

# United Nations GENERAL ASSEMBLY

TWENTY-SECOND SESSION

Official Records



SIXTH COMMITTEE, 1019th  
MEETING

Friday, 8 December 1967,  
at 3.15 p.m.

NEW YORK

## CONTENTS

	Page
<i>Agenda item 95:</i>	
<i>Need to expedite the drafting of a definition of aggression in the light of the present international situation (continued) . . . . .</i>	379

*Chairman:* Mr. Edvard HAMBRO (Norway).

## AGENDA ITEM 95

Need to expedite the drafting of a definition of aggression in the light of the present international situation (continued) (A/6833 and Corr.1, A/C.6/378, A/C.6/384, A/C.6/L.636)

1. Mr. E. SMITH (Australia) said that his delegation drew from the earlier failures to achieve a useful definition of aggression a different inference than the USSR representative: it saw no promise that further efforts by the proposed special committee would be fruitful. The idea of defining a concept that had been so often used in international affairs had a superficial attraction. However, the first enthusiasm engendered by that idea was quickly dampened when further thought was given to the history of attempts to define the concept. Sober reflection, divorced from political or propaganda considerations, must lead to the conclusion that an attempt to define aggression was unwise and unnecessary and made no contribution to international peace.

2. Over a period of almost half a century, in the League of Nations, the United Nations and associated bodies, numerous attempts had been made to arrive at a universally acceptable and comprehensive definition of aggression, but the goal had proved unattainable. Yet the USSR proposed, presumably in all seriousness, that a special committee should achieve that goal before the twenty-third session of the General Assembly.

3. The inference that an attempt to define aggression was quite unnecessary could be drawn from the terms of the Charter of the United Nations, which differed significantly from the Covenant of the League of Nations in that respect. The preservation "as against external aggression" of the territorial integrity and political independence of all Members had been central to the system of legal obligations embodied in the Covenant. While the Covenant itself had made no attempt to define "external aggression", efforts to do so had been made as the stresses of the era following the First World War had developed. The failure of those efforts had been recorded in the Secretary-General's 1952 report.<sup>1/</sup>

<sup>1/</sup> Official Records of the General Assembly, Seventh Session, Annexes, agenda item 54, document A/2211.

4. In the Charter, the concept of aggression was no longer central to the basic obligations and duties but appeared almost incidentally, as in the heading of Chapter VII and in Article 39. At the San Francisco Conference, the majority of the founders had opposed attempts to write a definition of aggression into the Charter, on the ground that no definition could be applied mechanically in all circumstances and any definition that did not meet that criterion would merely embarrass and hinder the Security Council in carrying out its functions. In practice, the Security Council had been concerned not with attempting to determine an act of aggression under Article 39 but with applying the Charter system to particular situations arising from threats to the peace and breaches of the peace. The whole emphasis was on the paramount interest of the Organization in the maintenance or restoration of international peace and security.

5. His delegation's view was, therefore, that a definition of aggression would be far more likely to impede the Security Council's work than to advance it, for it would undoubtedly give rise to procedural arguments as to the category into which a particular situation or action fell—the kind of argument which, with the present language of the Charter and the good sense of the Security Council, had been avoided.

6. His delegation did not agree with the USSR delegation that the question was urgent. The absence of a definition of aggression had not prevented the Security Council from acting in appropriate cases. In the case of the communist insurrection and terror in Malaysia, for example, the draft resolution, which had been vetoed by the USSR, had referred to "violations of territorial integrity" and a situation "likely to endanger peace and security"; the Security Council resolution on Korea (resolution 82 (1950)) had referred to "a breach of the peace". There had been no case in which a Security Council recommendation had been based on a determination by the Council that there had been an act of aggression.

7. If the Committee nevertheless decided that the question should receive fuller consideration, his delegation would not favour the USSR proposal for the establishment of a special committee (see A/C.6/L.636). If the task was to be attempted at all, it should be undertaken by a body of competent legal experts.

