

THE QUESTION OF DEFINING AGGRESSION

CONSIDERATION BY
SPECIAL COMMITTEE

The Special Committee on the Question of Defining Aggression met at United Nations Headquarters in New York from 24 February to 3 April 1969.

The Special Committee decided to resume work at the stage reached at the end of its 1968 session,¹ by continuing debate on the draft proposals before it at that time, on the understanding that representatives would still be free to discuss the whole question of defining aggression. It also decided to establish a working group of the whole and instructed it to pursue the Special Committee's task by giving more detailed consideration to the proposals, suggestions and points of view presented. The report of the working group was adopted by the Special Committee on 27 March and annexed to its report to the General Assembly.

The Special Committee's discussion centred on a 13-power draft definition submitted to the 1968 session by Colombia, the Democratic Republic of the Congo, Cyprus, Ecuador, Ghana, Guyana, Indonesia, Iran, Mexico, Spain, Uganda, Uruguay and Yugoslavia and a draft definition submitted by the USSR at the early stage of the 1969 session. The Special Committee also held a preliminary discussion on two additional draft definitions submitted at the concluding stage of the 1969 session. One of them, referred to in the Special Committee's report as the "new 13-power draft," was submitted by Colombia, Cyprus, Ecuador, Ghana, Guyana, Haiti, Iran, Madagascar, Mexico, Spain, Uganda, Uruguay and Yugoslavia; the other draft, referred to in the Special Committee's report as the "six-power draft," was submitted by Australia, Canada, Italy, Japan, the United Kingdom and the United States.

Most Special Committee members expressed the view that the definition of aggression should preserve the discretionary power vested in the Security Council as the organ with primary responsibility for the maintenance of peace. Some members, including Australia and the United States, stressed that the definition should in no circumstances be applied automatically by the Security Council and that in their view the USSR draft was unsatisfactory as its effect might be to force the Security Council to act in a certain way in certain circumstances and thereby diminish its discretionary power. Other representatives felt that the 13-power draft and the USSR draft might be construed as empowering the Security Council to add, or to classify as aggression, acts other than those enumerated in the definition; this would not only make any definition useless but would also destroy its *raison d'être*.

The view was expressed by the USSR and Bulgaria that the six-power draft was of an abstract and artificial character which did not contribute to a clear definition of aggression and that therefore it could hardly serve to help the Security Council in the discharge of its functions. The representatives of Canada, France and the United States, among others, considered that a definition of aggression should cover, as the six-power draft was intended to, acts by or against those political entities whose claims to statehood might not be universally recognized but upon which nevertheless fell the obligations of the United Nations Charter and international law as regards the use of force. Others, however, felt that the introduction of new concepts such as "political entity" compli-

¹ See Y.U.N., 1968, pp. 831-37.

cated rather than facilitated the Special Committee's task.

Most members expressed the view that the definition should be limited to acts constituting armed aggression as envisaged by the Charter. However, different interpretations were given regarding the scope of such acts. One problem was whether, for the purpose of exercising the right of self-defence, the concept of aggression should include indirect armed aggression. The question whether the concept extended to forms of aggression not involving the actual use of armed force was also raised.

France, Japan and the United States, among others, considered that the concept of aggression applied only to the use of force in violation of the Charter and that the 13-power draft and the USSR draft enlarged the concept beyond the provisions of Article 2(4) of the Charter.² Other members, while recognizing that the definition should be restricted to armed aggression within the meaning of Article 51 of the Charter, pointed out that there were other forms of aggression, such as economic and political pressure and the encouragement of subversion. These should be regarded as part of the concept of force, as they threatened the integrity and independence of the victim State. Cyprus, among others, argued that acts constituting indirect aggression should not be considered with direct armed aggression, as defined by the new 13-power draft.

Some members, including Bulgaria and the USSR, considered that the concept of aggression included the planning, preparation and launching of an aggressive war as a complex of interrelated acts. Doubt was expressed by France and Syria, among others, about the advisability of including indirect use of force in the scope of a definition. Difficulties inherent in defining or establishing proof of indirect armed aggression were pointed out in this connexion.

The six-power proposal was criticized by the USSR and others for its failure to refer to the most dangerous aspects of aggression, namely, the use of weapons of mass destruction. Some members—including Colombia, Turkey, the United Kingdom and the United States—considered it inappropriate to mention in the definition, as did the USSR draft, the kind of weapons used; whether aggression was com-

mitted was to be determined not by the kind of weapons used but by the nature of the acts committed. Czechoslovakia and the United Arab Republic, among others, disagreed with this view.

