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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, A/C.6/L.332)

GENERAL DEBATE

1. The CHAIRMAN briefly summarized the history of the question of defining aggression, referring in particular to General Assembly resolutions 378 B (V), 599 (VI) and 688 (VII). The question had been dealt with in chapter III of the International Law Commission's report covering the work of its third session (A/1858) and was the subject of a detailed report by the Secretary-General (A/2211) to the General Assembly's seventh session.

2. The Committee now had before it the report (A/2638) of the Special Committee on the Question of Defining Aggression set up under General Assembly resolution 688 (VII), the comments received from certain governments regarding that report (A/2689 and Corr.1) and the draft resolution submitted by the Union of Soviet Socialist Republics (A/C.6/L.332).

3. The General Assembly took a keen interest in the question of defining aggression and felt that a generally acceptable definition should be formulated with a view to promoting international peace and security and to developing international law. He hoped that the Sixth Committee would succeed in completing the definition at the present session.

4. Mr. TARAZI (Syria), Rapporteur of the Special Committee, reviewed the terms of reference the General Assembly had given the Special Committee in resolution 688 (VII). He pointed out the particular importance of chapter II of the Special Committee's report, which concerned the various forms of aggression. Contrary to the usual practice of United Nations organs, the Special Committee had clearly indicated in its report who had expressed the opinions reproduced therein. The Special Committee had decided to follow that procedure in view of the importance of the question and in order to make the Assembly's task easier. The documents submitted to the Special Committee were listed in paragraph 25 of the report; under its terms of reference the Special Committee had not felt it was entitled to vote on those documents, and had decided

to transmit them as they stood to Member States and to the General Assembly. They had therefore been annexed to the report.

5. He thanked the members of the Special Committee for having appointed him Rapporteur and for the assistance they had given him; he also thanked the Secretariat for its excellent co-operation.

6. He reserved his delegation's right to take part in the discussion.

7. Mr. MOROZOV (Union of Soviet Socialist Republics) pointed out that the General Assembly was examining the question of defining aggression for the fourth time. The question had a very important place in the Assembly's agenda, for it was plain that a definition of aggression would greatly facilitate one of the essential tasks of the United Nations, which was to maintain international peace and security and to prevent aggression. At its sixth session the General Assembly had declared that it was possible and desirable to define aggression, with a view to ensuring international peace and security and to developing international criminal law. At its seventh session the Assembly had confirmed that decision by declaring that continued efforts should be made to formulate a generally acceptable definition of aggression. Those decisions had been adopted by a large majority despite the efforts of some delegations that had sought by specious arguments to demonstrate that it was impossible and useless to define aggression.

8. He drew the Committee's attention to paragraphs 87 and 88 of the Special Committee's report. The key idea was that a definition of aggression was possible and desirable for the maintenance of international peace and security; many members of the Special Committee had recognized that such a definition would contribute to the development of international law and to the principles embodied in the Charter and would discourage a possible aggressor. Some members of the Special Committee had felt that the definition of aggression should not contain anything that would allow the aggressor to justify his aggression by pleading self-defence. The aforementioned statements of principle, which had been supported by the majority of the Committee, as well as a number of other valuable observations made by delegations that agreed in principle that it was necessary to define aggression, were a positive contribution to the study of the question of the definition of aggression.

9. A year had gone by since the close of the Special Committee's session. That year, as a number of representatives had pointed out in the general debate at the present session of the General Assembly, had been marked by some easing of international tension as a result of the termination of hostilities in Korea and the restoration of peace in Indo-China. But the United Nations was still faced with problems of outstanding

importance to which a successful solution must be found in order to avert the threat of a new world war and to strengthen universal peace and security. As had been recognized at preceeding sessions of the General Assembly, the definition of aggression would be one of the important means capable of contribution to the fulfilment of those major problems facing the United Nations.

10. He referred to a statement made by Mr. Molotov at the Berlin Conference of 1954, in which he had said that the Soviet people, who had seen a great part of their territory occupied for four years by the Nazi army and had sustained colossal losses in human lives and property in the war against Germany, were bound to exert every effort to ensure their future security and that their interests in that respect coincided as much with those of France as of Poland, with those of the United Kingdom and Belgium as of Czechoslovakia and other peace-loving nations of Europe and elsewhere. The Soviet Union, therefore, animated by the will to peace that had been the motive for its submission of a proposal for the definition of aggression to the Disarmament Conference as early as 1933, had again submitted a proposal (A/C.1/608) to that effect in 1950. Some delegations that had supported that proposal had nevertheless taken the view that it should be amplified and extended. It was in response to that suggestion that the Soviet Union delegation had revised its original draft.

11. He proposed that the draft should be taken as a working basis in drafting a definition of aggression.

12. The main part of the proposed definition referred to armed attack, the most serious and dangerous form of aggression by reason of its terrible consequences. The Soviet Union draft resolution made it clear that that State should be declared the attacker which first committed one of the acts listed in paragraph 1 of the draft resolution (A/C.6/L.332).

