

THE VICISSITUDES AND THE TRIUMPH OF THE  
UNITED NATIONS IN DEFINING AGGRESSION

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# C O N T E N T S

	Pages
Preface	.. 1 - 11
Chapter I THE NEED FOR A DEFINITION OF AGGRESSION	1 - 19
The Importance of the Definition	1
The Feasibility and Desirability of a Definition of Aggression; The Doctrinal Controversy	9
Chapter II HISTORICAL EFFORTS TO DEFINE AGGRESSION	20 - 40
- Upto World War I	20
- Upto the Establishment of the United Nations - Aggression Under the Covenant of the League of Nations	22
- Efforts to Define Aggression During the Establishment of the United Nations	36
Chapter III EFFORTS IN DEFINING AGGRESSION WITHIN THE FRAMEWORK OF THE UNITED NATIONS	41 - 70
- The First Special Committee, 1952-54	45
- The Second Special Committee, 1954-57	50
- The Third Special Committee, 1959-67	53
- The Fourth Special Committee, 1967-74	86
Chapter IV THE 1974 CONSENSUS DEFINITION OF AGGRESSION	71 - 115
- Classification	72
- The Preamble	73
- The Substantive Definition	81
Chapter V EVALUATION AND RECOMMENDATIONS	116 - 121
APPENDICES	122 - 144
BIBLIOGRAPHY	145 - 149

## PREFACE

The term aggression is as difficult to define as it is easy to recognise when it occurs. Every nation is perennially concerned with aggression - either preparing to commit or defending itself against it. This concern is explicit in the staggering amount of much-needed funds that are spent on armament; the bill today approximates to \$1000 billions. A war of aggression has been outlawed in legal theory since 1928 and yet human history is replete with wars of aggression. My curiosity was naturally aroused in such a topic which had defied solution since about last fifty years despite the universal agreement that wars of aggression should not be waged.

Defining aggression is certainly not containing aggression, but it is the first inevitable step towards it. An objective definition of aggression will deter unscrupulous states from openly disregarding it, will create a favourable world public opinion, will provide guidance to the Security Council and encouragement to the Member-States of the General Assembly which might otherwise hesitate in contributing their worth in the Assembly's peace-keeping operation. Moreover, such a definition will create opinio juris in the minds of States, committing or refraining from committing those defined acts that these fall within the purview of proscribed acts. This will mature, in due course, in jus cogens of international law.

An analysis is made of the doctrinal controversy whether it is desirable and feasible to define aggression, in Chapter I. Chapter II deals with the historical efforts put into this, before the establishment of the United Nations and Chapter III deals with the efforts of the United Nations itself - the various ups and downs which the definition had to face. Chapter IV is the analysis of the main substantive definition and in last Chapter V, the definition has been evaluated and its future potential judged.

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## CHAPTER I

### THE NEED FOR A DEFINITION OF AGGRESSION

The problem of aggression has been one of the most baffling ones in international relations. No other concept has eluded international law so much as aggression. All attempts at defining aggression were defied until 1974, when a consensus definition of aggression was agreed upon, in a resolution of the General Assembly.<sup>1</sup> This was despite the ironical fact that there were many wars of aggression which were committed during the period of about fifty years<sup>2</sup> since the first effort was made to define the concept of aggression. Though this term seems to contain a nucleus<sup>3</sup> of agreement, yet the outer margins of this concept have always remained nebulous, and despite 1974 consensus definition, there is no clear cut agreement as to what acts of a peripheral character ought to be regarded as aggression.

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- 1 General Assembly Resolution No. 3314 (XXIX), "Definition of Aggression of 14 December 1974", Reprinted in vol. 14, Indian Journal of International Law, 1974, p.466.
  - 2 Julius Stone, "Conflict Through Consensus" (Bombay: N.M. Tripathi, 1977), p.1.
  - 3 Julius Stone, "Aggression and World Order : A Critique of United Nations Theories of Aggression" (Greenwood, 1956), p.20.

Often, International Law is regarded as a weak law, or not a true law.<sup>4</sup> A law which mostly fails in fulfilling its main purpose will naturally be so regarded. Article 1(1) of the UN Charter states as one of the purposes of the UN - "to maintain international peace and security and to that end : to take effective collective measures for the prevention and removal of threats to the peace, and for the 'suppression of acts of aggression' or other branches of the peace ...." This purpose was to be fulfilled in accordance with the principle of Article 2(4) of the UN Charter according to which "all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner, inconsistent with the purposes of the United Nations". Thus, whether rightly or wrongly, it is regarded that the prime objective of International Law is to prevent aggressions and maintain international peace and security - the objective in which International Law has failed miserably. Hence, according to some, it has been deservedly relegated to the status it now occupies in popular esteem. "The Charter", it is affirmed, "like the Covenant before it, was only a tool, to be used or allowed to rust, by the people it was designed to serve."<sup>5</sup>

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4 J.G. Starke, An Introduction to International Law ( London, Butterworths , 1963), p.16.

5 B.B. Ferencz, Defining International Aggression (New York: Oceana Publications, Inc., 1975), vol.1, p.1.

International law would be what states make of it; it cannot acquire force from some source outside the international community itself. States have no moral right to denounce international law as a weak law because it is they who make it weak. Nevertheless, to boost up the sagging popular image of international law, perpetration of aggressive wars ought to be contained and the first thing which one can think in this context is to define the term aggression itself. Then, its objective application in specific situations would dispel the disrespect for international law.

Is it necessary 'to define aggression' under the UN Charter? A seemingly foolproof scheme to deter and punish a rather adventurous, hot-tempered state from embarking on a course of aggressive war, was evolved under Chapter VII of the UN Charter. Under it, there was to be "established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security...."<sup>6</sup> "All members of the UN, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or

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6 The United Nations Charter, Article 47(1).

agreements, armed forces, assistance and facilities, including rights of passage necessary for the purpose of maintaining international peace and security."<sup>7</sup> The Security Council is conferred with the primary responsibility for the maintenance of international peace and security and to take prompt and effective action on behalf of the members.<sup>8</sup> These provisions, coupled with the power of the Security Council to bind its members to carry out its decisions,<sup>9</sup> seemed, in 1945, to offer the guarantee of prevention or immediate suppression of acts of aggression. Under article 39, the Security Council was authorized to determine the existence of any threat to peace, breach of peace or act of aggression and could make recommendations or decide upon measures to be taken to maintain or restore international peace and security. A vast range of powers is conferred on the Security Council to make any of these determinations, so that a 'finding of aggression' as such is in no way a condition precedent to the taking of effective measures for peace enforcement. The Security Council can take measures ranging from mere economic and diplomatic sanctions<sup>10</sup> to the most vigorous aimed at deterring the use of military power.<sup>11</sup>

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7 Ibid., Article 43(1).

8 Ibid., Article 24.

9 Ibid., Article 25.

10 Ibid., Article 41.

11 Ibid., Article 42.



But the UN never came to be equipped with military power due to the evaporation of war time unity among all the permanent members of the Security Council after the war.

The Security Council does not have to enquire as to which state is the aggressor, before it could take any action. The determination that there exists a threat to the peace, or there has been a breach of the peace, are equally important to arm the Security Council with all the powers it possesses, as the determination that there has been an act of aggression. This was one of the reasons why the framers of the UN Charter did not think it necessary to define aggression. Moreover, the terms "threat to the peace" and "breach of the peace", carry no moral or ethical value.<sup>12</sup> The terms are almost value-neutral and no attribution of guilt is implied therein. Hence the determination of existence of such situations is more conducive to conflict-resolution. In other words, for applying collective security measures, a determination of an act of aggression is not a condition precedent to the taking of any enforcement action. If the Security Council has the given political will, then it can very well act in any given crisis situation. So, there 'apparently' appears to be no need for precisely defining the term of 'aggression'. Why, then, so much hue and cry about defining the term 'aggression'?

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<sup>12</sup> Julius Stone, n.2, p.7.

It is well known that, except in the Korean crisis in 1950, the Security Council has always been bogged down over the issue of aggression. The frequent use of veto, under article 27(3) of the UN Charter, has rendered the Security Council impotent in the face of any aggression, in which one of the permanent members happened to be interested. The whole collective security scheme elaborately provided in Chapter VII, was still-born. Thus when the body entrusted with the 'primary' responsibility for maintaining international peace and security became deadlocked then what is the remedy?

The remedy was seemingly found in the "uniting for Peace Resolutions of the General Assembly, adopted on 3 November 1950.<sup>13</sup> Under the terms of the resolution, the General Assembly asserted its competence, in case the Security Council, because of the veto, failed to discharge its primary responsibility for the maintenance of peace and security in any case of alleged threat to or breach of the peace; to consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression, the use of armed force when necessary.<sup>14</sup> An Emergency Special Session of the General Assembly was to meet within 24 hours, on the failure

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13 General Assembly Resolution, 377(V), 3 November 1950, in Doc. A/1481, 4 November 1950.

14 Ibid., Uniting for Peace Resolution, Resolution 'A', Part 'A'.

of the Security Council. The Uniting for Peace Resolution created "Collective Measures Committee of 14 Members",<sup>15</sup> and established a "Peace Observation Commission of 14 Members."<sup>16</sup> The General Assembly may, under this procedure, invite Members to contribute units to a force for use in any emergency.

There was (and still remains) at least one vital difference between such action of the General Assembly in relation to a threat to the peace, breach of the peace or act of aggression; and the peace enforcement action by the Security Council under Chapter VII. The recommendations of the Security Council are legally binding on the member-states (Article 25) but the General Assembly has no power, by its resolutions, to impose any legal obligations on the Member-states, not even on any states which a majority of Members regard as engaged in committing a threat to the peace, breach of the peace or even an act of aggression.<sup>17</sup> But it has the competence under Article 10, read together with the para 4 of Article 11, to deal with matters of peace and security and to make appropriate recommendations concerning them.<sup>18</sup> This competence, apart, the effectiveness of these hortatory recommendations will depend upon

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15 Ibid., Resolution 'A', Part 'D'.

16 Ibid., Resolution 'A', Part 'B'.

17 Julius Stone, n.2, p.8.

18 Jorge Castenanda, Legal Effects of United Nations Resolutions (New York, Columbia University Press, 1969), p.82.

the voluntary co-operation of the member states of the UN, including those involved in the disturbance of the peace. Member states should get completely convinced of the illegality of the aggression in such cases; then only voluntary collective action of the nature of peace-keeping operations will be possible. If the General Assembly too gets bogged down in the political debates regarding the nature of aggressive war, then the whole purpose of the Uniting for Peace Resolution, and indeed, of the maintenance of international peace and security will be jeopardised. "And, since crisis action is here involved, this motivation must be such as to trigger instantly converging voluntary decisions of many members, perhaps even to the point of contributing forces and incurring dangers in a common cause."<sup>19</sup> This inspiration and motivation will obviously come from a generally acceptable definition of aggression - a definition which is acceptable to the jural consciousness as well as the practical interests of the member-states.<sup>20</sup> Otherwise, the judgements of the Members will not concur and may even conflict in the particular case, nor will they be galvanised into rapid and effective action.<sup>21</sup>

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19 Julius Stone, n.2, p.9.

20 Quincy Wright, "The Prevention of Aggression", AJIL, vol.50, 1956, p.518.

21 Julius Stone, n.3, pp.45-46.

The Feasibility and Desirability of a Definition of Aggression : The Doctrinal Controversy

There has been a long standing doctrinal controversy regarding the feasibility and desirability of a definition of aggression, both the schools represented by eminent international lawyers. Those who favour a definition include Quincy Wright, Thomas A.V.W. and Thomas J.R., George Scelle, Ian Brownlie, Sohn L.B., etc. and those who maintain that definition will serve no useful purpose, include Julius Stone, Fitzmaurice, etc.

Julius Stone maintained that the very fact that the definition of aggression had defied solution, was proof of the impracticability of defining it. Even if defined, "it would, in fact, produce dangers and obstacles rather than aid and guide in the tasks of maintaining peace."<sup>22</sup> He maintained that to hope that some ingenious definition of aggression can produce an automatic or near-automatic judgement in future conflicts by any political organ, be it Security Council or General Assembly, is to imagine that we can somehow immunize this segment of international life from the acknowledged principles and prejudices of social and political life.<sup>23</sup>

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22 Ibid., p.151.

23 Ibid., p.25.

He decries the attempt of those who seek to find a "mechanical test of aggression, insulated from the merits of the situation in which States act", a test that would be "clear and precise enough for certain and automatic applications to all future situations", in short, a "juristic push-button-device."<sup>24</sup> He ascribed the failure of states and scholars to achieve agreement on a definition "at least in part to the impossibility of containing the unceasing struggle for a minimal justice in international relations within the straitjacket of precise formulae."<sup>25</sup> He made explicit his conviction that a satisfactorily precise and certain definition is unattainable, and expressed his apprehension of the additional elements of uncertainty of interpretation of the definition.<sup>26</sup>

G. G. Fitzmaurice has commented that "the failure to define the concept of aggression is due to the fact that it is inherently incapable of precise definition. Alternatively, ... we can conclude that the definition of aggression is not a purely legal matter, capable of being established by ordinary juridical methods. It includes other, more complex issue of military and political undertones."<sup>27</sup> He doubts whether the existence of a definition would really deter a

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24 Ibid., pp.10-11.

25 Ibid., p.12.

26 Ibid., p.24.

27 G. G. Fitzmaurice, "The Definition of Aggression", International and Comparative Law Quarterly, vol.I, 1952, pp.137-38.

deliberate aggressor. If a country thinks that chances of its winning are good and its policies demand such expediency, it will be unlikely to worry very much about the consequences. According to him, the problem is to determine when certain acts are justified and therefore not aggressive and when they are not justified and therefore are aggressive. This determination cannot be made by 'a priori' rules laid down in advance.<sup>28</sup>

The official stand of the US and UK has been that no definition, whether enumerative, general or mixed, will serve any purpose; it will merely restrain unduly the discretion of the competent UN organ in dealing with the acts of aggression. Any definition would, by implication, mean that other situations not covered by that definition, are exonerated from the pale of illegal use of force and states might, thus, be encouraged to commit acts of aggression, disguising them in the garb of other just and tenable acts. Such 'a priori' definition might prove "a trap for the innocent and signpost to the guilty",<sup>29</sup> because there is no end to the creative imagination of the human mind which might always invent yet newer modes of aggression and at the same time, avoid being branded as an aggressor legally. Moreover, when once a

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28 Ibid., p.141.

29 L.N. Doc., C166. M.50.128.ix, p.176. Quoted in Julius Stone, n.3, p.36.

State is labelled as an aggressor, then the natural instinct of a state is to continue in its aggressive pursuits so as to improve its bargaining capacity vis-a-vis the other belligerent. The mere declaration of a state as an aggressor, with the political will and military back-up of the international community, will only make the 'declared aggressor', intuitively, to step up his efforts. The ultimate result generally is just the opposite of what was intended. Instead of immediate cessation of hostilities, it prolongs and accentuates aggressions. Therefore, defining aggression was considered by these countries to be not of much use.

The opposing school of thought, led by Quincy Wright, find many uses of a definition of aggression. For him, "the definition of aggression is clearly vital to this objective of eliminating war, both legally and materially."<sup>30</sup> He maintained that "inventions in the field of communication, transportation and military technology have so shrunk the world, augmenting the vulnerability of all peoples to devastating attack... that many states cannot obtain even moderate security by the time-honoured methods.... The various purposes of the UN are interdependent and, advance in each is dependent on advance in the others. Laws and procedure for preventing war cannot be effective unless the atmosphere of world opinion and international politics becomes more favourable to peace.

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30 Quincy Wright, The Role of International Law (Manchester, Manchester University Press, 1961), p.59.



However, a suitable definition of aggression seems central in the entire work of the UN.<sup>31</sup>

Quincy Wright is one of the most vocal of those that support the attempts at defining aggression. In 1935, and again in 1956 (and, on many other occasions) he gave various definitions of aggressions.<sup>32</sup>

Professor Georges Scelle advocated a clear definition of aggression. He assimilates all recourse to violence to war and maintains that "we must wholly remove from international law the possibility of taking justice into one's own hands. The criterion of war and the criterion of aggression are one."<sup>33</sup> For him, the only criterion of war is the material facts, namely, use of force to support a national claim. He also gave his own definition of aggression. He stressed the relevant of the character of the objective or purpose of the State resorting to force.

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31 Quincy Wright, n.20, pp.518-19.

32 See, respective AJIL, 1935 and 1956. For detailed definitions, see Chapter II, p.

33 G. Scelle, "l'Aggression et la Legitime Defense dans les Rapports Internationaux", L'Esprit International, 1936, pp.377-79; Quoted by Julius Stone, n.3, pp.7-8.

Myres S. McDougal and Florentino P. Feliciano maintain that it may be "futile to seek a reificatory, absolutist and all-sufficing definition of aggression, as of any other legal concept. But the "impossibility of absolute precision does not necessarily render complete confusion desirable."<sup>34</sup> They go on, that ... legal principles might be formulated which would serve the same function that other legal principles serve - that of bringing to the attention of decision makers relevant factors in context which should rationally affect decision. From this perspective, the basic task is one of categorizing such variable contextual factors with respect to the distinction between permissible and non-permissible coercion. Though not limiting the discretion of the Security Council, the definition will prove an aid in containing aggressions, at least in the well-defined situations.

Other supporters of this school which holds that definition of aggression will prove helpful, including eminent international lawyers like Ian Brownlie,<sup>35</sup> Benjamin B. Ferencz,<sup>36</sup>

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34 See, MacDougal and Feliciano, Law and Minimum World Public Order (New Haven, Yale University Press, 1961), p.146.

35 Ian Brownlie, International Law and the Use of Force by the States (Oxford; Clarendon Press, 1963).

36 See his articles, "Defining Aggression: Where It Stands and Where It's Going", AJIL, vol.66, 1972; "A Proposed Definition of Aggression", International & Comparative Law Quarterly, 1972; "Defining Aggression - The Last Mile", Columbia Journal of Transnational Law, 1973.

Thomas A.V.W. and Thomas J.R.<sup>37</sup>, L.B. Sohn<sup>38</sup>, Professor V.V. Pella<sup>39</sup>, R.J. Alfaro<sup>40</sup>, etc. An objective and generally accepted definition will help the Security Council in promptly determining the aggressor and then applying the collective enforcement or preventive action to maintain international peace and security. "Otherwise the Security Council is left to determine the question of aggression and the measures to be taken in each case... thus making law in each case and that this would be a denial of the permanent existence of an international morality and of certain fundamental principles...."<sup>41</sup>

Now it is well recognised that there is individual criminal responsibility for committing crimes against peace, namely, planning, preparation, initiation or waging of a war of aggression or a war in violation of international obligations.<sup>42</sup>

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37 The Concept of Aggression (Dallas, 1972).