Canada, Italy, Japan and the United Kingdom, among others, considered that a definition of aggression should focus on two elements: unlawful intent and the illegality of the act itself. They asserted that this point was met by the six-power draft which, among other things, described intended effects of a breach of the peace and listed examples of specific means whereby the intentions were carried out.

Some members—including Cyprus, Guyana, Iraq and Mexico—believed that to make a determination of aggression dependent on the intentions of an accused aggressor would be dangerous in the present state of the international community. Not only would it be impossible to list all possible intentions, but aggressors always claimed that their goal was a legitimate one. The definition must be based on objective, not subjective, criteria, deriving from the nature of the act itself. In this connexion, it was observed that the USSR draft and the new 13-power draft used only factual criteria.

Ghana and the United States, among others, objected to a preambular paragraph of the USSR draft which referred to the principle of the peaceful co-existence of States with different social systems. They stated that the paragraph could be interpreted as implying that the use of force was permissible between States with similar social systems. The USSR stressed that the purpose of the paragraph was to highlight the necessity of preventing any attempt by one State to change the social and political system of another; that point was of particular importance to countries which had recently acquired independence.

A number of States argued that the principle of priority of "first use" of armed force should be included in the definition, and felt that the USSR draft and the new 13-power draft were satisfactory on that point. In the view of those States, that principle should be the main cri-

² For text of Article 2(4) and other Charter Articles mentioned herein, see APPENDIX II.

terion in determining the aggressor, as Article 51 of the Charter endorsed it as a condition for exercising the right of self-defence.

On the other hand, the principle of priority was disputed by some members—including Australia, the United Kingdom and the United States—which held the view that it was incompatible with the Charter and that it might be dangerous. They stated that by this principle, if a State committed one relatively inconsequential act, the victim could respond with the whole of its military might without being held an aggressor; such was not the rule of the Charter, which held that defensive measures should be proportionate to the attack. They also pointed out that the principle of priority raised problems of interpretation and would not be appropriate in the case of frontier incidents.

Most members considered that a definition of aggression should include clear and undisputed criteria distinguishing aggression from the legitimate use of force. They asserted that the only legitimate exceptions to the Charter's prohibition of the use of force were the inherent right of individual or collective self-defence and participation in measures to maintain or restore international peace and security, as decided by the appropriate organs of the United Nations or other competent bodies.

Some States, including Cyprus and Mexico, stated that the definition should begin by referring to the monopoly of the use of force vested in the United Nations, as did the 13-power draft. In this respect, they said, the USSR draft raised some difficulties. These States also pointed out that the USSR draft did not expressly mention self-defence, although it made a distinction between the legal and illegal uses of force.

Several members noted with satisfaction the inclusion of the inherent right of self-defence in the new 13-power draft and in the six-power draft. The Democratic Republic of the Congo, Iraq and Sudan, among others, supported the inclusion in the new 13-power draft of the principle of proportionality, obliging the State victim of an armed attack to keep its reactions within the bounds of what was necessary and sufficient to halt the aggression.

France and the United States, among others, stated that the Charter provisions concerning the competence of regional agencies were paraphrased inaccurately in the new 13-power draft.

Others, including Iraq, believed that the six-power draft was incompatible with the Charter since the draft would grant to regional organizations, as well as to the United Nations, the right to authorize the use of force.

Spain, Sudan, the United Arab Republic and Uganda, among others, stated that the definition of aggression should provide for an exception where the use of force was necessary to ensure the exercise of the right of peoples to self-determination. This provision, they noted, was included in the USSR draft and the new 13-power draft. Some members—including Italy and the United Kingdom—argued that such a provision would be inappropriate in a definition of aggression that was limited to inter-State relations. The six-power draft was criticized by Bulgaria and the USSR, among others, for ignoring the struggle of peoples for self-determination and for attempting, in their view, to give legal sanction to the colonial system by incorporating the expression "territory under the jurisdiction of another State."

While several members noted with satisfaction the inclusion in the USSR draft and the new 13-power draft of the concept of international responsibility for acts of aggression, others believed that such a concept should not be part of a definition of aggression and did not fall within the Special Committee's terms of reference.