8. Mr. CIASULLO (Uruguay) said that his country's position had been stated by the Chairman of his delegation in the General Assembly (1618th meeting, paras. 117-136). His delegation shared the view of those which considered it necessary to define aggression, but it did not agree that the question was urgent, much less that the present international situation made it so. In his delegation's view, the definition

should, in accordance with Article 13, paragraph 1 a, of the Charter, encourage the progressive development of international law and its codification, and should be based on the purposes and principles proclaimed in Articles 1 and 2 and on the provisions of Chapters VI and VII of the Charter; in other words, it should contain the most precise and juridical terminology and should take an objective and long-term approach.

9. Events, in their political manifestations, were a source of experience, and the jurist devised his norms or definitions on the basis of the history of events. In performing his task, however, the jurist should not immerse himself in political considerations; while he must not be caught up in the vacuum of abstraction, he must likewise not be caught up in transitory political situations.

10. Once it was agreed that a definition should be considered, there arose the question whether the definition should be analytical or concise. Excessive analysis would lead the Committee into dangerous casuistry, bearing in mind the powers of the Security Council under Article 39 of the Charter to determine the existence of any threat to the peace, breach of the peace, or act of aggression and to make recommendations, or decide what measures should be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security; for if the definition was too specific, it might inhibit the decisions of the Security Council in the case of acts of aggression which were not sufficiently clear-cut or were merely contemplated. Nor should the definition be too concise, since it would then be a mere repetition of the Charter rules.

11. The next question to be decided was the content of the definition. The decision should be based on all available precedents, both world-wide and regional, in so far as they reflected a general awareness, a formalized public opinion, or, in other words, "the general principles of law recognized by civilized nations", which had often found legal expression in pacts, regional agreements and General Assembly resolutions. For some time past, those precedents had dealt with two classes of aggression—armed or direct aggression, and unarmed or indirect aggression. Articles 10 and 15 of the Covenant of the League of Nations and the Briand-Kellogg Pact of 1928<sup>2/</sup> provided precedents for the definition of armed aggression. After the adoption of the United Nations Charter, the concept of unarmed or indirect aggression had developed. One source for the definition of that concept was General Assembly resolution 2131 (XX) concerning non-intervention, which condemned not only armed intervention but also all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements. The violation of those principles of non-intervention would constitute acts of aggression. Another source was General Assembly resolution 2160 (XXI) on strict observance of the prohibition of the threat or use of force in international relations, and of the right of peoples to self-determination.

12. In addition, since the adoption of General Assembly resolution 599 (VI), a number of United Nations bodies, including the Special Committee established by General Assembly resolution 688 (VII), the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, and the Sixth Committee in its discussion of the work of the latter Special Committee, had explored the concept of aggression. He cited, by way of example, the part of the Special Committee's report dealing with the principle prohibiting the threat or use of force (A/6799, paras. 21-113), which set out agreements on many points concerning aggression.

13. Similarly, when the International Law Commission had drafted a Code of Offences against the Peace and Security of Mankind,<sup>3/</sup> it had discussed the question; under the terms of General Assembly resolution 897 (IX), further consideration of it had been postponed until aggression had been defined. Under General Assembly resolution 898 (IX), consideration of the question of an international criminal jurisdiction had been postponed for the same reasons.

14. At the regional level, there were also many concepts and definitions in the Inter-American Treaty of Reciprocal Assistance of 1947<sup>4/</sup> and in articles 15-18, 24 and 25 of the 1948 Charter of the Organization of American States.<sup>5/</sup> At that regional level, the concept of aggression included direct or indirect aggression, economic coercion, political coercion, and so forth.

15. On the basis of those precedents, his delegation had reached the following conclusions: first, it was desirable and possible to establish a definition of aggression which was based not on particular cases but on ideas and which was juridically precise; secondly, that task should be entrusted to the Sixth Committee, which should act through a working group appointed by it; thirdly, the group should start with preliminary preparatory work—the collecting of precedents—which could be done in two or three weeks prior to the next session of the General Assembly, and an item on the consideration of a definition of aggression in the light of the precedents and the preliminary work of the working group should be included in the provisional agenda of that session. If that were done, the Committee would not once again postpone indefinitely the consideration of a definition of aggression, but neither would it embark on the task with the haste proposed in draft resolution A/C.6/L.636, operative paragraph 3 of which would have a special committee draw up a draft definition and submit it to the General Assembly at its twenty-third session. His delegation also disagreed with the third preambular paragraph of the draft resolution, which limited the concern expressed over acts of aggression to those acts which had recently been taking place, and with the fourth preambular paragraph, limiting the definition to armed attack by one State against another and to invasion, seizure or occupation of the territory of one State by the armed forces of another.