38 Sohn L.B., "The Definition of Aggression", 45, Virginia Law Report, 1969, p.69.

39 See, Julius Stone, n.3, p.9.

40 See McDougal and Feliciano's book "Law and the Minimum World Order", n.34, p.145.

41 V.V. Pella, "La Gueroie Crime", 1946, pp.43-44; Quoted in Julius Stone, n.3, p.9.

42 Article 6 of the Charter of the Nuremberg Tribunal, 1945 (Jurisdiction and General Principles).

This calls for the establishment of an International Criminal Court. But, the work of adopting a "code of offences against the Peace and Security of Mankind" will not progress further unless an objective definition is agreed upon. Under Article 2 of the draft code of offences, some acts have been listed as aggressive but no where the term aggression as such, has been defined. Thus, a definition would render unnecessary the application of ex-post-facto criminal law.

A clear cut definition, even if it is an enumerative type, would identify some fact-situations very clearly, thus the core of the problem would be identified. Therefore, states would be deterred from committing the enumerated acts outrightly. This "core" of the problem of definition may be extended later on, to include other kinds of direct and indirect aggressions as well. No doubt, initially, just by defining aggression, the aggressive wars will not cease, but it will contribute towards better public order in the international community in the long run. Just like, when duels were prohibited by law, the duels themselves did not cease immediately. But, in the long run, they did become non-existent. In the same way, definition of aggression may some day, optimistically, eradicate the menace of aggressive wars.

Quick determination of aggression will make it possible for other Member-States and the UN to render immediate help to the victim state. No government or state would consciously

commit aggressions in clearly defined situations. It will be easier to guide the world public opinion. In a world that lives in fear of aggression, the existence of a definition would do something to ease men's mind.<sup>43</sup>

Though a definition solemnly adopted by the General Assembly will not bind the Security Council, it might become a general principle of law recognised by the civilized world - opinio juris - and so might in future become an integral part of international law, which the Security Council would not violate.<sup>44</sup>

Sometimes, a treaty of alliance provides that the parties shall mutually assist each other, if any one of them is subjected to "aggression". A definition might enable the parties to know as to when one of them is subjected to the aggression.<sup>45</sup>

Thus, these various uses of the definition of aggression render it expedient for the international community to define aggression. Different types of definitions may be needed for

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43 GAOR, Agenda Item 51, Annexes, IX Session, A/2806 (Plenary meetings), p.10.

44 Ibid., paragraph 13.

45 Hans Blix, Sovereignty, Aggression and Neutrality (Uppsala, Sweden, 1970), p.28.

different purposes. For example, the one needed for peace-enforcing or peace-keeping functions of the Security Council or the General Assembly, would require precision and objectivity - intention i.e. 'animous aggressionists' being irrelevant - will not contain any attribution as to guilt of any party, since the immediate task is the cessation of hostilities, the attitude of the parties involved in the conflict towards the efforts made by other parties may be material.<sup>46</sup> The other definition which makes provision for punishing those guilty of war crimes, etc. may be elaborate and may contain attribution of guilt - the provisions as to Mens rea.

Finally, there is the controversy as to the content or format of the definition. The principal formulations proposed have generally assumed one or the other, or a combination, of two main forms. The first consists of a lengthy catalogue of various aggressive acts - vigorously supported by the Soviet Union. Any state committing the listed acts first is to be declared the aggressor. Its shortcoming is that, yet unknown devices may be invented by unscrupulous states to commit aggressions and evade liability under the definition. "By listing a number of acts of aggression, you almost inevitably, by implication, state or suggest that other acts which are not listed, do not constitute aggression."<sup>47</sup> The other principal

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46 G.G. Fitzmaurice, n.27, p.138.

type of definition "seeks the construction of a broad and general formula that would comprehend all possible instances of aggression."<sup>47</sup> It embodies the general principles, to be taken into account while considering any act of aggression, supported by UK, USA and other western states.

A third type - a combination of these two - is the mixed definition. A great majority of states, that support the formulation of some definition, have favoured the 'mixed' kind as a possible via media, in which "a general description would precede and govern a list of definite acts of aggression, which would be included merely to illustrate and not to restrict the general description".<sup>48</sup> Ultimately, it is this mixed type of definition that has been embodied in the definition of aggression in 1974.

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47 McDougal and Feliciano, n.34, pp.144-46.

48 Report of the Sixth Committee, GAOR, (XII), Annexes, Agenda Item 54, para 21, 1957.

## CHAPTER II

### HISTORICAL EFFORTS TO DEFINE AGGRESSION

#### 1. Upto World War I:

Four hundred years before Christ, the famous Chinese philosopher, Mo Ti, urged that international aggression be abandoned and wars be outlawed as the greatest of all crimes.<sup>1</sup> Later, the doctrine of 'just war' came to be advocated as a consequence of the Christianization of the Roman Empire and the ensuing abandonment of fervent pacificism by Christians. St. Augustine (354-430) defined just war in terms of the avenging of injuries suffered, where the guilty party has refused to make amends, and to punish wrongs and restore the peaceful status quo, but no further.<sup>2</sup> St. Thomas Aquinas took the definition of just war a stage further by declaring that it was the subjective guilt, not the objective wrong, that had to be punished.<sup>3</sup>

This doctrine of just war came to be tied up with the concept of sovereignty of states with the emergence of nation-states after the Treaty of Westphalia of 1648. Thereupon, the accent in legal doctrine moved from the application of force to

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1 Harley, J., Documentary Textbook of the UN, vol.2 (1950).

2 Malcolm Shaw, International Law (Liverpool, 1977), pp.414-15.

3 Ibid., p.415.





suppress the wrong-doer to a concern to maintain order by peaceful means. Yet, the concept of use of force remained lawful. The legality of recourse to war depended upon the formal processes of domestic law, and this notion started to evade the ethical consideration of justice. Hugo Grotius, tried to exclude ideological and theological considerations as the basis of a just war. He attempted to define just war in terms of self-defence, the protection of property and the punishment of wrongs by the citizens of the particular state.<sup>4</sup> "Other nations, not directly involved, were to do nothing whereby he who supports a wicked cause may be rendered more powerful, or whereby the movements of him who wages a just war may be hampered."<sup>5</sup> Gradually, the justice or otherwise of the cause became irrelevant in any legal consideration of war, and the basic issue came to revolve around the issue as to whether in fact a state of war existed. Thus in The Hague Peace Conferences of 1899 and 1907, instead of defining what constituted aggressive wars, the focus remained on evolving rules of conduct of warfare on land and the Sea; and on emphasizing peaceful means of settling international disputes.<sup>6</sup>

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4 Hugo Grotius, De Jure Belli ac Pacis, Vol.II, Cap.1, Sec.2, para 2.

5 Ibid., vol.III, Cap.7, Sec.3 (1625). Comparable to the present Article 2(5) of the UN Charter.

6 See, Scott J.B., The Hague Conventions and Declarations of 1899 and 1907



2. Upto the Establishment of the United Nations - Aggression Under the Covenant of the League of Nations:

One of the founding purposes of the Covenant was "to achieve international peace and security through international law, and to maintain justice", by the acceptance of obligations not to resort to war.<sup>7</sup> Regarding aggression, the Members undertook "to respect and preserve as against external aggression, the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled."<sup>8</sup> It was designed to preserve the existing boundaries and political structures of the Members from being overturned by any external forces. Should this be threatened, then "the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations."<sup>9</sup> In case of any dispute, threatening international peace and security, Members were to submit it either to arbitration or to enquiry by the Council. A further obligation was imposed on parties to a dispute not to resort to war until three months have passed after the award by the arbitrators or the report of the Council.<sup>10</sup>

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7 Preamble to the Covenant of the League of Nations.

8 The Covenant of the League of Nations, Article 10.

9 Ibid., Article 11.

10 Ibid., Article 12.

If the report of the Council was unanimous (excluding the votes of the Members, party to the dispute), then there was the obligation not to go to war with any party complying with such a report. But, in the absence of an unanimous report, Members reserved to themselves the right to take such action as may be considered necessary for the maintenance of their rights.<sup>11</sup> If any Member resorts to war, in violation of its Covenants, it shall ipso facto be deemed to have committed war against all other Members and it would be then subjected to economic, diplomatic and even military sanctions by other League Members.<sup>12</sup>

It is clear from a careful perusal of the Covenant provisions that it did not ban the use of force in waging wars "in all circumstances". It simply set up a procedure designed to restrict arbitrary use of force to tolerable levels, thus leaving some gaps in the international security system. Julius Stone observed that, "the introduction of the notion of aggression and the agitation for more precise criterion of it, were an attempt to rationalize the various quasi-procedural limitations. In part, they were an attempt to supplement the obvious deficiencies and the so-called gaps in the Covenant, by further discriminating still among the non-prohibited wars."<sup>13</sup> Thus, later, efforts were

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11 Ibid., Article 15.

12 Ibid., Article 16.

13 Julius Stone, Aggression and the World Order; A Critique of United Nations Theories of Aggression (London: Stevens, 1958), p.27.

concentrated on bridging the gaps of the Covenants, both within and without the League of Nations.

(a) Bridging the Gap Within the Framework of the League:

(i) The Draft Treaty of Mutual Assistance:

The Fourth Assembly of the League considered the Treaty of Mutual Assistance, prepared by the Temporary Mixed Commission. Aggressive war was solemnly declared, under this instrument, to be an international crime.<sup>14</sup> Parties undertook, jointly and severally, to furnish assistance to any victim of a war of aggression, provided that it had conformed to the provisions regarding limitation of armaments.<sup>15</sup> Thus the protection afforded to the victim was directly to be linked to disarmament. To make the mutual assistance more viable and reassuring, the Council was to decide within four days as to who was the object of aggression and whether that party was entitled to claim the assistance. Members undertook to abide by the decision of the Council.<sup>16</sup> Thus, though the determination of the aggressor was the starting point of the whole defensive system, yet it nowhere defined the term 'aggression'. The only reference to the 'intent' of aggression was contained in Article 1. This element of intention was to become the subject of great debate

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14 The Treaty of Mutual Assistance, Article 1.

15 Ibid., Article 2.

16 Ibid., Article 4.

over the period in which the subject of aggressive wars was to be considered.

(ii) The Geneva Protocol for the Pacific Settlement of International Disputes:

This protocol sought to combine into one the key elements of Arbitration, Security and Disarmament. Compulsory arbitration was the fundamental basis of the protocol. The gap in the Covenant allowing war under certain circumstances, was to be bridged by prohibiting all wars of aggression. Henceforth, no purely 'private war' between nations will be tolerated.<sup>17</sup> The signatories agreed not to go to war except in case of resistance to acts of aggression or in pursuant to the agreement of the Council or the Assembly.<sup>18</sup> The States undertook to recognise as compulsory, ipso facto and without special agreement, the jurisdiction of the Permanent Court of International Justice,<sup>19</sup> though they could make reservations regarding this.

The most important article of the draft protocol stated that any State resorting to war in violation of the undertakings contained in the Covenant or in the present protocol was an aggressor. Violation of the rules for demilitarized zones was equivalent to a resort to war. Refusal to submit a

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17 M. Politis, in the Introduction, Report on the Draft Protocol for the Pacific Settlement of International Disputes.

18 Protocol for the Pacific Settlement of International Disputes, Article 2.

19 Ibid., Article 15.

dispute to the prescribed pacific settlement procedures was itself an act of aggression, unless the Council unanimously decided otherwise. Thus, under this plan, positive action by the Council was required to negate the presumption of aggression which arose from failing to submit the dispute to peaceful settlement. Refusal to accept an armistice or the violation of its terms was also an act of aggression, immediately attracting economic, financial and military sanctions. Even reparations were proposed to be imposed on the aggressor.<sup>20</sup>

The effectiveness of this protocol depended upon the speedy identification of the aggressor. It, in the opinion of M. Politis, involved two aspects: first, aggression had to be defined, and, secondly, its existence had to be ascertained objectively. The definition of aggression was thought to be a relatively easy matter, "that State is the aggressor which resorts in any shape or form, to force in violation of the engagements contracted by it either under the Covenant..., or under the present Protocol."<sup>21</sup>

The second point - ascertainment whether aggression had taken place - was thought to be difficult. It was a question of fact, in the interpretation of which the subjective state of mind of each State might creep in. An important point

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20 Ibid., Articles 11-15.

21 Report of the Special Rapporteur, M. Politis, n.17, Para 8, p.204.

made during the discussion was that even a state, victim of aggression, did not have full freedom of action; the force employed by it must be 'proportionate' to the object in view and must be exercised within the limits and under the conditions recommended by the Council.<sup>22</sup>

Benes<sup>23</sup> considered that the two loopholes of the Covenant had thus been closed - the one allowing the Council's recommendations not to be followed, and the other that the Council itself might fail to reach unanimity so that no determination of aggression would exist.<sup>24</sup>

(b) Bridging the Gap - Outside the Framework of the League

(i) The Locarno Treaty of Mutual Guarantee, 1925:

It was a regional security pact which contained mutual guarantees regarding the inviolability of their frontiers as fixed by or in pursuance of the Peace Treaty of Versailles,<sup>25</sup> coupled with an undertaking not to attack or invade each other or resort to war against each other. But war was not prohibited, if it was in exercise of the right of legitimate

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22 Ibid., Commentary on Article 10, Para 8, p.204.

23 Chairman, Third Committee, on Question of Sanctions and Disarmament of the Draft Protocol.

24 Report of the Third Committee, Ibid., p.209.

25 Treaty of Mutual Guarantee Between Germany, Belgium, France, Great Britain and Italy, (Locarno, 16 October 1925), Article 1.

defence, or if there was a flagrant breach of the Versailles provisions relating to a demilitarized zone, provided such breach constituted an unprovoked act of aggression, or by reason of the assembly of armed forces in the demilitarized zone, immediate action was necessary.<sup>26</sup> But, no explanation as to what would signify "flagrant", "unprovoked" or "aggression" actions was offered. Thus no effort was made even here, to precisely define aggression. Some indication was afforded by Article 4(3) when the collective measures were to become effective either on the crossing of frontiers, or on the outbreak of hostilities or on the assembly of armed forces in the demilitarized zone, but beyond this simple, limited enumeration, nothing more was offered.

(ii) The Kellogg-Briand Pact, of The Pact of Paris, 1928:

The General Treaty for the Renunciation of War as an Instrument of National Policy, which was ratified by almost all the countries of the world, was a major attempt to outlaw war. This instrument was more in the nature of moral rhetoric to the states, as it did not have any penal provisions to punish its alleged violators. Parties declared that "they condemned recourse to war for the solution of international controversies and renounce it as an instrument of national policy in their relations with one another."<sup>27</sup> Further, the

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26 Ibid., Article 2.

27 General Treaty For Renunciation of War as an Instrument of National Policy; League of Nations Treaty Series, No. 2137, 1929, Article 1.



parties pledged that "the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means."<sup>28</sup>

Though war as such, was "outlawed" under this instrument, the interpretation adopted by states regarding the term self-defence was so wide and inclusive that it made no sense at all. It was argued that the Pact of Paris did not impair the right of self-defence. The limits of self-defence were subjectively determined by the US to include what it considered to be its "vital interests," whereas the British argued that the term entitled them to defend all overseas colonial possessions. Hence, there was no desire to define the term aggression, because its complementary term, self-defence, could almost always be used to justify any war.

But the Pact of Paris did, at least in legal theory, outlaw war and henceforth, no legal state of war could be established between two nations. In the absence of any provisions for renunciation or lapse, it might still be considered in force. According to one authority, it "stands together with the UN Charter as one of the two major sources of the norm limiting force by states. It is parallel to and a complement to the Charter."<sup>29</sup>

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28 Ibid., Article 2.

29 Ian Brownlie, International Law and the Use of Force by States (Oxford: Clarendon Press, 1963), p.91.

(iii) The Conference for the Reduction and Limitation of Armaments (popularly known as the Disarmament Conference), 1933:

In pursuance to the directive contained in Article 8 of the League Covenant, there was an obsessive concern with the reduction of the armaments. But the issue of disarmament was inextricably linked to an assurance of security. Thus, there was a vicious circle; neither could be achieved without the other preceding it. And while considering security, the problem of aggression with its converse principle of self-defence, always arose. The Rapporteur of the League Committee on the subject thought that "the existence of a precise definition of the notion which these bodies would have to apply, would render the determination of the aggressor much easier, and there would be less risk of an attempt to shield or excuse the aggressor for various political reasons without appearing to break the rule to be applied."<sup>30</sup> It was stated that the question of the definition of aggressor and that of sanctions to be applied against the aggressor, though closely connected, are nevertheless separate questions. It enumerated five acts viz: Declaration of War; Invasion of the territory of a station without declaration of war; Attack by Land, Naval and Armed Forces of the territory of another state, of its vessels or of its aircrafts; Establishment of a naval blockade of the

coasts or ports of another state; and support given to armed bands which have invaded the territory of another state, and each of these, by itself, would constitute an act of aggression".<sup>31</sup> No consideration whatsoever whether political, military or economic in nature,... was to be accepted as justification of aggression, and this proscription was made absolute. By adopting a Protocol, annexed to Article 2, two other justifications viz. the internal condition of a State, and the international conduct of a State, were also barred.

But as no nation was really ready and willing to reduce its armaments, the atmosphere was not conducive to the formulation and adoption of a uncontroverted definition of aggression.

(iv) The Soviet Definition of Aggression, 1933 -  
The Litvinoff Definition:

In pursuance to the French Proposals for the General Disarmament, the Soviet delegate Litvinoff, proposed the Soviet definition. The Soviet Union, it was argued, being the only socialist state surrounded by hostile capitalist states, all the more needed security and for the achievement of this security among hostile nations, an objective, precise and readily applicable definition of aggression was imperative. "To secure the minimum of authority, impartiality and confidence to the international organ (... providing security), we shall

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31 Ibid., Article 1.

have to give it instructions for its guidance and that means, first of all, defining war and aggression; and then distinguishing between aggression and defence, and once for all condemning those fallacious justifications for aggressions (the reference was to UK's and USA's reservations to the Kellogg-Briand Pact) with which the past has familiarized us."<sup>32</sup>

The Soviet definition<sup>33</sup> contained a preamble and three articles. It noted the necessity "with the utmost precision, to define aggression, in order to remove any possibility of its justification", and then listed, in Article 1, the acts of aggression:

1. The aggressor in an international conflict shall be considered that State which is the first to take any of the following actions:

- (a) Declaration of war against another state;
- (b) The invasion by its armed forces of the territory of another state without declaration of war;
- (c) Bombing the territory of another state by its land, naval or air forces or knowingly attacking the naval or air forces of another state;

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32 General Discussion of the Memorandum by the Soviet Delegate : Plan for the General Disarmament and the Organisation of Peace (French Proposals), 31 meeting, 6 February 1933, Doc.Conf.D.146, p.237.

33 Ibid., Draft Declaration, Document Conf. D/C.G.38, pp.237-38.

- (d) The landing in or introduction within the frontiers of another state of land, naval or air forces without the permission of the government of such a state or the infringement of the conditions of such permission, particularly as regards the duration of sojourn or extension of area;
- (e) The establishment of a naval blockade of the coast or parts of another State.

Article 2 - No considerations whatsoever of a political, strategic or economic nature, including the desire to exploit natural riches or to obtain any sort of advantages or privileges on the territory of another state, no references to considerable capital investments or other special interests in a given state, or to the alleged absence of certain attributes of state organisation in the case of a given country, shall be accepted as justification of aggression as defined in Clause 1.

