



Chairman: Mr. Zenon ROSSIDES (Cyprus).

AGENDA ITEM 89

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

1. Mr. LARÉ (Togo) said that his delegation found some grounds for optimism in the results achieved by the Special Committee on the Question of Defining Aggression and in the terms of the resolution it had adopted (see A/8419, para. 66). The Special Committee had recognized the need for the international community to be armed with a definition of aggression, and the debate in the Sixth Committee had confirmed the correctness of its opinion. Every effort should be made to derive the maximum advantage from the propitious circumstances which prevailed, and his delegation was in favour of the Special Committee's continuing its work in 1972 with a view to a speedy conclusion.

2. With regard to outstanding points of divergence, an issue which continued to divide the Special Committee was the procedure to be used for adopting a definition. His delegation considered that any definition, to be effective, must command the support of the largest possible number of States. He hoped that all States, and particularly the major Powers, would strive for a consensus, but if none was forthcoming his delegation would favour the adoption of majority decisions.

3. Concerning the relationship between a definition of aggression and the Security Council's powers under Article 39 of the Charter, some delegations feared that the Council might be bound by a definition produced by another United Nations organ. His delegation did not think that would necessarily be so, but it was glad that the Special Committee seemed close to solving the problem by concentrating on a definition which, while enumerating typical acts of aggression, would expressly reserve the Security Council's power to determine the existence of aggression in the case of other acts.

4. As far as enumeration itself was concerned, Togo continued to think that the most practical solution would be to limit it to acts involving the use of armed force by a State directly against another State. An objective appraisal of the realities of international life nevertheless demanded the eventual elaboration of a more comprehensive definition, since the indirect use of force, subversion, and the exercise of economic and political pressure were illegal acts no less likely to endanger peace. In addition, any definition of aggression should state that the use of force by colonial

peoples in their struggle for liberation was legitimate, since General Assembly resolution 1514 (XV) clearly recognized their right to self-determination. Any colonial Power which ignored that right was therefore committing aggression and its victims were entitled to use force to resist that aggression in exercise of their right of self-defence. Moreover, however long the period of illegal colonial occupation lasted, the right to self-determination could not be extinguished by prescription.

5. Mr. KLAFKOWSKI (Poland) said that the report of the Special Committee (A/8419) indicated that its 1971 session had been fruitful. Most delegations now thought a definition of aggression possible and necessary. His delegation wished to reiterate its view that the adoption of such a definition would not only contribute to the codification of international law but also strengthen international security and promote the rule of law. An element essential to any definition of aggression if it was to be adopted by a large majority, and one common to all the proposals before the Special Committee, was recognition of the relationship between the definition and the purposes and principles of the United Nations. The United Nations and its organs did not function in a vacuum; since the signing of the Charter there had been many conventions codifying rules of international law and also a large number of resolutions and declarations concerning the interpretation of rules and principles of international law. Any definition of aggression would have to accord with the law as so developed. It must obviously not encroach on the powers of the Security Council, and it must be couched in such a way as to be of use to the Council in the exercise of those powers.

6. As far as the subject matter of the report was concerned, his delegation attached importance to the recognition in the definition of the principle of priority as formulated in the Soviet Union draft (*ibid.*, annex I, draft proposal A). It noted with interest the consideration the Committee had paid to the question of intent, and it favoured the inclusion in the definition of statements on the legal consequences of aggression and the legitimate use of force, particularly by colonial peoples in opposing attempts by force to deny them their right of self-determination.

7. Poland continued to oppose the view that the definition should refer to political entities other than States; such a description was foreign to the Charter and to documents connected with the codification of international law, and its use might cause difficulties in the interpretation and application of the definition.

8. Since the elaboration of a definition acceptable to a majority of States seemed possible, his delegation favoured

allowing the Special Committee to continue its work in 1972.

9. Mr. ARYUBI (Afghanistan) said that his country, with its history of suffering from direct and indirect aggression, was a strong supporter of all attempts to strengthen the collective security system of the United Nations. It was therefore encouraged by the Special Committee's progress towards a generally acceptable definition of aggression and realized that the delay in the completion of its work was due to political rather than juridical causes.

