



Chairman: Mr. Zenon ROSSIDES (Cyprus).

AGENDA ITEM 89

**Report of the Special Committee on the Question of
Defining Aggression (continued) (A/8419)**

1. Mr. SINGH (India), reiterating the usefulness and urgency of a definition of aggression, said that his delegation attached particular importance to four points.
2. In the first place, whatever the virtues of precision, the definition of aggression should be first and foremost comprehensive and should not be limited to armed aggression. There were a great many kinds of aggression, and any definition covering only direct forms would be incomplete and therefore dangerous. Hence his delegation did not share the view that the study of indirect aggression should be postponed until later. That would have the further drawback of stretching out the work of the Special Committee on the Question of Defining Aggression still longer. If, of course, the Special Committee intended to produce a compromise between the various projects before it (see A/8419, annexes I and II), several years would no doubt be necessary. But in view of the importance and urgency of the problem, the Special Committee might do well to replace the definition by a description, merely giving a general formulation of aggression by way of a recital of its constituent factors, specifying the means to be used in identifying the culprit, and fixing the responsibility of the State concerned. That procedure would bring together all the aspects of aggression mentioned so far. Moreover, an unduly precise definition would have the drawback of enabling a potential aggressor to distort its provisions, for example by making use of the latest scientific inventions.
3. Secondly, his delegation considered it impossible to list all the motives which could constitute aggressive intent, and saw no point in including a list in the definition of aggression. Both in international law and in criminal law, the concept of motive helped to prove premeditation, but it was not an essential element in determining that a crime had been committed. If the Special Committee was to complete its work fairly rapidly, it must keep to essentials.
4. The third point was that since aggression had been defined as the use of armed force by a State against another State, it was essential to pinpoint exactly when the use of force took place in respect of a given act of aggression. He wondered whether it was when the territorial integrity of the victim State was violated by the arms of the aggressive State, or when the victim had taken the irrevocable step of launching its weapons of destruction, even if they had not yet violated the territorial boundary of the victim State. The question was of tremendous importance in the context of supersonic weapons, and the reply to it would go far towards determining the right of self-defence possessed by the victim under Article 51 of the Charter. The Special Committee would be all the more justified in studying that question in that it was intimately bound up with the notion of priority. If first use of nuclear weapons was in all instances illegal, he wanted to know what was the position of the victim State. Also he asked whether it was entitled to use nuclear devices as a means of self-defence, or whether it would in turn become an aggressor if it used such devices before the weapons launched by the other State violated its territory. Possibly, as the United Kingdom delegation had stated (1271st meeting), the definition of aggression should not become involved with questions of self-defence, but it would be incomplete if it did not specify how to determine the time and place of the act of aggression. There again, international law could look to criminal law for a lead.
5. The Indian delegation's fourth submission was that an interim declaration on definition of aggression would do more harm than good. Since it was by nature incomplete, it would leave States free to act with impunity in the fields outside its sphere of application. So much had been recognized by the delegations which were opposed to that method, including those of great Powers. But while that was gratifying, his delegation would like to point out that the only solution was a comprehensive definition of aggression in all its forms, including those that appeared to be the most innocent. The case might arise, for example, where a State forced millions of human beings to flee into the territory of another State. If such an invasion threatened not only the economic and political structures of the receiving State but its very existence, there was no question but it constituted aggression, even if there had been no use of armed force across its frontiers. In such a case, it should be specified when, how and where the right of self-defence could be exercised.
6. His delegation was confident that the Special Committee would complete its task as rapidly as possible, bearing in mind all the constituent elements of the concept of aggression, without exception.
7. Mr. ARULANANDOM (Malaysia) recognized the progress made by the Special Committee, but found it disappointing that it had not yet been able to produce a definitive draft definition. The difficulty was that the definition must not merely be in conformity with the provisions of the Charter and respect the discretionary powers of the Security Council; it must also be acceptable to all the States concerned and made any tendentious interpretation impossible. Aggression was an easy matter to

determine in the case of an individual, but it became infinitely complicated in the case of international relations.

8. His delegation considered that the definition should apply also to indirect aggression, and that the inclusion of that concept, far from being incompatible with the Charter or restricting the Security Council discretionary powers, would on the contrary help the Council to determine the existence of a real threat to peace. His delegation was aware that at the present time aggression more often than not took the form of infiltration, subversion, sabotage and terrorism. Once it was agreed that the language of the Charter made a definition of aggression necessary, a definition restricted to armed aggression as such would not be enough. His delegation would go further and suggest that the Special Committee should look into the question of radio propaganda broadcast by one State against another.