Then it gave various examples wherein no stated excuses serve as justification which fall in two categories:

- (A) The internal situation in a given state.
- (B) Any acts, laws, or regulations of a given state.

The last article stated that the mobilization or concentration of armed forces at the border of another State gave rise to a right to the threatened state to take diplomatic and other peaceful measures. Even military measures of the similar nature, without crossing the frontier, could be reciprocated.<sup>34</sup>

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34 Ibid., Article 3.

The Soviet Union entered into many Non-Aggression Pacts with its neighbours in which it embodied substantially this definition of aggression. The principles which were important to the Soviet delegate were, the inviolability of recognised frontiers, and non-interference in the affairs, development, legislation or administration of another state. It took 40 years for the Soviet proposals, with modifications, to be accepted and embodied in the Consensus Definition of 1974.

(v) London Convention for the Definition of Aggression, 1933:

The Disarmament Conference was doomed to failure in the prevailing atmosphere of economic instability, mistrust and apathy. Since the Soviet Union continued to face hostile opposition of major capitalist states, to ensure its regional security with a ring of buffer states, it signed a convention for the Definition of Aggression<sup>35</sup> on 3 July 1933. Apart from the USSR, it was signed by Romania, Poland, Afghanistan, Persia, Latvia, Estonia and Turkey, and later on, acceded to by Finland. It accepted the precise wordings of the definition of Aggression<sup>36</sup> as recommended by the Politis Committee in May 1933, until such time as those rules shall become universal.

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35 Convention For the Definition of Aggression, Signed at London, 3 July 1933; League of Nations - Treaty Series, No. 3391 (1934), pp.69-77.

36 Ibid., Article 2; n.33, Soviet Definition of Aggression.

Two more similar Conventions were signed by the USSR, one with Czechoslovakia, Turkey and Yugoslavia, and the other, with Lithuania.

Many other nations referred to the need to define aggression in their agreements. Other prominent efforts in defining aggression were made by some International Law Associations and International Law Publicists. Only two need be noted here.

A group of distinguished scholars at the Harvard Law School produced a Draft Convention on the Rights and Duties of States in case of Aggression. Its very general definition ran as:

"Resort to armed force by a state when such resort has been duly determined by a means which the State is bound to accept, to constitute a violation of an obligation". 37

Another definition of aggression was suggested by Quincy Wright, which stated:

"A State which is under an obligation not to resort to force, which is employing force against another State and which refuses to accept an armistice proposed in accordance with a procedure which it has accepted to implement its no-force obligation, is an aggressor, and may be subjected to preventive, deterrent or remedial measures by other States bound by that obligation." 38

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37 See, AJIL, vol.33, 1939, Supplement 821-909, p.811.

38 Quincy Wright, "The Concept of Aggression in International Law", AJIL, vol.29, 1935, p.395.

3. Efforts to Define Aggression During Establishment of the UN

(1) The Drafting History of Article 39 of the UN Charter:

The Dumbarton Oaks Proposals, which later formed the basis of the UN Charter, included the following for eliciting the comments of participants:

"2. In general, the Security Council should determine the existence of any threat to the peace, breach of the peace or act of aggression and should make recommendations or decide upon the measures to be taken to maintain or restore peace and security." 39

Committee 3 of the Commission III entrusted with this part of the proposals, soon came to face the problem of defining aggression, and its inclusion in the Charter. Bolivia maintained that "the efficacy of the Security machinery is directly related to the need of designating the aggressor as such and defining what is meant by "aggressor state"... A previous definition of typically aggressive acts is absolutely essential in order that states composing the international community, may recognise what they should avoid in their international conduct so as not to give occasion for collective sanctions."<sup>40</sup> Then there was an enumerative list

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39 The Dumbarton Oaks Proposals for a General International Organisation, Chapter VIII, Section B-2, pp.13-14.  
Doc.1.G/1.

40 Para 5, of the "Proposals of the Declaration of the Republic of Bolivia for the Organization of a System of Peace and Security", UNCIO, Doc.2(English) G/14(r).



of seven acts which, when committed would give rise to the presumption of aggression. Thus, the inclusion of definition would facilitate the prompt determination of aggressors and consequently the prompt application of the collective security measures. It would charge the Security Council with the positive obligation of determining the aggressor and in the obvious cases of aggression, the application of the sanctions would become "near-automatic".

Bolivia was strongly supported by the Philippines which, too, gave a definition of aggression for inclusion in the Charter.<sup>41</sup> Among others, supporting the Bolivian proposal, were Colombia, Ethiopia, Guatemala, Honduras, Mexico, New Zealand and Uruguay. Iran and Egypt, without offering their own definition, supported the inclusion generally. But the Four-Powers (The USA, the UK, the USSR and China) proposed an amendment which would have required the Security Council, in determining the aggressor, to take into account any failure to comply with provisional measures recommended by the Council for the restoration of peace.<sup>42</sup> This was interpreted as a partial definition<sup>43</sup> because it implied that failure to accept

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41 Part XIII, "Proposed Amendments to the Dumbarton Oaks Proposals Submitted by the Philippines Delegation", UNCIO, Doc. 2 (English), G/14(K).

42 Proposed insertion of a new paragraph, between paras 2 and 3 in Section B of Chapter VIII of the Original Dumbarton Oaks Proposals, n.39. See, UNCIO, Doc. 2 (English) G/29.

43 United Nations Conference on International Organisation Doc. 442 (English) III/3/20., p.342.

the Council's recommendations might lead to the conclusion that the recalcitrant state was the aggressor.

All pros and cons were elaborately discussed by the Committee 3, Commission III on Enforcement Arrangements. The USA and the UK led the majority in opposition. But, the final conclusion reached was reported by the Rapporteur of the Committee, Mr Paul Boncour, thus:

"Although this proposition evoked considerable support, it nevertheless became clear to a majority of the Committee that a preliminary definition went beyond the possibilities of this conference and the purpose of the Charter. The progress of the technique of modern warfare renders very difficult the definition of all cases of aggression. The list of such cases being necessarily incomplete, the Council would have a tendency to consider of less importance the acts not mentioned therein; those omissions would encourage the aggressor to distort the definition or might delay action by the Council. Furthermore, in the other cases listed, automatic action by the Council might bring about a premature application of enforcement measures.

The Committee therefore decided to adhere to the text drawn up at Dumbarton Oaks and to leave to the Council the entire decision as to what constitutes a threat to peace, a breach of the peace or an act of aggression". 44

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44     In part C, I - Role of the Security Council, Report of Mr Paul Boncour, Rapporteur on Chapter VIII, Section B; UNCIO, Restricted Doc.881(English).III/3/46, p.505.

(11) The Charter of the International Military Tribunal and the Nuremberg War-Crimes Trials:

The USA in its plan, for the trial of major war criminals, stated that launching a war of aggression was, inter alia, a criminal act.<sup>45</sup> The US representative, Justice Kacjson at the London Conference which drew up the Charter of the International Military Tribunal (hereinafter called the IMT) stated that the best way to avoid hazard was to include an agreed definition of aggression in the Charter of the Tribunal. He referred to the Soviet Treaty of 3 July 1933<sup>46</sup> and other treaties for possible guidance. But in face of strong opposition, the United States dropped its proposal and the term 'aggression' remained undefined in the final Charter of the IMT.

In the lengthy Nuremberg trials, in order to establish that waging of aggressive war was an international crime, specific reference was made to the Hague Conventions of 1899 and 1907, the League Covenant, the Locarno Pacts of 1925, the Pact of Paris of 1928 and various Non-Aggression Agreements. The IMT in its judgement, stated, "to initiate a war of aggression... is not only an international crime; it is the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole."<sup>47</sup> Though the fact of waging

45 American Draft of Definitive Proposal, Presented to Foreign Ministers at San Francisco, April 1945, Document IV, Executive Agreement, para 6, part d, p.24.

46 See, n.35.

47 Judgement of the IMT, Part III, The Common Plan of Conspiracy and Aggressive War, p.16.

aggressive wars was very vociferously advocated in the Nuremberg Trials, and also, in the Tokyo war-crimes trials, the very definition of what exactly constitutes aggression was assiduously avoided. It is a strange phenomena that aggressions were committed, that every nation was concerned either with the preparations for committing aggression or defending itself against it, that everybody knew when aggression actually occurred yet, nobody could satisfactorily define it. It is only when the 'force of law' will replace the 'law of force', that some sense will prevail in the international community of states to define aggression.

### CHAPTER III

#### EFFORTS IN DEFINING AGGRESSION WITHIN THE FRAMEWORK OF THE UNITED NATIONS

The superstructure of the United Nations was erected with high hopes of humanity. At its first session, the General Assembly, by unanimous resolution<sup>1</sup> affirmed the principles of international law recognized in the Charter of the Nuremberg Tribunal and the judgement of the Tribunal. These principles were directed to be included in a 'Code of Offences against the Peace and Security of Mankind'. But beyond this, no concrete efforts in defining aggression were made, until 1950. During the early cold war period, the frequent use of veto paralyzed the working of the Security Council (the Czech. crisis 1948; the Korean crisis 1950, etc.). It prompted the General Assembly to take over the "secondary or residuary responsibility" of maintaining international peace and security under its Uniting for Peace Resolutions. In the First (Political and Security) Committee, on 6 November 1950, the Soviet Union revived, under the agenda item "Duties of States in the event of the outbreak of hostilities",<sup>2</sup> the

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1 Res.95(1); GAOR(I), 55th Plenary Meeting, 11 December 1946, at p.1144.

2 The Yugoslavian Proposals, GAOR, (V) Meetings of the First Committee, (A/1501), 4-9 November 1950.

substance of its draft definition of aggression of 1933.<sup>3</sup> Though the US, France and Canada led the protest against any fixed definition, nevertheless the question was referred to the International Law Commission for further consideration and formulation of the notion of aggression.<sup>4</sup> The General Assembly also adopted another resolution - Peace Through Deeds - which, after "condemning the intervention of a State in the internal affairs of another State...", solemnly re-affirmed that "whatever the weapons used, any aggression, whether committed openly, or by fomenting civil strife in the interest of a foreign Power, or otherwise, is the gravest of all crimes against peace and security throughout the world",<sup>5</sup> thus referring to direct and indirect aggression.

Commenting on the possibility and desirability of a definition of aggression, various enumerative and general-abstract definitions were proposed. The Commission considered it "undesirable to define aggression by a detailed enumeration of aggressive acts, since no enumeration could be exhaustive... the only practical course was to aim at a general and abstract definition."<sup>6</sup> The Commission took as a basis of discussion the

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3 See, the UN Document A/C.1/608.

4 General Assembly Resolution 378 B.(V), 308th Plenary Meeting, 17 November 1950., p.13.

5 Ibid., pp.13-14.

6 GAOR (VI), Supplement No.9, Document A/1858; Chapter III "Question of Defining Aggression", para 45, p.9.

text submitted by Mr Alfaro of Panama in his memorandum<sup>7</sup>, which read:

"Aggression is the use of force by one state or group of States, or by any government or group of governments, against the territory and people of other states or governments, in any manner, by any methods, for any reasons, and for any purposes, except individual or collective self-defence against armed attack or coercive action by the UN." 8

Even after amendment, the proposal was defeated.<sup>9</sup>

Mr Spiropoulos, Special Rapporteur on the Draft Code of Offences against the Peace and Security of Mankind, came to the conclusion that "this notion of aggression is a natural concept - a concept per se - which is not susceptible to definition. A legal definition of aggression would be an artificial construction, which would never be comprehensive enough to comprise all imaginable cases of aggression."<sup>10</sup> The Commission suggested the inclusion of the following in the Code of Offences:

"Article 2: The following acts are offences against the peace and security of mankind:

1. Any act of aggression, including the employment by the authorities of a state of armed force against another state for any purpose other than national or collective self-defence or in pursuance of a decision or recommendation by a competent organ of the United Nations.

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7 Memorandum (A/CN.4/L.8).

8 GAOR, n.6, para 46, p.9.

9 Ibid., para 51, p.10.

10 Ibid., para 39, p.8.

2. Any threat by the authorities of a state to resort to an act of aggression against any other state." 11

It also made nine additional offences in the code.<sup>12</sup>

This report of the International Law Commission was referred to the Sixth (Legal) Committee which "thought it possible and desirable, with a view to ensuring international peace and security and for the development of international criminal law, to define aggression by reference to the elements which constitute it."<sup>13</sup> By the same resolution, the Secretary-General was instructed to submit a report in which the question of defining aggression was to be thoroughly discussed.

The report submitted by the Secretary-General<sup>14</sup> was a greatly detailed document. It took note of the comments by fourteen countries which recently joined the UN. The report was divided in two parts - Part I dealing with the historical evolution under League period and the UN period; and, part II, General, dealing with the problem "Should aggression be defined"?, "How should it be defined (enumerative, general or combined type of definition)?" How far such a definition would be

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11 Ibid., para 53, p.10.

12 Ibid., Chapter IV, "Draft Code of Offences Against the Peace and Security of Mankind", Para 59, Text, Article 2.

13 See, The General Assembly Resolution 599(VI), adopted at its 368th plenary meeting, 31 January 1952.

14 GAOR (VII), Annexes, Agenda Item 54, A/2211, 3 October, 1952.



binding on the various organs of the UN"? Various aspects of these questions were nicely summed up in this report.

Following this, the General Assembly decided to include, in the agenda of its seventh session, the question of defining aggression. The Sixth Committee recommended to the General Assembly to adopt a resolution<sup>15</sup> in which it was proposed to establish a Special Committee of 15 members.<sup>16</sup> The said Committee was instructed to submit draft definitions of aggression or draft statements of the notion of aggression and study the problem on the assumption of a definition being adopted by a resolution of the General Assembly.

(a) The First Special Committee of Fifteen Members, 1952-54:

There were five ad hoc texts before the Committee - a draft definition by the USSR, two working papers submitted by China, a working paper submitted by Mexico, and last one by Bolivia.<sup>17</sup> The three types of definitions, popularized by the Secretary-General's report, viz. general, enumerative and mixed, established themselves thoroughly in the 1953 committee as rallying points and points of attack for conflicting views. The Soviet delegate Morzov led the attack on 'general definitions' as valueless, in so far as they

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15 The General Assembly Resolution 688 (VII), 20 December 1952.

16 Fifteen Members were: Bolivia, Brazil, China, Dominican Republic, France, Iran, Mexico, Netherlands, Norway, Pakistan, Poland, Syria, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, the USA.

17 GAOR (IX) Supplement No. 11(A/2638), Report of the Special Committee on the Question of Defining Aggression, pp. 13-15.

always approximated to saying that aggression was aggression, because these definitions themselves included terms having no fixed or clear meaning. The Soviet proposal of 'enumerative definition', too came under attack, specially by the UK. It maintained that this enumeration was not so much a definition as an incomplete catalogue of acts constituting aggression. Its incompleteness or non-exhaustive character would imply a license (six) to commit aggression by other unenumerated devices.<sup>18</sup> These were thought to be most deceiving types of definitions.<sup>19</sup> The US proposal of giving a list of factors to be taken into account by the competent UN organ, was also considered.

The Special Committee discussed various forms of aggression. What is meant by "aggression" in the Charter sense? Can an extended meaning be given to the term 'aggression' so as to include the notions of 'indirect', 'economic' and 'ideological' aggression too? The newly submitted Soviet text now, for the first time, included these other forms of aggressions.<sup>20</sup> Indirect aggression included various subversive

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18 For detailed statement of British position, See, G. G. Fitzmaurice, "The Definition of Aggression", ICLQ, vol.1, 1952, pp.137-44.

19 n.17, para 34, p.4.

20 Ibid., pp.7-11.

activities, promotion of civil-strife, etc. The economic aggression meant threatening another State's economic life, exploiting its natural riches or imposing an economic blockade, whereas ideological aggression included war propaganda, promoting hatred for other peoples, etc.

The Bolivian delegate<sup>21</sup> sought to infer a Charter prohibition of economic aggression from the three Charter principles of "political independence", "sovereign equality", and "non-interference in the domestic affairs" of States. Since "political independence was closely linked with economic independence, a threat to the latter was as much an act of aggression as was the armed aggression". The Iranian representative Mr Adamiyat<sup>22</sup> classed it as one of the most significant forms of indirect aggression, which causes an economic paralysis directly endangering the economic stability and hence political independence of the underdeveloped countries. These acts directly or indirectly impede the exercise of sovereignty over natural resources. But, this concept of economic aggression was criticized on the ground that this type of aggression does not give rise to the right to self-defence under Article 51 of the Charter.<sup>23</sup>

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21 Ibid., para 70, p.8.

22 Ibid., para 73, p.8.

23 Ibid., para 77, p.9.

Similarly, for ideological aggression, Soviet proposal included war propaganda, propaganda for the use of atomic, bacterial, chemical and other types of weapons of mass-destruction, promotion of hatred, racialism, etc.<sup>24</sup> M. Adamiyat (Iran), as well as others, saw "ideological aggression" as a form of "indirect aggression", of intervention in another State's internal or foreign affairs, including direct or indirect incitement to civil wars, threats to internal security and incitement to revolt by the supply of arms or by other means.<sup>25</sup> The USA stressed the danger that, to extend the notion of aggression thus, would weaken its application to armed aggression, a point which gained ascendancy as the debate went on.

The Committee Report included the debate whether it is possible and desirable to define aggression but no new point could be made. It noted the connexion between a definition of aggression and the maintenance of international peace and security;<sup>26</sup> and also discussed the problems raised by the inclusion of this definition in the Code of Offences

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24 Ibid., p.10.

25 Ibid., p.10.

26 Ibid., p.11.

against the peace and security of mankind and of its application within the framework of international criminal jurisdiction.<sup>27</sup>

The Sixth Committee considered the comments received from various governments regarding the Report of the Special Committee, discussed various new resolutions. Its report<sup>28</sup> showed a wide divergence of opinion as to whether it was possible or desirable to define aggression and as to the form and content of any such definition. Argentina and Denmark expressed their opposition.<sup>29</sup> The United Kingdom expressed its doubts.<sup>30</sup> The French conveyed their general support<sup>31</sup> and the Soviet-block maintained its position in favour of the detailed expose set forth in various USSR proposals.<sup>32</sup>

Regarding the utility of definition, it was observed that, adoption by the General Assembly might result in its becoming a general principle of customary international law, thus gradually becoming an integral part of international law which the Security Council would not violate.<sup>33</sup> But in the absence of any possibility of reaching agreement, it was

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27 Ibid., p.12.

28 GAOR, IX, Annexes, Agenda Item No.51, Report of the Sixth Committee, A/2806.

29 Ibid., p.2.

30 Ibid., p.6.

31 Ibid., p.2.

32 Ibid., pp.2,3 and 5.

33 Ibid., p.10.

decided by the Assembly, on the recommendations of the Sixth Committee<sup>34</sup> to establish a (Second) Special Committee of 19 members.<sup>35</sup> Also, considering the connection between the Draft Code and the question of an international criminal jurisdiction, and the question of defining aggression(sic) the Assembly decided to defer any further consideration of either the international criminal court or the draft Code of Offences until the new Special Committee to define aggression had submitted its report.<sup>36</sup>

(b) The Second Special Committee of Nineteen Members, 1954-1957;

After a survey of views expressed at the ninth session of the General Assembly,<sup>37</sup> the preliminary question of the possibility and desirability of a definition was again considered. The overwhelming majority of the Committee considered it possible and desirable to define aggression,

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34 G. Assembly Resolution 895(IX), 4 December 1954.