13. The justification of aggressive actions by any arguments of a political, strategic or economic nature was also prohibited. Those important elements in the definition of the concept of armed attack would deprive so-called preventive wars of any basis or justification; they would frustrate the various pretexts customarily used to justify acts of aggression. History had shown that the aggressor always claimed that he was acting in self-defence or tried to justify his armed attack on the ground that his rights or interests had been violated or that a situation had arisen which purportedly threatened his security, endeavouring in that way to conceal his aggression and to mislead world public opinion.

14. In the cases of the German aggression of March 1940 against Denmark and Norway, the aggression of May 1940 against Belgium, the Netherlands and Luxembourg, the attack on Yugoslavia and Greece in April 1941, the invasion of the Soviet Union on 22 June 1941, the Japanese aggressions and the anti-Comintern pact, the aggressor had attempted to justify his crime by invoking either the need to "defend" the invaded territories against attack by another Power, or the need for self-defence or, in the case of Germany, the need for "living space", or other pretexts. The judgments of Nuremberg and Tokyo showed that in each case the tribunals had dealt appropriately with such pretexts and had recognized that their purpose had been to disguise the true nature of aggressive acts.

15. Some of the proposals for a definition of aggression had been put forward, in particular the Mexican proposal of 1953 (A/2638, annex IV), that did not mention the important criterion of a State's being the first to commit certain acts against another State. Any definition of aggression that did not recognize that extremely clear and simple principle was worthless. That was why the attempts to replace the criterion proposed by the USSR for the definition of aggression by general and vague formulas, whatever their authors' intention might be, might result in such formulas' being used in attempts to justify a State that was the first to launch an armed attack against another State—that was to say, to justify acts of aggression.

16. It was therefore clear that in the interests of peace the United Nations should work out a precise definition of armed aggression. That was the intention of the Soviet Union draft resolution; paragraph 7 of the resolution completed the proposed definition by indicating what steps a threatened State could take.

17. In response to wishes expressed in the past, the Soviet delegation had added to its definition of armed aggression a definition of acts of indirect, economic and ideological aggression. That was in strict conformity with the principles set forth in and the distinction recognized by the United Nations Charter. Article 39 of the Charter referred to acts of aggression in general, while Article 51 dealt with the most serious form of aggression: an armed attack, which, because of its seriousness, justified the exercise of the right of legitimate self-defence, individual or collective.

18. The acts of indirect, economic and ideological aggression listed in paragraphs 2, 3 and 4 of the Soviet Union draft resolution clearly constituted serious violations of the Charter of the United Nations, and it was the General Assembly's duty to define such violations.

19. When the Soviet proposal for a definition of aggression was discussed at the sixth and seventh sessions of the General Assembly, it was pointed out that, while the acts enumerated therein undoubtedly constituted acts of aggression, it would be undesirable to consider such a list as exhaustive inasmuch as that might give rise to difficulties if an aggressor were to use methods that it had been impossible to foresee at the time when the definition had been worked out. The definition proposed by the Soviet Union in 1953 had taken that view into account and had included a further provision to the effect that acts committed by a State, in addition to those listed in the definition, might be deemed in a particular case to constitute aggression if declared by a decision of the Security Council to be an attack or an act of economic, ideological or indirect aggression.

20. It was to be hoped that the draft resolution he had just introduced would win many supporters, because it responded to the vital interest of maintaining international peace and security.

21. Mr. ALFARO (Panama) felt that the question was not whether it was necessary, possible and desirable to define aggression. That question undoubtedly called for a reply in the affirmative, a view that seemed to be shared by the members of the Committee as a whole. The debate therefore ought to bear mainly on the way aggression should be defined.

22. Thirty years had already passed since the League of Nations had begun to concern itself with the problem of the definition of aggression, and in 1933, thanks to the efforts of Maxim Litvinov and Nicolas Politis, the League had worked out a formula that had been enshrined in three non-aggression pacts concluded by the Soviet Union with three different groups of countries. There had also been various attempts at definition outside the League of Nations, in particular article 9 of the Inter-American Treaty of Reciprocal Assistance signed at Rio de Janeiro on 2 September 1947.

23. None of those formulae was fully satisfactory by modern legal standards because they had all been based exclusively on lists of acts constituting aggression. Everyone knew how dangerous and unsatisfactory lists were in legislative and constitutional texts. As had been said many times, in a constantly changing world the human mind could not foresee all the forms that aggression might take, so that a list was necessarily incomplete and its gaps allowed aggressors to escape punishment.

24. Experience had shown that the Litvinov-Politis formula had been a far from satisfactory method of solving the problem. It had listed what had been termed "the five deadly sins" in the sphere of aggression: declaration of war, invasion, armed attack, naval blockade, and support for armed bands. There was, however, no doubt that aggression could take other forms, and, conversely, that instances might be found in which the acts listed did not constitute aggression. For instance, a declaration of war was not an act of aggression in itself. To deny that would amount to saying that the United States of America had been the aggressor in declaring war on Japan after the attack on Pearl Harbour, or that the United Kingdom and France had committed an act of aggression in launching hostilities against Germany after the attack on Poland. Clearly, a declaration of war could not be an act of aggression precisely in the case when it had been provoked by an act of aggression.