<sup>3/</sup> See Official Records of the General Assembly, Ninth Session, Supplement No. 9 (A/2693), chapter III.

<sup>4/</sup> United Nations, *Treaty Series*, vol. 21 (1948), I, No. 324, p. 93.

<sup>5/</sup> *Ibid.*, vol. 119 (1952), I, No. 1609, p. 48.

<sup>2/</sup> General Treaty for Renunciation of War as an Instrument of National Policy, signed in Paris on 27 August 1928—League of Nations, *Treaty Series*, vol. XCIV (1929), No. 2137, p. 57.

16. His delegation was prepared to support any draft resolution which covered the points and provided for the procedure he had described.

17. Mr. PRANDLER (Hungary) recalled that in the General Assembly his delegation had stated that the definition of aggression, and particularly the condemnation of armed attacks and of the occupation of foreign territories, would constitute a significant step towards the maintenance of international peace and security (1614th plenary meeting, para. 56). In keeping with that positive approach, his delegation considered that the General Assembly should establish a special committee, as envisaged in draft resolution A/C.6/L.636, to examine with urgency all aspects of the definition of aggression and to report to the General Assembly at its twenty-third session. That approach had been supported by a great number of delegations, but had been opposed by others on the ground that it was neither necessary nor possible to define aggression. There was hardly an argument which had not been employed for or against defining aggression during the last forty years. His delegation did not therefore claim to be bringing new elements into the discussion, but it was convinced that every delegation had to live up to its political, moral and legal responsibility in examining its attitude towards the definition of aggression, especially in the light of the present international situation.

18. The first argument against defining aggression was based on the negative results of past efforts in the League of Nations, the Sixth Committee, the International Law Commission, and the Special Committee. Past efforts could not be described simply as ineffective, however. At the 1615th plenary meeting of the General Assembly, the representative of Ecuador, after analysing the history of the question from 1950 to 1957, had drawn the following conclusions: firstly, the General Assembly had always shown a profound interest in the question of the definition of aggression; secondly, none of the bodies that had examined the item had had the time to make a thorough examination of so difficult and complicated a question; thirdly, neither those bodies nor the General Assembly had ever come to the conclusion that it was impossible or inappropriate to define aggression.

19. A second argument against the defining of aggression was that the notion of aggression was indefinable. That argument was rather out of date, because in the process of the progressive development of international law and its codification a number of notions which had appeared indefinable had been successfully defined. Moreover, aggression was something real, especially for its victims, and to renounce the possibility of defining it would be tantamount to passive acceptance of the idea that aggression had always been and would continue to be a phenomenon of life. That attitude, which contradicted the noble aims of the Charter, was surely not acceptable to any member of the Committee.

20. A third argument against defining aggression was that a definition would contain loop-holes and would hinder legitimate self-defence by the victim of aggression. That position would not bear critical analysis. In the application of any legal norm, it was the responsibility of the judiciary not to let the offender

go unpunished. In the case of aggression, it was the responsibility of the Security Council to determine whether or not there had been an act of aggression. As the representative of Cyprus had said at the tenth meeting of the Committee established under General Assembly resolution 1181 (XII), the guilty party, whether in international or in domestic law, could always interpret the legal definition of his offence in such a way as to exonerate himself, for no such definition was exhaustive, but definition served a purpose, and, if it left loop-holes, they could always be filled in by amendments. Moreover, the contrary argument had been outmoded by the Second World War, the establishment of the United Nations, the radical changes in the map of the world, the fall of past empires and the rise of new nations.

