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CONTENTS

Chairman: Mr. Francisco V. GARCIA AMADOR (Cuba).

AGENDA ITEM 51

Question of defining aggression: report of the Special Committee on the Question of Defining Aggression (A/2638, A/2689 and Corr.1 and Add.1, A/C.6/L.332 and Rev.1) (*continued*)

GENERAL DEBATE *(continued)*

1. Mr. TARAZI (Syria), speaking on a point of order, stated that the press release reporting his statement at the Committee's 407th meeting had been incomplete and, hence, misleading. He asked that, in the future, press releases should render the views of his delegation more accurately.

2. Mr. LIANG (Secretary of the Committee) said that the Secretariat would take note of the Syrian representative's remarks.

3. Mr. PRATT DE MARIA (Uruguay) recalled that at the sixth and seventh sessions of the General Assembly his delegation had opposed the definition of aggression for a number of reasons. As his delegation had pointed out out at the time, in the case of an outbreak of hostilities, the international community had a twofold task. First, it had to take emergency action to put an end to the hostilities and to restore the *status quo ante*. Only then could it proceed to determine who had been the aggressor. One difficulty his delegation had had in mind was that the existence of a definition might actually interfere with the taking of emergency action under Articles 40 to 42 of the Charter and article 7 of the Inter-American Treaty of Reciprocal Assistance.

4. Upon reconsideration his delegation believed, however, that that particular difficulty might be overcome if special provision for emergency action was made in the resolution by which the definition would be adopted.

5. A second difficulty was that, in so far as it tended to limit the functions vested in the Security Council under Article 39, the definition might violate the Charter. Nevertheless, while it was true that the United Nations Conference on International Organization had not wished to define aggression, preferring to leave the matter to the Security Council, it was equally true that the General Assembly had the power to make recommendations on the subject under Article 10 of the Charter. Furthermore, any definition adopted by the General Assembly would have the force of a recommendation only, and hence could not be regarded as restricting the powers of the Security Council.

6. A mixed definition, consisting of a general statement and a non-exhaustive illustrative list of specific acts of aggression, would give the organs dealing with acts of aggression clear guidance without limiting their freedom of action in respect of acts not covered in the list. At the same time, under a definition drafted along those lines the organs in question could not arbitrarily and unjustly describe as aggression acts that really were not.

7. In view of those considerations, his delegation now believed that it should be possible, on the basis of the proposals made, to work out, at the current session, a definition of aggression that, if not perfect, would at least be practicable and would overcome the difficulties he had mentioned.

8. Mr. NINCIC (Yugoslavia) said that the general view in the Committee seemed to be still, as it had been at the sixth session, that a definition of aggression was possible and desirable.

9. His delegation had fully concurred with that view from the start because it believed that a definition would provide a warning to would-be aggressors, give guidance to the competent United Nations organs that might be called upon to deal with acts of aggression, and constitute a significant contribution to the development of international criminal law. Although no agreed definition had as yet been adopted, the work of the General Assembly, the International Law Commission and the Special Committee had not been in vain. On the contrary, substantial progress had been made. In particular, the area of disagreement on the type of definition to be adopted had been considerably narrowed.

10. Extensive discussion of a general definition, as opposed to an exhaustive enumerative or limitative definition, had brought out the respective advantages and shortcomings of both methods, and the current trend, which his own delegation supported, seemed to be in favour of mixed definition, combining the advantages and eliminating the defects of the two. That trend was reflected in the report of the Special Committee on the Question of Defining Aggression (A/2638) and had become even more pronounced in the current discussion. Even the latest Soviet proposal (A/C.6/L.332/Rev.1) could no longer be regarded as a strictly limitative definition.

11. Nevertheless, while a mixed definition seemed to be preferred by all those who were in favour of defining aggression, a number of delegations still opposed a definition in any form. It seemed, however, that their objections related to specific types of definition—now more or less abandoned—rather than to a definition *per se*.

12. One of their objections was that aggression was a constantly changing political concept that it was impossible to capture in an abstract legal formula. Even if that were so—which it was not, because concepts of that nature had definite meaning within given historical conditions—the objection would still apply only to a strictly limitative definition, and not to the more flexible mixed definition.