10. Because of the difficulties involved in defining indirect aggression, his delegation continued to feel that the Special Committee should first define armed aggression, the most dangerous form, and deal later with other forms, especially acts such as economic blockade, which were particularly notorious and repeatedly practised.

11. In defining aggression, the notion of first use was fundamental; not only was it a basic criterion in determining the oppressor, and one which found support in the Charter, but its inclusion in the definition was designed to prevent States from committing aggression under the guise of so-called preventive war. The definition should distinguish clearly between aggression and the legitimate use of force.

12. With regard to the latter use of force by regional agencies, paragraph III of the six-Power draft (*ibid.*, draft proposal C) was not in accordance with Article 53 of the Charter.

13. The concept of political entities other than States found no support in the Charter, and its inclusion in the definition would create confusion. The Special Committee should therefore confine the scope of its work to sovereign States, which were the only political entities recognized in international law.

14. With regard to the notion of proportionality, the second sentence of Article 51 of the Charter appeared to limit the degree to which the right of self-defence could be exercised and, in his delegation's view, justified the formulation in paragraph 6 of the 13-Power draft (*ibid.*, draft proposal B).

15. The definition of aggression should include a statement recognizing the right of dependent peoples under alien domination to use force to achieve self-determination if no other course lay open to them.

16. His delegation supported the proposal that the Special Committee's mandate should be renewed for 1972.

17. Mr. HYERA (United Republic of Tanzania) said his delegation was glad to note that the necessity for a definition of aggression was now generally accepted and that a spirit of compromise was beginning to emerge. The Special Committee had justifiably decided to limit the scope of its work to armed aggression while recognizing that other forms existed. But once it had completed its definition of armed aggression it must go on to define the other forms. Economic means of aggression might in fact be

more dangerous than the use of force, and most States were now more exposed to the former than the latter.

18. With regard to the statement in the Special Committee's report that the general definition of aggression should reflect the concept of aggression as contained in the Charter (see A/8419, para. 19), his delegation took the view that whatever was done in the name of or under the Charter must be based on the purposes and principles of the United Nations and that no arbitrary definition of aggression could be permitted to be forced out of the wording of the Charter.

19. On the question of the procedure to be used for adopting the definition, the method of seeking the consent of all the permanent members of the Security Council was obstructive and undemocratic, and should be abandoned. The fact that the Security Council had primary responsibility for the maintenance of international peace and security did not entitle it to reject rules of international law which were being elaborated by the General Assembly, in the present instance through the Special Committee set up by the Assembly to deal with the question of aggression. The Security Council acted on behalf of the Members of the United Nations and was required to respect its purposes and principles. While it must be allowed some discretion where the law was silent or ambiguous, it could not do as it wished. It was the international community as a whole, acting democratically through the General Assembly and the Special Committee, that should define aggression. That was particularly true in a situation where the Security Council had failed to live up to the expectations of the world community. The Special Committee must go ahead with its task even if permanent members of the Security Council failed to co-operate with it.

20. His delegation might wish to comment at a later stage on the substantive issues of the question of defining aggression and appealed to all the members of the Sixth Committee to re-dedicate themselves to a crucial task, undeterred by any obstructive manoeuvres they might encounter.

21. The United Republic of Tanzania would support the extension of the Special Committee's mandate in the hope that a more democratic procedure would be followed in its work.

22. Mr. MARTINEZ MORCILLO (Spain) said that the Special Committee showed the same internal contradictions that permeated the entire Organization. One of the chief obstacles to the institutionalization of international relations had been overcome as a result of the general agreement within the Special Committee that it was necessary and possible to define aggression. Nevertheless, it would appear from its work during its 1971 session that there were far more elements of disagreement than of agreement. The report of the Working Group (*ibid.*, annex II) contained so many expressions in brackets that the last session of the Special Committee had been described as "the battle of the brackets". The disparity between wishes and realities reflected a serious internal contradiction in the work of the Special Committee, all the more apparent since the three positions reflected in the three draft proposals

before the Special Committee (*ibid.*, annex I) actually contained more common ground than was apparent at first sight. It was paradoxical, therefore, that divergent and uncompromising positions should be held. The main future task of the Special Committee would be to overcome its own internal contradictions. His delegation, as a member of the Special Committee, would play its part in that task at the appropriate time.