21. A fourth argument against defining aggression was that such a definition would contradict the purposes and the provisions of the Charter. It was contended that the framers of the Charter had not considered it their task to establish a definition of aggression. While readily admitting that such was the case, his delegation pointed out, first, that the framers of the Charter had very realistically refrained from trying to establish a definition because they knew that the question was a complicated one and that they could not afford the time needed for that task, and, secondly, that it was one thing to have a definition generally accepted as a legal norm and another to include it in the Charter, which had a special status among the sources of international law and in which every word, especially in the context of the maintenance of international peace and security, had a special meaning and importance.

22. It was also contended that the Security Council would be hindered by a definition of aggression. However, those who advocated the defining of aggression did not intend that the definition should be included in the Charter by revision. Consequently, that definition, although it would play a very important role in the deliberations of the Security Council, as all accepted norms of international law did, would leave enough scope for interpretation by the Council, which must act in conformity with the provisions of the Charter. Furthermore, the General Assembly, in its resolution 599 (VI), had already rejected the fear of a rigid definition, stating that it would be of definite advantage if directives were formulated for the future guidance of such international bodies as might be called upon to determine the aggressor. In any event, his delegation could not accept the argument against rigid definitions. If rigid definitions would hamper the work of the Security Council and other international bodies, then every past effort to draw up international agreements, including the Charter of the United Nations, had been a failure and every future effort to develop international law would be futile. In his delegation's view, the existence of definitions contributed to a solid international order, and to the rule of law so often referred to by the delegations and scholars who opposed those definitions.

23. His delegation fully understood that some delegations opposed the definition of aggression in good faith, basing their arguments on legal considerations. Thus, Sir Humphrey Waldo had pointed out in an article entitled "The Regulation of the Use of Force

by Individual States in International Law"<sup>6/</sup> that the Anglo-American legal mind distrusted *a priori* definition and preferred to move from precedent to precedent. However, even Sir Humphrey had concluded that, while the no-definition school was certainly correct in emphasizing that the largest element in the determination of aggression in any given case must always be the appreciation of the facts and of the intentions of the parties—a view which his delegation shared—there was some need for further defining the ambit of the crime of aggression and, accordingly, although an unsatisfactory definition would be worse than none at all, there was a case for continuing the attempt to clarify, if not define, the crime of aggression, as otherwise the line between international wrongs and international crimes might be completely blurred. His delegation therefore appealed to all members to continue the attempt to clarify and define all aspects of aggression by establishing a special committee.

24. Agreeing to the establishment of a special committee did not necessarily imply agreement on the substance of the question. Some delegations which at first had opposed the establishment of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States because they had not approved of its mandate had nevertheless taken part in it, and that Committee had already produced practical results. His delegation agreed that the task of the new special committee would be arduous and that rapid results could not be expected. Special attention should also be given to the view expressed by the representative of France in the General Assembly, namely, that a definition of aggression must be based upon a formula acceptable to the overwhelming majority of Member States and to the Powers primarily responsible for the maintenance of peace, within the framework of the tasks ascribed to the Security Council by the Charter (1615th plenary meeting, para. 53).

25. The task of defining aggression could not be entrusted to the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, as suggested by the representative of Iran (1613th plenary meeting, para. 51), because that Committee was overburdened and already behind schedule in dealing with its own agenda.

26. Although fully aware of the political and legal difficulties involved, his delegation was confident that a definition of aggression could be achieved by common efforts. It would be a ray of hope in the present grave international situation, which his delegation viewed with deep concern.

27. Mr. NACHABE (Syria) recalled that, in its resolution 599 (VI), the General Assembly had expressed the view that it was possible and desirable to define aggression by reference to the elements which constituted it. The consideration of the question had since passed through two phases: an active phase, from 1953 to 1957, during which two committees had worked on the elaboration of a definition and a passive phase,

from 1957 to 1967, during which the Committee established under General Assembly resolution 1181 (XII) for the purpose of determining when it would be appropriate for the Assembly to consider the question again had been unable to reach a decision. Those who opposed the idea of a definition of aggression had tried stubbornly to delay work on the question, and the latest attempt to expedite matters was fully justified.