13. Another objection was that, since the definition was bound to be incomplete, it might show potential aggressors how to accomplish their aims without being branded as aggressors. That objection, too, applied to a limitative definition only. It could not apply to a definition that contained a general statement of what the term "aggression" meant, followed by a purely illustrative list. It might be argued, of course, that even an illustrative list, by placing special emphasis on certain instances of aggression, might tend to give less importance to any acts not listed and would thus suffer from the same basic disadvantage as the enumerative definition. The answer there was that the cases listed would be the most flagrant and violent, and if their enumeration served to deter a potential aggressor from resorting to them or helped the competent United Nations bodies to take appropriate action, the definition would have served its purpose. As for the cases that were not listed, they would be covered by a general clause—which, after all, would be more effective than no definition at all. Consequently a mixed definition, far from helping the aggressor or preventing action, would act as a deterrent to aggression and provide useful guidance to the competent United Nations organs.

14. The most serious objection was that the definition would restrict the Security Council's freedom of action under Chapter VII of the Charter in a manner not only inconsistent with the Charter but also politically dangerous. Indeed, it would be politically unwise to leave the Security Council little choice but to condemn a State as an aggressor and possibly even to take enforcement action when attempts to achieve peaceful settlement or provisional measures under Article 40 of the Charter might be more advisable. Yet, while a mixed definition would make it more difficult for the organs concerned to evade their responsibility when faced with an obvious case of aggression within the meaning of the definition, it would neither preclude them from acting in cases not specifically listed nor commit them under Article 39 of the Charter to any rigid course of action in such cases. For all those reasons, a mixed definition should be generally acceptable.

15. Differences of opinion continued to exist, however, on the substance and scope of the definition. The question was whether the definition should refer only to the use of force or whether it should also cover economic and ideological aggression.

16. There seemed to be a tendency to interpret the term "aggression" as meaning any act that conflicted with the principles of the Charter or was detrimental to international peace and security. For legal, political and practical reasons, he could not accept such a broad interpretation. Legally, a broad interpretation of the term "aggression" was not justified by the letter or, indeed, the spirit of the Charter. As the French representative had pointed out at the 405th meeting, Article 39 of the Charter listed reprehensible acts in the order of their seriousness, and to include ideological or economic pressure in the term "aggression" would be to regard them as being more serious than threats to the peace or breaches of the peace. In due time, those expressions, too, might be defined, possibly in terms covering economic and ideological pressure, but they had no place in a definition of aggression, having regard to the provisions of Article 2, paragraph 4, and Article 39 of the Charter.

17. Politically, an unduly broad definition would be so general as to become meaningless; or, what was worse, it might be used as a pretext for "preventive" action. In both cases, the definition would defeat its purpose. For example, there was currently a proposal before the General Assembly to prohibit the use of nuclear weapons except in self-defence against aggression (DC/53, annex 9). If a definition of aggression covering economic or ideological pressure was adopted, a State would be technically justified to use nuclear weapons against another State that was engaging in a propaganda campaign or an economic boycott against it.

18. Incidentally, if the proposal relating to nuclear weapons was adopted, it would be all the more important to have a definition of aggression, since without it the prohibition of the use of nuclear weapons would be subject to a condition that had not been defined and would thus be open to arbitrary interpretation.

19. From a practical point of view, economic and ideological forms of aggression were such controversial topics that a persistent demand for their inclusion in the definition would only cause the adoption of a definition to be postponed indefinitely. It was far more advisable to seek a definition along generally acceptable lines.

20. From the foregoing it was clear that his delegation preferred a definition consisting, first, of a general description of aggression related to the use of force "against the territorial integrity or political independence of any State" within the meaning of Article 2, paragraph 4, of the Charter. That was a most important criterion and was essential to a correct interpretation of the specific instances to be listed subsequently. It would provide safer guidance than would the declaring as aggressor the State that first committed a particular act—which did not, for instance, distinguish between a party that by inadvertence or otherwise provoked a frontier clash and one that reacted to such a provocation by bringing the bulk of its armed forces into play. Moreover, such a criterion would make it possible to determine whether there had been aggressive intent, a concept that in itself was far too subjective to be readily ascertainable. The generic part of the definition should also provide for the two cases in which the use of force was permitted by the Charter, namely individual and collective self-defence. The second part of the definition would list, by way of example only, some of the more flagrant cases of aggression covered by the term "aggression", as interpreted in the generic part of the definition, including some of the acts listed in paragraph 1 of the Soviet draft (A/C.6/L.332/Rev.1).