23. The central aspect of the Special Committee's work was the general definition of aggression. The first contradiction in the general definition of aggression could be found in the debates regarding indirect aggression. It would surely be more sensible to leave the entire issue of indirect aggression for discussion during a second phase, on the understanding that there would be no implication that any delegation was abandoning its position. It would then be easier to make progress on the subject of direct aggression, and the study of indirect aggression could be undertaken later in an atmosphere of much greater freedom of action. Postponement would allow for greater flexibility on other points as well, such as proportionality.

24. Another contradictory issue was the reference to sovereignty, which appeared in brackets in the general definition drawn up by the Working Group. The right to sovereignty was different from the right to independence; an attack could be made against the sovereignty of a State without affecting its independence. He doubted whether any delegation opposed the idea that an attack against a State's right to organize its own political and social structure was aggression, whether the attack was labelled a subversive act to bring down a Government or a subversive act to achieve internal revolution within a State. The differences of opinion regarding the inclusion of sovereignty in the definition of aggression might be solved by finding a way to reflect the rights implicit in that principle, preferably by using an expression that was firmly established in political terminology.

The reference to territorial waters and air space, also in brackets in the Working Group's text, was a further example of contradictions within the Special Committee. Those who had objected to its inclusion had argued that it was redundant and unnecessary. Yet they had proposed that the topic should be mentioned among the concepts on which there was substantive disagreement. At the time there was certainly no unanimity regarding the breadth of territorial waters, but it was unanimously recognized that territorial waters formed part of the territory of States; it was important for coastal States that it should be made clear that any reference to territorial waters implied that those waters too were protected against aggression. There should be no objection to the inclusion of a reference to air space.

26. Turning to the matter of working methods, to which the representatives of Guyana (1268th meeting), Egypt (1269th meeting) and other countries had referred, he recalled that the Chairman of the Working Group had pointed out that there was some uncertainty as to whether the Group was meant to be a negotiating body or a drafting committee. Working methods should be more flexible, so as to ensure the just and equitable representation of all

interests and the direct participation of all members of the Special Committee who were ready to negotiate.

27. It was necessary, first of all, to complete the task of delimiting the areas of agreement and disagreement concerning those aspects of the definition of aggression which had not been discussed at the two previous sessions of the Special Committee. That should not be difficult, since the differences of opinion concerned drafting rather than substantive matters.

28. He did not think anyone would disagree with the view that territory acquired by force should not be recognized. That concept should therefore be included in any definition of aggression, whether as a legal norm or as a political principle, since there was not as yet any positive text governing international responsibility.

29. Other principles, such as the right to self-determination and the right to territorial integrity, were already well established in the United Nations. Once the preliminary task he had outlined had been completed, it would be possible to initiate negotiations with a view to overcoming all the contradictions that had become apparent to date.

30. Mr. TOURÉ SADAN (Guinea) said that unless the United Nations was able to conclude its work expeditiously on the definition of aggression, the arrogance and cruelty of certain expansionist States would plunge the world into catastrophe. The membership of the Sixth Committee included States which could greatly facilitate its task if they so desired or if they could be constrained to do so. Being themselves aggressors, they knew very well what constituted aggression. Among those States were Portugal, South Africa and Israel. Portugal, which owed its existence to the continuing support of the NATO Powers, had become the champion of colonial wars in which it used inhuman methods; South Africa's repression of the indigenous population was an everyday occurrence, its latest move being an incursion against the peaceful people of Zambia; while Israel's persistence in retaining the territories it had acquired by force was a matter of grave concern to all. In the face of that situation, his delegation wondered why those countries, which were constantly violating public international law, were allowed to retain their membership in an organization founded to preserve international peace and security.

31. The report of the Special Committee marked a definite step forward in its work. But the proposals before it showed more concern for detail and wording than for reaching a true definition of aggression. None of them presented an over-all, general and coherent definition; they merely enumerated the various forms of aggression. The definition contained in the Soviet Union draft (see A/8419, annex I, draft proposal A) was not comprehensive and functional enough, and the right of self-determination mentioned in paragraph 6 should be further articulated in order to make it quite clear that the acts of dependent peoples in exercise of that right did not constitute aggression. The sponsors of the 13-Power draft (*ibid.*, draft proposal B) had defeated their purpose by making their text too long and wordy. The sponsors of the six-Power

draft had (*ibid.*, draft proposal C) borne in mind the need to make themselves understood. The long definition was specific in every detail; and his delegation felt that the Special Committee might find in that draft sufficient material with which to accomplish its task.