35 Nineteen Members were: China, Czechoslovakia, Dominican Republic, France, Iraq, Israel, Mexico, Netherlands, Norway, Panama, Paraguay, Peru, Philippines, Poland, Syria, USSR, UK, USA, Yugoslavia.

36 The General Assembly Resolution 898(IX), 14 December 1954.

37 Twelfth Session, Supplement No.16(A/3574) - Report of 1956 Special Committee, Section II, pp.5-11.

though the opinion was divided as to how it should be defined. Pointing out the inherent dangers in defining aggression, China and USA opposed it, because of the difficulty of putting into words something that was so dependent on circumstances. Citing M. Paul Boncour at the San Francisco Conference, the UK did not want to limit the discretion of the Security Council.<sup>38</sup> But many arguments were also advanced in favour of defining aggression.<sup>39</sup> Views were expressed about the functions and scope of the definition, and also, the various types of definitions. But beyond these preliminary issues, no new headway could be made.

The Report summed up different stands taken with regard to various activities covered by a definition - military armed force, indirect aggression, economic and ideological aggression. It stated the essential elements in the proposed definitions, pros and cons of the 'priority principle', justifiable armed attack in self-defence, and the quality of the force constituting aggression.<sup>40</sup>

The debate on aggression appeared rather academic in 1956, in face of the Middle East crisis and other contemporary aggressions then occurring. Thus disappointed and despaired, the Special Committee decided not to put the draft definitions to vote but to transmit them to the General Assembly,<sup>41</sup> in the hope that its work would contribute to the problem of defining aggression, in future.

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38 Ibid., para 100, p.12.

39 Ibid., para 104, p.13.

40 Ibid., pp.9-11; Part II, E.

41 Ibid., para 24, p.5.

The Sixth Committee of the General Assembly discussed the report of the 1956-Special Committee.<sup>42</sup> To some members, it appeared that the growing international tensions and the increasing armaments race required a clear definition of aggression more than ever before. Others, such as the United States, the UK, Japan, China, and Canada, argued that a definition might make peace more difficult by providing a false sense of security and restricting the flexibility of the competent UN organ. The USA, in its draft resolution presented to the Sixth Committee,<sup>43</sup> proposed to postpone indefinitely further consideration of the question of defining aggression whereas most members favoured only postponing the question, for some time. As a compromise, the Sixth Committee recommended that the question be referred to the Assembly's General Committee which would be asked to report back to the Secretary General when it considered that the time was appropriate to take up the subject again. By its resolution<sup>44</sup>, the General Assembly postponed the consideration for two years and instructed the Secretary-General to solicit the comments of 22 states which recently joined the UN, along with the comments of others.

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42 GAOR (XII), Annexes, Agenda Item No.54, Report of the Sixth Committee, A/3756.

43 Ibid., US Draft Resolution, A/C.6/L.402, p.1.

44 The General Assembly Resolution 1181(XII), 29 November 1957.



(c) The Third Special Committee of Twentyone Members, 1959-1967:

The period of two years prescribed by the General Assembly Resolution 1181 of 1957 passed when the new committee, now enlarged to 21 members, met,<sup>45</sup> on 14 April 1959. Its study of the 14 comments received from the governments convinced it that views have remained almost static over the period and that there was no reason to think that the appropriate time had come for the Assembly to again consider the question of defining aggression. The Committee therefore resolved, over Soviet protest, to adjourn until April 1962 any further consideration of the question<sup>46</sup>, though providing that an absolute majority of the committee members may request the Secretary General, to reconvene the meeting earlier.

At the peak of tension during Cuban missile crisis (in which the Security Council had been doubly paralyzed), the Committee was reconvened in April 1962. It noted the absence of sufficient change in the attitudes of Member States regarding

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45 Report of the Special Committee, The UN Doc. A/AC.91/2, 24 April 1959. The 21 members of the Committee were: Australia, Ceylon, China, Czechoslovakia, Ecuador, El Salvador, France, Greece, Indonesia, Ireland, Japan, Lebanon, Mexico, Nepal, Netherlands, Pakistan, Romania, the USSR, the UK, the USA, Uruguay.

46 Ibid., p.6.

the appropriate time to reconsider the question of defining aggression, and adjourned until April 1965 any further consideration of the question, unless the majority called for an earlier meeting.<sup>47</sup>

Though before April 1965 when the Committee was reconvened, there occurred many aggressions, but there seemed to be no inclination to define it. The United Kingdom and Argentina observed that due to the work, the Special Committee on Principles of International Law governing Friendly Relations and Co-operation Among States in accordance with the Charter of the United Nations, which was considering the principle that "States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the purposes of the UN", there was duplication of the efforts, hence they proposed to adjourn indefinitely unless the majority called for them to reconvene.<sup>48</sup> Only the USSR wanted the Committee to recommend to the General Assembly that the appropriate time had come for it to resume work on the definition of aggression.<sup>49</sup> But instead, by way of compromise, the Committee decided to adjourn to April 1967. In the interim period, further views of the governments would be solicited.

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47 UN Documents. A/AC.91/3, 3 April 1962.

48 UN Documents A/AC.91/5, 26 April 1965, p.4.

49 Ibid., p.5.

When the Special Committee met again, to define aggression in 1967, ten years had passed since its establishment, and it was still debating whether the time was appropriate for further Assembly action. Finding itself stalled in Committee, the USSR called for the Assembly to expedite the drafting of a definition of aggression in the light of the present international situation.<sup>50</sup> In the Sixth Committee, to which the question was referred to, there was an agreement that a definition of aggression was both feasible and desirable. An intense debate developed and various draft resolutions were put forth by various combinations of states.<sup>51</sup>

The conclusion finally reached was to establish yet another Special Committee of 35 members, "taking into consideration the principle of equitable geographical representation and the necessity that the principal legal systems of the world should be represented."<sup>52</sup> The Committee was to consider all the aspects of the question so that an adequate definition of aggression might be prepared and to report all the views to the Assembly. This was to be the last of the Special Committees, now Fourth, which triumphed in its efforts

50 GAOR (XXII), Annexes, Agenda Item No.95, Report of the Sixth Committee, Doc.No.A/6833, 22 September 1967.

51 Ibid., pp.4-8.

52 Ibid., p.8. The 35 members of the Fourth Special Committee were: Algeria, Australia, Bulgaria, Canada, Columbia, Cyprus, Czechoslovakia, Ecuador, Egypt, Finland, France, Ghana, Guyana, Haiti, Indonesia, Iran, Iraq, Italy, Japan, Madagascar, Mexico, Norway, Romania, Sierra Leone, Spain, Sudan, Syria, Turkey, Uganda, USSR, UK, USA, Uruguay, Yugoslavia, Zaire. Surprisingly, India was not a member of any of the Special Committees on Defining Aggression.

of defining aggression.

(d) The Fourth Special Committee

In pursuance to the General Assembly Resolution 2330 "Need to expedite the drafting of a definition of aggression in the light of the present international situation", the (fourth) Special Committee was appointed. This Special Committee had its marathoon sessions of five weeks each, every year alternating between Geneva and New York.

The first 1968 session was full of political recriminations, specially between the USSR and the USA, and their respective allies.<sup>53</sup> In the Special Committee, four distinct draft definitions were offered by various combinations of states.<sup>54</sup> The group of Western States, maintaining its traditional stand that definition will serve no purpose, offered no draft definition. These nations even opposed the Soviet proposal that Special Committee take up this matter next year again.<sup>55</sup> Later on, six of the thirty-five member states viz Australia, France, Italy, Japan, the United Kingdom and the United States, joined together to present a definition of their own.

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53 GAOR(XXIII), Agenda Item 86, Report of Special Committee, Question of Defining Aggression. A/7185/ Rev.1, 4 June-6 July.

54 Ibid., paras 7-12, pp.3-11.

55 Ibid., pp.13-19 under, Value of a Definition of Aggression.

Apart from questioning the very utility of defining the term, which mostly moved on ideological and political considerations, the Committee discussed the type of definition, the relation between the definition and the Charter, the exact meaning of the concept of aggression - whether indirect aggression, including the economic and ideological aggression, ought to be included within the ambit of the definition of aggression. There was intensive debate on the various draft proposals.<sup>56</sup> But these debates, produced practically no agreement on any major point. On the advice of the Special Committee, and its own Sixth Committee, the General Assembly adopted a resolution requesting the Special Committee to continue its efforts in 1969.<sup>57</sup> But many states were pessimist, holding that what was needed was not a definition but the political will and power to enforce decisions.

In 1969, these four drafts before the Special Committee were merged into three<sup>58</sup> - one by the USSR, another by thirteen Powers.<sup>59</sup> and the third draft by six Powers<sup>60</sup> which had abstained

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56 Ibid., pp.26-33.

57 General Assembly Resolution 2420(XXIII), 1746th plenary meeting, 18 December 1968.

58 GAOR (XXIV), Supplement No.20, Doc.A/7620, Report of the Special Committee, 24 February-3 April.

59 Thirteen Powers were: Columbia, Cyprus, Ecuador, Ghana, Guyana, Haiti, Iran, Madagascar, Mexico, Spain, Uganda, Uruguay and Yugoslavia.

60 Six Powers were: Australia, Canada, Italy, Japan, the UK and the USA.

from voting in favour of continuation of the work. As the drafts were compared and debated upon, the major areas of difference began to emerge, for the first time. As regards the ambit and the scope there was a general consensus that "the definition should be limited, at least for the time being, to the idea of armed aggression as envisaged in the Charter."<sup>61</sup> The consensus based the concept of armed aggression on two essential factors: the use of armed force, and an attack on the territorial integrity of political independence of another state. (Ultimately, in 1974 consensus definition, this emerging concept of armed aggression was carried to its logical conclusion - leaving economic and ideological aggressions from the purview of the "aggression"). The main debate centered around the USSR draft. The principal problems raised during the whole debate were: whether the definition would be applied to political entities which were not recognized as states (exception being made in case of the UN itself)<sup>62</sup>; what acts should be included in the concept of aggression;<sup>63</sup> The question of aggressive intent<sup>64</sup> and principle of priority;<sup>65</sup> what acts were exempted from being branded as

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61 Report of the Special Committee, n.58, p.15, para 25.

62 Ibid., pp.14-15, paras 23-24, and, p.25 para 60.

63 Ibid., pp.15-19 and, pp.26-27, paras 61-67.

64 Ibid. p.19 and p.27.

65 Ibid., p.19 and p.28.

aggression viz. acts in self-defence and collective action by the UN organ;<sup>66</sup> what acts ought not to be considered as aggression.<sup>67</sup> It also listed various legal consequences of aggression for the states concerned (the question of responsibility) and for other states (the question of non-recognition of territorial gains).<sup>68</sup>

Noting this progress of the Special Committee, the Sixth Committee recommended to the General Assembly to ask the Special Committee to continue its work in 1970.<sup>69</sup>

When the Special Committee resumed its task in Geneva, its secretariat had prepared a comparative chart<sup>70</sup>, setting forth in visual detail all of the differences and similarities of three drafts which were being considered. Its report was a lengthy document which again reconsidered all the points discussed earlier. As far as the Soviet draft and thirteen power draft were considered, they had much in common to evolve easy consensus but in contrast, the six Powers draft contained some new and thorny problems. A Working Group composed of representatives from the supporters of each of the different drafts, began to move towards agreement on some of the points of difference,<sup>71</sup> and it nicely summarized the existing position

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66 Ibid., pp.21-22 and pp.29-30.

67 Ibid., pp.22-23 and p.31.

68 Ibid., p.23 and p.31.

69 Report of the Sixth Committee, Document A/7853,  
para 25, p.6.

70 Doc.A/AC.134/L22, 24 July 1970.

71 See, Annex.II to the Report of Special Committee (XXV), Supplement No.19A/8019, p.61.

of all the important points involved. At the end of 1970, the Committee noted with satisfaction that some progress had been made and it could not complete its work due to the paucity of time. It sought to continue the work in 1971. The Sixth Committee again debated this report and recommended that Special Committee continue its efforts, to which the General Assembly concurred.<sup>72</sup>

There emerged a number of alternative texts on about half-a-dozen of the principal points of disagreement.<sup>73</sup> The earlier device of Working Group was followed in this session too, consisting of eight members,<sup>74</sup> which submitted two reports to the Special Committee. The first dealt with the 'general definition of aggression' and the 'principle of priority'. The second report, with 'the political entities other than states', 'legitimate uses of forces', 'aggressive intent', 'acts proposed for inclusion in the definition of aggression', 'proportionality', 'legal consequences of aggression', and 'the right of people to self-determination'.<sup>75</sup> But, in the annex to the report of the Special Committee, both the reports of Working Group were combined.<sup>76</sup>

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72 General Assembly Resolution 2644(XXV).

73 Report of the Special Committee (XXVI), Supplement No.19, A/8419, Annex III, p.30.

74 Ibid., p.3, para 8.

75 Ibid., p.3, para 9.

76 Ibid., p.30, para 2.



The United States, which had so far opposed the Soviet proposals came forth with new suggestions which seemed to be leaning towards an accommodation. The US was trying to balance the weight to be given to the intent of the parties as compared with the significance of the fact that one party had been the first to use armed force.<sup>77</sup>

By the end of 1971 session, there was general acceptance that there should be a definition of aggression and there was no visible disagreement about the format. All concurred that there ought to be a preamble, restating certain basic principles, a generic definition of aggression, an enumeration of specific acts which clearly indicated aggression, a reaffirmation that the Security Council could determine that other acts were also aggressive and an explanation as to when the use of force would be permissible.

Though the Preamble became clearer, the general definition remained debatable. As to the acts which are to be listed as aggression, invasion; attack; bombardment; and blockade were thought to be aggressive, beyond any pale of discussion, but the more subtle breaches of the peace, such as subversion and fomenting civil-strifes continued to present difficulties. The declaration of war was not regarded significant. The Thirteen Powers still insisted that nothing short of an armed attack could lawfully evoke a legitimate response of self-defence. The Six Powers wanted greater flexibility and looked

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77 Ibid., p.29.

to the purposes or intent of the action whereas the USSR still concentrated on which party was the first to use armed force. The Arab States, led by Egypt, were bent upon condemning any military occupation/annexation as acts of continuing aggression (keeping Israeli occupation of Arab lands in mind).

The Special Committee once again noted with satisfaction the progress achieved so far and decided to resume its work in 1972.<sup>78</sup> The Sixth Committee encouraged the Special Committee to continue its efforts towards a successful conclusion.<sup>79</sup>

More working groups were proposed to be established to facilitate and expedite the work of the Special Committee.<sup>80</sup> These new groups could be smaller but ought to be representative. But only one working group continued its work in 1972 and it made use of informal consultations with a view to overcome existing differences and difficulties.<sup>81</sup> But, in terms of additional accomplishment, 1972 was comparatively a lean year for the Special Committee. During the session, five separate proposals, mostly restating previous positions, were made by various delegations.<sup>82</sup> Now, due to the device of informal negotiations and working group, the differences came sharply under focus and there seemed to be the possibility of adjournment

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78 Ibid., p.21.

79 GAOR (XXVI), Annexes, Document A/8525, p.8, para 42.

80 Ibid., p.2, para 8.

81 Report of the Special Committee (XXVII), Supplement No.19, A/8719, p.6, para 15.

82 Ibid, Appendix B, pp.18-23.

on various stands by group of states which had submitted three main drafts. But the Working Group had no time to consider the report of its Negotiating Group, and the Special Committee had no time to consider the report of its Working Group. These reports were simply annexed to the main report. There were many alternatives noted in the report under the various heads: Indirect use of force; legal use of force; questions of priority and aggressive intent; right of people to self-determination; legal consequences of aggression.<sup>83</sup> Though the progress had slowed down, nevertheless the outlines of compromise were unmistakable and the hope began to be expressed that a definition by consensus would soon be possible.<sup>84</sup> In the Sixth Committee, the whole debate was concisely summed up in eight parts and it was recommended in the resolution<sup>85</sup> that "considering the urgency of bringing the work to a successful conclusion and the desirability of achieving the definition as soon as possible and also noting the common desire of the Committee members to continue their work on the basis

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83 Ibid., Appendix A, pp.14-17.

84 See, Ferencz, B.B., "Defining Aggression Where It Stands and Where It's Going", AJIL, vol.66, 1972, pp.491-508. Also, see, Ferencz, B.B., "A Proposed Definition of Aggression By Compromise and Consensus", ICLQ, vol.22, 1973, pp.407-433.

85 The General Assembly Resolution 2967(XXVII), 2109 Plenary meeting, 14 December 1972.

of results achieved and to arrive with due speed at a draft definition in a spirit of mutual understanding and accommodation, that Committee resume its work in 1973 at Geneva.

The term which had defied solution since the League days and over which maximum time of the world bodies was spent, had still remained nebulous before 1971-72. But, now the countours of the definition of aggression were becoming clearer. The Sixth Committee report,<sup>86</sup> summarizing the raging debates, can be made basis of the appraisal of the progress by 1972. It noted with satisfaction the progress achieved so far... "that task was nearer solution than ever before. It now afforded a clear view of the issues which were still causing some difficulties." Agreement had been reached on few points such as 'the question of political entities other than States', on 'the right of peoples to self-determination', but no complete accord seemed to be in sight as regards 'principle of priority and aggressive intent', 'the indirect use of force', 'legitimate uses of force', etc.<sup>87</sup> Though not complete unanimity but general consensus was reached about the necessity and desirability of having definition.<sup>88</sup>

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86 GAOR(XXVII), Annexes, Report of the Sixth Committee, Doc. A/8929.

87 Ibid., Debate, para 9, p.3.

88 Ibid., part B, pp.3-4, paras 14-17.

Discussing the report of the informal negotiating group, representatives observed that the words "however exerted" be deleted as they otherwise placed aggression and other breaches of peace, on the same footing. To make the definition precise and certain, words like "sovereignty", should not be used as these themselves required some definition. There was general recognition that the definition would not curtail the discretion of the Security Council as that would be tantamount to amending the Charter. At best, it would only guide it.<sup>89</sup> Only some of the most important and undisputed forms of indirect uses of force were sought to be included, along with the list of direct uses of force in 'acts proposed for inclusion in the definition'. Some indirect uses were sought to be included because "in the modern world these were tending to take the place of direct aggression",<sup>90</sup> having comparable purposes and effects. The principle of priority was of paramount importance - providing basic criterion in identifying an aggressor since it would prevent States from committing acts of aggression under the pretext of waging a so-called preventive war.<sup>91</sup> Inevitably, no consideration relating to internal or foreign policy of a

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89 Ibid., p.4, para 21.

