

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.