32. The sponsors of the three draft proposals had made great efforts to prepare texts which would include the necessary elements of a coherent and dynamic definition that would be acceptable to all. However, his delegation felt that the definition of aggression should only be a preliminary step towards the articulation of the legal consequences of aggression; the two should not be separated. What was needed was a clear, dynamic, functional and concise definition which would include indirect aggression and would specify that the struggle of national liberation movements in the exercise of their right to self-determination did not constitute aggression. The principle had already been stated in General Assembly resolution 1514 (XV).

33. With regard to the formulation of a text on the legal consequences of aggression, his delegation would support a general definition which included the term "however exerted". In the modern world, the great Powers were able to use many forms of unarmed aggression that were more dangerous than armed aggression. They should not be permitted to evade the jurisdiction of the United Nations.

34. The question of political entities was not unimportant, but it should not unduly concern the Committee at the present stage. With regard to the legitimate use of force, his delegation felt that action taken in exercise of that right fell within the competence of the victim State, which had full sovereignty to judge it.

35. The concept of aggressive intent should be discarded from the general definition of aggression; aggression was essentially a voluntary and premeditated act, and the inclusion of that concept was therefore superfluous.

36. The idea of proportionality would encourage aggressors and discourage the victims of aggression in their just and legitimate recourse to force. The body that had to deal with a specific case should confine itself to determining the extent of retaliation against aggression; no rigid framework should be constructed round the idea of proportionality.

37. The principle of priority was very important and great attention should be paid to it. The principle would ultimately justify all the liberation efforts of the third world.

38. Mr. JELENIK (Hungary) was pleased to note that certain countries which had previously opposed drawing up a definition of aggression were now in favour of it. If the definition was to be successful, all States must recognize its paramount importance in achieving the purposes of the Charter of the United Nations and safeguarding international peace and security. The only way of arriving at an acceptable and lasting definition was by following the consensus method.

39. The Special Committee's report showed that some progress had been made and that divergent opinions had

drawn somewhat closer together. His delegation fully shared the view that the Special Committee should concentrate in the first instance on defining direct aggression or armed attack—the most dangerous and serious form. That approach was in line with Article 51 of the Charter, which singled out armed attack as the sole form of aggression conferring the right of individual or collective self-defence.

40. His delegation was pleased to note that the Special Committee had agreed that the principle of priority should be included in the definition of aggression. As the Soviet Union draft proposal made clear, priority was a basic, determinative and objective criterion, which made it impossible for an aggressor State to plead innocence on the grounds that it was conducting a preventive war. The principle of priority placed the burden of proof on the State which first resorted to force. Hence his delegation could not accept the view that priority was a factor of secondary importance that should merely be taken into account.

41. His delegation considered that aggression was an international crime committed intentionally, even with premeditation, and that consequently the notion of intent should be included in the definition. In assessing the importance of that criterion, it should be borne in mind that, since aggression was a serious international crime, the responsibility of its perpetrator was closely linked to the notion of criminal intent.

42. His delegation had reservations about the inclusion of the concept of proportionality in the definition. Several delegations had rightly stressed that no such concept appeared in the Charter and that it was by no means universally recognized in international law. Its inclusion in the definition would favour the aggressor by throwing the burden of proof on the victim of aggression. Furthermore, a State that had been attacked should not be required to assess the strength of the enemy forces in order to ensure that its defence was commensurate with the aggression. Such a principle would encourage rather than discourage the aggressor, which was quite contrary to the purpose of the definition.

43. If it was to serve international peace and security effectively, the definition must take into account the legal consequences of aggression and the principle of responsibility. Paragraphs 4 and 5 of the Soviet Union draft proposal clearly spelled out the principle of the non-recognition of territorial gains resulting from armed aggression, the principle of the political and material responsibility of the aggressor State, and the principle of the criminal responsibility of persons guilty of aggression. Armed struggle by colonial and dependent peoples for liberty and independence could not be regarded as aggression.

44. He expressed his confidence in the Special Committee's ability to achieve success and therefore believed it should continue and intensify its efforts.

