

10- Definition of Aggression

The search for a generally acceptable definition of aggression has been going on since early 1927 when the Draft Treaty on Mutual Assistance was under consideration in the League of Nations. The subject was again discussed in the League in the 1930's and raised in the United Nations in 1950 when the General Assembly referred the matter to the International Law Commission which, however, failed to agree on a definition. Since that time the question of defining aggression has been considered intermittently by the General Assembly's Sixth Committee. After lengthy negotiations in the Sixth Committee at the 1967 session of the General Assembly, a reconstituted Special Committee on the Question of Defining Aggression, composed of 35 members (including Canada), was set up. The first session of this Committee was held in Geneva in the summer of 1968. At that time three draft definitions were submitted to the Committee, two by groups of non-aligned States and one by the USSR. In spite of extensive negotiations conducted between the co-sponsors of the first two proposed definitions, it was not possible to develop an agreed non-aligned text.

At the second session in 1969, Canada and the five other Western States (Australia, Italy, Japan, the U.K. and U.S.A.), while maintaining their traditional view that a definition is unnecessary since it is the Security Council which must decide in any particular case what is aggression, tabled a Western draft definition in order to ensure that a number of principles to which they attach great importance would be incorporated in any eventual definition adopted by the Committee and recommended to the General Assembly. Major among these principles are: (a) compatibility with the U.N. Charter; (b) safeguarding the discretionary authority of the Security Council to determine whether aggression has been committed; (c) the applicability of the definition to "indirect" aggression; (d) its applicability to entities not generally recognized as states; (e) the non-automaticity of the definition, even in the case of first use of force; and (f) its political acceptability to all the Permanent Members of the Security Council and to the majority of the General Assembly.

At its 1970 and 1971 sessions, in spite of some examples of compromise (e.g. there is agreement that any definition must not tie the hands of the Security Council in exercising its discretion to decide what is an "act of aggression"), it proved impossible to reach a consensus on an appropriate definition. At the 1972 session the non-aligned group proved unwilling to modify their positions on a number of outstanding issues, such as their insistence that: (a) the first use of force always constitutes aggression; (b) states which are the victims of aggression are not bound by the principle of proportionality in responding; (c) there is no burden on the victim to prove aggressive intent on the part of the alleged aggressor; and (d) dependent people can use force to attain independence.

Both at the 1971 session of the General Assembly and during the 1972 session of the Special Committee, Canadian representatives expressed disappointment at the lack of progress being made. Canada indicated that a hiatus of one or two years might give governments more time to reconsider their positions and in the interim try to move forward on the basis of informal negotiations.

The only issue to be decided by the General Assembly at its 1972 session will be whether it should accept the Special Committee's recommendation that the Special Committee should be invited to continue its work in 1973.