no considerations of whatever nature could excuse the use of force by one State against another, with the exception of the right of individual or collective self-defence laid down in Article 51.

17. It would be appropriate to refer in the definition to the right of self-determination of peoples and to the recognition by the United Nations of the right of colonial peoples opposing forcible action against their right of self-determination to receive all support in accordance with the principles of the Charter. The thirteen-Power draft in no way limited the scope of Charter provisions concerning the right of peoples to self-determination, sovereignty and territorial integrity.

18. His delegation supported the Special Committee's recommendation that the General Assembly should invite it to resume its work as early as possible in 1971.

19. Mr. LIANG (China) reiterated his delegation's view that a definition of aggression would not be of any great usefulness, though it was willing to participate in the Sixth Committee's discussion of the problems involved.

20. In view of the ineffectiveness of earlier conventions and other instruments containing definitions of aggression, and since the General Assembly was not a legislative organ and could not issue legislative fiats, an Assembly resolution seemed to be the only form such a definition could take.

21. If the General Assembly were codifying all the aspects of aggression, it could include in the codification provisions concerning international responsibility and non-recognition of territorial gains obtained by aggression. However, such provisions, which appeared in two of the drafts considered by the Special Committee, were inappropriate in a definition of the kind under discussion. In addition, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, which had just been adopted by the General Assembly (resolution 2625 (XXV)), already contained provisions on that subject and there would be no point in repeating the same idea in the definition of aggression.

22. In the discussion about the organ of the United Nations for which the definition was intended, it was important to distinguish between political and judicial organs. A study of the practice followed by the Security Council in determining whether aggression had been committed showed that the Council had never considered itself to be a judicial organ. In addition, it had always attached more importance to finding peaceful means of settlement than to reaching conclusions concerning the existence of acts of aggression. The discretionary power of the Council would not be affected by the proposed definition, which would simply be used by that organ as one of many legal sources to draw on in its work.

23. The Declaration on Friendly Relations used the term "war of aggression", which had a restrictive meaning and implied the existence of a state of war. Yet there were other uses of force which constituted aggression. The Special Committee was faced with the choice between concentrating on the concept of wars of aggression and using some other formula which would cover other uses of force and better meet the needs of the international community. In any case, the task of harmonizing the Charter, the Declaration on Friendly Relations and the proposed definition would take many years.

24. Another obstacle to the definition was the difference of views on the inclusion of a reference to indirect aggression. The Chinese delegation was of the opinion that that form of aggression, which embraced subversive activities, should be included. Indirect aggression, armed or otherwise, had become much more subtle and widespread since the end of the Second World War and presented a new menace to the international community unknown at the time when the first attempts to define aggression had been made in the United Nations.

25. Mr. ROSSIDES (Cyprus) welcomed the fact that the Special Committee had concentrated on the definition of aggression proper, as it appeared in the Charter, namely the use of armed force or armed attack by one State on another. The great achievement of the Special Committee at its last session had been to relegate to the past the debates about the possibility or desirability of a definition;

all three groups represented in the Special Committee had now submitted draft proposals. His delegation was in favour of producing an agreed text that would represent the views of all parties, since the definition should command universal respect. However, if it proved impossible to reach agreement, a very wide majority would be a sufficient basis for submitting a draft resolution to the General Assembly, which could then consider whether a unanimous decision was necessary. It should not be forgotten that the Special Committee was mainly concerned with the legal aspects of the definition, whereas the General Assembly had over-all political responsibility.

26. Of the various questions still in dispute, he thought that the urgency of the need for a definition was beyond doubt; indeed, the General Assembly had so stated in resolution 2549 (XXIV), and nothing had occurred in the intervening period to change the situation. On the contrary, the need for the definition had become even more urgent in the light of the debates which had taken place at the present Assembly session and in order to complete such texts as the Declaration on Friendly Relations and the draft Code of Offences against the Peace and Security of Mankind, as well as other international instruments on security matters.

27. On the subject of direct or indirect aggression it was relevant to point out that the Charter itself referred merely to aggression; in Article 1 a distinction was drawn between threats to the peace, which the United Nations existed to prevent, and acts of aggression or other breaches of the peace, which were to be suppressed. It therefore appeared that an act of aggression was a specific instance of the more general term "breaches of the peace". Under Article 39 the Security Council was responsible for determining the existence of any threat to the peace, breach of the peace or act of aggression, which could be distinguished from each other by reference to Article 51, where the right of self-defence in the case of "armed attack" was laid down. Setting aside the interpretation of Article 51 based on the French text, which referred to "*aggression armée*", he believed that the Special Committee could take it that the meaning of aggression in the Charter was tantamount to armed attack giving rise to the right to self-defence. It did not matter whether a particular act was direct or indirect, since the criterion for determining whether it amounted to aggression or merely a breach of the peace was whether or not it constituted an armed attack within the meaning of Article 51. That approach might simplify the task of defining aggression and offer a bridge between the opposing points of view.

28. With regard to aggressive intent, the six-Power draft laid down two conditions for determining the existence of aggression, namely the purposes listed in paragraph IV, section A, coupled with the means set forth in paragraph IV, section B. That concept, as the French representative in the Special Committee had stated,¹ led to the theory of just and unjust wars, which was a mediaeval notion. Since the Charter referred only to acts and not to motives, he could not agree with the inclusion of the concept of intent. The purpose of the definition was to restrain aggression, not to provide justification for it; to give effect to the

¹ See A/AC.134/SR.57 of 20 July 1970.