90 Ibid., p.5, para 22.

91 Ibid., p.6, paras 26-27.

state could serve as a justification for aggression. It remained, of course, a rebuttable presumption. The Western States (sponsors of six Powers draft) still maintained that intent should be a fundamental ingredient of any definition of aggression. But several representatives were opposed to including the aggressive intent in the definition as it was thought to be too subjective an element<sup>92</sup> - and because it would place the burden of proof on the victim of aggression. The legitimate use of force included the use of force by the Security Council in collective Enforcement Action and in Collective or Individual Self-Defence. There was some debate whether the rule of proportionality should be included in the definition, keeping in view the legal maxim summum jus summum injuria.<sup>93</sup> The majority supported the inclusion of the right of self-determination in definition. According to them, the colonial domination could be assimilated to continued aggression, hence the subjugated people could justly take up arms. Nations helping these subjugated people with arms or otherwise, ought not to be branded as helping the aggressors.<sup>94</sup> A minority opposed this and regarded the issue of self-determination as extraneous which

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92 Ibid., p.6, paras 28-29.

93 Ibid., pp.6-7, paras 30-31.

94 Ibid., p.7, paras 33-35.

only complicates the complex question of defining aggression. Lastly, as regards the legal consequences of aggression, the report of the Sixth Committee noted that the substantial position of earlier session remained unchanged and the consensus was that no illegal gain resulting from aggressive war ought to be so recognised.<sup>95</sup>

In 1973 at Geneva, for the first time all the various drafts were consolidated into a single document which allowed the few major points of difference to be isolated and exposed. To iron-out the differences still persisting, the working group established four contact groups.<sup>96</sup> The first contact group dealt with the general definition, specially the terms "sovereignty", and "territorial integrity". The second contact group dealt with acts proposed for inclusion, indirect uses of force, minor incidents and right of self-determination. The third, with the questions of priority and aggressive intent. The fourth, with the legal uses of force, and the legal consequences of aggression.

The doubts about the usefulness of a definition were no longer expressed. There was recognition that it was most desirable to accept the definition by consensus. There was considerable harmony regarding the principles to be contained

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95 Ibid., p.8, para 36.

96 Report of Special Committee, (XXVIII), Supplement No.19, A/9019, See, Annex II, p.13.

in a definition, but some differences about wordings and sequence still remained. Agreement had been reached that only the Security Council should have authority and discretion to decide about aggression. The list of enumerated acts was almost closed and there was understanding that minor incidents would be excluded. It was accepted that both the first use of armed force and the intent of the parties would have to be taken into account, and that certain forms of indirect aggression would have to be included in a list of aggressive acts. The principle of proportionality was dropped due to the strong Soviet opposition. The circumstances under which force could lawfully be employed in self-defence was also eliminated by relying on a general reference to the Charter. Major disagreement hinged around less than half a dozen points.<sup>97</sup> How to apportion the relative weight to be given to the fact that one party had struck the first blow or that another had lawful intentions, still presented a problem. Some expressed doubts about whether attacks on marine and air fleets should be enumerated among the aggressive acts<sup>98</sup> and there was some uncertainty about how to deal with armed forces over-staying

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97 Ibid. See Appendix A, pp.15-21.

98 Ibid., Appendix A, p.19.



their welcome lodgement in another state, or using foreign territory for unlawful activities. There was strong disagreement about whether armed force could lawfully be used as part of a struggle for self-determination and what exactly were the legal consequences of aggression.<sup>99</sup>

At the conclusion of 1973 session, the Special Committee submitted, for further deliberations a single Consolidated Draft defining aggression.<sup>100</sup> It had a preamble and seven articles, and ten of the thirtyfive members submitted counter-proposals. The Committee noted with satisfaction that the progress had been such that it might be possible to draft a generally acceptable definition at its next session.<sup>101</sup>

The Sixth Committee commented on each article of the draft and unanimously concluded that the Special Committee should meet early in 1974 with a view to completing its task.<sup>102</sup>

At long last, the Fourth Special Committee started its last session from 11 March to 12 April 1974. At the end of

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99 For a detailed analysis of points of agreement and disagreement at the end of 1973, See, Ferencz, B.B., "Defining Aggression, The Last Mile", Columbia Journal of Transnational Law, vol.12, 1973, pp.430-463.

100 Ibid., Appendix A., p.15.

101 Ibid., p.5.

102 The General Assembly Resolution 3105(XXVIII), 2197th Plenary Session, 12 December 1973.

1973 session, the consolidated text contained the draft definition of aggression which was so delicately balanced that any attempt to shift the emphasis anywhere would pull down the whole superstructure. Personal rapport between the Committee members paved the way for frank and extensive informal negotiations. The same method of Working Group, and various Contact Groups was employed again. These groups hammered out the differences on various articles.

Finally, the drafting group completed the final draft definition of aggression from the revised consolidated text prepared by Contact Group IV. Then on 12 April 1974, the 35-member Special Committee considered and adopted the recommendation of its Working Group which had a preamble and eight articles.

This recommendation of Special Committee was considered by the Sixth Committee in October 1974, and was adopted by it at its 1503rd meeting on 21 November 1974. The General Assembly adopted it by 'consensus', on 14 December 1974 at its 2319th plenary meeting.<sup>104</sup> And thus, after facing innumerable vicissitudes, the seemingly undefinable term "aggression" was defined and the UN had triumphed. But, how far this triumph befitted the expectations of the world community, remains to be seen.

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103 Report of Special Committee (XXIX), Supplement No.19, A/9619.

104 The General Assembly Resolution 3314(XXIX), GAOR(XXIX), Supplement No.31.

## CHAPTER IV

### THE 1974 CONSENSUS DEFINITION OF AGGRESSION

By adopting the delicately balanced Consensus Definition of Aggression, the General Assembly gave its approval to last fifty years of labour. Contradictory predictions were made at the birth of this definition, ranging from the expectant utterances of smaller and third world nations to the near-condemnation of the definition by Western States, branding it to be a 'face-saving device'. The definition was adopted by General Assembly Resolution which has four paragraphs and an Annexure.<sup>1</sup> The actual definition is contained in the Annexure. In the Resolution, the General Assembly recalled the birth of the Fourth Special Committee<sup>2</sup> and expressing its appreciation to that Committee, approved the Consensus Definition. It exhorted the States to refrain from the acts of aggression and other uses of force contrary to the Charter of the United Nations<sup>3</sup> and other Principles of "Friendly Relations" and brought this definition to the notice of the Security Council. The Consensus Definition is intended only to guide the Security Council and

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1 See General Assembly Resolution No.3314(XXIX), Definition of Aggression of 14 December 1974. Reprinted in IJIL, vol.14, 1974, p.466.

2 The General Assembly Resolution 2330 (XXII) of 18 December 1967.

3 n.1, para 3 of the preamble.

not hinder its discretion otherwise.

### Classification

The annexed definition has ten preambular paragraphs which refer to the important purposes of the UN Charter, to the "Friendly Relations Declaration" and to other principles of international law. Out of eight articles, the first one is general - characterising the attributes of common aggression. The second article embodies not only the Soviet proposal of "priority" but also the Western proposal of "intentions". The third article enumerates various cases of aggression about which there exists no doubt. Together, these three articles represent the mixed type of definition. Article 4 could have been a part of Article 3 itself. It merely reaffirms the issues raised during the debates that various aggressive acts listed in the preceding article are not exhaustive and that the discretion of the Security Council is not curtailed. Article 5 is a hotch-potch - an assortment of various disjointed issues. The next article, again, by way of abundant caution, reaffirms that the present definition does not enlarge or diminish the scope of the Charter. Article 7 is the most controversial and hotly debated article, regarding the right of peoples to self-determination. The last one adjoins an integrated and overall view of the definition.

Analytically, the whole definition may be classified as under:

- (a) What is aggression? The broad attributes of aggression which would include article 1 (general definition), articles 6 and 8.
- (b) What kinds of acts constitute aggression? It would include article 2 (priority and presumption of aggression), article 3 (list of acts regarded as aggression), articles 4 and 5(1).
- (c) What is the nature of aggression? It would include article 5(2), and 5(3) and article 1.
- (d) Rights of self-determination, freedom and independence, and acts of aggression which would include articles 7 and 3(g).

#### Analysis of the Definition

The Preamble:

The preamble of the annexed definition<sup>4</sup> is, more or less, a forerunner of the substantive definition. In ten paragraphs it explicitly and implicitly makes it clear as to what is contained in the succeeding substantive articles. The first four paragraphs emphasize the need to have the definition

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4 The General Assembly Resolution (A/9890), A/Res./3314(XXIX), 14 December 1974, p.2.

within the context of the UN Charter, and the fifth paragraph urged the need in the context of existing world situation. The remaining paragraphs in one way or the other, refer to the articles within.

**Para 1 - Reference to the Fundamental Purposes of the UN ; The General Assembly**

Basing itself on the fact that one of the fundamental purposes of the United Nations is to maintain international peace and security and to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace;

This is a restatement of article 1(1) of the UN Charter, and was first proposed to be included in the definition by the USSR and the Thirteen Powers.<sup>5</sup> Its inclusion merely reinforced the context in which the UN General Assembly wanted to expedite the formulation of the definition. There is very little variation from the language of the Charter and the omission of the later part of article 1(1), regarding pacific settlement of the disputes, was not intended to serve any extraneous purpose.

**Para 2 - The Role and Responsibility of the Security Council;**

Recalling that the Security Council, in accordance with Article 39 of the Charter of the United Nations shall

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<sup>5</sup> Report of the Special Committee, 1973, GAOR(XXVIII) Supplement No.19, A/9019, 25 April to 30 May 1973.

determine the existence of any threat of the peace, breach of the peace or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Article 41 and 42, to maintain or restore international peace and security;

This is identical with the Article 39 of the Charter and it was included in all the three main proposals before the Special Committee. The French delegate had objected to the reference to Article 39 without referring to Article 51 on self-defence, but it was voted against. Here, it merely states the obvious fact that the Security Council will decide what acts would constitute aggression. This finds further support within the definition, in Articles 2, 4 and 6.

Para 3 - Pacific Settlement of Disputes:

Recalling also the duty of States under the Charter to settle their international disputes by peaceful means in order not to endanger international peace, security and justice;

This again emphasises the basic principle of the Charter (Articles 2(3), and 33(1)). Both, the Six-Power draft and the Thirteen-Power draft had included this duty in their preambles.<sup>6</sup>

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6 Ibid., p.59 and p.57 respectively in Annex.\*.

**Para 4 - Charter Provisions to remain intact;**

Bearing in mind that nothing in this definition shall be interpreted as in any way affecting the scope of the provisions of the Charter with respect to the functions and powers of the organs of the United Nations;

For the first time in the Consolidated Text of 1973<sup>7</sup> this proposal was made. A slight change was made at the instance of Japan, substituting the words "functions and powers" for "rights and duties". On the face of it, this para, reserving the powers of the UN, seems to be superfluous but it was added by way of caution. Many states had feared that the scope of the definition might go beyond the UN Charter, hence its inclusion.

**Para 5 - Urgency of Defining Aggression:**

Considering also that, since aggression is the most serious and dangerous form of the illegal use of force, being fraught, in the conditions created by the existence of all types of weapons of mass destruction, with the possible threat of a world conflict and all its catastrophic consequences, aggression should be defined at the present stage;

This proposal too, emerged in the 1973 consolidated text and was embodied in the 1974 definition almost verbatim.

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7 Report of Special Committee, 1973, n.5, p.15.



Many of the smaller states had expressed concern about the use of bacteriological, chemical and nuclear weapons, which they would have liked to outlaw completely. The reference to "all types of weapons of mass destruction" was designed to allay their fears. This para portrays the danger of modern warfare to the humanity and exhorts them to refrain from unwanton aggression.

**Para 6 - Use of Force for Prohibited Purposes:**

Reaffirming the duty of States not to use armed force to deprive peoples of their right to self-determination, freedom and independence, or to disrupt territorial integrity;

The draft proposal of the USSR in 1969 contained in para 3 of its preamble<sup>8</sup>, equated the right of peoples to self-determination with the human-rights, and thus, it was contrary to the Charter. This Soviet proposal referred to the General Assembly Resolution 1514(XV) of 14 December 1960 (and it was repeated in its draft definition<sup>9</sup>), making it clear that it benefits only those peoples struggling against colonialism. The Thirteen-Power draft merely referred to the provisions in the Charter concerning self-determination, sovereignty and territorial integrity. But its inclusion does not affect the right of the subjected people to use even

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8 The Soviet Proposal, n.5, p.55, para 3.

9 Ibid., p.56, article 6.

armed force against the colonial power.<sup>10</sup> This right to self-determination is also included in the main definition, in Article 7 and has caused much controversy and debate.  
 Para 7 - Re-affirms Inviolability of Territory:

Reaffirming also that the territory of a State shall not be violated by being the object, even temporarily, of military occupation or of other measures of force taken by another state in contravention of the Charter, and that it shall not be the object of acquisition by another state resulting from such measures or the threat thereof;

This paragraph reaffirms the inviolability of territory by proscribing all uses of force and not merely armed force. Even a temporary military occupation is to be condemned. The attempt of many states (led by Romania) to delete the words "in contravention of the Charter"<sup>11</sup> was opposed by other states, specially the Western States. Otherwise, the Berlin occupation of the USA, which is authorised under article 107 of the Charter, would have become illegal.

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10 Report of the Special Committee 1972 (XXVII), Supplement No.19, Doc.A/8719. Syrian Proposal at p.17.

11 See, B.B. Ferencz, Defining International Aggression, vol.II (Oceana Publications: New York, 1975), p.23.

**Para 8 - Reference to the Friendly Relations Declaration;**

Reaffirming also the provisions of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation Among States in accordance with the Charter of the United Nations;

While discussing the article 5 of the substantive definition, the Contact Group chose to insert this paragraph. It was in the context of non-recognition of territorial acquisition that this reference to Friendly Relations was made. And it merely reinforces the part three of the article 5 of the definition.

**Para 9 - Utility of the Definition:**

Convinced that the adoption of a definition of aggression ought to have the effects of deterring a potential aggressor, would simplify the determination of acts of aggression and the implementation of measures to suppress them and would also facilitate the protection of the rights and lawful interests of, and the rendering of assistance to the victim;

There had been lengthy debates over the question of desirability of the definition. This para outlines five of the more important uses of defining aggression. Such a provision was contained in the original Soviet draft of 1970<sup>12</sup>

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12 Report of Special Committee 1970(XXV),  
Supplement No.19, A/8019, p.55.

which was ultimately adopted in the 1974 definition with some minor changes.

Para 10 - The Need to Consider All Circumstances:

Believing that, although the question whether an act of aggression has been committed must be considered in the light of all circumstances of each particular case, it is nevertheless desirable to formulate basic principles as guidance for such determination,

Adopts the following definition of aggression:

This preambular para emphasises the need to consider all the relevant circumstances - and thus provides flexibility to the definition. It also gives support to the view of many smaller states that the exercise of the Council's discretion could not be completely arbitrary since the definition would have to serve as a guide.

The whole preamble is a masterpiece in the art of compromise - as is the whole of the definition. To someone, not familiar with the background of the debates, preamble would seem either redundant or irrelevant. For example, there was apparently hardly any need to change the Charter language in the first three paragraphs. The paragraphs 6-8 had already been declared in the Friendly Relations Declaration. Still, it becomes necessary and relevant in the light of all the vexing problems the Special Committee had to face.

### The Substantive Definition

All the eight articles of the definition are dealt with one by one and the various points raised during the debates in the Fourth Special Committee have been referred to.

#### Article 1 - The General Definition of Aggression:

Aggression is the use of armed force by a state against the sovereignty, territorial integrity or political independence of another state, or in any manner inconsistent with the Charter of the United Nations, as set out in this definition.

Explanatory Note: In this definition the term "State":

- (a) is used without prejudice to questions of recognition or to whether a state is a Member of the United Nations;
- (b) includes the concept of a "group of states" where appropriate.

Initially the Special Committee started its task by working on three draft proposals but by 1972, the contours were becoming clearer. The Report of the Special Committee made clear the general format of the definition<sup>13</sup> though as regards details, many alternatives were proposed. The position obtaining in 1972 with regard to this question was:

"Aggression is the use of armed force (however exerted) by a state against the territorial integrity (sovereignty) or political independence of another state, or in any other manner inconsistent with the Charter of the United Nations". 14

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13 n.10, Appendix A, p.14.

14 Ibid., p.14, under "General Definition of Aggression".

It was stressed that the term "territorial integrity" includes territorial waters and air space, but the point was not accepted. At that time the terms territorial waters had different meaning for different nations, hence it was sought to be avoided. Anyhow, it was contended that the term territorial integrity impliedly included these two terms within itself.

As regards the word "sovereignty" - which first appeared in Thirteen-Power draft<sup>15</sup> - the Soviet Union insisted that it was superfluous since force used against "political independence" was practically the same thing as force used against "sovereignty". Later on, by equating the violation of sovereignty with armed encroachment on the territorial integrity or political independence, the USSR adopted its own interpretation. But many states, particularly the smaller ones, wanted to keep the word "sovereignty" in the general definition of aggression. Sovereignty as such does not figure in the Charter language of Article 2(4), which speaks of territorial integrity and political independence, and in view of the experience gained since the adoption of the Charter, these two cannot be equated. Closely connected with this was the controversy regarding the words "in any other manner inconsistent with the Charter". Kenya and

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15 n.12, p.57.

Paraguay denounced it as ambiguous, as offering a loophole<sup>16</sup> in as much as the aggressor state may itself consider its action as justified and as not inconsistent with the Charter. But these doubts were repelled when it was reaffirmed in the text of the definition that the Security Council, and not the individual state, would be the determining body. The proposals that there be reference to "principles and purposes" or to the "principles and provisions" of the Charter, instead of the words "inconsistent with the Charter" was not accepted as the latter impart more precision and clarity.<sup>17</sup>

But the controversy regarding the words "use of armed force (however exerted)" caused much debate.<sup>18</sup> These words first appeared in 1972, Report of the Special Committee in its informal negotiating group and then in 1973 consolidated text. The Six Powers had originally sought to prohibit force "overt or covert, direct or indirect".<sup>19</sup> Many states, including the USSR, shared the fear that broader language might increase the risk that a mere breach of the peace might be treated as

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16 See Summary Records 1474 at p.8 (Kenya) and, Summary Records 1483 at p.3. Quoted in B.B. Ferencz, n.11, p.27.

17 Report of the Sixth Committee (XXVIII), A/9411, pp.546-47.

18 n.10, Appendix A, p.14.

19 Report of the Special Committee 1970, n.12, p.59 in Article 2.

an act of aggression. This fear had prompted the UN Committee in 1945, while drafting the UN Charter, to refrain from defining the term aggression. Pressure was put to delete these words from the text as these placed 'aggression' and 'any other breach of the peace' on the same footing whereas even according to the UN Charter they differed in gravity and should be evaluated differently.<sup>20</sup> Their retention, it was contended, would lead to a definition of aggression which would be inconsistent with the Charter. Since the general principle enunciated in Article 1 was explained by the following Articles, the words "however exerted" were not necessary and could lead to misinterpretation; in the interest of a clear general definition, it would be better to delete these words.<sup>21</sup> If a provision dealing with the indirect use of force were to be included in the definition (as was, in fact, done in Article 3 of the 1974 definition, listing some of the indirect uses of force as aggression), then these words "however exerted" would become redundant.