9. He was also in favour of including *animus aggressionis* in the definition. The concept, as distinct from that of motive, lost its subjective character if it was regarded in the light of the circumstances surrounding a given act of aggression.

10. He endorsed the importance given to the principles of priority, proportionality and self-defence, but he pointed out that the definition of aggression must be based on all those principles taken together and not on this or that principle taken in isolation. He likewise endorsed the view that the definition should not apply to the struggle of dependent peoples for their right of self-determination.

11. His delegation reserved the right to make known its position on the other questions in due course. In the meantime it assured the Special Committee of its strong support.

12. Miss VEGA (Peru) said that her delegation had made a close study of the Special Committee's report (A/8419) which indicated that encouraging progress had been made by its Working Group. The members had reached agreement on two very important points, namely that the general definition of aggression should reflect the concept of aggression as defined in the Charter, and that the list of acts constituting aggression should be accompanied by a declaration specifying that such acts were listed without prejudice to the discretionary powers of the Security Council.

13. Her country had voted for the draft which had subsequently become General Assembly resolution 2644 (XXV), in which the Assembly recognized the urgency of the question of defining aggression.

14. Aggression implied both the use of force by one State against another and a danger to peace and security. Therefore, except in the case of self-defence, it was to be condemned, whatever its justification, as a violation of the rules of law governing international peace and security.

15. The question was what type of definition to give to aggression. It could be either specific and restrictive, containing an enumeration of cases of aggression, or a comprehensive definition establishing the essential features of aggression, with the exception of the two cases of

self-defence and collective action resulting from a mandate by an international body competent to impose sanctions. But a third solution was conceivable, and the Peruvian delegation inclined towards it, namely a mixed definition establishing first of all a general rule indicating the essential features of aggression and secondly an open-ended list of cases of aggression.

16. Any definition of aggression should serve the cause of peace to which all States aspired, in particular small and medium-sized States whose economic and social progress was closely bound up with the maintenance of international peace and security; it should also round off the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, contained in General Assembly resolution 2625 (XXV).

17. In her delegation's view, the Special Committee should devote its attention first and foremost to armed aggression, the most typical form. At the same time it should take into account other procedures where the immediate objective might appear different from that of the traditional act of aggression but led to the same results. That applied to indirect aggression, and particularly to economic aggression as referred to in the recent resolution of the Special Committee on Latin American Co-ordination (resolution 9 (XII)).

18. On the subject of the entities to which the definition should apply, her delegation felt that only States should be taken into consideration, regardless of the question of their recognition. States should be regarded in the definition as the only subjects of international law capable of committing or being the victim of an act of aggression.

19. With regard to aggressive intent, her delegation considered that any act of aggression necessarily involved an element of intention, but it was a subjective element and should therefore not be included in the definition.

20. On the other hand, the definition should contain provisions concerning the legal consequences of aggression; that would constitute a significant advance in the development of international law, it would be of value for peace-keeping bodies, and it would confirm the principle that, being an international crime, the unlawful use of force entailed responsibility and could in no event confer rights.

21. Her delegation considered that the mandate of the Special Committee should be extended in accordance with the resolution which it had adopted (*ibid.*, para. 66).

22. Mr. LOOMES (Australia) expressed apprehension that the slow rate of progress might prompt some States to demand that the Special Committee take a decision on some hastily evolved proposal. Such a procedure would be regrettable, because to be useful the definition of aggression would have to have universal endorsement. Moreover, an interim definition would be not only dangerous but quite as difficult to formulate as a definitive one. Perhaps the Special Committee could improve its working methods by taking account of the proposals made on the subject by the representatives of Guyana (1268th meeting) and Ghana

(1270th meeting). His delegation was particularly attracted by the idea of introducing greater flexibility into the composition of the present Working Group and any working groups which might be set up in the future. It was confident that the work of the Special Committee would be successful, provided its members remained sincerely committed to the principle of consensus.

23. Mr. EL-BACCOUCH (Libyan Arab Republic) enumerated the elements of the definition of aggression which in his delegation's opinion were essential. First, aggression should be defined on the basis of the principles set forth in the Charter, in order to strengthen the machinery for the maintenance of international peace and security. Second, the definition should mention the right of dependent peoples to self-determination, which had been recently affirmed in the Declaration on Friendly Relations, and their right to use all means in their power, including force, to achieve that end; the definition should also include a condemnation of the use of force against such peoples by colonial Powers. Third, the definition should contain provisions covering the legal responsibility of the aggressor and condemning the occupation or annexation of territory. Fourth, the definition of aggression should be a legal instrument conducive to fortifying the rule of law in international relations and strengthening the fundamental principles set forth in the Declaration on Friendly Relations. Fifth, as the members of the Special Committee had recognized, the definition should include the principle of priority, which would establish a presumption of guilt for the party making the first use of aggression. Sixth, priority should be given to defining direct aggression and consideration of indirect aggression should be deferred until a later stage. Seventh, the provision of assistance to national liberation movements by entities to which the definition applied should not be considered an act of aggression; the Libyan Arab Republic would, incidentally, continue to support the liberation movements in Palestine and South Africa. Eighth, the definition of aggression should include a mention of bacteriological or chemical weapons, the use of which constituted a direct act of aggression.

