



Thursday, 2 November 1972,
at 10.50 a.m.

Chairman: Mr. Erik SUY (Belgium).

In the absence of the Chairman, Mr. Velasco Arboleda (Colombia), Vice-Chairman, took the Chair.

AGENDA ITEM 88

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

1. Mr. MAKAREVICH (Ukrainian Soviet Socialist Republic) said that a definition of aggression must be produced rapidly, since it was a very important means of preventing war. The activities of the Special Committee had a very direct connexion with the future of the world at a time when aggression was being perpetrated in a number of regions, destroying innocent lives and doing harm to the environment. The Ukrainian SSR had welcomed the initiative of the USSR leading to the establishment of the Committee. If a new world war was to be prevented, it was essential that all the forces of peace should unite to resist aggression.

2. All acts of aggression had features strictly their own as well as characteristics in common, and it was the latter that should be embodied in the definition of aggression. The existence of such a definition would provide a legal basis for putting a stop to any aggressor. Not only that, but the activities of the Security Council would be facilitated by the clarification it would provide of the Charter's provisions concerning peace-keeping.

3. At its fifth session, the Special Committee had made progress, both in its plenary meetings and in the meetings of the informal negotiating group. In annex II, appendix A, of its report (A/8719) was a list of a number of basic elements of the definition prepared by the informal negotiating group on which agreement had been reached. There were signs of a closing of the gap in regard to such matters as the importance to be given to the principle of priority. The Special Committee had been criticized for its slow rate of progress, but such criticism failed to take account of the complexity and difficulty of the task. In that connexion, it might be useful to recall that it had taken 10 years to produce the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. Some delegations had also found the Committee's working methods unsatisfactory. In his delegation's view, however, the search for formulas which would be acceptable all round was the only possible method. If any other rule than that of consensus was followed, a potential aggressor could always cite the lack of unanimity as a pretext to justify its attitude.

Generally speaking, the wording of the definition should be in line with the wording of Article 2 of the Charter.

4. With regard to the question of lawful uses of force, alternative 1 in the report of the informal negotiating group might be used as a basis for an agreement. The proposals on that point submitted by the USSR to the informal group were fully in keeping with the Charter. In the matter of the provision which would guarantee the right of peoples to self-determination, the Soviet Union draft proposal (*ibid.*, annex I, draft proposal A) was very close to that of the 13 Powers (*ibid.*, draft proposal B). The use of force by peoples under colonial domination was justified in Article 51 of the Charter, since colonial domination could be assimilated to continued aggression.

5. With regard to the legal consequences of aggression, it was important to include in the definition the principle of non-recognition of territorial gains resulting from the use of force in violation of the Charter. That would help to discourage a potential aggressor. The draft proposals of the USSR and the 13 Powers both contained a provision to that effect. On that particular point, his delegation favoured the second of the alternatives proposed in the report of the informal group.

6. He expressed satisfaction with the progress made. He hoped that the Sixth Committee would recommend the General Assembly to extend the mandate of the Special Committee, inviting it to continue its work and to endeavour to complete it as rapidly as possible. The want of a precise definition of aggression was detrimental to observance of the provisions of the Charter. All peace-loving nations were anxious that such a definition should be produced rapidly so as to round off the series of instruments guaranteeing international security.

7. Mr. YASSEEN (Iraq) said that the process of defining aggression was declaratory in character. Interpretation of the Charter and of international law in general was the way to crystallize the notion of aggression as conceived by those who had drafted the Charter.

8. While the definition of aggression was declaratory, it was nevertheless of great importance, since the lack of such a definition had led to frequent abuse. At the same time, it would be going too far to argue that in the absence of a definition it was impossible to apply the rules of the Charter concerning aggression correctly. Apart from the fact that it would enlighten international public opinion and associate it with the work of the United Nations bodies responsible for testifying to acts of aggression, the definition of aggression would facilitate the task of those bodies and enable them to

carry it out properly and impartially. It would also protect certain States against their own weaknesses by bringing out, for example, certain forms of favouritism, and it would enable them to fulfil their peace-making role more effectively.

