

CHAPTER III

THE QUESTION OF DEFINING AGGRESSION

CONSIDERATION BY SPECIAL COMMITTEE

In accordance with a General Assembly decision of 12 December 1969,¹ the Special Committee on the Question of Defining Aggression continued its work in 1970.

Meeting at Geneva, Switzerland, from 13 July to 14 August 1970, the Special Committee discussed the three draft proposals which had been submitted to it at its 1969 session, namely: (1) a USSR proposal; (2) a 13-power proposal (Colombia, Cyprus, Ecuador, Ghana, Guyana, Haiti, Iran, Madagascar, Mexico, Spain, Uganda, Uruguay and Yugoslavia); and (3) a six-power proposal (Australia, Canada, Italy, Japan, the United Kingdom and the United States).²

After a general discussion of the three proposals, the Special Committee decided to consider them paragraph by paragraph according to the concepts on which they were based.

The main points considered by the Special Committee were the following:

- (1) Application of the definition of aggression:
 - (a) the definition and the power of the Security Council;
 - (b) political entities to which the definition should apply.
- (2) Acts proposed for inclusion in the definition:
 - (a) the question of "direct or indirect" aggression;

¹ See Y.U.N., 1969, p. 774, text of resolution 2549 (XXIV).

² Ibid., pp. 768-71, for information on the draft proposals.

(b) declaration of war; (c) use of weapons of mass destruction; (d) invasion, attack, military occupation and annexation; (e) bombardment, attack on land, sea or air forces, blockade and the use of other forms of armed force; (f) armed bands, volunteer forces and terrorist and subversive activities.

(3) The principle of priority (first use of force).

(4) Aggressive intent.

(5) Legitimate use of force: (a) self-defence; (b) organs empowered to use force.

(6) Proportionality (the question of the limits of self-defence).

(7) Acts considered not to constitute acts of aggression: the right of peoples to self-determination.

(8) Legal consequences of aggression: (a) non-recognition of territorial gains; (b) the question of responsibility.

The Special Committee established an eight-member working group to formulate a definition of aggression. However, for lack of time it was unable to examine the Working Group's report, which it therefore decided to annex to its own report to the General Assembly. The Special Committee also decided to recommend to the General Assembly that it be asked to resume its work as early as possible in 1971.

CONSIDERATION BY GENERAL ASSEMBLY

The report on its 1970 session by the Special Committee on the Question of Defining Aggression was considered by the General Assembly at its twenty-fifth session.

The report was referred to the Assembly's Sixth (Legal) Committee, where it was discussed at 12 meetings held between 20 October and 2 November 1970.

VIEWS ON GENERAL ASPECTS OF QUESTION OF DEFINING AGGRESSION

During the discussion, a number of representatives, including those of Ceylon, Cyprus and Poland, stated that the formulation of a definition of aggression would help considerably towards the maintenance of international peace and security. It was said that in addition to contributing to the progressive development of international law, especially with regard to the principle of non-use of force, a legal definition would make it possible to consolidate the mechanism of collective security based on the Charter of the United Nations; it would not only dissuade potential aggressors but also pro-

tect States against the arbitrary or automatic characterization of the use of force as aggression.

Some Members, however—China, Israel and Sweden, for instance—expressed doubts about the usefulness of a definition of aggression. They held that there was no urgency to achieve a definition shortly after the adoption by the General Assembly of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States (see pp. 784-92), which included provisions relating to the prohibition of the use of force, self-determination and legal consequences of aggression.

The representatives of Canada, Hungary and Syria, among others, felt that the Special Committee had made encouraging progress in the three years since its establishment, considering the vain attempts that had been made for 40 years to define aggression. It was observed that at the Committee's 1970 session the sponsors of the various draft proposals had clarified their positions and the gap between different points of view had been narrowed. It was also said that the area of agreement that had emerged from the Committee's 1970 session was much wider than was indicated in its report, which could only record official positions. A majority of the speakers therefore supported the proposal that the Special Committee should resume its work as early as possible in 1971.

In the opinion of some representatives, including those of Finland and Japan, the progress made by the Special Committee warranted neither optimism nor pessimism; the few common factors which had emerged from the Committee's 1970 session concerned only the less difficult questions. The representative of Liberia felt that the nature of the subject and the current political climate made it advisable to suspend the Committee's work for a year or two. Cameroon considered that the Committee's mandate should not be renewed unless the Committee was specifically requested to submit to the 1971 session of the General Assembly conclusions recommending a compromise between the various tendencies which would serve as the basis for a generally acceptable definition.

