

Chapter IV

The question of defining aggression**Consideration by Special Committee**

The Special Committee on the Question of Defining Aggression met at United Nations Headquarters, New York, from 1 February to 5 March 1971 to resume its work, as requested by the General Assembly on 25 November 1970.¹

The Special Committee decided to consider the specific questions mentioned in the 1970 report of its Working Group, namely: a general definition of aggression; the principle of priority; political entities other than States; legitimate use of force; aggressive intent; acts proposed for inclusion in the definition; principle of proportionality; legal consequences of aggression; and the right of peoples to self-determination.

The Special Committee reconstituted its Working Group, instructing it to formulate an agreed or generally accepted definition of aggression and, in case it was unable to reach such a definition, to report its assessment of the progress made, indicating both the points of agreement and disagreement.

The Working Group held 23 meetings in 1971, and submitted two successive reports to the Special Committee. The first report reflected the outcome of its discussions on the general definition of aggression and the principle of priority; the second report reflected the results of its discussions on the questions of political entities other than States, legitimate use of force, aggressive intent, acts proposed for inclusion in the definition of aggression, proportionality, legal consequences of aggression and the right of peoples to self-determination.

The Special Committee considered the first report of the Working Group, but for lack of time was unable to examine the second report. Both reports were annexed to the 1971 report of the Special Committee to the General Assembly.

On 5 March 1971, the Special Committee unanimously adopted a resolution, submitted by Czechoslovakia and Mexico, by which, inter alia, it noted the common desire of its members to continue their work on the basis of the results attained and arrive at a draft definition, and it recommended to the General Assembly that the Committee be invited to resume its work in 1972.

General Assembly discussion

The report of the Special Committee on its 1971 session was taken up by the General Assembly at its twenty-sixth (1971) session. The report was referred to the Assembly's Sixth (Legal) Committee,

which discussed it at 11 meetings held between 26 October and 18 November 1971. Some of the main points raised are summarized below.

Views on general aspects of question of defining aggression

Many Members expressed the view that there was an urgent need for a definition of aggression. The representatives of Bulgaria, Poland, the Syrian Arab Republic, the USSR and Yugoslavia, among others, felt that the adoption of a definition of aggression would not only contribute to the codification of international law but also strengthen the system of collective security established by the United Nations Charter and promote the rule of law. It was further held, by those States among others, that a definition of aggression could contribute towards the formation of an enlightened public opinion; could be a yardstick against which to measure the conduct of States in the light of their obligations under the Charter; could serve as a warning to any potential aggressor; would be useful for protecting small countries; and would supply a legal basis, within the framework of the United Nations, for eliminating the lack of precision and the subjective nature of political judgements.

Other Members, including Cameroon, Israel and the United States, expressed doubt regarding the usefulness of a definition of aggression. The representative of the United States felt that although the clarification of legal norms was a useful step in promoting the rule of law, an agreed definition of aggression was not vital to the attainment of the purposes and principles of the Charter; a determination to make the United Nations collective security system as effective as possible was far more important.

The representative of Israel argued that even if such a definition could be established, it could neither have any impact on the development of international penal law nor remove provocation and aggression.

The representative of Cameroon held that international peace in fact depended on the political will of States; it would be wrong to believe that the cause of peace could be furthered by working out new rules of law, since the various juridical instruments of general application at the disposal of the international community were quite adequate for its needs.

¹ See Y.U.N., 1970, pp. 797-98, text of resolution 2644(XXV).

The Cameroonian representative said he was unable to share the optimism of those who believed that the Special Committee was on the verge of completing its work and could not support the proposal that the mandate of the Special Committee be renewed in 1972, a position that was also taken by the representative of Israel.

Most of the representatives who spoke, however, felt that the Special Committee had made encouraging progress which gave grounds for hope that a generally acceptable definition of aggression could be formulated in the near future.

With regard to the procedure to be followed for the formulation and adoption of a definition of aggression, the representatives of Ceylon, Finland, Greece and Hungary were among those who considered that the only way of arriving at an acceptable and lasting definition of aggression was by consensus.

Other representatives, including those of Iraq, the Ukrainian SSR and the United Republic of Tanzania, felt that if it was not possible to reach a consensus the definition should be adopted by a simple majority. (The representative of the United Republic of Tanzania held that the method of seeking the consent of all the permanent members of the Security Council was obstructive and undemocratic and should be abandoned.)