9. The interpretation underlying the definition of aggression must not be restrictive. It must extend to the consequences to be drawn from aggression and must specify what could or should be done to help the State which was the victim of aggression and bring the aggressor State to heel.

10. With regard to the role of the Security Council in the definition of aggression, he said that certain statements wrongly gave the impression that the Council should play a creative role. Actually, the Security Council should confine itself to verifying that acts of aggression had been committed, basing its action on the notion of aggression as deducible from international law. Hence, the delegation of Iraq could not accept certain formulas which suggested that the Security Council was at liberty to determine the notion of aggression. It was important that the definition of aggression should leave no doubt on that subject. If the definition was to constitute a correct interpretation of the Charter, he would not hesitate to maintain that the Security Council would be under an obligation to apply it.

11. Recalling his delegation's position on certain points, he said that in the first place a distinction should be made between the notion of intent and that of motive. Aggression was, of course, an intentional act which could not be committed by negligence, and intent was a constituent element of it; but the existence of the act of aggression did not depend in any way on the motivation. The only question was whether the perpetrator was acting deliberately. If it bombed the territory of another State, realization on its part that it was doing so was all that mattered; its motives were neither here nor there. Hence, while the delegation of Iraq agreed that the notion of intent should be embodied in the definition, it was opposed to the introduction of the notion of motive.

12. Secondly, the so-called principle of priority derived from a precise interpretation of Article 51 of the Charter, which recognized the right of self-defence in the event of armed attack; but there could be no doubt that the right in question could only be exercised where the attack had already taken place. The right of people to self-determination, a subject on which the representative of the Ukrainian SSR had made comments which he personally fully endorsed, constituted a specific instance of self-defence. Oppressed peoples had the right to fight for their independence, since colonial domination was an instance of continued aggression. In so far as the competent organs of the United Nations were not in a position to give them effective aid, their right to fight for their independence could not be challenged. The same applied to military occupation—another type of continued aggression which gave its victims the right to seek to recover the territories occupied.

13. With regard to the mandate of the Special Committee, there was no doubt that the Committee had made great

progress since 1968. To terminate its work would amount to throwing away several years of effort. International public opinion must not remain disappointed any longer, and it would be unfortunate to give up when the end was in sight. If it was true that the work of the Special Committee had progressed slowly, the reason was that certain States had been opposed to the very idea of defining aggression.

14. On the matter of the procedure to be followed, both in the Special Committee and in the Sixth Committee and the General Assembly, it would of course be preferable for all the outstanding questions to be resolved by consensus. However, the consensus method was at times tricky, since it occasionally happened that particular States were not interested in espousing the views of the international community. To insist on a consensus would be tantamount to making dependent on the wish of certain Powers, to avoid reaching a compromise, the goal which the international community as a whole was anxious to attain. The Special Committee had endeavoured over the last few years to reach a consensus, but it was now high time to consider the application of the majority rule. After all, that was how certain provisions of the Charter itself had been adopted. The majority rule was more democratic than the principle of consensus, since it made the decision dependent on the majority whereas the principle of consensus yielded to the will of a minority. In short, a definition adopted by a majority was better than no definition at all. A definition adopted by a majority could alter the attitude of recalcitrant States by bringing the weight of international public opinion to bear.

15. Mr. BESSOU (France) observed that the Special Committee's recommendation to the effect that it should be invited to resume its work in 1973 (see A/8719, para.14) reflected the view that the formulation of a generally recognized definition of aggression depended on the extent to which all the members of the Special Committee were prepared to act in a spirit of mutual understanding and accommodation. By its action in the Special Committee and the Working Group, his delegation had demonstrated its desire to co-operate in formulating a definition of aggression and to prevent that definition from being diverted from its purpose so as to justify acts of aggression committed with intentions not defined as aggressive, or committed for preventive purposes on the pretext that they constituted an act of self-defence.

16. It was regrettable that the Special Committee had made so little progress at its latest session. On the other hand, results had been achieved in informal negotiations, and his delegation therefore hoped that the Special Committee would continue its work in 1973, again using the method of informal negotiations carried out between formal meetings of a working group. His delegation considered that the Committee should meet at Geneva.