21. A definition along those lines, though not perfect, should be generally workable and command the greatest measure of agreement. It was to be hoped that, in the

more propitious atmosphere of international relations now prevailing, such a definition could be adopted.

22. Mr. CASTAÑEDA (Mexico) said that earlier work on a definition of aggression, particularly that performed by the Special Committee, had shed light on certain basic questions—such as the possible influence of a definition on the interpretation and application of Article 51 of the Charter, and the need for safeguards against the dangers of a purely enumerative definition —and that agreement had been reached on the latter question, the USSR having so amended its definition that the enumeration of acts was no longer restrictive, with the consequence that the adoption of a definition at the current session had become a distinct possibility.

23. His delegation, like many others, had from the first been in favour of what had come to be known as a mixed definition. Its objection to an enumerative definition was not only that no list of acts of aggression could be entirely exhaustive, but that the definition must determine the essence or principle common to all acts of aggression, as only the formulation of such a principle could provide adequate guidance to political organs in judging specific cases. On the other hand, a general definition unaccompanied by a list of acts of aggression would be too vague to provide useful guidance. Furthermore, such a list would give a clearer understanding of the problem of the public, which would in turn influence the conduct of Governments and so contribute to the maintenance of peace. For those reasons, Mexico had proposed a mixed definition in the Special Committee (A/2638, annex, IV), where an abstract definition was followed by a non-restrictive enumeration of specific acts of aggression.

24. There was another method of avoiding the dangers of a purely enumerative definition—that of stating that the organs called upon to apply the definition could, at their discretion, declare acts not included in the definition to be acts of aggression. That method had been followed in the USSR proposal (A/C.6/L.332/Rev.1) and was also favoured by the Panamanian representative (406th meeting, para. 8).

25. In his view, a definition of that type would not only be useless; it would be contrary to the very purpose of a legal definition, which was to delimit the competence of the organ that would apply it and consequently to exclude certain acts from its jurisdiction. If the definition of aggression adopted by the General Assembly was valid in itself, the Security Council should be guided by it; if the Security Council conserved absolute freedom of action, the definition would be worthless. The definition was intended to help the Security Council to avoid arbitrary decisions; a definition that expressly invited the Security Council to amplify it would, on the contrary, encourage arbitrary action. He gave two examples in support of his argument.

26. The USSR representative in the Special Commitee had quite correctly objected to including a threat of the use of force in the definition, on the ground that the inclusion might open the door to aggression by States claiming to be acting in self-defence (A/2638, para. 65). Yet paragraph 5 of the latest USSR proposal (A/C.6/L.332/Rev.1) would make it possible for the Security Council to say that a threat of the use of force constituted an act of aggression. Similarly, the Panamanian representative, who felt that the use of armed force was an essential element of aggression, would allow the Security Council to disregard that principle and to make additions to a definition he himself regarded as comprehensive. The USSR representative might feel that his country was protected by its right of veto from any decision of the Security Council that it regarded as arbitrary; but that was not true of the great majority of Member States.

27. It might be argued that paragraph 5 of the USSR draft resolution and the Panamanian proposal did no more than recognize the broad powers vested in the Security Council by Article 39 of the Charter. That was partly true. Any definition adopted by the General Assembly in a resolution would be a recommendation and, consequently, not binding on the Security Council, which would retain the freedom of action granted it under Article 39 of the Charter. But the matter was not as simple as that. The recommendations of the General Assembly not only had the force of moral suasion; no delegation would deny that they also had a certain legal value. Article 38 of the Statute of the International Court of Justice made no distinction between international conventions, international custom and the general principles of law recognized by civilized nations, and a definition of aggression solemnly adopted by the General Assembly might be included in the last category. It might thus in time become part of international law, and the question would then arise whether the Security Council could wish to act in contravention of international law.

28. Since the Charter was essentially a political document—it being the purpose of the United Nations not to restore a legal order that had been upset, but to maintain international peace and security—it might be argued that the Security Council was not bound by the provisions of international law where they might be said to conflict with the taking of effective collective measures for the maintenance of peace. It was on that ground that the Brazilian representative had concluded (405th meeting) that no definition of aggression was possible without previous amendment of the Charter. There was some merit in that view, at least where a final solution of the problem was concerned; nevertheless, if the General Assembly were to adopt a definition of aggression, neither the Security Council nor the General Assembly itself would lightly disregard that new principle of international law, even though the Charter in theory permitted them to do so.