Mexico and the USSR felt that a definition of aggression would gain in importance if it were adopted in a General Assembly resolution similar to that by which the Assembly had adopted the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.²

Views on content of definition

THE DEFINITION AND THE POWER OF THE SECURITY COUNCIL

It was generally accepted in principle that the definition of aggression should safeguard the discretionary power of the Security Council as the United Nations organ with primary responsibility for the maintenance of international peace and security. Italy held that no definition of aggression could bind the Security Council in determining a particular case of aggression; the Security Council was and remained an organ of security. Mexico inquired whether the incorporation of a definition of aggression in international law would not have the effect of curtailing the powers of the Security Council.

POLITICAL ENTITIES TO WHICH DEFINITIONS SHOULD APPLY

A number of representatives, including those of Afghanistan, Bulgaria, Costa Rica, Cuba, Ghana,

Greece, Iraq and Peru, opposed the inclusion in the definition of aggression of a reference to "political entities other than States."

The representative of Ghana held that the definition should apply to all sovereign and independent States, whether they were Members of the United Nations or not; the notion of "political entity" was not embodied in the Charter, which had no provision for making the existence of a sovereign State dependent on its recognition by other States.

The Peruvian representative maintained 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.

To ensure that the definition was given the widest possible application, some representatives, including those of Italy and Zambia, suggested resorting to the compromise solution envisaged in the Working Group's 1971 report, namely, to annex to the definition an explanatory note to the effect that the term "State" included States whose statehood was disputed.

The representative of the United States, among others, felt that the definition of aggression, if it was to be complete, should include the concept of political entities; agreement on certain aspects of that problem had already been achieved in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, he noted.

ACTS PROPOSED FOR INCLUSION IN DEFINITION

Many Members expressed the view that the definition should be limited, at least at the current stage, to the use of armed force. Different opinions were expressed, however, with regard to whether the definition should cover the so-called indirect use of armed force for the purposes of the exercise of the right of self-defence. Several representatives, including those of France, Ghana and Iraq, maintained that at the current stage of its work the Special Committee should not concern itself with defining "indirect aggression" because of the difficulty of finding a precise definition and the time-consuming process of determining a consensus.

The representative of Ghana noted that care should be taken not to confuse the concept of "breach of the peace" with that of "armed attack" or "aggression"; the Special Committee's report had cited as examples of acts constituting aggression acts which, in fact, would only result in a

² See Y.U.N., 1970, pp. 784-92.

breach of the peace if they were of such intensity as to necessitate recourse to self-defence, in which case they would pose an imminent danger to life and property as well as to the existence of a State. The French representative proposed that the definition contain a list of the most serious kinds of aggression, i.e. those contemplated in Articles 39 and 51 of the Charter.³ He felt that the sending of armed bands by one State into the territory of another might be included in the list, but that unduly vague concepts, such as support for acts of subversion, should be excluded, since a State might use them as a pretext for aggression under the guise of self-defence.

Other representatives, including those of Canada, Israel and the United States, maintained that the definition of aggression should cover any illegal use of armed force, whether direct or indirect.

The United States representative held that a definition of aggression must be exhaustive and not partial and that attempts to draw a distinction between "direct" and "indirect" aggression sometimes served as an excuse for accepting a partial definition; such a distinction had no basis in the Charter, where the various kinds of illegal force or aggression were not differentiated.

The representative of Israel contended that indirect aggression was probably the most serious contemporary manifestation of aggression and that any enumeration of acts of aggression which overlooked that particular form would have no great practical value. It was common knowledge that current violations of the provisions of the Charter were due as much to indirect as to 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, the Israeli representative added.

Chile, Cuba and India were among those holding that the definition should not be limited to armed aggression; for example, it was noted by Cuba, France and Zambia that the Special Committee should consider including in the definition a reference to economic aggression as one of the most serious forms of attack or challenge.

The notions of declaration of war, occupation and annexation were among the specific acts mentioned for enumeration in the definition as examples of aggression. The Canadian representative noted that a view seemed to be emerging that a declaration of war did not necessarily constitute aggression but was an important element in determining an act of aggression, because of its inherent seriousness and the formal juridical consequences that followed from it.

Egypt felt that the most serious act of aggression

was occupation or annexation of the territory of a State by force.