With regard to the procedure to be followed in preparing and adopting a definition of aggression, many Members, including Hungary, Japan, Kuwait, Mongolia and the United

States, stressed that such a definition must be capable of attracting overwhelming support among Members of the United Nations, including the permanent members of the Security Council; in other words, it must be a consensus definition.

Other Members, such as Cyprus, Iraq and Uganda, were also in favour of working for unanimity. However, while recognizing the value of a mutually acceptable text, they believed that if unanimity could not be achieved the Special Committee should vote on controversial matters so that a draft definition that commanded a large majority of its members could be produced.

The representatives of the Central African Republic, Colombia and Zambia were among those who considered that it was unrealistic to try to adopt a definition by consensus; moreover, they said, it was not essential that the definition be acceptable to the permanent members of the Security Council, since there could be no question of accepting any veto in the progressive development of international law.

It was also maintained that a definition approved by a large majority of States would constitute a weighty legal basis that could not be ignored by the United Nations bodies responsible for maintaining international peace and security.

VIEWS ON CONTENT OF DEFINITION

Many representatives, including those of Belgium, China, Malaysia and Uruguay, observed that any definition of aggression should in no way curtail or fetter the Security Council's discretionary power under Article 39 of the United Nations Charter,³ that is, its freedom of judgement in determining whether any specific situation involved an act of aggression. It was said in this connexion that the definition was not to be applied automatically by the Council, and that a definition adopted by the General Assembly could never enjoy binding legal force, even though it would have a definite moral value for public opinion and for the Council.

On the other hand, Austria, the Central African Republic and Iraq argued—as did others—that the definition ought to be worded in such a way as to prevent the Security Council from

making arbitrary decisions. In the opinion of some of these Members, once the General Assembly had adopted a definition, based strictly on the Charter or on uncontested principles of international law, it would be binding on all bodies, including the Security Council. Whereas Austria considered that the Council should be free to determine the existence of an act of aggression in all cases not fully covered by a list of acts constituting aggression to be included in the definition, Mexico doubted if the Council had the right to add other acts to the list. Some Members, Barbados and Haiti, for instance, felt that the reference to the Security Council's power was irrelevant to the definition since the Assembly and the Council would automatically be guided by any definition that might be produced.

Some Members, including Austria and the United Kingdom, maintained that the definition of aggression should be applicable not only to States but also to other political entities. It was said that it should not be possible to argue that, by reason of the disputed status of a particular political entity by or against which force had been used, use of force did not constitute aggression.

Other Members, including Iraq and the USSR, were opposed to the inclusion in the definition of the idea of political entities, an idea which they termed alien to the Charter. Such inclusion, it was said, could blur the distinction between international conflicts and civil wars and also encourage certain States to prevent the exercise of the right of peoples to self-determination by labelling national liberation movements as aggressors.

A number of Members, including Colombia, Syria, Uganda and the USSR, held that it would be more practical to deal first with direct armed aggression and to leave the question of other forms of aggression to a later stage. It was said that while it should not be difficult to agree on what constituted the most serious and obvious cases of armed aggression, to try to draw up a definition of aggression in the widest sense would raise many difficulties. Most of those Members specified that they attached

³ For text, see APPENDIX II.

great importance to the question of indirect aggression, which was of particular interest to small countries, which were especially vulnerable to that form of aggression, and to countries still under colonial domination.

Other Members, including the United Kingdom and the United States, maintained that any definition must cover all uses of force, whether or not they were "direct." It was said that the labels "indirect aggression" for covert forms of aggression and "direct aggression" for overt armed attack were at variance with the Charter. The most serious threats to international peace and security currently stemmed from the less direct and less overt uses of force; a partial definition covering only "direct" aggression would therefore not be acceptable.

The representatives of Sweden and Yugoslavia, among others, felt that, at the current stage, the definition should cover only the use of force, without qualifying it as "direct" or "indirect." In the opinion of some representatives, including those of Cyprus and France, the proposed definition of indirect aggression could not be exhaustive and therefore the definition of aggression should include a minimum list of the most serious cases of aggression under Articles 39 and 51 of the Charter;⁴ the inclusion of certain serious cases of indirect aggression, for instance the infiltration of armed bands, would be acceptable in such a list.

Afghanistan and Pakistan were among Members holding that the definition should cover various other forms of aggression, such as economic, financial, political, cultural and ideological pressures. The value of including such forms was contested by other Members, however.

In the opinion of some Members, including Bolivia and Greece, a declaration of war was intrinsically an act of aggression. Others, Canada and Ceylon for instance, felt that a declaration of war did not necessarily constitute aggression per se and was not necessarily relevant to the existence of aggression.

Some Members, including Libya, considered that weapons of mass destruction should be expressly mentioned in a definition, while others thought that weapons represented only a means of committing aggression and were not a constituent element of it.