24. Mr. LUKASHUK (Ukrainian Soviet Socialist Republic) observed that the Special Committee had made significant progress and its members had reached agreement on a large number of points. It should be noted that the Special Committee was endeavouring to proceed by way of consensus, which was essential in the field of international law, where the purpose was to establish universally recognized norms. It was extremely important to seek agreement between the different States representing the main legal systems of the world, and it was clear that a definition of aggression must have the support of the overwhelming majority of members. Nevertheless, it was not possible to reach a consensus unless all members made efforts to that end.

25. In spite of the progress made by the Special Committee, there still remained many highly complex questions to be resolved. In the first place there was the question of indirect aggression. In his view, aggression differed in nature according to whether it was exercised directly or indirectly, in the way in which it was manifested and the risks it entailed. A clear distinction must therefore be drawn at the legal level between the two forms of aggression, especially

from the viewpoint of their consequences, and for practical reasons direct aggression, which was the only form mentioned in Article 51 of the Charter, should be defined first before the question of indirect aggression was broached.

26. With regard to the question of political entities, several delegations had already stressed that it was absurd to confuse them with States. They were only short-term political structures which might subsequently turn against the very States which had created them to serve their interests.

27. On the question of the organs empowered to use force, he considered that the only organ of the United Nations which could decide on the use of force was the Security Council; Article 11 of the Charter left no room for doubt on that question. Any attempt to grant such powers to other organs would be tantamount to a revision of the Charter.

28. The concept of proportionality had never been established in international law. By seeking to place limitations on the victim's natural right of self-defence, that concept actually protected the aggressor. It should be pointed out in that connexion that in the case of territorial annexation the aggressor State should not be regarded merely as the enemy of its victim but should be outlawed by the international community. The concept of proportionality might, however, apply in the case of indirect aggression, where recourse to the right of self-defence was ruled out.

29. It should be stated that the use of force was legitimate when exercised by peoples fighting for their right to self-determination. That principle was in conformity with the Charter, and the Security Council had recently applied it in a resolution concerning Namibia.¹

30. With regard to aggressive intent, since aggression was a crime, the element of intention could not be disregarded. It was the intention which determined the act; moreover, it should not be overlooked that the Security Council, when determining the existence of an act of aggression, had to take into consideration the intentions of the parties.

31. His delegation was in favour of extending the mandate of the Special Committee, which should expedite its work. The establishment of several working groups would be a useful means of doing so.

Mr. Klafkowski (Poland), Rapporteur, took the Chair.

32. Mr. NYAMDOO (Mongolia) said that the definition of aggression was a task of great importance and urgency. A generally accepted definition would be an effective means of halting acts of aggression and strengthening the system of international security.

33. Although it had not yet managed to achieve a final solution, the Special Committee had made considerable progress, and it had succeeded in finding a measure of common ground among the different positions. In that connexion, the establishment of the Working Group had proved to be a wise decision.

¹ Resolution 301 (1971) of 20 October 1971.

34. A definition of aggression must be based on universally recognized principles, in particular the principle of *jus cogens*. Among the various texts discussed by the Working Group, his delegation favoured the following definition:

“Aggression is the use of force by a State against [the sovereignty or] the territorial integrity [including the territorial waters and airspace] or political independence of another State, or in any other manner inconsistent with the purposes of the United Nations.”

That text offered two advantages: it placed the emphasis on armed aggression, which was the most serious and most dangerous form of aggression, and it was in conformity with the spirit as well as the letter of the Charter. Before taking up the question of indirect aggression, armed aggression must first be defined: the discussion of both forms of aggression simultaneously could only impede the progress of the Special Committee’s work.

35. The principle of priority was of great importance, since it was the first act of aggression that unequivocally identified an aggressor. Although divergent views had been expressed in that regard within the Working Group, his delegation considered that priority was a determinative factor.