28. His delegation remained firmly convinced of the need for a definition of aggression. Such a definition would not put an end to wars and acts of aggression, but it would have a considerable moral and political effect and discourage potential aggressors. It would also facilitate the task of the international organ called upon to determine the aggressor.

29. Many attempts to define aggression had already been made. At the International Conference on Military Trials, held in London in 1945, the United States had proposed that a definition of the crime of aggression should be included in the Charter of the International Military Tribunal. In 1952, however, it had changed its attitude, and the statement made by the United States representative at the preceding meeting unfortunately held out no hope that his country would revert to its original stand.

30. The membership of the United Nations had more than doubled since 1952, and the growing number of Member States in Africa, Asia and Latin America regarded the development of law as a guarantee for their own existence and for international peace and security. It was therefore to be hoped that a large majority would support the resumption of work on a definition of aggression and the establishment of a special committee for that purpose.

31. Mr. SUCHARITKUL (Thailand) confirmed the views expressed by his delegation in the General Assembly (1618th plenary meeting, paras. 152-178). So far as future action was concerned, Thailand was not opposed to a comprehensive definition of aggression, if an acceptable one could be found, nor did it object to genuine and constructive efforts to define aggression as a legal concept. However, it doubted whether it was possible to arrive at an agreed definition within a relatively short time or whether a propitious moment had come and for a meaningful and productive debate on the subject.

32. Mr. MAKSIMENKO (Byelorussian Soviet Socialist Republic) recalled that his delegation's views on the political aspects of the question under discussion had been expressed in the General Assembly (1618th plenary meeting, paras. 62-96). At a time when an increasing number of acts of aggression and armed intervention were being committed, international jurists should turn their attention to the drafting of a definition of aggression, which would be one way of strengthening international peace and security. The existence of a definition, which would be an important international legal instrument, would discourage potential aggressors.

33. The idea of defining aggression was opposed by the same States which were preventing the codification of the principle of non-intervention in matters within the domestic jurisdiction of any State and the principle prohibiting the threat or use of force, and other

<sup>6/</sup> See Académie de droit international, *Recueil des Cours*, (The Hague, 1952), vol. 81, part II.

principles concerning friendly relations and co-operation among States. Their arguments—which were unacceptable to those who really wanted international law to be used to preserve peace and security—were that it was impossible to define aggression or that the time was not ripe for a definition. Reference had been made to the fact that no criminal code could define the concept of guilt. However, codes simply established the corpus delicti and mentioned the most common types of crime, and the same could be done in a definition of aggression.

34. The elements of a definition already existed; that fact had been acknowledged in the past by States which had since adopted the opposite view. The chief United States prosecutor at Nürnberg, Robert H. Jackson, had stated that one of the most authoritative sources of international law on the subject was the Convention for the Definition of Aggression, signed in London on 3 July 1933.<sup>7/</sup> Since then, international law had made further progress along those lines. General Assembly resolution 599 (VI) had stated that it was possible and desirable to define aggression by reference to the elements which constituted it.

35. His delegation supported the USSR draft resolution (A/C.6/L.636). A legal instrument defining

<sup>7/</sup> League of Nations, Treaty Series, vol. CXLVII (1934), No. 3391, p. 69.

aggression would help the Security Council to solve the complex international problems which still arose and would generally promote the aims of the United Nations Charter. The task of drafting such an instrument should be entrusted to a committee specially established for that purpose, and not to the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, which had its own important work to perform.

36. The United States representative had referred at the preceding meeting to the Charter's scheme for maintaining international peace and security and had said that all States should be made to respect it. That was quite true, and the USSR proposal was not designed to abolish that scheme. On the contrary, it was designed to make the scheme function more smoothly and to assist the Security Council in the performance of its duties. The unconvincing argument of the United States and Australian delegations that a definition would not put an end to acts of aggression had already been refuted. Without being idealistic, there was no need to take such a pessimistic view of matters. A definition of aggression would undoubtedly be of some use.

*The meeting rose at 4.25 p.m.*