Algeria, Spain, Sudan and Syria, among others, considered that the principle of non-recognition of advantages resulting from aggression, as contained in the USSR draft and the new 13-power draft, was essential to a definition of aggression. Other members, including Indonesia and the United Kingdom, considered the reference to non-recognition to be inappropriate in the definition.

On 28 March 1969, the Special Committee approved a draft resolution submitted by Colombia, the Democratic Republic of the Congo, Cyprus, Ecuador, Ghana, Guyana, Haiti, Madagascar, Mexico and Uruguay. By this, the Special Committee, among other things, recognized the progress made during the 1969 session in the consideration of the question of defining aggression and on a draft definition, as reflected in its report, and noted the common will of the members of the Special Committee to continue consideration of the question of defining

aggression. The Special Committee, noting further that there had not been enough time to complete its task, recommended to the General Assembly, at its twenty-fourth (1969) session, that the Special Committee be asked to resume its work as early as possible in 1970.

CONSIDERATION BY GENERAL ASSEMBLY

The report of the Special Committee on the Question of Defining Aggression was discussed at the General Assembly's twenty-fourth session, later in 1969, mainly in the Assembly's Sixth (Legal) Committee.

Most representatives who spoke in the Sixth Committee held that it was both possible and desirable to define the concept of aggression in the current international situation.

The representatives of Bulgaria, Burma, Mexico and Uganda, among others, referred to the progress achieved by the Special Committee and to the fact that one of the drafts submitted to the Special Committee had been sponsored by countries which had often expressed misgivings about the possibility and desirability of defining aggression. They said that the formulation of a satisfactory definition would further the cause of peace and that the Security Council would find such a definition useful in exercising its functions.

On the other hand, some States, including Brazil, felt that it was neither possible nor desirable to define the concept of aggression. Australia, the United Kingdom and the United States, among others, observed that the submission of the six-power draft did not mean that the sponsors of the draft had abandoned their long-standing scepticism about the usefulness of the definition of aggression. They had submitted their draft because the other drafts had not only failed to provide a satisfactory definition but had in fact helped to accentuate the differences of opinion in the Special Committee.

Many Members, including Burma, the Byelorussian SSR, Cyprus, Ghana, Lebanon and the United Arab Republic, supported the proposal that the Special Committee should resume its work early in 1970, in order that it might try to complete its work, if possible, before the twenty-fifth anniversary of the United Nations, later in 1970. However, Belgium and Liberia, among others, considered that the Special Com-

mittee's task was very complex and deserved the attention of all United Nations Members; therefore it would be more expedient not to convene the Special Committee until 1971 or 1972, so that the Secretary-General could study any relevant proposals from United Nations Members.

A number of Sixth Committee Members expressed the view that a satisfactory definition of aggression should conform to, and be based on, the Charter of the United Nations. Australia, Canada and Finland, among others, said that the definition should be supported by a large majority of United Nations Members, including all the permanent members of the Security Council. Other States, including Ghana, disagreed with the latter point and considered it incompatible with the Charter, in particular with the basic principle of the sovereign equality of States.

The representatives of Japan and the United Kingdom, among others, stressed that the definition should safeguard the discretionary power of the Security Council, the United Nations organ which bore the main responsibility for the maintenance of peace. On the other hand, others, including the representatives of Ghana and Uruguay, considered that if the definition were to be useful it must be binding on the Security Council and that the definition should not prevent other competent United Nations organs, particularly the General Assembly, from taking a decision concerning the existence of a case of aggression.

Australia and the United States, among others, said that the definition should be expressly applicable to entities not generally recognized as States. Chile and Finland, on the other hand, stated that the definition should refer only to "States" and should avoid any general expression such as "political entities."

Several Members, including France, held that the definition should be limited to aggression resulting from the direct use of armed force. On the other hand, Burma, Japan and the United States, among others, considered that the concept of the indirect or covert uses of force, such as the infiltration of armed bands, terrorism or subversion, must be included in any definition. They asserted that it should be possible to exercise the right of self-defence, as provided by the Charter, against both direct and indirect forms of illegal use of force. Moreover, some

States, including Bolivia, Cuba and Yugoslavia, felt that the definition should encompass all the forms of aggression which did not involve the use of armed force, such as economic, financial and political pressures, which could be just as dangerous as military aggression.

Bulgaria and the USSR believed that the inclusion in the definition of a provision condemning weapons of mass destruction would be appropriate and useful. Others, Chile among them, felt that it would be unnecessary to specify in the definition the nature of the weapons used.