The "Explanatory Note" arose as a consequence of protracted debate regarding the political entities to which the definition should apply. All drafts (except one by Six Powers) referred to actions by "States". The Six-Power draft too

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20 Report of the Sixth Committee 1972, GAOR (XXVII), A/8929, p.4.

21 n.17, p.7.



referred to "political entities" delimited by international boundaries<sup>22</sup> but this was a oblique reference to cover those defined territories whose statehood was disputed such as existed in Germany, Vietna, Israel, Korea, Rhodesia. Having conceded this Western nations' demand, compromise began to emerge.<sup>23</sup> The GDR opposed any notion of collective responsibility (implied in the term "Group of States"), supported by Hungary and Japan. Their fears were calmed by adding the concluding clause: "where appropriate".

Article 2(4) of the UN Charter prohibits all uses of force, including the threat to use force. But Article 1 of the Consensus Definition of Aggression does not speak of threat to use force as an act of aggression. Even the Nuremberg Tribunal had held it to be an act of aggression, even if the victim state, in the face of overwhelming power, surrendered without engaging in war. Hence, the result is that mere threat of using force does not attract the label of aggressor.

Article 2 - Principle of Priority and Aggressive Intent:

"The first use of armed force by a state in contravention of the Charter shall constitute prima facie evidence of an act of aggression, although the Security Council may, in conformity with the Charter conclude that a determination

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22 Report of Special Committee 1970, n.12, p.59.

23 Report of Special Committee 1971, GAOR (XXVI), A/8419, p.31.

that an act of aggression has been committed, would not be justified in the light of other relevant circumstances including the fact that the acts concerned or their consequences are not of sufficient gravity".

This article tries to embody two contradictory principles viz: the principle of priority, holding that all that need be done to ascertain an act of aggression is to look for that State which has been the first to use armed force; and the principle of intent, holding that it is to the purposes or designs of the aggressor which must be taken into account.

The Soviet Union had been the first<sup>24</sup> and the foremost supporter of the priority principle. Even the Six Power position put forth in 1964, was that before an act could be condemned as aggressive, it would be essential to prove that it had been first used in order to achieve one of the five specifically prohibited objectives.<sup>25</sup> This principle was thought to be basic and determinative, making it impossible for an aggressor state to plead innocence on the grounds that it was conducting a preventive war. Hence the purported clauses that "(intention) would be taken into account", or "due weight shall be given to the question whether",<sup>26</sup> were not finally incorporated. It was said that

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24 See, 1933 Soviet proposed definition.

25 Report of Special Committee 1970, n.12, p.59.

26 Paragraph 5 of Working Group's Report, pp.19-20. Doc. A/8419.

all the states had the right to respond by force of arms as soon as the act of aggression started, regardless of the intentions or motives of the aggressor, since the victim generally has no means to ascertain the aggressor's intentions. Fears of other states were allayed by inserting in Article 5, Clause 1 that "no consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression". Thus, the first use of force all the more becomes a case of clear aggression.

During the course of debates, the Western States had conceded that only "due regard" had to be given to the question of intent or the animus aggressionis but they did not feel that the purposes of the action should be given any lesser consideration than the chronological fact of who had struck the first blow.<sup>27</sup> Their argument runs that in the modern warfare, it is almost impossible to determine who had acted first, that a minor first use of force might have been provided so as to appear to the world community that it is taking up arms in self-defence but in fact using that minor provocation as a pretext for massive retaliation. They also maintained that it was unreasonable in the atomic age to expect any nation to wait to be destroyed before taking any

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27 Report of Special Committee 1972, n.10, p.18.

defensive measures. The Soviets contended that it would be impossible to prove intent, that it would cast an unreasonable burden on the victim and that objective criteria were essential. The reconciliation on these two different stands became possible in a compromise text which treated the first use of armed force "in contravention of the Charter" as prima facie evidence of aggression and also gave the Security Council authority to take "other relevant circumstances" into account.

As regards the first use of armed force in contravention of the Charter, doubts were expressed that this, by implication, meant that there could be a legitimate use of force, not in contravention of the Charter. Many states might become judges themselves and resort to first strike, justifying it as 'not in contravention of the Charter'.<sup>28</sup> Compromise was reached when the subjective determination by the States was prohibited in favour of an objective determination by the Security Council whether or not there has been any contravention of the Charter.<sup>29</sup> The inclusion of Article 5(1) helped allay the fears.

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28 Report of the Special Committee 1974(XXIX), Supplement No.19, A/9619, Annex.I, p.21 for France; p.17 for Romania; p.15 for Madagascar.

29 Ibid., p.21.

For some, prima facie meant that aggression existed until the presumption was rebutted or that the Security Council otherwise determined to the contrary.<sup>30</sup> But the United States and the United Kingdom resented equating "prima facie" case with actual "conviction" or imposition of guilt. They required that aggression existed upon an express finding to that effect by the Security Council.<sup>31</sup>

It was agreed that minor incidents ought not to be regarded as cases of aggression.<sup>32</sup> This was achieved by adding the sentence at the end of the Article 2 that the Council could conclude that an act was not aggression, if it, or its consequences were not of sufficient gravity to justify a finding of aggression.

Article 2 was properly regarded as a key provision of the consensus definition; obviously there was lot of air of compromise regarding the language to be used, but it remained subject to various interpretations. References to "purposes" had been dropped. In exchange, "other relevant circumstances" could be considered and there was a requirement that the act to be offensive had to be "in contravention of the Charter."

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30 Ibid., p.21.

31 Ibid., p.23 for the USA, and p.31 for the UK.

32 Report of Special Committee 1973, n.5, p.17.

Who decided whether an act was "in contravention" and what was included among the "other relevant circumstances" to be considered and exactly what was the significance of considering the first strike to have prima facie evidentiary value, have all remained subject to different interpretations.

Article 3 - Acts Qualifying As Aggression: (A) Direct Uses of Force

Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provisions of Article 2, qualify as an act of aggression:

- (a) The invasion or attack by the armed forces of a state of the territory of another state or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another state or part thereof.

War is a relative and ambiguous term. Even the UN Charter makes no reference to it. To constitute an act of aggression, there need not be a declaration of war. This article embodies the typical Soviet type of enumerative definition but at the same time, it is subject to the general provisions of Article 2.<sup>33</sup> Thus, the general discretion given to the Security Council to make a finding of aggression otherwise than those listed in Article 3, has been preserved.

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33 n.5, p.24, under the caption "Acts Proposed for Inclusion".

This way, no water-tight application of definition would risk a premature determination of aggression.

Among the various aggressive acts, there had already been agreement that, the traditional methods of aggression - invasion or attack - would top the list.<sup>34</sup> To these, "military occupation" and "annexation" were added from among the acts enumerated in the Thirteen-Power Draft. The language used reflects the intensity of the feeling which existed among various members of the Committee, specially those whose territories were partly under military occupation. Invasion is invariably an antecedent to "military occupation, however temporary. "Invasion" and "occupation however temporary", then, are the unavoidable antecedents of "annexation by the use of force". Since both the invasion and the attack have already been condemned as clear acts of aggression, the reiteration of "occupation however temporary" and "annexation" only serves to reaffirm the earlier instances.

These are the illustrations of direct uses of force and have been traditionally regarded as aggressive. There was not much controversy over this sub-clause and it had found place in all the three drafts submitted to the Special Committee.<sup>35</sup>

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34 Report of Special Committee, 1971, GAOR (XXVI), Supplement No.19, Doc.A/8419, p.42, under 'f'.

35 Report of Special Committee, 1970, n.12, pp.55-60.

"(B) Bombardment by the armed forces of a state against the territory of another state or the use of any weapons by a state against the territory of another state",

The 1972 text was basically the same, except that it also contained, "including weapons of mass destruction."<sup>36</sup> The Soviet argument, that the use of nuclear, bacteriological and chemical weapons should also be specifically listed, demonstrating the special adherence for such weapons, was supported by Syria, Iraq and Romania.<sup>37</sup> The Western Powers rejected this view, holding that it was not the weapons which determined the legality of the attack and the reference to "any weapons" was all inclusive so that a further enumeration was redundant. France and Ghana agreed and the USSR (it had already obtained reference to "weapons of mass destruction" in the fifth Preambular Paragraph) was also prepared to accept the Western view.<sup>38</sup> Romania, which had led the opposition, had to settle for the confirming explanatory note which it insisted, had to be included in the Report.<sup>39</sup>

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36 Report of Special Committee, 1972, p.10, p.14.

37 Report of Special Committee, 1973, n.5, p.14.

38 Summary Records 1443, p.9.

39 Report of Special Committee 1974, n.28, p.9.



"(c) The blockade of the ports or coasts of a State by the armed forces of another state";

The blockade of the ports and coasts of a State has been traditionally regarded as an act of aggression. It appeared in the Soviet definition of 1933. In the Special Committee, this proposal was made in the Thirteen-Powers' Draft<sup>40</sup> as well as in the Soviet draft.<sup>41</sup> The Six Powers did not mention it in their draft but were quite prepared to include it. There was not much debate in the Special Committee regarding blockade as an act of aggression. But many land-locked countries wanted to include a similar provision in the definition, by assimilating the cutting off access to the sea by the adjoining countries to the concept of blockade. Listing the one and failing to list another was viewed as an unjustified discrimination, violating the sovereign equality of states.<sup>42</sup> Afghanistan, on behalf of the land-locked countries presented a working paper at the last minute<sup>43</sup> suggesting addition of a clause at the end of article 3(c), (so as not to upset the delicate compromise reached so far), stating:

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40 Report of Special Committee 1970, n.12, p.58.

41 Ibid., p.56.

42 India, Afghanistan and Nepal were among such states who thought it to be discriminatory. See, Summary Records 1445, p.16 (India), p.7 (Afghanistan); Summary Records 1483, p.71 (Nepal).

43 See, Report of Sixth Committee 1974, n.1, p.1, para 6 "Working Paper Introduced by Afghanistan" (A/C6/L 990), supported by 17 other land-locked countries.

"as well as the blockade of the routes of free access to and from the sea of land-locked countries".

But in the final reckoning, it was agreed that the footnote which had appeared in the report of the Special Committee<sup>44</sup> would be augmented by an additional observation that the Report of the Sixth Committee contained statements on the definition. This statement, as it appeared in the Sixth Committee's report was:

"The Sixth Committee agreed that nothing in the definition, and in particular Article 3(c), shall be construed as a justification for a State to block, contrary to international law, the routes of free access of a landlocked country to and from the sea". 45

This saving clause for the landlocked countries had an additional requirement that act be "contrary to international law". This then brought on consensus in the language of the definition.

"(d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another state";

It first appeared in 1933 Politis definition that an attack on the "vessels" or "aircraft" of another state would

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44 Report of Special Committee, n.28, p.11.

45 See the reference made in the Report of the Sixth Committee, n.1, p.2, as A/9619 and Corr.1.

amount to aggression. The Special Committee also agreed in 1972 upon a text which characterized as aggression "an attack by the armed forces of a state on the land, sea or air forces of another state."<sup>46</sup> But in 1973, attack on "marine and air fleets" had to be included as a result of the disputes which had arisen regarding fishing rights in coastal waters off Iceland and other countries.

Japan, being an island state whose very existence depends upon marine transport, attached great importance to the provision regarding an attack on marine and air fleets since such an attack on its fleet would be equivalent to a blockade of Japan's coast.<sup>47</sup> The Soviet Union, with its own trawlers spread throughout the world shared the Japanese view which was also supported by the USA. As against this, Indonesia and Ecuador, supported by Syria, argued that "it was a legitimate exercise of national sovereignty for a country to detain and impose penalties upon any foreign vessel or aircraft engaged in unlawful activities within its territorial waters or air space."<sup>48</sup> They, and many other coastal states, felt that there should be no restraint on their legal right to use force, if necessary to preserve their coastal resources from illegal invasion, pollution or exploitation by

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46 Report of Special Committee 1972, n.10, p.14.

47 Report of the Special Committee 1974, n.28, Annex.I, p.16.

48 Ibid., p.15.

foreign predators. A consensus was arrived at after making clear that it was not an individual attack but a massive attack on fleets which was contemplated by Article 3(d).

In the Sixth Committee, Peru introduced a working paper in 1974<sup>49</sup>, proposing an additional article, stating:

"Nothing in this definition, and in particular Article 3(d), shall be construed as in any way prejudicing or diminishing the authority of a coastal state to enforce its national legislation in maritime zones within the limits of its national jurisdiction".

A small working group, then worked out the compromise formula, to be added in a footnote to the Special Committee's report and an explanation in the Sixth Committee, confirming that "... nothing in the definition, and in particular Article 3(d), shall be construed as in any way prejudicing the authority of a state to exercise its rights within its national jurisdiction, provided such exercise is not inconsistent with the Charter of the United Nations."<sup>50</sup>

This safeguard, of consistency with the UN Charter, made Article 3(d) acceptable to those who were reluctant to spell out the permissible uses of force against commercial fishing vessels.

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49 Report of Sixth Committee, 1974, n.1, p.1, para 5.

50 Summary Records 1502, p.4.  
(Emphasis added)

**(B) INDIRECT USES OF FORCE:**

"(e) The use of armed forces of one state, which are within the territory of another state with the agreement of the receiving state, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement";

This provision had its origin in the Six Power proposal that "use of armed forces in another state, in violation of the fundamental conditions of permission for their presence, or maintaining them there beyond the termination of permission".<sup>51</sup> The force must have been used to achieve one of the five stated objectives. The present text was a result of compromise.

Any nation retaining its troops in another state's territory, where they had been lawfully stationed might be guilty of aggression, if it did not evacuate those troops on the schedule set by the host state. Such type of a case does not seem to have any grave consequences for the maintenance of international peace and security, hence its inclusion in the limited, non-exhaustive list of aggressive acts does not seem to be at par with other acts.

(f) The action of a state in allowing its territory which it has placed at the disposal of another state, to be used by that other state for perpetrating an act of aggression against a third state;

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<sup>51</sup> Report of Special Committee, 1970, n.12, p.60.

The Working Group of the Special Committee proposed in 1973 the following provision to deal with guerilla warfare:

"The action of a state placing its territory at the disposal of another state when the latter uses this territory for perpetrating an act of aggression against the third state with the acquiescence and agreement of the former". 52

In such cases, actually aggression is being committed, concomitantly by two states, one, whose territory is being used, another, whose troops are engaged in perpetrating aggression. As far as this provision is concerned, it only condemns the earlier state, and the case of the latter state would be dealt with by other provisions in the present definition. The proposed text also gave rise to the difficulty of proving "acquiescence and agreement". The Italian delegate argued that there could be no wrong-doing by the territorial state for acts carried out without its consent.<sup>53</sup> It was thought to be quite <sup>a</sup> reasonable proposal. Other states (including the UK and the USA) wanted it to be included in the text, and they condemned this "complicity" in the heinous act of aggression as severely as aggression itself.

Libya proposed that National Liberation Movements should be exempted from the purview of Article 3(f), which was again debated at length, in the forthcoming paragraph, 3(g) and, Article 7 of the definition.

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52 Report of Special Committee 1973, n.5, p.17.

53 Summary Records 1472, p.10.

(g) The sending by or on behalf of a state of armed bands, groups, irregulares or mercenaries, which carry out acts of armed force against another state, of such gravity as to amount to the acts listed above, or its substantial involvement therein;

Whether or not indirect aggression should be included in the definition of aggression had since 1952 been a bone of contention. The draft proposal of the USSR, contained this provision of indirect aggression,<sup>54</sup> following their earlier draft definition of 1933. The Six Powers also included support for armed bands and irregular forces, and it went to the extent of branding even organisation of such bands, as aggression<sup>55</sup>. But the smaller states, however, feared that it might take years to reach agreement on direct aggression and the inclusion of indirect aggression might make it possible for the more powerful states to seek out some act of support for a subversive group within its own territory, and use that as a justification for launching a massive counter-assault disguised as self-defence.

In the Working Group report of 1972, two alternatives were proposed,<sup>56</sup> but it was the first alternative with modified language that finally emerged. Here, Syria argued

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54 Report of Special Committee, 1970, n.12, p.56.

55 Ibid., p.60.

56 Report of Special Committee 1972, n.10, p.15.

that actions by armed bands might be mere breaches of the peace and would not justify triggering the entire collective defence mechanism. If it was of such a magnitude that it amounted to armed attack, then it might be regarded as aggression.<sup>57</sup> By 1973, there was agreement on the important point that indirect aggression should also be listed among the illustrative aggressive acts but there was strong disagreement about the text. Some maintained that for inclusion in the list, armed bands must actually carry out "invasion or attack", that it must be of such a gravity as to amount to aggression. The USA, of the Six Powers, was willing to drop such words from this provision as "organising", "encouraging", "assistance to", "knowing acquiescence in" or "lending support to" armed bands.<sup>58</sup> It also wanted to condemn "open and active participation" in any of the prohibited activities as aggression. This stand was opposed by Syria, Iraq, Egypt and GDR, maintaining that this would open the door to all sorts of abuses since "participation" was an imprecise term and might even involve only a minor breach of the peace.<sup>59</sup>

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57 Ibid., p.15.

58 Report of Special Committee 1973, n.5, p.23.

59 Summary Records. 108 at 5 (Syria), at 9 (Iraq).  
Summary Records 107 at 5 (Egypt).



In 1974, in the Special Committee, Arab, African and some socialist states joined hands in opposing Article 3(g) because they wanted to maintain the door open for National Liberation Movements. On the other hand, Western States sought to obtain as restrictive a formulation as possible. The compromise that evolved required that the previous reference to "invasion or attack" be deleted and the phrase "or its open and active participation therein" also be dropped from the 1973 Consolidated Text of the definition. Instead the action would be judged on the basis of "substantial involvement of the state" taking all the circumstances into account. The Arab states went along with the compromise in exchange for a major concession made to them in Article 7, dealing with the use of force and self-determination. France maintained that, until the armed bands have been despatched, no act of aggression could be said to have occurred - mere organisation or preparation would not suffice.<sup>60</sup> The Soviet representative stressed that nothing in the wordings of para (g) could be construed as casting any doubt on the legitimacy of National Liberation Movements, guerilla warfare or resistance movements.<sup>61</sup>

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60 Report of Special Committee, 1974, n.28, p.22.

61 Ibid., p.37.

The entire Article 3, thus lists seven illustrations of aggressions. It could, of course, have listed other, more obvious, and earlier debated cases but, as is made very clear in the next article that the list is not an exhaustive one. It lists only more prominent and classical representative cases of aggression on which it had been possible to reach consensus.

Article 4 - Non-Exhaustive Character of Listed Acts:

"The acts enumerated above are not exhaustive and the Security Council may determine that other acts constitute aggression under the provisions of the Charter".

The consensus definition was adopted by General Assembly Resolution which cannot override the Charter provision. Under the Charter, the Security Council alone was to have enforcement powers and the Assembly was to be a forum for discussion and debate. Hence, the sole discretion given to the Security Council under Article 39 cannot be taken away by a General Assembly Resolution. In the Security Council, the big five Powers have the power of veto - exactly the countries who are more prone to aggression because of their military power. And yet, this power equilibrium cannot be upset. Hence on this Article 4 of the definition, there had been, since long, an agreement.