36. There was likewise no doubt that aggressive intent was an essential element in the definition of aggression. Aggression might be committed in error but it could never be accidental; indeed, it was the element of intent that distinguished acts of aggression. Among the various texts considered by the Working Group, his delegation was of the opinion that the best was the one contained in paragraph 12 (a) of the report of the Working Group (*ibid.*, annex III).

37. A definition of aggression must unquestionably make a distinction between aggression proper and the legitimate use of force. There could be no question of aggression, for example, when peoples had to resort to force in order to secure recognition of their right to self-determination, a right which was enshrined in contemporary international law. There could also be no question of aggression when a State acted in the exercise of its right of self-defence, but it was abundantly clear that that right could only be exercised when aggression had already occurred, and that excluded any justification of pre-emptive strikes. There could be no doubt that a definition of aggression must make it possible to identify the guilty party. Lastly, territorial gains resulting from aggression could not under any circumstances be recognized.

38. The concept of proportionality, which had been the subject of debates that had hampered the Special Committee in its work, was inconsistent with the exercise of the right of self-defence and had no place in the definition.

39. His delegation was in favour of extending the Special Committee’s mandate and creating several working groups to accelerate the progress of its work.

40. Mr. JACOVIDES (Cyprus) said that as a member of the Special Committee, his delegation had already expressed its views on the content of a definition of

aggression; the 13-Power draft (*ibid.*, annex I, draft proposal B), of which it was one of the sponsors, clearly reflected its position.

41. The progress made by the Special Committee at its 1971 session had not been as extensive as some might have hoped, partly because conflicting political viewpoints continued to exist between States, and, partly because the Committee had now come to grips with the most difficult issues involved in defining aggression. Nevertheless, his delegation welcomed the efforts made to reconcile conflicting viewpoints and was pleased to note that almost no-one today questioned the possibility or the desirability of a definition of aggression. The achievement of a definition would without any doubt inhibit would-be aggressors and enable the Security Council to decide, in specific instances of aggression, on the basis of objective legal considerations.

42. With regard to the method to be used in resolving the disagreements as to the scope and the content of the definition, every effort should be made to reach a consensus on a text to be submitted to the General Assembly, which would then decide whether or not the draft definition should be unanimously adopted. At present, however, it was the Special Committee that must consider the remaining substantive problems, and his delegation supported the recommendation that the Committee should resume its work in 1972.

43. Mr. RAKOTOSON (Madagascar) expressed regret that the points of disagreement concerning the definition of aggression were still more numerous than the points of agreement.

44. With regard to the question whether or not the notion of indirect aggression should be incorporated in the definition, his delegation was pleased to note that the authors of the six-Power draft (*ibid.*, draft proposal C), while maintaining that the expression “however exerted” –with reference to aggression–should have a place in the definition, were not unalterably attached to it and were prepared to accept the incorporation of the expression in the list of acts of aggression.

45. His delegation felt that the definition would stand to gain in precision if it explicitly mentioned territorial waters and airspace; however, it noted that two of the three draft proposals before the Special Committee contained the phrase “contrary to the purposes, principles and provisions of the Charter” and “in any other manner inconsistent with the purposes of the United Nations”, which, if included in the definition, would undoubtedly give it a very broad sphere of application.

46. He was pleased to note that the three drafts submitted to the Special Committee were careful not to prejudice the discretionary powers of the Security Council. On the other hand, there was disagreement as to what specific acts should be included in the list of acts of aggression. In his delegation’s view, it should be possible to reach agreement on an open-ended list, which would not infringe on the powers of the Security Council. His delegation wished to stress that indirect aggression and such forms of aggression as ideological or economic aggression posed a serious threat to the security of States, in particular

new States. It would therefore not be wise to restrict the definition to the one form of aggression referred to in Article 51 of the Charter, namely, armed aggression justifying the exercise of the right of self defence. In any case, a large-scale invasion which posed an imminent danger comparable to that resulting from an armed attack could be considered as armed aggression under Article 51 of the Charter.

47. As to the question of political entities other than States, the disagreement which had arisen in the Special Committee was due to the fact that the Charter dealt only with aggression committed by a State against another State. Unquestionably the existence of a State should not be subject to its recognition by other States. To make that point clear, however, an explanatory note could be annexed to the definition specifying that the term "State" should also extend to one whose status was in question. Accordingly, the definition should apply to any State whether it was a Member of the United Nations or not.

48. The Special Committee should recognize the difference between intent and motive. In his delegation's view, criminal intent was a constituent element in a crime; that idea, moreover, was recognized in international law and had been in evidence, for example, at the Nuremberg trials. On the other hand, motive was not related to the establishment of the fact of crime; at the most it could be used to establish the existence of extenuating or aggravating circumstances; it could never erase the concrete fact. In his delegation's opinion, one of the major defects of the six-Power draft was that it was based more on the concept of motive than on that of intent.