17. He reminded the Committee that his delegation's position with regard to the substance of the question was based on three principles: strict fidelity to the Charter, strict interpretation of direct armed aggression and sole responsibility of the Security Council for defining aggression. The

1972 Working Group had already indicated the possible structure of a joint definition and further compromises could probably be reached on the basis of strict respect for the Charter.

18. In his delegation's view, the principle of priority, which it considered essential, was irreconcilable with the criterion of intent. For that reason it could not agree that the two criteria of priority and intent should be included in the definition of aggression on the same footing. With regard to intent his country could, as a compromise, agree that the Security Council should take into account the aims pursued and intentions expressed by the States concerned, but it could not agree that the lack of intention characterized as aggressive under the definition given should exculpate the State which had been the first to launch a bombardment or invasion. The combination of priority and intent would provide a loop-hole for escaping condemnation as an aggressor which would go far beyond the current provisions of the Charter and cast doubt on the usefulness of a definition containing such elements.

19. With regard to the question of indirect aggression, his delegation wished to recall that in its view the definition of aggression could not be exhaustive and should contain a minimum list of the most serious cases of aggression, i.e., a minimum of incontestable cases of armed aggression, corresponding to both Article 39 and Article 51 of the Charter. In a spirit of give-and-take, however, it could agree that the list of acts of aggression should include the sending of armed bands by one State into the territory of another State. It could also agree to consider, without rejecting it *a priori*, the idea propounded by certain delegations that some acts of indirect aggression would be acts of aggression under Article 39 but would not confer the right of self-defence under Article 51. It was essential to ensure that notions as imprecise as "support of subversion" did not make it possible wrongly to invoke self-defence to justify a preventive war taking the form of an armed attack. For that reason his delegation felt it was juridically unacceptable to say that in such cases the right of self-defence under Article 51 could be invoked provided that it was proportionate to the indirect aggression.

20. Mr. CRUCHO DE ALMEIDA (Portugal) stressed the importance of the Special Committee's work and expressed the view that the remaining differences of opinion reflected its members' sense of responsibility. It had to be acknowledged, however, that the report of the informal negotiating group showed that most of the major problems raised by the notion of aggression still remained to be solved.

21. At the current stage of the work, his delegation merely wished to make two comments. Firstly, the definition of aggression was too complex a question to be complicated further by efforts to introduce elements which had nothing to do with the notion to be defined. There was no basis in the Charter or the works of legal writers for linking the concept of aggression to the right to self-determination, a step which merely created an extraneous issue. The question of self-determination was carefully regulated in the

Charter, which contained no provisions permitting any alternative to peaceful means of settling possible disputes in that area. There could be no exception to Article 2, paragraph 4, which guaranteed respect for the principle of non-intervention in the internal affairs of States.

22. Furthermore, the reference to the use of nuclear, bacteriological or chemical weapons or any other weapons of mass destruction constituted an unjustified extension of the problems relating to aggression. Without overlooking the particularly cruel nature of those weapons, it would seem more advisable to deal with them in the context of disarmament or the progressive development of the humanitarian law of war.

23. In view of the slow progress of the Special Committee's work, the Sixth Committee might consider either renewing its mandate for 1973 or giving it time to reflect by deferring its next session until 1974. Before taking a decision on that point, his delegation would follow carefully the debate in the Sixth Committee, so as to inform itself about the results of the informal negotiations undertaken by the members of the Special Committee with a view to resolving differences of opinion and existing difficulties, in accordance with the Special Committee's recommendation.

24. Mr. ZOTIADIS (Greece) said that the definition of aggression could further considerably the cause of peace and strengthen the rule of law. The latest session of the Special Committee had, however, been disappointing. It should nevertheless be acknowledged that since its establishment the Special Committee had made slight progress on certain points, especially the application of the five guiding principles on the basis of which it had been working since 1969, the agreement about the general formula of the definition of aggression and the efforts to draft generally acceptable formulations of the individual elements of the definition. Furthermore, the use of informal consultations to reduce existing differences could prove to be very useful. Despite the doubts which had been expressed about the Special Committee's work, particularly because of the difficulties involved in drawing up a comprehensive list of acts of aggression, his delegation considered it necessary to display optimism and determination and to hope that the atmosphere of co-operation prevailing in the Special Committee would enable it to complete its work successfully.