The British declared that not only the General Assembly but not even the Security Council could make the definition binding on itself.<sup>62</sup> China expressed doubts about the wisdom

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<sup>62</sup> Summary Records 1447, p.6.

of having the Council decide on aggression<sup>63</sup>. Ecuador proposed an addition to Article 4 that an international penal tribunal ought to be established having the powers currently attributed to the Security Council in the matter.<sup>64</sup>

Though the discretion of the Security Council is left completely unfettered here, the very existence of the consensus definition, moulding world public opinion and crystallizing new norm of customary international law does not leave the Security Council totally free as compared to where it was before the adoption of the definition. Nevertheless, article 4 provides the much needed flexibility at present and is conducive to possible future agreement as regards implementation of the definition.

Article 5 - No Justification Admissible:

"No consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression".

Article 5 includes three disjointed truisms which seems to have no clear connection with one another. This provision first appeared in the 1933 Soviet definition then in Politis Report, the Nuremberg trials, and was considered by the International Law Commission in 1951.<sup>65</sup> But it disappeared from the three texts submitted to the Special Committee.

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63 Summary Records 1442, p.23.

64 Summary Records 1441, p.20.

65 Doc.A/C.1/108, p.9.

Then, it was again reintroduced by Romania in 1972 but in a slightly different form.<sup>66</sup> Without much debate, it was accepted in principle in 1973, but controversy remained as to its placement. Some states (the UK, the USA) wanted to include it in the preamble. The USSR, fearing even a minimal curtailment of the discretion of the Security Council, wanted to exclude it, if possible or at best, to let it creep into the preamble. For accommodating this Soviet insistence, the final report of the Special Committee included a reference to Article 5, linking it to the principle contained in the Friendly Relations Declaration that "no state or a group of states has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other state".<sup>67</sup>

Initially the provision was inserted so that no motive, political, economic or military, could be relied upon as a possible justification for committing aggression, but after undergoing the metamorphosis due to the 'necessity of reaching an agreement', it finally read as though it is a traditional prohibition against unlawful intervention. It thus exhilarated the countries of South America - since long a sufferer of imperialist intervention under the guise of Monroe Doctrine/

for Aggressive Wars.

66 Report of Special Committee 1972, n.10, Appendix B., p.23.

67 Report of Special Committee, 1974, n.28, p.9.

**Second Part : Criminal Responsibility for Aggressive Wars:**

"A war of aggression is a crime against international peace. Aggression gives rise to international responsibility".

In the 1973 Consolidated Text, the first part of Article 6 contained - "Aggression constitutes ( ) against international peace giving rise to responsibility under international law." What caused controversy, was the question of selecting proper adjective to be used in the open bracket. The report suggested five alternatives.<sup>68</sup> Three of these were, "a grave violation", "a crime", "criminal violation". Six Powers even proposed to omit this provision altogether.<sup>69</sup>

Indulging in semantic jugglery, the UK made distinction between "aggression" and the "aggressive war". Citing the principle contained in the Friendly Relations Declaration - "A war of aggression is a crime against the peace for which there is responsibility under international law" - it maintained that individual criminal responsibility depended upon aggressive wars only. For mere aggression, there would only be state responsibility viz: compensation. The UK was not prepared to go beyond the precincts of international law as perceived by itself.<sup>70</sup> The USA supported the UK stand.<sup>71</sup>

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68 Report of Special Committee, 1973, n.5, p.20.

69 Ibid., p.20.

70 Report of Special Committee, 1974, n.28, Annex.I, p.32.

71 Ibid., p.22.

So did Japan<sup>72</sup> perhaps because some of its prominent military and political leaders had been the victims of too broad an interpretation of international individual criminal responsibility.

It is submitted that the purported distinction between "aggression" and "aggressive war" is dubious, and retrograde. It is only confusing the issue of defining aggression in as objective a manner as possible. The International Law Commission made no such distinction listing it as first offence Against the Peace and Security of Mankind: "For any act of aggression under international law the responsible individuals shall be punishable."<sup>73</sup> The General Assembly in 1952 referred to the crime of aggression without any reference to war.<sup>74</sup> Later even in the Nuremberg trials,<sup>75</sup> it was held that invasions of Austria and Czechoslovakia were acts of aggression even though, in the absence of resistance on the part of these countries, there was no "war".

To achieve consensus, then, the USSR and the non-aligned states recognised that a broader view would have made it even

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72 Ibid., p.15.

73 Doc.A/C.1/108, p.11.

74 The General Assembly Resolution 599(VI), in Doc.A/2087, p.17.

75 Based on "Control Council Law No.10", The Judgement of the International Military Tribunal.<sup>76</sup>

more difficult for the Security Council to reach the conclusion that aggression had occurred. Further development of international criminal law would be necessary to deal adequately with the issue in the future. To stabilize, the Soviet proposal to add explanatory note was accepted which reads: "With reference to the second paragraph of Article 5, the words "international responsibility" are used without prejudice to the scope of this term".<sup>76</sup> The third and the last part reads: 'Non-Recognition of Advantage Gained by Aggression'.

"No territorial acquisition or special advantage resulting from aggression are, or shall be recognised as lawful".

It is a well acknowledged principle of international law (though, perhaps well ignored in practice) that the fruits of aggression shall not be recognised. The Stimson doctrine of non-recognition propounded in 1932 and the advisory opinion delivered by the International Court of Justice (ICJ) in South West Africa (Namibia) case in 1971, point to the well stationed position of this principle. This provision is again a reaffirmation of the inviolability of territory of a state and even condemns any other advantage which the aggressor might acquire over the victim state by means of aggression.

Article 6 - Inviolability of the Charter and the Lawful Uses of Force:

"Nothing in this definition shall be construed as in any way enlarging or diminishing the scope of the Charter, including its provisions concerning cases in which the use of force is lawful".

Not all uses of force constitute aggression. Even under the Charter (apart from under the General International Law), some exceptions to the principle of prohibition of use of force viz. Article 2(4), have been made. The right to self-defence, and the enforcement action by the competent organ (the Security Council, the Regional Agencies) of the UN constitute exceptions to Article 2(4).

The issue of the relationship between the right of self-defence and the concept of aggression was one of the most difficult problems facing the Special Committee, as one gives rise to other.<sup>77</sup> These two concepts can be viewed as complementary to each other. The Thirteen Powers, fearing over-reaction by the more powerful states, had earlier insisted that, under Article 51 of the Charter, self-defence could only be employed to repel an armed attack. The smaller nations felt that in order to reduce the risk of aggression, they would have to curtail and narrowly interpret their own right to self-defence. This apparently did not suit the

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77 Report of Special Committee, 1970, n.12, p.14.



interests of big Powers. The Six Powers insisted that there was an "inherent right of individual or collective self-defence" referred to in Article 51, which could be used against any form of aggression, whether armed or indirect. But the Soviet draft said nothing directly about the right of self-defence, and restricted the use of force to the Security Council alone.<sup>78</sup>

As elsewhere, this question of self-defence proved quite intractable. What type of responses would be permissible under what circumstances of provocation? Thirteen-Power draft insisted upon proportionality in case of armed attack,<sup>79</sup> fearing that unrestricted right of self-defence could not provide protection, particularly for small states. It might otherwise disguise the aggression in the garb of self-defence, as picking up a quarrel with small states to provoke it, is not too difficult. The British and the Americans had, at various stages of the negotiations, hinted that they would concede the legitimate use of force to repel the unlawful action provided that they are assured of the use of right of self-defence against indirect aggression. As against these two stands, the USSR maintained that proportionality would only benefit the aggressor and put unwanted restrictions on the victim in the exercise of its

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78 Ibid., 'Drafts Proposed', pp.55-60.

79 Ibid., p.58, Article 6 of 13 Powers' draft.

right of self-defence. Thus, the Soviet refusal to include the rule of proportionality explicitly in this article of the definition sealed its fate. Naturally, under such circumstances it was left to the Security Council to judge the various tests of self-defence whether the purported use of force was 'reasonable' under the circumstances, temporary as required by Article 51 until the Council could act, and whether it was 'necessary' to repel the aggressive act. In the absence of these criteria, the Security Council must brand the defending state as aggressor.

As regards the organs empowered to use force, various states have interpreted the Charter provisions variously, even in irreconcilable ways. Reference to these is found in three drafts submitted to the Special Committee.<sup>80</sup> Whether it is only the Security Council acting under articles 39 and 42, or the General Assembly under the Uniting for Peace Resolution, or various regional agencies acting pursuant to or with the authorization of the Security Council under Articles 52-53, the question is as badly decided here as under the Charter. Thus the Special Committee did not specifically define the parameters of the lawful uses of force and left it to the discretion and the wisdom of future generations.

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80 Ibid., See para 6 of USSR draft, p.56; paras 3 and 4 of 13 Powers draft, p.57; para 3 of 6 Powers' draft, p.59.

Article 7:

"Nothing in this definition, and in particular article 3, could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to 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, particularly peoples under colonial and racist regimes or other forms of alien domination; nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above mentioned Declaration".

Since 1945, the right to self-determination has become an accepted principle of international law. The Charter of the UN explicitly proclaimed the right of self-determination and it was reiterated in General Assembly's Resolution on Declaration and it has acquired the status of a jus cogens under International Law. Naturally, the attempts at defining aggression had to reckon with this principle.

Preambular paragraph 6 asserted the duty of states to refrain from opposing self-determination by force, and the eighth preambular paragraph affirmed the "Friendly Relations" principles. Then again article 3(g) of this definition sought to restrict support for armed band. These various references to the right of self-determination were ultimately balanced in too vague an article.

In the 1972 Report of the informal negotiating group, two alternatives were proposed<sup>81</sup> - the first referring to

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81 Report of Special Committee 1972, n.10, Appendix A, p.17.

the UN Charter provisions and, the second to the Friendly Relations Declaration. In 1973, the Consolidated Text contained single definition in article 5<sup>82</sup> which now was so worded that it referred to both, the UN Charter and the Friendly Relations Declaration.

Colonialism is regarded as continued aggression and hence it gives rise to the inherent and inalienable right of self-defence against the colonial power. Those who struggle may use armed force against colonial power and other nations may render them material and military help, without, in each case, being branded as aggressors.

The Six-Power draft contained no reference to the right of peoples to self-determination. These Western Powers even thought the problem to be out of the ambit of the definition of aggression. The French delegate stated that this right concerns peoples whereas the definition of aggression pertains to the sovereign States, hence its inclusion here is incongruous<sup>83</sup>, and in any case, it has not been worded in the form of a safe guarantee that those, who supported peoples struggling for their freedom, would not be accused of aggression. The USA, supporting the right of peoples to self-determination generally, stated that article 7 does not as such define the

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82 Report of Special Committee, 1973, n.5, p.17.

83 Report of Special Committee, 1974, n.28, p.22.

right to self-determination. Its only useful role would be to provide a guideline to the Security Council while determining the cases of aggression under article 39 of the Charter.<sup>84</sup>

The Thirteen-Power draft proposed that: "None of the preceding paragraphs may be interpreted as limiting the scope of the Charter's provisions concerning the right of peoples to self-determination, sovereignty and independence."<sup>85</sup>

During the debate Syria demanded for specific authorization to use force against any form of foreign or alien domination, which was incorporated in the Consolidated Text of 1973.<sup>86</sup>

But the Western States felt that this went too far. The USA considered it totally out of place in an instrument intended to further the cause of peace. France even considered so broad an interpretation of the right to self-determination as a menace to the territorial integrity of States.

This article contains many expressions whose interpretations or meanings are by no means undisputed. These would include "peoples", "colonial and racist regimes", "alien domination", etc. This article can be regarded as the classical case of "give and take" and has so emerged finally

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84 Ibid., p.24.

85 Report of Special Committee 1970, n.12, p.58.

86 Report of Special Committee 1973, n.5, Appendix A, Article 5, p.17.

that each group of states may have its own interpretation supported by the language. The agreement seems to have been reached in wording even though there is no agreement in principle. As one of the delegates stated - "The definition has reached a sufficient level of abstraction to be acceptable."<sup>87</sup>

Article 8:

"In their interpretation and application the above provisions are interrelated and each provision should be construed in the context of the other provisions".

This text is borrowed from the "Friendly Relations" Declaration in which the words "provisions" have been inserted in place of the words "principles". This article sprang up in 1974 only, to accommodate the conflicting desires of nations to place certain articles at the end of the definition. Algeria insisted that the last article should be the one dealing with self-determination whereas the UK wanted the ending of the definition with the article reaffirming the inviolability of the Charter. Hence this article, stating that all the provisions of the definition are to be viewed in conjunction with one another and not in isolation.

Not everybody was pleased with the definition. To accommodate the contrary views at times, the text of the definition was deliberately made ambiguous, as seen above.

The definition was then adopted by consensus. The General Assembly's resolution <sup>88</sup> mildly exhorted all States to refrain from all acts of aggression and other uses of force contrary to the Charter and Friendly Relations Declaration. Even the purported directive to the Security Council was worded very politely, stating: "Calls the attention of the Security Council to the Definition of Aggression, as set out below, and recommends that it should, as appropriate, take account of that definition as guidance in determining, in accordance with the Charter, the existence of an act of aggression."<sup>89</sup>

The work that stopped in early 50s due to the lack of the definition of aggression, viz. Draft Code of Offences against the Peace and Security of Mankind, and the establishment of an International Criminal Court,<sup>90</sup> could be resumed now. By taking up the matter of international peace and security in the right earnest, the UN could contribute its worth. If nations do not heed to its sane counsel, then the nations will be failing the UN and not the UN, the nations. The UN has at last triumphed in defining aggression and now it is up to the Nations to rise above petty bickerings and difference and make most of this definition.

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88 The General Assembly Resolution 3314(XXIX).

89 Ibid., p.2, para 13, sub-para 4.

90 The General Assembly Resolution 177(II).

CHAPTER V  
EVALUATION AND RECOMMENDATIONS

During the course of drafting the UN Charter, it was thought advisable not to include the definition of aggression in the text and leave the question of determining aggressions to the complete discretion of the Security Council. This hope was belied as various political and ideological considerations crept in in the objective determinations of aggression. Hence to restore that dissipated confidence it had become imperative to import some objectivity in determining aggressions by defining the term "aggression". As the General Assembly has already started assuming, since 1950s, more and more powers with regard to maintenance of international peace and security under the 'Uniting for Peace Resolutions', the definition would help the General Assembly in this task. As noted in the first chapter, under the Charter defining aggression is not a condition precedent to the taking of enforcement action. But certainly, objectively defined cases of aggression would help in clearing the conscience of the reluctant Member-States which would then be more willing to contribute contingents in pursuance to the General Assembly recommendations. This purpose of the definition ought not to be marred by extending political and ideological recriminations in the General Assembly. It offers an effective outlet from the usual impasse of the Security Council.



The General Assembly had suspended its task (sic) on "(T)he Code of Offences against Peace and Security of Mankind", and on the establishment of an "International Criminal Court" until a clear definition of aggression has been reached, so that the punishment under the former could be more effective. Completion of the task of defining aggression has now supplied the General Assembly with that missing piece and the International Law Commission should be instructed now to revise, update and complete those two unfinished works. Definition of aggression together with these instruments will bring about an atmosphere more conducive to the maintenance of international peace and security - the main purpose of the United Nations.

The Secretary General had listed various uses of the definition of aggression in his report in 1952.<sup>1</sup> First, the definition would help governments know what constitutes aggression so that they would not commit aggressions unaware. Secondly, it would 'help' the organs of international body responsible for determining aggressors. Thirdly, it would help States, victims of aggression, to know as to when they can exercise their right of self-defence under article 51 of the Charter. Fourthly, it would guide public opinion.

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<sup>1</sup> Report of the Secretary General, GAOR(VII), Doc. A/2211, p.53.

Fifthly, it would help the courts which might have to judge the alleged aggressors. All above uses, except the last one, can be fulfilled by the present definition of aggression and even the last one would be fulfilled as and when the International Criminal Court is established. By clearly identifying the acts universally acknowledged to be aggressive, no government would commit aggression unaware or at least no government would be able to take that plea in justification. The definition would certainly help the competent organ of the UN without hindering it in the exercise of its discretion. <sup>↳</sup> "lawful when an act, clearly aggressive in nature, is committed and a permanent member of the Security Council uses veto to protect itself or its ally, it would become gradually difficult for such member to cover these arbitrary uses of veto to protect aggressions under any garb whatever. When the world public opinion would be decidedly hostile to such cases of aggression (a task in which the present definition of aggression will be helpful), then it would establish a sort of opinio juris, placing these cases within the undisputed pale of aggression. This opinio juris, so essential an element of the customary international law, would then gradually metamorphosis itself into the jus cogens of international law.

So far the role of the Security Council has been anything but encouraging. It has always recoiled in the face of blatant aggressions and each such abstention has impliedly encouraged

the aggressors. But, now the adoption of the definition of aggression changes the legal position with regard to determinations of aggressions. Article 39 of the Charter provides that the Security Council "shall determine the existence of any... act of aggression". The Security Council cannot abscond from its primary responsibility of determining aggressions by a mere non-determination because the word "shall" implies an imperative duty. Now, to reinforce this intended meaning, Articles 2 and 3 of the Consensus Definition make the first commission of the designated act as "prima facie evidence of an act of aggression." The presumption thus created continues until rebutted by a determination that no aggression has been committed. Though the Security Council has the competence to conclude that a determination that an act of aggression has been committed would not be justified in the light of other relevant circumstances; this discretion being exercisable in conformity with the UN Charter. And the Charter has the words "shall" in Article 39, hence, now whenever an act of aggression occurs, the rebuttable presumption would come into force, obliging the Security Council to determine either that the aggression has been committed or that it has not been committed.

Some Western writers<sup>2</sup> surprisingly have taken a very pessimistic view of the role of the Security Council. They

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2 See, e.g., J. Stone, Conflict Through Consensus - United Nations Approaches to Aggression (N.M. Tripathi, Bombay, 1977), pp. 30-32.

want the unwanted status quo to continue. They contend that the word "any" in Article 39 of the Charter - "...any threat to the peace or act of aggression" - implies that the duty to determine aggressions arises only when the Security Council deems there to be any such act of aggression. But it is submitted that this is beyond the limits of sanity and common-sense, because whenever an act of aggression occurs, everyone knows about its existence as such. Then, why leave the discretion with the Security Council, in deeming about such existence of questions of fact? The Security Council is duty-bound to act in such situations. But in the ultimate analysis, the consensus definition of aggression depends for its success or failure, on the conscientious bona fide of the Members of the United Nations.

The role and importance of the General Assembly which was enhanced under the Uniting For Peace Resolutions, can now be more resourcefully tapped and utilized. The Western States, which had comfortable majority in 1950s now face hostile majority of the third world countries, and are quite reluctant to support extension of General Assembly's powers. Symbolizing the true attitude of Western States, Julius Stone still holds international law to be the exclusive preserve of civilized nations, and dreads "the phase of tyranny of "automatic" majorities in the General Assembly (which) creates unprecedented dangers (sic) for some of its

Members and for most of the principles of the United Nations, not to speak of international law."<sup>3</sup> He even denounced the Consensus Definition variously as political warfare drive; the United Nations Verbal Celebration, a face-saving device, etc. But this bold attempt of the General Assembly must yield fruits in the shape of further strengthening international peace and security and the consequent increased importance of the General Assembly itself.