According to several representatives, including those of Italy and Japan, aggressive intent should be taken into account in the formulation of the definition. However, the representatives of Ceylon, Chile, Romania and Saudi Arabia, among others, believed that the definition should be based not on the subjectivity of the intent but on the objectivity of the act. The element of intent, in their view, was virtually impossible to establish, and it could operate as a sanction for preventive attacks.

The principle of priority was criticized by Belgium, China, Italy and the United States, among others, as being incompatible with the Charter. On the other hand, several Members, including Chile, France, Ghana, Mongolia and the USSR, considered that the notion of first use of armed force was of fundamental importance. They asserted that those who argued that the question was one of preparation for aggressive war rather than one of first attack overlooked the fact that it was very difficult to distinguish between preparations connected with self-defence and preparation for aggressive war. Although the principle of priority was certainly very difficult to apply, that was no justification for ignoring it.

With regard to the legitimate use of force, several Members, including Cyprus, Romania and the United Kingdom, stressed the need to include in the definition of aggression a clear and precise provision recognizing the right of self-defence as provided for in the Charter. They observed that the exercise of the right of self-defence should be recognized only as a victim's response to armed aggression and that it was a restricted right which should not detract from the right of the Security Council to act in the interest of the maintenance of peace and security.

As to the legitimate use of force by regional

agencies, Chile and Yugoslavia, among others, pointed out that under Article 53 of the Charter those agencies were prohibited from taking enforcement action without the authorization of the Security Council. Others, however, felt that such a view was restrictive and was contrary to Articles 52 and 53 of the Charter.

The representatives of Bulgaria, Cuba, Sudan, Uganda and Yugoslavia were among those who maintained that the definition should contain a clause recognizing the right of dependent peoples to use force in the exercise of their right to self-determination.

Some Members—including Bolivia, Ghana and Iraq—referred to the question of the legal consequences of aggression and argued that the definition should establish the responsibility of the aggressor for his action and the principle that any gains the aggressor obtained should not be recognized.

The Sixth Committee also discussed the draft proposals which had been submitted to the Special Committee on the Question of Defining Aggression. The discussion centred on the USSR draft, the new 13-power draft and the six-power draft.

Several States, including Colombia and Guyana, supported the USSR and new 13-power drafts in principle. They stated that those drafts revealed a substantial convergence of attitudes with regard to the fundamental principles on which the definition should be based.

With regard to the USSR draft, Italy and the United States, among others, observed that the draft implied the existence of forms of aggression other than armed aggression, whereas within the meaning of the Charter the concept of aggression was confined to acts involving the use of armed force. Moreover, the possible consequences of the criterion of first use of armed force, as embodied in the USSR draft, were unacceptable. The rigid application of that criterion by the draft signified disregard for Article 2(4) of the Charter, which prohibited not only the use of force but also the threat of force. Mexico, among others, objected to a clause in the USSR draft implying the power of the Security Council to classify as aggression acts other than those included in the definition. One preambular paragraph of the USSR draft was criticized by the United States and Yugoslavia, among others, as suggesting that the use of

force would be permitted among States with similar social systems.

The United Kingdom and the United States, among others, believed that the new 13-power draft deviated from the Charter scheme by arbitrarily excluding the indirect or covert use of force from the Charter concept of aggression, thus denying, in certain serious cases of aggression, the right of self-defence. They also said that the draft, in part, constituted a revision of Article 2(4) of the Charter and conflicted with Article 53 of the Charter. Also, they continued, the draft conflicted with Charter law by depriving the General Assembly of its fundamental responsibilities regarding the maintenance of peace and security.

In the opinion of Bulgaria, Guyana, Uganda and Yugoslavia, among others, the six-power draft tended to place the burden of proof on the victim of aggression, by emphasizing the psychological aspects of aggression at the expense of the material elements. In addition, it failed to provide for important elements, such as the responsibility of the aggressor and the right of dependent peoples to use force in the exercise of their right to self-determination. Also, it considered regional organizations as being on an equal basis with the United Nations, which was contrary to Article 53 of the Charter.

DECISION BY GENERAL ASSEMBLY

On 12 December 1969, the General Assembly, acting on the basis of a recommendation of the Sixth Committee, adopted resolution 2549 (XXIV) by 83 votes to 1, with 18 abstentions.

By the preamble to the resolution, the Assembly said that it had considered the report of the Special Committee on the Question of Defining Aggression and that it took note of the progress made by the Special Committee in its consideration of the question of defining aggression and on the draft definition, as reflected in the report.