49. Another source of disagreement was the differences of opinion that existed within the Special Committee regarding the role of the Security Council. It was his delegation's view that the Council's role was that of a judge, and as such it should determine whether or not an act constituted an offence and whether its author was guilty. In order to do that, the Council must study the facts and look for the material element and the element of intent. Both elements must be present before the responsibility of the author of the act could come into play. That being so, it seemed unnecessary to introduce the notion of intent, since the underlying intention was bound to be investigated by the Council in deciding whether the act complained of was an act of aggression.

50. The same approach should be adopted towards the questions of priority and proportionality; although they were not constituent elements of aggression, the Security Council, in its capacity as judge, was none the less required to determine to what extent the first use of force or the excessive nature of retaliation had a bearing on the degree of responsibility of the perpetrator of the act.

51. In any case, his delegation felt that the definition of aggression must serve as a guide rather than a code for the Security Council; in other words, that it should be sufficiently flexible to allow the Council to establish a dynamic body of jurisprudence. Furthermore, in view of the importance of the role conferred on the Council with regard to the maintenance of international peace and security, the permanent members should reach agreement

on the various elements to be included in the definition of aggression; failing that, the definition might well have little practical value.

52. Mr. NALL (Israel) said that the difficulties surrounding an attempt to formulate a definition of aggression by enumerating all acts of force were insurmountable. Even if such a definition was established, it could neither have any impact on the development of international penal law nor remove provocation and aggression; in fact, it might be viewed as an unconstitutional attempt at amending the Charter.

53. A retrospective glance at the efforts over the past 20 years to define aggression showed that, instead of being clarified, the problem had become more complex than it had originally appeared; it might be relevant to ask whether it was really desirable, or even wise, to continue a search which would only lead to an incomplete catalogue of acts of force. His delegation had always hoped that the Special Committee would succeed in formulating a generally acceptable definition, i.e. a definition that would permit an objective evaluation to be made of all the circumstances of each particular case, thus making it possible for Member States to fulfil their obligations under the Charter in good faith and unreservedly. Unfortunately, the reports of the Special Committee led his delegation to doubt whether those expectations could be fulfilled.

54. His delegation's apprehension had been confirmed by the report under consideration, from which it appeared that the Special Committee was still divided on most questions, beginning with that of the scope of the definition. Various suggestions had been made not only to include in the definition matters that were entirely irrelevant, but what was by far more surprising, even to exclude from it the essential concept of indirect aggression, the consequence of which would be to circumvent the application of the principle of self-defence. Yet indirect aggression was probably the most serious contemporary manifestation of aggression, and a comprehensive enumeration of acts of aggression which overlooked that particular form would have no great practical value. It was common knowledge that the provisions of the Charter were currently violated as much by indirect aggression as by direct aggression and that certain States had used force through the agency of terrorists or armed bands or had permitted such groups to operate from their territories against the territorial integrity and political independence of other States.

55. Since it was the Security Council that had the primary responsibility for the maintenance of peace and security, it was essential that the definition should be accepted by all its permanent members. Unless the definition was adopted unanimously by the Sixth Committee, it would not enable the Security Council to exercise the powers conferred on it by Article 24, paragraph 1, of the Charter.

56. The principle of "first use" could not be a determining criterion in the definition of aggression. Certain acts of aggression, such as blockade, could oblige the State against which they were directed to have recourse to its inherent right of collective or individual self-defence.

57. The question of aggressive intent should be left to the discretionary power of the Security Council, which should

take motive and purpose into consideration in determining the existence or non-existence of aggression. Inclusion of the notion of intent in the definition could only add to the complexity of the problem.

58. Nor would it serve much purpose to include the concept of proportionality, since the victim of aggression naturally resorted to whatever degree of force was necessary to repel the aggressor; it could hardly be expected to take the time to weigh abstract concepts.

59. For all those reasons, his delegation considered that the extension of the Special Committee's mandate, in addition to being a financial burden on the Organization and creating additional work for Member States, would

merely increase the ambiguity already existing, jeopardize the basic rights embodied in the Charter, and adversely affect the powers of the various organs of the United Nations, particularly the discretionary power of the Security Council. After 26 years of activity, no evidence could be found that the Council had difficulty in performing its task of determining the existence of aggression merely because it lacked an appropriate definition. His delegation would not support the recommendation to extend the Special Committee's mandate, not because it objected to the formulation of a definition on principle but because it doubted the necessity, practicability or usefulness of such a definition.

The meeting rose at 12.55 p.m.