Romania held that the definition should include cases in which a State made its territory available to another State so that it could commit aggression against a third State.

PRINCIPLE OF PRIORITY

No basic objection to the inclusion of the principle of priority in the definition of aggression was expressed. Several Members, including Bulgaria, Hungary and Iraq, felt that the principle must be retained as being a basic and determinative criterion. Hungary noted that the principle of priority made it impossible for an aggressor State to plead innocence on the grounds that it was conducting a preventive war: the burden of proof was placed on the State that first resorted to force.

Others, including Canada, Italy and the United States, were of the opinion that the principle of priority could not in itself constitute a determining factor and should figure in the definition as only one element among others. The Canadian representative suggested that the question of priority might be solved by postulating that the Security Council should determine, in each case, which party first used force and treat its finding as a fact of considerable significance but without prejudice to the ultimate consequences of the finding.

AGGRESSIVE INTENT

In the view of some Members, including Burma, El Salvador, the USSR, the United Kingdom and the United States, the element of intent should be a fundamental ingredient of any definition of aggression.

The USSR said that if the definition did not include the element of intent, its sphere of application would be limited; in particular, it would not apply to cases where exercise of the right of self-defence developed into actual aggression.

The United States considered that *animus aggressionis* was an essential element of a definition of aggression.

Others—France, Ghana, Iraq and Israel, for instance—were opposed to including the element of intent in the definition. Since aggressive intent was necessarily implied in any act of aggression, Ghana said, it was not necessary to include the principle in the definition; the inclusion of the element of intent in a definition would in fact permit an aggressor State to seek to justify its action, but the burden of proof should always be on the aggressor and not on the victim State.

The representative of Israel felt that the question of aggressive intent should be left to the

³ Fortext of Articles 39 and 51 of the Charter, see APPENDIX II.

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.

LEGITIMATE USE OF FORCE

Egypt and the USSR were among those maintaining that the definition of aggression should distinguish clearly between aggression and the legitimate use of force. Article 51 of the Charter expressly provided that the right of self-defence could be exercised in the event of armed attack, the USSR noted. Egypt said that a definition not totally based on Article 51 would run the risk of encouraging the use of force in violation of the provisions of the Charter.

On the other hand, the United Kingdom felt that any attempt to incorporate in the definition of aggression a definition of the right of self-defence was misconceived and dangerous; the Special Committee's terms of reference did not entitle it to embark on a definition of the right of self-defence. All that was required, the United Kingdom said, was that the definition should contain a suitable saving provision to the effect that the definition did not apply to what was done in the exercise of the right of self-defence.

The representatives of the Byelorussian SSR, France, Ghana, Hungary, Israel and Mongolia were opposed to including the principle of proportionality in the definition of aggression. They made the following points: no such principle appeared in the Charter and 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; such a principle might be applied in the case of indirect armed attack or breaches of the peace, which were less urgent; and, in any case, Article 51 of the Charter recognized the right of self-defence as an inherent right without any restrictions whatsoever.

Other representatives, including those of Burma, Costa Rica, Greece and the United States, considered that it would be useful to include the principle of proportionality in the definition. The United States representative felt that the fear that incorporating the principle of proportionality in the definition of aggression would only encourage aggression was not supported by the facts; proportionality should be based on the danger rationally perceived by the victim. He noted that the principle was not a new concept in municipal law and that it would be relatively easy to transfer it to international law.

It was observed by the representative of Greece that the principle of proportionality was an

excellent criterion for determining whether an action was defensive or aggressive.

With regard to the organs empowered to use force, some Members, including Cuba and the Ukrainian SSR, maintained that the Security Council alone could decide on the use of force. Article 11 of the Charter, the Ukrainian representative said, 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. Cuba was unable to accept any definition which recognized that force could be used legitimately under regional arrangements or by regional agencies without the authorization of the Security Council, as required by Article 53 of the Charter.⁴

THE RIGHT OF SELF-DETERMINATION

Several Members, including Ghana and Romania, said that logically it was the duty of the Special Committee, as the body responsible for defining aggression—namely, the illegal use of force—to consider situations in which the use of force was legitimate, in particular the inalienable right of colonial peoples to oppose any attempt to deprive them by force of their right to self-determination.