29. The objection that such a definition would be worthless because it would not be binding on the Security Council was therefore invalid. If the Security Council attached little importance to international law, its members would not be constantly claiming that their positions were in accordance with that law; and it would also be pointless not only to define aggression, but to seek to codify and develop any principles of international law related to the maintenance of peace.

30. Considering what the contents of a definition of aggression should be, he said that it should be limited to the use of force. So-called indirect, economic and ideological aggression could effectively be dealt with by the Security Council under Article 39 of the Charter if they were serious enough to be threats to the peace; and, as the French representative had pointed out, it would be absurd, by defining them as acts of aggression, to rate them as more dangerous than threats to

the peace. Moreover, in his view, aggression as spoken of in Article 39 of the Charter and armed attack as mentioned in Article 51 had the same meaning and should give rise to the same legal consequences. If forms of aggression not involving the use of armed force were included in the definition, the possibilities of legitimate use of force in self-defence would be greatly augmented, and that would represent a serious danger to the peace. Lastly, there was a general agreement that armed attack constituted aggression; expanding the concept of aggression unduly would not only weaken it, but would make it more difficult for the Committee to evolve a generally acceptable definition.

31. While it was true that indirect, economic and ideological aggression pursued the same purposes as armed aggression and that, as the Iranian representative had mentioned (405th meeting), they were prohibited in the Charter of the Organization of American States, in that document they were defined not as aggression but as intervention, and it was also under the heading of intervention that they were listed in the draft code of offences against the peace and security of mankind prepared by the International Law Commission (A/2693, chapter III). It was a question of legal codification. Those were acts of intervention and not of aggression. In his view, such acts did not constitute aggression unless accompanied by the use of force.

32. Threats of the use of force should also be excluded from the definition, so as not to provide an excuse for preventive wars, which were not justified under Article 51 of the Charter.

33. Although the delegations that held that it was both possible and desirable to define aggression had certain differences of opinion, those differences were not basic, and the areas of agreement were larger than those of disagreement. The USSR delegation, having accepted the idea of a non-restrictive enumeration, would perhaps go a step further and accept a general definition followed by an enumeration of acts of aggression, while delegations that were in favour of a general definition should see no great harm in the addition of an illustrative list of acts of aggression.

34. He proposed that, after the general debate had been completed, a working group composed of authors of various earlier proposals and of other representatives should attempt to draft a definition acceptable to the majority.

35. Mr. STIRLING (Australia) said the Special Committee was but the last in a long series of international bodies that had attempted to define aggression and had failed in the attempt. That suggested that, in the world as it was, a satisfactory definition was not possible of attainment. He had come to the conclusion, moreover, that the definition of aggression was not worth while, first, because a universally applicable definition was impracticable, secondly, because it would do more harm than good by providing loopholes for future aggressors, and thirdly, because it might give rise to a procedural discussion and thus cause delay on some critical occasion when the Security Council or the General Assembly should act quickly in defence of peace. The great Powers might perhaps be able to defend themselves alone against an armed attack while the United Nations spent precious time debating who was the aggressor; but the small countries could ill afford, for the sake of idealistic considerations, to slow down the proceedings of the United Nations at such a vital time.

36. Mr. SAPOZHNIKOV (Ukrainian Soviet Socialist Republic) said that most delegations agreed that a definition of aggression would provide an important safeguard for the maintenance of international peace and security. That wide measure of agreement was due to a growing awareness of the fact that the world was indivisible and that any threat to the peace had universal repercussions. Agreement on a definition would amount to a renewed pledge by the United Nations to secure the purposes and principles of the Charter.

37. In the Committee, mutual understanding was beginning to show on four points. First, a large number of delegations considered that the General Assembly was competent to adopt a resolution defining aggression. Articles 11 and 13 of the Charter authorized the General Assembly to make recommendations designed to safeguard international peace and security, and a definition of aggression adopted by resolution would be an example of such a recommendation and would carry great moral and political authority. Secondly, most delegations appeared to agree that definition of armed attack was the main thing in a definition of aggression, although the definition of aggression could not be reduced merely to the definition of armed attack. Thirdly, it was conceded that a general, abstract definition would serve no purpose whatsoever, since any such definition would have been similar to the statement that aggression was aggression. Fourthly, most of those who favoured a definition agreed that some form of enumeration was necessary, provided that the list was not exhaustive.

