

CANADIAN DELEGATION  
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Statement made by Mr. J.A.  
Beesley, Canadian Representa-  
tive to the Sixth Committee  
of the XXV UNGA on Item 87:  
Definition of Aggression.

Déclaration prononcée par M.  
J.A. Beesley, représentant  
canadien à la Sixième Commission  
de la XXV<sup>e</sup> Assemblée générale  
des Nations Unies sur le point 87:  
définition de l'agression.

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DELEGATION DU CANADA  
AUPRES DES NATIONS UNIES

Mr. Chairman,

I should like to begin by complimenting the Chairman of the Special Committee on the Question of Defining Aggression for the way in which he has guided the deliberations of the Committee. He has at all times shown the tact, the skill, the firmness, the flexibility and the impartiality which the complexity and the sensitivity of the problem has demanded. I should also like to pay tribute to the rapporteur of the Committee and to the members of the Secretariat who assisted in the preparation of the truly excellent report of the Committee's studies. Given the variety of views expressed on the many separate and important matters of issue, it is no small accomplishment to produce a report of such clarity.

The last time my delegation intervened on this question in this Committee, we pointed out that there had been some considerable progress achieved by the Committee, although it had not been possible to indicate the full extent of this progress in the report of the Committee; movement between opposing positions occurring in informal discussions is not always reflected in the formal positions taken in debate. If this was true of the previous sessions of the Committee, it was true even more of the most recent sessions. In particular, during the meeting last June in Geneva, some considerable measures of flexibility was shown on certain issues for the first time. While it was not possible to concretize this movement by agreement on specific language, there is nonetheless some basis, in our view, for hoping that the spirit of conciliation evident in the Committee will result

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in agreement on these issues. It may be helpful to those delegations not represented on the Committee to be provided with some examples of the issues on which some progress was achieved.

#### Definition and Power of the Security Council

As appears in the report of the Committee there is a large area of common ground on this question of central importance. While some differences remain concerning the extent to which the Security Council's discretion should remain unfettered by the proposed definition, there appears to be general agreement that the definition should safeguard the authority of the Security Council as the United Nations' Organ primarily responsible for the maintenance of international peace and security. This is a point to which the Canadian delegation has always attached great importance and it is encouraging to note that no delegation suggests that any proposed definition should be utilized by the Security Council in an automatic or categorical manner.

#### Acts Proposed for Inclusion in the Definition of Aggression

Some considerable progress was achieved in clarifying the positions of the co-sponsors of the several draft definitions concerning the acts proposed for inclusion in the definition. Perhaps more important, some flexibility was displayed for the first time by proponents of opposing positions on previously controversial issues.

The Canadian delegation has made clear from the outset that it attaches importance to the inclusion within any proposed definition of so-called indirect armed aggression consisting, for example, of infiltration across frontiers or internationally agreed lines of

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demarcation by armed bands, external utilization of terrorism or subversion or other indirect uses of force intended to violate the territorial integrity or independence of states. Some of the proponents of this point of view accepted, however, during the discussions in Geneva, that not every such act need necessarily constitute aggression. Indeed, to argue otherwise would be to impugn the discretionary powers of the Security Council. On the other side, some of the proponents of the view that such acts should not be included within the proposed definition conceded for the first time that some such acts could constitute aggression either because their seriousness transformed their character into direct armed aggression or on the basis of other legal rationales. It may be that the application of the principle of proportionality to this issue could provide the basis of a possible solution to what has thus far been one of the most controversial questions under consideration by the Committee.

On a connected issue there was somewhat less but nonetheless discernible progress, namely whether or not the use of atomic weapons constituted an act of aggression per se. It has been the position of my delegation that the possibility should not be foreclosed of nuclear weapons being used in self-defence against an attack of an aggressor using conventional weapons. This point of view seems now to be more widely shared in the Committee.

Another issue on which there appeared to be in the past a fairly sharp division of views was/a declaration of war of itself constitutes aggression. Here too, there seemed to be movement both

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on the part of those who have argued that this act is aggressive per se and those who have argued that it ought not to be included in a definition. The position that appears to be developing is that while a declaration of war need not necessarily constitute an act of aggression (for example the declarations of war by some of the allied powers such as Canada against Nazi Germany in spite of the fact that Canada had not previously been attacked by that country), on the other hand a declaration of war, precisely because of its formal juridical consequences and the inherent seriousness of the act must necessarily constitute an important element to be taken into account in determining the commission of an act of aggression.