The United Arab Republic and Yugoslavia,

among others, considered that invasion, attack, military occupation and annexation of territory constituted flagrant acts of aggression which should be incorporated in any definition. An opposing view was expressed by Canada and others, which held that military occupation and annexation were essentially consequences of either the legitimate use of force or acts of aggression and therefore should not be included. The representative of Romania maintained that the definition should mention a form of aggression whereby a State made its territory available to another State for the purpose of an armed attack against a third State.

The introduction of the concept of priority (first use of force) into the definition did not meet, in principle, any opposition. However, different views were expressed regarding the degree of importance which should be accorded to that concept in the definition.

Greece, Iran, Iraq and the USSR, among others, held that the priority principle, which was sanctioned by many international instruments and was based directly on the provisions of the Charter, constituted the only objective criterion applicable in determining the aggressor; it laid the burden of proof on the State that attacked first, and its purpose was to prevent States from committing acts of aggression in the guise of preventive wars. Other Members, including Italy, Japan and the United Kingdom, maintained that the priority principle should figure in the definition only as one element among others.

A number of representatives, including those of Colombia, Cyprus, France and Iraq, were opposed to including the element of aggressive intent in the definition. It was observed that the element of priority was irreconcilable with the subjective element of intent; the two elements, therefore, should not be placed on the same footing in the definition, even though it was conceivable that the Security Council might take into consideration expressions of intent by the States involved. It was pointed out that the inclusion of the concept of aggressive intent in the definition would have the effect of placing the burden of proof on the victim, and would

⁴ Ibid.

also enable the aggressor to take shelter behind the definition in order to deny that he had any aggressive intent.

The representatives of Italy and the United Kingdom, among others, argued that aggressive intent was one of the most important elements in determining whether or not aggression had occurred; if intent were not recognized as an element of aggression, a limited, erroneous or unauthorized attack could unjustly be labelled as aggression. It was also said that the element of intent was not necessarily subjective: it was generally inferred, especially in criminal law, from the objective circumstances of the offence.

According to some representatives, including those of Australia and Uruguay, any definition of aggression should acknowledge that the use of force in the exercise of a State's inherent right to individual or collective self-defence did not constitute aggression. Other Members, for instance El Salvador and Uganda, felt that efforts should be made to establish the limits of the right of self-defence vested in States by virtue of Article 51 of the Charter, in order to prevent any possible ambiguity between any kind of military action and aggression in the proper sense of the word. It was said that not all breaches of the peace would give a State the right to self-defence.

Some Members, including Finland, Greece and Iran, favoured including the principle of proportionality in the definition. It was observed in that connexion that an unconditional right of self-defence could not be protective, particularly in the case of small States, since it seemed to provide the only guarantee that a defensive action would not turn into aggression. The representatives of Canada, Ghana and others said that the question of proportionality should play little part in the definition. It was pointed out that Article 51 of the Charter did not mention the principle of proportionality and placed no limitations on the means that the victim of armed aggression could use to repel the aggressor.

Some Members, Cuba and Iraq, for instance, stressed that the use of armed force by regional arrangements or agencies would be legitimate only if there had been a prior decision to that effect by the Security Council under Article 53 of the Charter.⁵ The view was expressed, by

Bulgaria among others, that the Security Council alone could decide to resort to enforcement measures involving the use of force.

Many Members including Guinea, Pakistan and Zambia, were in favour of including in the definition of aggression a provision that would make an exception for the use of force when it was necessary to ensure the exercise of the right of peoples to self-determination. Such a provision, it was said, was of great importance to countries that were prepared to support national liberation movements. Colonialism, they argued, qualified as aggression, and the use of force by dependent peoples for self-determination—for instance the organizing of armed bands and the instigation of civil strife—should be regarded as legitimate means.

Australia, Portugal and the United Kingdom were among those observing that the use of force by colonial peoples was not envisaged in the Charter system and should be excluded from the definition. In that connexion, it was noted that the question of self-determination and administration of dependent territories had been carefully regulated by the Charter, which had instituted an effective system that did not envisage the use of armed force by dependent peoples; moreover, recognition of the legitimacy of the use of force in order to give aid to dependent and oppressed peoples might provide a pretext for manifest acts of aggression.

Colombia and the Ukrainian SSR, among others, considered that the definition should contain provisions concerning the legal consequences of aggression; it should state clearly that the unlawful use of force entailed responsibility and conferred no rights. It was observed in this connexion that the principle of the non-recognition of territorial gains obtained by force had already been recognized in several international instruments and that the principle of the responsibility of the aggressor had also been embodied in international practice, for instance at the Nuremberg and Tokyo tribunals.