Other Members, including Italy and the United Kingdom, said the right of self-determination should not be mentioned in the definition of aggression. It was argued that this right had been dealt with in other instruments, and therefore was not relevant to the definition of aggression; it could not be made part of the definition without an unacceptable distortion of the definition's scope and function.

LEGAL CONSEQUENCES OF AGGRESSION

Several representatives, including those of Egypt and Iraq, said the definition of aggression should include a provision concerning the legal consequences of aggression. In the view of the representative of Iraq, it must be stated that aggression, once established, entailed responsibility; it was also important to mention the principle of non-recognition and to declare that no territorial gain from aggression should be recognized.

The representatives of Italy and the United States, among others, maintained that the definition of aggression should not mention the legal consequences of aggression; the question went beyond the Special Committee's terms of reference and, in any case, had been adequately dealt with in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States.⁵

⁴ For text of Articles 11 and 53 of the Charter, see APPENDIX II.

⁵ See footnote 2.

Decisions by General Assembly

On 3 December 1971, the General Assembly: (1) decided that the Special Committee on the Question of Defining Aggression should resume its work as early as possible in 1972; (2) requested the Secretary-General to provide the Special Committee with the necessary facilities and services; and (3) decided to include the question in the provisional agenda of its 1972 session.

These decisions by the Assembly were set forth in resolution 2781 (XXVI), which was adopted, by a vote of 110 to 0, with 3 abstentions, on the recommendation of the Sixth Committee.

The resolution was based on a proposal put forward in the Sixth Committee by the following 33 Members: Bulgaria, the Byelorussian SSR, Colombia, Cyprus, Czechoslovakia, Ecuador,

Egypt, Ethiopia, Ghana, Guinea, Guyana, Haiti, Hungary, India, Iran, Jordan, Kenya, the Libyan Arab Republic, Madagascar, Mali, Mexico, Mongolia, Pakistan, Poland, Romania, Sierra Leone, the Syrian Arab Republic, Uganda, the Ukrainian SSR, the USSR, the United Republic of Tanzania, Yugoslavia and Zambia.

The text was approved by the Sixth Committee on 15 November 1971 by a vote of 85 to 0, with 3 abstentions. (For text of resolution, see DOCUMENTARY REFERENCES below.)

On 21 December 1971, the Assembly, in taking decisions concerning the implementation of the Declaration on the Strengthening of International Security, called for an early agreement on the definition of aggression. (For text of resolution 2880 (XXVI), see pp. 40-41.)

DOCUMENTARY REFERENCES

General Assembly—26th session
Sixth Committee, meetings 1268-1276, 1281, 1285.
Fifth Committee, meeting 1460.
Plenary meeting 1999.

A/8401. Report of Secretary-General on work of the Organization, 16 June 1970-15 June 1971, Part Four, Chapter IV B.

A/8419. Report of Special Committee on Question of Defining Aggression, 1 February-5 March 1971. (Chapter IV: Recommendation of Special Committee.)

A/C.6/L.827. Bulgaria, Byelorussian SSR, Colombia, Cyprus, Czechoslovakia, Ecuador, Egypt, Ethiopia, Ghana, Guinea, Guyana, Haiti, Hungary, India, Iran, Jordan, Kenya, Libyan Arab Republic, Madagascar, Mali, Mexico, Mongolia, Pakistan, Poland, Romania, Sierra Leone, Syrian Arab Republic, Uganda, Ukrainian SSR, USSR, United Republic of Tanzania, Yugoslavia, Zambia: draft resolution, approved by Sixth Committee on 15 November 1971, meeting 1281, by 85 votes to 0, with 3 abstentions.

A/C.6/L.828, A/C.5/1401, A/8533. Administrative and financial implications of draft resolution recommended by Sixth Committee in A/8525. Statements by Secretary-General and report of Fifth Committee.

A/8525. Report of Sixth Committee.

RESOLUTION 2781 (XXVI), as recommended by Sixth Committee, A/8525, adopted by Assembly on 3 December 1971, meeting 1999, by 110 votes to 0, with 3 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 1 February to 5 March 1971,

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 at its session held in 1971,

Considering that in its resolutions 2330 (XXII) of 18 December 1967, 2420 (XXIII) of 18 December 1968, 2549 (XXIV) of 12 December 1969 and 2644 (XXV) of 25 November 1970 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 1972;

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