Another difficult and controversial issue on which some noticeable progress may have been made relates to the possible inclusion of military occupation and annexation in the proposed definition. The Canadian Delegation has taken the position that military occupation and annexation are essentially consequences of either legitimate uses of force or acts of aggression, and that such acts should not therefore be included within a definition of aggression. Other delegations disagreed with the consequential argument, but have maintained also that military occupation and annexation can never be excused on any grounds and that such acts are therefore aggressive per se in every instance. While it would be idle to suggest that this issue is close to resolution, it is nonetheless possible to detect some movement on both sides. It was pointed out during the debate, for example, that there were and still are military occupations resulting

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from the Second World War which are not necessarily aggressive and that the same may even apply to certain annexations consequential upon the termination of the Second World War, although this later point is somewhat controversial. It was also conceded however, by some of the proponents of the contrary view, that an occupation which might be legitimate if based, for example, upon a treaty arrangement, could be transformed into an aggressive act if occurring or continuing against the will of the host State.

Principle of Priority

Another issue previously regarded as extremely controversial was whether "first use" of force of itself predetermines the nature of the force as aggressive. My delegation has always taken the position that although such an approach is a legitimate one assuming that all member states of the U.N. could agree that the principle of priority predetermines the character of the use of force, it did not provide a really effective answer to the problem. Even apart from the difficulties in determining which party makes the first use of force, first use does not necessarily carry with it an irrefutable presumption of culpability. During the discussions in Geneva, however, some delegations sharing this point of view conceded that first use was at the very least a most important element to be taken into account in determining whether or not a particular use of force is aggressive. On the other side, some of the proponents of the first use principle appear to have conceded that so long as the importance of the principle was stressed in the definition, the principle need not be postulated in

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such a manner as to virtually pre-judge the issue, since in any event such matters had to be left to the discretion of the Security Council.

Aggressive Intent

It has been the position of the Canadian delegation throughout that one of the most important elements in determining aggression is that of intent. Some delegations on the Committee had taken an opposing view and had expressed the fear that including the element of intent in a definition could provide pretexts for an aggressor claiming no aggressive intent. There seems now to be a more widespread acceptance in the Committee of the position that while the question of intent can never of itself predetermine the nature of a use of force, it is an important element to take into account, at the discretion of the Security Council. It may be that some progress can be made in reformulating this element in a way that reflects the general view which appears to be developing in the Committee.

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There are a number of issues still presenting difficulties, including the principle of proportionality, the appropriateness of having the definition apply to entities other than states; of including the principle of self-determination in the definition independently of the "legitimate use of force" concept; the proper treatment to be accorded the principle of self-defence single and collective; and a number of less serious issues of an essentially drafting nature. The views of the Canadian delegation on these areas of difference still outstanding are well known, and it is not therefore necessary for us to repeat them, particularly given the general desire

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to keep our debates as brief as possible. Suffice it to say that we do not see any outstanding issues facing the Committee which are insuperable, given a continuation of the past willingness on all sides to approach the problem in a spirit of conciliation, in the common interest.

The decision taken by the Special Committee to base discussions on the latest three texts, that is to say, the USSR draft definition, the 13 Powers definition and the 6 Powers draft, (of which Canada is a co-sponsor), was a wise one. We also welcome the agreement which was reached among a number of non-aligned and Latin American delegations who are not formally co-sponsors of any text, to co-operate closely with the 13 Powers and to take an active part in the debate and present proposals relating to the drafts under consideration.

It is, I think, Mr. Chairman, no exaggeration to say that in the short period since the creation of the Special Committee on the question of defining aggression by General Assembly resolution 2230 (XXII) of 18 December 1967, more has been accomplished towards clarifying the elements to be included in any legally adequate definition of aggression and towards developing and expanding the political basis for agreement on a definition than had occurred in the previous several decades of intermittent efforts to achieve this end.

I should like to conclude, Mr. Chairman, by making clear the willingness of the Canadian delegation, in the light of the progress made by the Committee thus far, to continue to play an active part in

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the deliberations of the Committee, in a spirit of co-operation.

It is our view that the high level of debate maintained in the Committee, and the willingness of members to work towards possible accommodation by informal negotiations augur well for the further success of the Committee.