45. Mr. FARUKI (Pakistan), speaking in exercise of his right of reply, said he would like to clarify his suggestion (1270th meeting) concerning an interim definition of aggression, which certain delegations appeared to have

misunderstood. While he might wish to return to the subject at a later stage, he would state forthwith that his delegation was chiefly concerned for the security of certain small States which had much larger neighbours or were situated in areas of conflict. Such countries were threatened with aggression and therefore could not wait while the Special Committee produced a definitive version of the definition. It was obvious that major difficulties still persisted, and since they were largely due to political factors there was little hope that they would be quickly resolved. He had therefore suggested, as an interim measure, that a provisional definition be produced, covering those areas on which agreement already existed. He had been further encouraged by the adoption of 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), which set forth certain kinds of action that fell within the category of aggression. On the basis of the areas of agreement in the Working Group and the provisions of the Declaration, he believed that it would be possible to come to an early decision on an interim definition.

46. It was a matter of regret that the representative of India had regarded that suggestion, made in good faith and in the common interest, as a measure that might encourage aggression and he was at a loss to understand how that could be possible. The idea of an interim measure was quite common in the legal practice of many countries.

47. At the preceding meeting, the representative of India had tried to widen the scope of the definition of aggression by bringing in the question of refugees, thus attempting to make political capital out of an essentially humanitarian question. Unhappily, the eastern regions of the Indo-Pakistan subcontinent were parts of the world which frequently had to make calls on the humanitarian instincts of mankind as a whole. His delegation sympathized with India on the sufferings caused by the recent natural catastrophe in Orissa, but, whether cyclone victims or refugees or other defenceless people were involved, their plight should not be made a political matter. It would be highly unfortunate if the world ceased to heed appeals for help because certain Governments had used human problems for political ends. He could therefore not accept the idea that the suffering of refugees should be included in the definition as a form of bloodless aggression.

48. His Government had done all in its power to facilitate the return of its citizens from a neighbouring country. The President of Pakistan had offered to meet the Prime Minister of India in any place at any time; he had proposed the withdrawal of all troops from the border zone; he had accepted the good offices of the Secretary-General and invited him to visit the area; he had agreed to the convening

of a good offices committee; and he had accepted the proposal to station representatives of the United Nations High Commissioner for Refugees on both sides of the Border. His Government took the view that the problem of the refugees would be better dealt with if the other side responded constructively to those proposals.

49. Mr. CRUCHO DE ALMEIDA (Portugal), speaking in exercise of his right of reply, said that allusions made to his country by the representative of Guinea were political in nature and therefore fell outside the scope of the item under discussion, which concerned the purely legal problem of drawing up a definition of aggression.

50. Mr. SINGH (India), exercising his right of reply, said that nothing had been further from his intention than to introduce a political issue into a legal discussion. Political issues on the subject brought in by Pakistan had been discussed in other forums of the United Nations like the General Assembly and the First and Third Committees. The Sixth Committee did not need to be dragged into politics. He mentioned that he had merely illustrated by an example the statement made by the Representative of Pakistan on how comprehensive the definition of aggression should be. Pakistan had desired that aggression be so defined as to defeat the ingenuity of any aggressor State. A civilian unarmed inflow of millions of humans was a befitting illustration.

51. He agreed with the view that the definition of aggression should be complete and had proposed that, until such time as a comprehensive definition could be drawn up, the Special Committee might find it useful to produce a description listing all the forms of aggression that had been mentioned in the Sixth Committee or included in the Declaration on Friendly Relations. That was the quickest and yet a strictly legal approach. The proposal by the representative of Pakistan to produce an interim definition seemed to him incompatible with the notion of a comprehensive one, and it was bound to leave loopholes that would tempt a potential aggressor.

52. He was grateful to the representative of Pakistan for his expressions of sympathy on the sufferings of the victims of the cyclone, and he hoped that humanitarian considerations would remain paramount in all matters concerning inter-State relations. He felt sure that everyone was aware of India's position in that respect.

53. Mr. TOURÉ SADAN (Guinea), exercising his right of reply, said he fully understood why the representative of a country with a political system such as Portugal's would wish to draw a distinction between legal and political matters.

The meeting rose at 5.15 p.m.