The Assembly considered that it had not been possible for the Special Committee to complete its task, in particular its consideration of the proposals concerning a draft definition of aggression. The Assembly also considered that in its resolutions of 18 December 1967 and 18 December 1968,³ it had recognized the widespread conviction of the need to expedite the definition of aggression. Finally, the Assembly underlined the urgency of defining aggression and the desirability of achieving this objective, if possible, by the twenty-fifth anniversary of the United Nations in 1970.

By the operative part of the resolution, the Assembly: (1) decided that the Special Committee should resume its work, in accordance with its mandate, at Geneva in the second half of 1970; (2) requested the Secretary-General to provide the Special Committee with the necessary facilities and services; and (3) decided to include the matter in the provisional agenda of its twenty-fifth (1970) session. (For text of resolution, see DOCUMENTARY REFERENCES below.)

The resolution was based on a proposal put forward in the Sixth Committee by: Algeria, Bolivia, the Central African Republic, Chad, Cyprus, Dahomey, Ecuador, Ethiopia, Ghana, Greece, Guyana, Haiti, India, Jamaica, Kenya, Libya, Mali, Mexico, Mongolia, Morocco, Nicaragua, Niger, Pakistan, Paraguay, Peru, Romania, Sierra Leone, Southern Yemen, Sudan, Syria, Tunisia, Uganda, the USSR, the United Arab Republic, the United Republic of Tanzania, and Yugoslavia. The 36-power draft resolution was approved by the Sixth Committee on 3 December 1969, by 68 votes to 1, with 15 abstentions.

³ See Y.U.N., 1967, pp. 757-58, and Y.U.N., 1968, p. 837, for texts of resolutions 2330(XXII) and 2420 (XXIII), respectively.

DOCUMENTARY REFERENCES

GENERAL ASSEMBLY—24TH SESSION
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Plenary Meeting 1831.

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A/7620. Report of Special Committee on Question of Defining Aggression.
A/C.6/L.785. Algeria, Bolivia, Central African Republic, Chad, Cyprus, Dahomey, Ecuador, Ethiopia, Ghana, Greece, Guyana, Haiti, India, Jamaica, Kenya, Libya, Mexico, Morocco, Nicaragua, Niger, Pakistan, Paraguay, Peru, Romania, Sierra Leone, Southern Yemen, Sudan, Syria, Tunisia, Uganda,

United Arab Republic, United Republic of Tanzania, Yugoslavia: draft resolution, co-sponsored orally by Mali, Mongolia and USSR, approved by Sixth Committee on 3 December 1969, meeting 1169, by 68 votes to 1, with 15 abstentions. A/C.6/L.786, A/C.5/1278, A/7838, A/7861. Administrative and financial implications of draft resolution recommended by Sixth Committee, A/7853. Statements by Secretary-General and reports of Advisory Committee on Administrative and Budgetary Questions and Fifth Committee. A/7853. Report of Sixth Committee.

RESOLUTION 2549 (xxiv), as proposed by Sixth Committee, A/7853, adopted by Assembly on 12 December 1969, meeting 1831, by 83 votes to 1, with 18 abstentions.

The General Assembly,

Having considered the report of the Special Committee on the Question of Defining Aggression on the work of its session held in New York from 24 February to 3 April 1969,

Taking note of the progress made by the Special Committee in its consideration of the question of de-

fining aggression and on the draft definition, as reflected in the report of the Special Committee,

Considering that it was not possible for the Special Committee to complete its task, in particular its consideration of the proposals concerning a draft definition of aggression submitted to the Special Committee during its sessions held in 1968 and 1969,

Considering that in its resolutions 2330 (XXII) of 18 December 1967 and 2420 (XXIII) of 18 December 1968 the General Assembly recognized the widespread conviction of the need to expedite the definition of aggression,

Considering the urgency of defining aggression and the desirability of achieving this objective, if possible, by the twenty-fifth anniversary of the United Nations,

1. Decides that the Special Committee on the Question of Defining Aggression shall resume its work, in accordance with General Assembly resolution 2330 (XXII), at Geneva in the second half of 1970;

2. Requests the Secretary-General to provide the Special Committee with the necessary facilities and services;

3. Decides to include in the provisional agenda of its twenty-fifth session an item entitled "Report of the Special Committee on the Question of Defining Aggression."