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3 Ibid., p.170.

## APPENDICES

### Appendix A

THREE MAIN PROPOSALS BEFORE THE SPECIAL COMMITTEE  
(appearing as Annex 1<sup>49</sup> in the Special Committee's 1970 Report.  
GAOR (XXV), Supp.No.19 (A/8019), pp.55-60, and reprinted in  
G.A.O.R. (XXVIII), Supp. No.19 (A/9019), pp.7-12.

A. Draft proposal submitted by the Union of Soviet Socialist  
Republics (A/AC.134/L.12)

The General Assembly

Basing itself on the fact that one of the fundamental  
purposes of the United Nations is to maintain international  
peace and security and to take effective collective measures  
for the prevention and removal of threats to the peace, and  
for the suppression of acts of aggression or other breaches  
of the peace,

Noting that according to the principles of international  
law the planning, preparation, initiation or waging of an  
aggressive war is a most serious international crime,

Bearing in mind that the use of force to deprive dependent  
peoples of the exercise of their inherent right to self-deter-  
mination in accordance with General Assembly resolution 1514  
(XV) of 14 December 1960 is a denial of fundamental human  
rights, is contrary to the Charter of the United Nations and  
hinders the development of co-operation and the establishment  
of peace throughout the world,

Considering that the use of force by a State to encroach  
upon the social and political achievements of the peoples of

other States is incompatible with the principles of the peaceful coexistence of States with different social systems,

Recalling also that Article 39 of the Charter states that the Security Council shall determine the existence of any threat to the peace, breach of the peace or act of aggression and shall decide what measures shall be taken in accordance with Article 41 and 42 to maintain or restore international peace and security.

Believing that, although the question whether an act of aggression has been committed must be considered in the light of all the circumstances in each particular case, it is nevertheless appropriate to formulate basic principles as guidance for such determination,

Convinced that the adoption of a definition of aggression would have a restraining influence on a potential aggressor, would simplify the determination of acts of aggression and the implementation of measures to stop them and would also facilitate the considering of assistance to the victim of aggression and the protection of his lawful rights and interests,

Considering also that armed aggression is the most serious and dangerous form of aggression, being fraught, in the conditions created by the existence of nuclear weapons, with the threat of a new world conflict with all its catastrophic consequences and that this form of aggression should be defined at the present stage.

Declares that:

1. Armed aggression (direct or indirect) is the use by a State, first, of armed force against another State contrary to the purposes, principles and provisions of the Charter of the United Nations.

2. In accordance with and without prejudice to the functions and powers of the Security Council:

A. Declaration of war by one State, first, against another State shall be considered an act of armed aggression;

B. Any of the following acts, if committed by a State first, even without a declaration of war, shall be considered an act of armed aggression:

(a) The use of nuclear, bacteriological or chemical weapons or any other weapons of mass destruction;

(b) Bombardment of or firing at the territory and population of another State or an attack on its land, sea or air forces;

(c) Invasion or attack by the armed forces of a State against the territory of another State, military occupation or annexation of the territory of another State or part thereof, or the blockade of coasts or ports.

C. The use by a State of armed force by sending armed bands, mercenaries, terrorists or saboteurs to the territory of another State and engagement in other forms of subversive activity involving the use of armed force with the aim of promoting an internal upheaval in another State or a reversal



of policy in favour of the aggressor shall be considered an act of indirect aggression.

3. In addition to the acts listed above, other acts by States may be deemed to constitute an act of aggression if in each specific instance they are declared to be such by a decision of the Security Council.

4. No territorial gains or special advantages resulting from armed aggression shall be recognized.

5. Armed aggression shall be an international crime against peace entailing the political and material responsibility of States and the criminal responsibility of the persons guilty of this crime.

6. Nothing in the foregoing shall prevent the use of armed force in accordance with the Charter of the United Nations, including its use by dependent peoples in order to exercise their inherent right of self-determination in accordance with General Assembly resolution 1514(XV).

B. Draft proposal submitted by Colombia, Cyprus, Ecuador, Ghana, Guyana, Haiti, Iran, Madagascar, Mexico, Spain, Uganda, Uruguay and Yugoslavia (A/AG.134/L.16 and Add.1 and 2)

The General Assembly,

Basing itself on the fact that one of the fundamental purposes of the United Nations is to maintain international peace and security and to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace,

Convinced that armed attack (armed aggression) is the most serious and dangerous form of aggression and that it is proper at this stage to proceed to a definition of this form of aggression,

Further convinced that the adoption of a definition of aggression would serve to discourage possible aggressors and would facilitate the determination of acts of aggression,

Bearing in mind also the powers and duties of the Security Council, embodied in Article 39 of the Charter of the United Nations, to determine the existence of any threat to the peace, breach of the peace, or act of aggression, and to decide the measures to be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security,

Considering that, although the question whether aggression has occurred must be determined in the circumstances of each particular case, it is nevertheless appropriate to facilitate that task by formulating certain principles for such determination,

Reaffirming further the duty of States under the Charter of the United Nations to settle their international disputes by pacific methods in order not to endanger international peace, security and justice,

Convinced that no consideration of whatever nature, save as stipulated in operative paragraph 3 hereof, may provide an excuse for the use of force by one State against another State,

Declares that;

1. In the performance of its function to maintain international peace and security, the United Nations only has competence to use force in conformity with the Charter;

2. For the purpose of this definition, aggression is the use of armed force by a State against another State, including its territorial waters or air space, or in any way affecting the territorial integrity, sovereignty or political independence of such State, save under the provisions of paragraph 3 hereof or when undertaken by or under the authority of the Security Council;

3. The inherent right of individual or collective self-defence of a State can be exercised only in case of the occurrence of armed attack (armed aggression) by another State in accordance with Article 51 of the Charter;

4. Enforcement action or any use of armed force by regional arrangements or agencies may only be resorted to if there is decision to that effect by the Security Council acting under Article 53 of the Charter;

5. In accordance with the foregoing and without prejudice to the powers and duties of the Security Council, as provided in the Charter, any of the following acts when committed by a State first against another State in violation of the Charter shall constitute acts of aggression;

- (a) Declaration of war by one State against another State;
- (b) The invasion or attack by the armed forces of a State,

against the territories of another State, or any military occupation, however temporary, or any forcible annexation of the territory of another State or part thereof;

(c) Bombardment by the armed forces of a State against the territory of another State, or the use of any weapons, particularly weapons of mass destruction, by a State against the territory of another State;

(d) The blockade of the coasts or ports of a State by the armed forces of another State;

6. Nothing in paragraph 3 above shall be construed as entitling the State exercising a right of individual or collective self-defence, in accordance with Article 51 of the Charter, to take any measures not reasonably proportionate to the armed attack against it;

7. When a State is a victim in its own territory of subversive and/or terrorist acts by irregular, volunteer or armed bands organized or supported by another State, it may take all reasonable and adequate steps to safeguard its existence and its institutions, without having recourse to the right of individual or collective self-defence against the other State under Article 51 of the Charter;

8. The territory of a State is inviolable and may not be the object, even temporarily, of military occupation or of other measures of force taken by another State on any grounds whatever, and that such territorial acquisitions obtained by force shall not be recognized;

9. Armed aggression, as defined herein, and the acts enumerated above, shall constitute crimes against international peace, giving rise to international responsibility;
10. None of the preceding paragraphs may be interpreted as limiting the scope of the Charter's provisions concerning the right of peoples to self-determination, sovereignty and territorial integrity.
- C. Draft proposal submitted by Australia, Canada, Italy, Japan, the United Kingdom of Great Britain and Northern Ireland and the United States of America (A/AC.134/L.17 and Add.1 and 2)

The General Assembly,

Conscious that a primary purpose of the United Nations is to maintain international peace and security, and, to that end, to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace,

Recalling that Article 39 of the Charter of the United Nations provides that the Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security,

Reaffirming that all States shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered

Believing that, although the question of whether an act of aggression has been committed must be considered in the light of all the circumstances of each particular case, a generally accepted definition of aggression may nevertheless provide guidance for such consideration,

Being of the view that such a definition of aggression may accordingly facilitate the processes of the United Nations and encourage States to fulfil in good faith their obligations under the Charter of the United Nations,

Adopts the following definition:

I. Under the Charter of the United Nations, "aggression", is a term to be applied by the Security Council when appropriate in the exercise of its primary responsibility for the maintenance of international peace and security under Article 24 and its functions under Article 39.

II. The term "aggression" is applicable, without prejudice to a finding of threat to the peace or breach of the peace, to the use of force in international relations, overt or covert, direct or indirect, by a State against the territorial integrity or political independence of any other State, or in any other manner inconsistent with the purposes of the United Nations. Any act which would constitute aggression by or against a State likewise constitutes aggression when committed by a State or other political entity delimited by international boundaries or internationally agreed lines of demarcation against any State or other political entity so delimited and not subject to its authority.

III. The use of force in the exercise of the inherent right of individual or collective self-defence, or pursuant to decisions of or authorization by competent United Nations organs or regional organizations consistent with the Charter of the United Nations, does not constitute aggression.

IV. The uses of force which may constitute aggression include, but are not necessarily limited to, a use of force by a State as described in paragraph II.

A. In order to:

- (1) Diminish the territory or alter the boundaries of another State;
- (2) Alter internationally agreed lines of demarcation;
- (3) Disrupt or interfere with the conduct of the affairs of another State;
- (4) Secure changes in the Government of another State; or
- (5) Inflict harm or obtain concessions of any sort;

B. By such means as:

- (1) Invasion by its armed forces of territory under the jurisdiction of another State;
- (2) Use of its armed forces in another State in violation of the fundamental conditions of permission for their presence, or maintaining them there beyond the termination of permission;
- (3) Bombardment by its armed forces of territory under the jurisdiction of another State;
- (4) Inflicting physical destruction on another State through the use of other forms of armed force;
- (5) Carrying out deliberate attacks on the armed forces, ships or aircraft of another State;

- (6) Organizing, supporting or directing armed bands or irregular or volunteer forces that make incursions or infiltrate into another State;
- (7) Organizing, supporting or directing violent civil strife or acts of terrorism in another State; or
- (8) Organizing, supporting or directing subversive activities aimed at the violent overthrow of the Government of another State.



## Appendix B

### CONSOLIDATED TEXT OF THE REPORTS OF THE CONTACT GROUPS AND OF THE DRAFTING GROUP

(Being Appendix A to the Special Committee's 1973  
Report, G. A. O. R. (XXVIII), Supp. No. 19(A/9019), pp. 15-21)

#### Preambular paragraphs

Basing itself on the fact that one of the fundamental purposes of the United Nations is to maintain international peace and security and to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace,

Recalling that Article 39 of the Charter states that the Security Council shall determine the existence of any threat to the peace, breach of the peace or act of aggression and shall make recommendations or decide what measures shall be taken in accordance with Articles 41 and 42 to maintain or restore international peace and security,

Recalling also the duty of States under the Charter of the United Nations to settle their international disputes by peaceful means in order not to endanger international peace, security and justice,

Bearing in mind that nothing in this definition shall be interpreted as in any way extending or diminishing the provisions of the United Nations Charter with respect to rights and duties of the organs of the United Nations,

Considering also that since aggression is the most serious and dangerous form of the illegal use of force, being fraught, in the conditions created by the existence of all types of weapons

of mass destruction, with the possible threat of a world conflict with all its catastrophic consequences, aggression should be defined at the present stage,

Reaffirming the duty of States not to use armed force to deprive peoples of their right to self-determination, freedom and independence,

Reaffirming also that the territory of a State shall not be violated by being the object, even temporarily, of military occupation or of other measures of force taken by another State in contravention of the Charter,

Convinced that the adoption of a definition of aggression would have a restraining influence on a potential aggressor, would simplify the determination of acts of aggression and the implementation of measures to stop them and would also facilitate the protection of the lawful rights and interests of the victim and the rendering of assistance to the victim,

Believing that, although the question whether an act of aggression had been committed must be considered in the light of all the circumstances in each particular case, it is, nevertheless, appropriate to formulate basic principles as guidance for such determination,

#### General Definition of Aggression

##### Article 1

Aggression is the use of armed force (however exerted) by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this definition.

Explanatory note: In this definition the term "State"

- (a) is used without prejudice to questions of recognition or to whether a State is a Member of the United Nations, and
- (b) includes the concept of a "group of States".

#### Questions of Priority and Aggressive Intent

##### Article 2

The first use of armed force in contravention of the Charter shall constitute prima facie evidence of an act of aggression provided, however, that the Security Council may in conformity with the Charter conclude that a determination to that effect would not be justified in the light of other relevant circumstances, including, as evidence, the purposes of the States involved.

#### Acts Proposed for Inclusion

##### Article 3

Any of the following acts, regardless of a declaration of war, shall constitute an act of aggression:

- (a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;
- (b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;
- (c) The blockade of the ports or coasts of a State by the armed forces of another State;
- (d) An attack by the armed forces of a State on the land, sea or air forces, marine and air fleets of another State;

- (e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;
- (f) The action of a State placing its territory at the disposal of another State when the latter uses this territory for perpetrating an act of aggression against a third State with the acquiescence and agreement of the former;
- (g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out invasion or attack involving acts of armed force against another State of such gravity as to amount to the acts listed above, or its open and active participation therein.

Provision on the Non-Exhaustive Character of the list and the Clause on Minor Incidents

#### Article 4

The acts enumerated above are neither exhaustive nor do they prevent the Security Council from refraining from the determination of an act of aggression if the act concerned is too minimal to justify such action.

Conversely, the Security Council may determine other acts as constituting aggression under the provisions of the Charter.

#### The Right of Peoples to Self-Determination

#### Article 5

None of the preceding paragraphs may be interpreted as limiting the scope of the Charter's provisions concerning the right of peoples to self-determination or as preventing peoples under military occupation or any form of foreign domination in their actions against and resistance to such alien domination

from using force and seeking or receiving support and assistance in order to exercise their inherent right to self-determination in accordance with the principles of the Charter and in conformity with the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

### Legal Consequences of Aggression

#### Article 6

Aggression constitutes ( ) against international peace giving rise to responsibility under international law.

No territorial acquisition or special advantage resulting from aggression is lawful nor shall it be recognized as such.

Legal Uses of Force, including the question of centralization

#### Article 7

Nothing in this definition shall be construed as in any way enlarging or diminishing the scope of the Charter including its provisions concerning cases in which the use of force is lawful.

The following wording has been considered, but it has not been decided where it should be inserted:

"No consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression."

Appendix C

DEFINITION OF AGGRESSION

(Resolution adopted by the General Assembly on the report of the Sixth Committee (A/9890) A/Res/3314(XXIX), 14 December 1974)

The General Assembly,

Having considered the report of the Special Committee on the Question of Defining Aggression, established pursuant to its resolution 2330 (XXII) of 18 December 1967, covering the work of its seventh session held from 11 March to 12 April 1974, including the draft Definition of Aggression adopted by the Special Committee by consensus and recommended for adoption by the General Assembly,

Deeply convinced that the adoption of the Definition of Aggression would contribute to the strengthening of international peace and security,

1. Approves the Definition of Aggression, the text of which is annexed to the present resolution;
2. Expresses its appreciation to the Special Committee on the Question of Defining Aggression for its work which resulted in the elaboration of the Definition of Aggression;
3. Calls upon all States to refrain from all acts of aggression and other uses of force contrary to the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations;

4. Calls the attention of the Security Council to the Definition of Aggression, as set out below, and recommends that it should, as appropriate, take account of that definition as guidance in determining, in accordance with the Charter, the existence of an act of aggression.

#### DEFINITION OF AGGRESSION

The General Assembly,

Basing itself on the fact that one of the fundamental purposes of the United Nations is to maintain international peace and security and to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace,

Recalling that the Security Council, in accordance with Article 39 of the Charter of the United Nations, shall determine the existence of any threat to the peace, breach of the peace or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security,

Recalling also the duty of States under the Charter to settle their international disputes by peaceful means in order not to endanger international peace, security and justice,

Bearing in mind that nothing in this Definition shall be interpreted as in any way affecting the scope of the provisions of the Charter with respect to the functions and powers of the organs of the United Nations,

Considering also that, since aggression is the most serious and dangerous form of the illegal use of force, being fraught, in the conditions created by the existence of all types of weapons of mass destruction, with the possible threat of a world conflict and all its catastrophic consequences, aggression should be defined at the present stage,

Reaffirming the duty of States not to use armed force to deprive peoples of their right to self-determination, freedom and independence, or to disrupt territorial integrity,

Reaffirming also that the territory of a State shall not be violated by being the object, even temporarily, of military occupation or of other measures of force taken by another State in contravention of the Charter, and that it shall not be the object of acquisition by another State resulting from such measures or the threat thereof.

Reaffirming also the provisions of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,

Convinced that the adoption of a definition of aggression ought to have the effect of deterring a potential aggressor, would simplify the determination of acts of aggression and the implementation of measures to suppress them and would also facilitate the protection of the rights and lawful interests of, and the rendering of assistance to, the victim,



Believing that, although the question whether an act of aggression has been committed must be considered in the light of all the circumstances of each particular case, it is nevertheless desirable to formulate basic principles as guidance for such determination,

Adopts the following Definition of Aggression:

#### Article 1

Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition.

Explanatory note: In this Definition the term "State":

- (a) Is used without prejudice to questions of recognition or to whether a State is a Member of the United Nations;
- (b) Includes the concept of a "group of States" where appropriate.

#### Article 2

The first use of armed force by a State in contravention of the Charter shall constitute prima facie evidence of an act of aggression although the Security Council may, in conformity with the Charter, conclude that a determination that an act of aggression has been committed would not be justified in the light of other relevant circumstances, including the fact that the acts concerned or their consequences are not of sufficient gravity.

### Article 3

Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provisions of article 2, qualify as an act of aggression;

- (a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;
- (b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State or the use of any weapons by a State against the territory of another State;
- (c) The blockade of the ports or coasts of a State against the territory of another State;
- (d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;
- (e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;
- (f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;
- (g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

## Article 4

The acts enumerated above are not exhaustive and the Security Council may determine that other acts constitute aggression under the provisions of the Charter.

## Article 5

1. No consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression.
2. A war of aggression is a crime against international peace. Aggression gives rise to international responsibility.
3. No territorial acquisition or special advantage resulting from aggression is or shall be recognized as lawful.

## Article 6

Nothing in this Definition shall be construed as in any way enlarging or diminishing the scope of the Charter, including its provisions concerning cases in which the use of force is lawful.

## Article 7

Nothing in this Definition, and in particular article 3, could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to 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, particularly peoples under colonial and racist regimes or other forms of alien

domination; nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above mentioned Declaration.

Article 8

In their interpretation and application the above provisions are interrelated and each provision should be construed in the context of the other provisions.

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