Other Members, such as Italy and the United Kingdom, felt that to include the legal consequences of aggression in the definition would impair the clarity of the text and the effective-

⁵ For text of Article 53, see APPENDIX II.

ness of the guidance it was expected to provide. In this connexion, Burma suggested that it would be more appropriate to deal with the question of non-recognition of territorial gains obtained by force in the preamble of the definition, since it concerned a legal consequence of aggression and was not an element of aggression itself.

DECISION OF GENERAL ASSEMBLY

On 25 November 1970, the General Assembly, acting on the recommendation of its Sixth Committee, adopted without objection resolution 2644 (XXV).

The Assembly thereby recognized the widespread conviction of the need to expedite the definition of aggression, and considered the urgency of bringing the work of the Special Committee on the Question of Defining Aggression to a successful conclusion.

The Assembly then decided that the Special Committee should resume its work as early as possible in 1971. It also decided to include the

question in the provisional agenda of its 1971 session. (For text of resolution, see DOCUMENTARY REFERENCES below.)

The resolution was based on a proposal put forward in the Sixth Committee by the following 38 Members: Algeria, Bulgaria, the Byelorussian SSR, the Central African Republic, Cyprus, Czechoslovakia, Ecuador, Ethiopia, Ghana, Guinea, Guyana, Haiti, Hungary, India, Indonesia, Iran, Kenya, the Khmer Republic,⁶ Kuwait, Libya, Madagascar, Mali, Mexico, Morocco, Poland, Romania, Sierra Leone, Southern Yemen, Sudan, Syria, Tunisia, Uganda, the Ukrainian SSR, the USSR, the United Arab Republic, the United Republic of Tanzania, Yemen and Yugoslavia.

The text was approved without objection by the Sixth Committee on 2 November 1970.

⁶ On 7 October 1970, Cambodia changed its name to the Khmer Republic.

DOCUMENTARY REFERENCES

GENERAL ASSEMBLY—25TH SESSION

Sixth Committee, meetings 1202-1209, 1211-1214. Plenary Meeting 1914.

A/8001. Report of Secretary-General on work of the Organization, 16 June 1969-15 June 1970, Part Four, Chapter IV C.

A/8019. Report of Special Committee on Question of Defining Aggression, 13 July-14 August 1970. (Chapter IV: Recommendation of Special Committee.)

A/C.6/L.799. Algeria, Bulgaria, Byelorussian SSR, Central African Republic, Cyprus, Czechoslovakia, Ecuador, Ethiopia, Ghana, Guyana, Haiti, India, Iran, Kenya, Kuwait, Libya, Madagascar, Mali, Mexico, Morocco, Poland, Romania, Sierra Leone, Southern Yemen, Sudan, Syria, Tunisia, Uganda, Ukrainian SSR, USSR, United Arab Republic, United Republic of Tanzania: draft resolution.

A/C.6/L.799/Rev.1. Algeria, Bulgaria, Byelorussian SSR, Central African Republic, Cyprus, Czechoslovakia, Ecuador, Ethiopia, Ghana, Guinea, Guyana, Haiti, Hungary, India, Indonesia, Iran, Kenya, Khmer Republic, Kuwait, Libya, Madagascar, Mali, Mexico, Morocco, Poland, Romania, Sierra Leone, Southern Yemen, Sudan, Syria, Tunisia, Uganda, Ukrainian SSR, USSR, United Arab Republic, United Republic of Tanzania, Yemen, Yugoslavia: revised draft resolution, adopted without objection by Sixth Committee on 2 November 1970, meeting 1213.

A/8171. Report of Sixth Committee.

RESOLUTION 2644 (xxv), as recommended by Sixth Committee, A/8171, adopted without objection by Assembly on 25 November 1970, meeting 1914.

The General Assembly,

Having considered the report of the Special Committee on the Question of Defining Aggression on the work of its session held at Geneva from 13 July to 14 August 1970,

Taking 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 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 1969 and 1970,

Considering that in its resolutions 2330 (XXII) of 18 December 1967, 2420 (XXIII) of 18 December 1968 and 2549 (XXIV) of 12 December 1969 the General Assembly recognized the widespread conviction of the need to expedite the definition of aggression,

Considering the urgency of bringing the work of the Special Committee to a successful conclusion and the desirability of achieving the definition of aggression as soon as possible,

Noting also the common desire of the members of

the Special Committee to continue their work on the basis of the results achieved and to arrive at a draft definition,

1. Decides that the Special Committee on the Question of Defining Aggression shall resume its work, in accordance with General Assembly resolution 2330(XXII), as early as possible in 1971;

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-sixth session an item entitled "Report of the Special Committee on the Question of Defining Aggression."