Charter, not to restrict its application. He could not accept the idea that a State would be justified in using one of the means listed in paragraph IV, section B, for the purpose of executing the decision of a court of arbitration or an international tribunal, for instance, since that would be contrary to the Charter.

29. He was opposed to including in the definition the concept of political entities other than States, which was not mentioned in the Charter.

30. Further discussion might help to bring the differing points of view closer together. In that connexion one of the sponsors of the thirteen-Power draft had suggested that it might be possible to add the infiltration of armed bands to the list of acts of aggression.

31. His delegation supported the recommendation to renew the Special Committee's mandate and hoped that the draft resolution adopted by the Sixth Committee would refer to the urgency of the task of the Special Committee.

32. Mr. ALCIVAR (Ecuador) said that the celebration of the twenty-fifth anniversary of the United Nations, as an occasion for sober appraisal of the Organization's record, had prompted his delegation to reiterate the features it wished to see embodied in the proposed definition of aggression.

33. The United Nations Charter was much more than a general multilateral treaty. It had been pointed out that, although a treaty in form, in substance it was the constitution of the international community, comparable to the constitutions of States. Ecuador would go so far as to say that it was the constitution of the universal international community juridically organized as the United Nations.

34. The League of Nations had been a community of States created with a view to universality. Being the first attempt at international organization, it had understandably made mistakes—mistakes which were still being repeated. Nevertheless, it was to be admired for having established the fact that war concerned not only belligerents but the whole international community, a view which had paved the way for the new legal and moral conception of war as a crime against humanity.

35. The United Nations had been born as a community of peoples, and it was therefore in the name of the peoples of the United Nations, and not of the High Contracting Parties, that its Charter was signed. The basic philosophy of the Charter was set forth in the Preamble, above all in the determination that armed force should be used only in the common interest, and in Article 1 (1), which summarized the basic objective of the United Nations and laid the foundation for the system of international security instituted by the Charter. It also contained the first mention in the Charter of acts of aggression.

36. The prohibition of the use of force was a principle of international law with a long history prior to its incorporation in Article 2 (4) of the Charter. However, the prohibition was expressed there in a form which had provoked misgivings of the kind which the definition of aggression

must dispel. Whereas Article 10 of the Covenant formulated the prohibition positively, Article 2 (4) of the Charter did so only negatively. The arguments advanced at San Francisco against a positive formulation had not been justified by subsequent events. His delegation was therefore anxious that the definition of aggression reflected with absolute clarity the fact that the principle in Article 2 (4) of the Charter was a constitutional rule mandatory for States and that the right to territorial integrity and territorial independence which that preemptory rule established was positively guaranteed, as in the Covenant, by the international legal order and thus by the system of collective security instituted by the Charter.

37. That was the basis of the thirteen-Power draft. Only the world Organization, in the maintenance of international peace and security, could use force. Its use by one State or group of States against another constituted a crime of aggression which gave rise to the responsibility and penalties established by the international legal order.

38. Articles 1, 39 and 51 of the Charter demonstrated that a distinction was to be drawn between armed and other aggression and that only armed aggression, or armed attack, justified the exercise of the right of self-defence. That right had existed before the Charter; Article 51 did not create it. Moreover, it was exercisable solely as stipulated in Article 51, otherwise its exercise would constitute armed aggression. Consequently, the provisions of Article 51 could not be held to constitute an exception to the Organization's monopoly of the right to use force.

39. As far as the use of force by regional bodies was concerned, it was difficult to distinguish between offensive and defensive uses. But Chapter VIII of the Charter laid down a satisfactory régime by rigorously subordinating the activities of such bodies to the United Nations, thus preventing them from using force in a manner which infringed the Organization's monopoly. The thirteen-Power draft covered that situation appropriately by its references to Articles 51 and 53 of the Charter. It had been suggested that the practice of certain regional organizations undermined the view embodied in the thirteen-Power draft; Ecuador disagreed. Any action inconsistent with those articles would be illegal under Article 103 of the Charter and so could not constitute a source of law.

40. His delegation was totally opposed to the inclusion of the notion of intent in the definition. As formulated in the six-Power draft, it extended beyond intent to motivation, a subjective element which had no place in penal law.

41. He confirmed Ecuador's decision to contribute fully to the task of defining aggression, although it could not agree to any definition which was not based on the fundamental principles of the Charter or which permitted any abuse of the right to self-defence or of the prerogatives of regional bodies. If a suitable definition was obtained by consensus, Ecuador would support it, but it would not sacrifice its views for the sake of agreement.

42. Mr. OWADA (Japan), Rapporteur, said that if the Sixth Committee wished its report to the General Assembly to contain an analysis of the views expressed on agenda item 87 it would have to take a decision to that effect,

because of the provisions of General Assembly resolution 2292 (XXII). The Secretariat had indicated that the cost of summarizing the main views would be approximately \$2,250.

43. The CHAIRMAN said that in the absence of any objection he would take it that the Committee wished its

report to contain a summary of the principal views which had emerged in the discussion of the Special Committee's report.

It was so agreed.

The meeting rose at 12.50 p.m.