25. The matter was all the more urgent because it was generally acknowledged that a definition of aggression would help the Security Council to determine the existence of acts of aggression and suppress them. His delegation considered, however, that the powers of the Security Council in that respect were not discretionary, because under Article 24 of the Charter the Council had only "primary", and not exclusive, responsibility for the maintenance of peace. As the Iraqi delegation had suggested earlier in the meeting, the urgency of the question might lead the Special Committee to resort to the majority rule, which in turn might open the way to a consensus at a later stage, as had happened in the case of the Declaration

on Principles of International Law concerning Friendly Relations and Co-operation among States. The very nature of the problem undeniably necessitated the widest possible support of Member States.

26. Since his country was not a member of the Special Committee, he wished to explain its position on the question under consideration. First, his delegation supported the general definition of aggression agreed upon, namely "aggression is the use of armed force by a State against the territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations". In order to safeguard peace and security, any definition of aggression, including the enumeration of specific aggressive acts, should be based on the Charter. That did not mean, however, that the Charter should be interpreted restrictively; on the contrary, the principles of the Charter should be amplified in the light of the general principles of international law.

27. As to various elements of a definition of aggression, his delegation considered that, in the first place, the principle of priority, a fundamental criterion to be found in all systems of municipal law, was of paramount importance in any such definition. On the question of the political entities to which the definition should apply, as States were the normal subjects of international law the definition should be limited to them, regardless of whether they were recognized or not. States which were not recognized were capable of committing aggression or could fall victim thereto. The subjective character of the criterion of intent could not be ignored; the victim of an act of aggression could never be expected to remain passive, without taking defensive counter-action, until the *animus aggressionis* was established. As the representative of Iraq had correctly pointed out, intent was inextricably linked with the aggressor's full awareness of the nature of the act which it was committing. Furthermore, aggressive intent was a concept unknown to positive international law as far as States were concerned and was relevant only in determining the criminal responsibility of individuals for crimes against peace. To attempt to justify an armed attack on the grounds of benevolent intent would be tantamount to disregarding Article 2, paragraph 4, of the Charter. For those reasons, it was preferable not to include aggressive intent as an element of the definition, in order to accommodate the absolute prohibition of the use or threat of force by States, other than in the case of self-defence. As to the distinction

between direct and indirect aggression, his delegation was gratified by the general agreement which existed in the Special Committee that the definition would have to be open-ended and that the Security Council could decide that acts other than those included in it might constitute aggression. There was no doubt that the indirect use of force could have consequences just as destructive for the victim as a direct frontal assault. Consequently, an enumeration of aggressive acts should include acts such as infiltration across frontiers or internationally agreed lines of demarcation by armed bands and the use of terrorism or subversion, or any other indirect use of armed force intended to violate the political independence or territorial integrity of a State. The agreement reached within the Special Committee with regard to the designation of certain acts as acts of aggression was nevertheless welcome.

28. One issue which had yet to be resolved was that of the permissible response to certain forms of illegal coercion which fell short of armed attack. In that connexion, the concept of proportionality was a safe guarantee that a defensive action would remain defensive and was not a cover for an aggressive act.

29. As to the question of self-determination, reference to the relevant provisions of the Charter and of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States could provide a possible solution to the conflict of views as to whether self-determination had any place at all in the definition of aggression.

30. No definition of aggression could serve the cause of peace and security if it failed to recognize the legal consequences of an aggressive action. Any complete definition should therefore include a provision regarding the international responsibility of the aggressor as well as the inadmissibility of any territorial or other gain resulting from acts of aggression. As time passed, the need for a definition of aggression was increasingly recognized as a more than helpful factor in eliminating the elements of indecision and subjectivity which characterized situations where the issue was, if not to discourage a potential aggressor, at least to expose it and establish its international responsibility. For those reasons, his delegation supported the Special Committee's recommendation that it should resume its work in 1973.

The meeting rose at 12.10 p.m.