38. The view expressed by the United States representative (404th meeting), who opposed any form of definition, seemed quite inconsistent. The United States representative's point of view was based on the hypothesis that any definition would necessarily contain certain imperfections that a potential aggressor might turn to his advantage. In fact, however, skilful drafting could produce a definition that an aggressor would find impossible to circumvent. The comments of the United States representative would have been more constructive if, instead of contenting himself with the negative statement that no definition would be satisfactory, he had attempted some analysis of a concrete proposal, such as the USSR draft resolution (A/C.6/L.332/Rev.1).

39. As the French representative had pointed out (405th meeting), the insertion of paragraph 5 in the USSR text had satisfactorily provided for all cases of aggression to which specific reference was not otherwise made. The criticism that the definition might be circumvented no longer applied, and the Committee would be well advised to devote less time to artificial difficulties.

40. It was evident that the Panamanian representative's statement at the 403rd meeting was based on a misinterpretation of the USSR definition. The statement that a declaration of war was "not an act of aggression in itself", was a repetition of the obvious. None of the acts mentioned in the USSR draft resolution amounted to aggression *per se*. Two acts might be the same in the military sense, yet, from the legal viewpoint, one would be an act of aggression and the second legitimate retaliation. Aggression would in-

evitably be the first act, which induced or provoked the second. The Panamanian representative was also mistaken in implying that a third State that intervened in defence of a victim of aggression could be classed as an aggressor under the terms of the USSR definition.

41. The Panamanian representative had suggested that the ideal formula might be to say that an "act of aggression" was the use by one 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. That phraseology restricted aggression to the use of armed force; yet it was now generally accepted that aggression could be committed in a variety of forms, of which armed attack was only one. Furthermore, if any examples of aggression were to accompany that definition, as the Panamanian representative had suggested, it would be indispensable to stress that the aggressor State was the State that first committed one of the acts listed.

42. The inclusion of the above-mentioned criterion in a definition of aggression was based on Article 51 of the Charter, which stipulates that "if an armed attack occurs against a Member of the United Nations," the State has the inherent right of "individual or collective self-defense". It is the armed attack against a Member of the United Nations to which Article 51 refers—that is, an attack first committed by a State in relation to another State.

43. The advantages of the USSR draft resolution were that it avoided abstract verbiage and tackled the problem realistically. It was not, as some had alleged, a mere enumeration. Paragraph 1 was principally concerned with the obvious form of aggression—armed attack. On the other hand, the draft also gave numerous examples of other types of aggression, and, by its paragraph 5, provided for every contingency. Paragraph 6 confirmed the fundamental principle that political and economic considerations could never justify an act of aggression. Paragraph 7 was designed to ensure that States resorting to so-called "preventive war" would be branded as aggressors. The text as a whole was a most workmanlike document.

44. Before passing any final judgment on the Panamanian representative's suggestion (406th meeting, para. 8), which was not yet a formal proposal, the Ukrainian delegation would be grateful for some explanations.

45. First, it was not clear whether the self-defence referred to corresponded to the right recognized under Article 51 of the Charter. If the answer was in the affirmative, it was difficult to understand why no reference to that provision had been made. Furthermore, it was difficult to understand why Mr. Alfaro had spoken of "a competent organ of the United Nations", when Chapter VII of the Charter provided, in unequivocal terms, that the only competent organ in such cases was the Security Council. Ambiguities were extremely dangerous and might be pleaded by a potential aggressor as justification for his act.

46. Mr. ALFARO (Panama), replying to the Ukrainian representative, said that his concept of national or collective self-defence was in absolute harmony with Article 51 of the Charter. He had not referred to that provision expressly, as the reference seemed self-evident.

47. The reference to "a competent organ of the United Nations" reproduced the language of article 2 (1) of the draft code of offences against the peace and security of mankind as adopted by the International Law Commission (A/2693, chapter III). When that code came to be approved, some other organ besides the Security Council might be competent to rule on aggression.

48. Mr. SAPOZHNIKOV (Ukrainian Soviet Socialist Republic) said that, at first sight, the Panamanian representative's replies confirmed the apprehensions that his interpretation of his own text ran contrary to the provisions of the Charter.

49. The Ukrainian delegation reserved its right to speak again later on the definition of aggression.

The meeting rose at 1.5 p.m.

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