25. There was another serious criticism that could be made of the Litvinov-Politis formula. Under the formula, the aggressor State was the State that first committed one of the acts listed. But that criterion obviously could not be maintained, because a State might very well be the first to commit acts regarded as acts of aggression in the exercise of its right of self-defence. Similarly, a State attacking another State in order to come to the help of a third country that had itself been attacked would be the aggressor, if that criterion were applied. Thus the aggressor was not necessarily the State that first resorted to force, but the State that was the first to break the peace, in the purely material sense of the word, in any way whatsoever.

26. The list in article 9 in the Inter-American Treaty of Reciprocal Assistance was certainly even more incomplete than the Litvinov-Politis formula, but it had the advantage over the latter of not being restrictive, since article 9 left it to the Organ of Consultation to decide whether an act other than those expressly listed did or did not constitute an act of aggression.

27. The ideal formula would therefore be one that, while defining the essence of aggression, could include all its possible forms. The elements of such a definition were to be found in the United Nations Charter itself. A study of Articles 2 (4), 42 and 51 would show that

the Charter obliged Members to refrain from the threat or use of force, although it did not impair the inherent right of individual or collective self-defence, and that it authorized the competent United Nations body to use force to resist aggression and to maintain international peace and security where other measures had proved inadequate. In other words, the Charter countered the unlawful use of force with lawful force. It could therefore be concluded that any unlawful use of force constituted an act of aggression; a simple and concise definition of aggression would therefore term an "act of aggression" the employment by a State of armed force against another State for any purpose other than for national or collective self-defence or in pursuance of a decision or recommendation by a competent organ of the United Nations. There was certainly no form of aggression, in the true sense of the word, that did not come under that general definition, which had the additional advantage of being in harmony with the definition of the first crime in the draft code of offences against the peace and security of mankind.

28. That definition was certainly reduced to its simplest terms and would no doubt have to be amplified although—and that was an important point—always on the basis of the fundamental criterion in the Charter. It might be necessary, for example, to decide whether the threat of resort to force constituted an act of aggression or not, and whether certain other acts such as naval demonstrations or mobilization were threats of resort to force. Nevertheless, the concept of aggression that could be identified in a general way by an act of violence must first be clearly defined; by introducing certain other principles it would then be possible to bring the concepts of economic and ideological aggression into the definition. The question was certainly very complicated, but the elements of a satisfactory definition of aggression were to be found in the Charter.

29. Finally, the enumerative method might be retained and a definition might include, as examples, a list of cases of aggression that left no room for doubt. Such a formula, which would be comparable with that of the Treaty of Rio de Janeiro, would reconcile different points of view.

30. To sum up, the Panamanian delegation favoured an abstract definition covering all possible cases, to which a number of examples could be added if the Committee so desired.

31. Mr. SECADES (Cuba) recalled that the Assembly had decided to formulate a generally acceptable definition of aggression, with a view to promoting international peace and security and to developing international law, and to make continued and joint efforts to that end. His delegation was fully prepared to co-operate in that task. It considered that a definition of aggression would consolidate the United Nations collective security system and develop international criminal law, while to define aggression together with other offences against the peace and security of mankind would be to respect the principle of *nullum crimen sine lege*. Finally, in a world living in the fear of aggression, the existence of a definition might help to set minds at rest.

32. The first problem before the Special Committee had been the kind of definition to adopt. A general

definition, the basic elements of which could be found in the Charter of the United Nations, would certainly not suffice; it was precisely because the Charter considered the problem merely in a general way that the General Assembly had considered it necessary to take into account the constituent elements of aggression. On the other hand, a purely enumerative definition would be necessarily incomplete and therefore dangerous, as it would offer loopholes to possible aggressors.

33. For that reason, his delegation favoured a mixed definition such as that described in principle in paragraph 37 of the report. A definition in general terms followed by an enumeration of specific acts as examples would certainly be best, since the competent bodies could determine, on the basis of the general definition, whether or not an act not included in the list constituted aggression.

34. The Special Committee had had to decide whether to give to the term "aggression" a limited or a wider sense. It could hardly be denied that either interpretation was possible; in the most limited sense of the term, aggression was merely armed attack or any analogous act; in the widest sense, the term included economic and ideological aggression, the organization

of subversive activity, and political aggression proper. The wide interpretation could, it seemed, be based on the principles of the Charter, and, to judge by the provisions of Article 2 (4), the Charter prohibited not only the use of armed force, but also the use of means of coercion that might endanger the territorial integrity or political independence of any State or was in any way inconsistent with the purposes of the United Nations.

35. Nevertheless, for technical reasons, his delegation felt that the Committee should confine itself to defining aggression in the limited sense and should define other forms of aggression when it studied the draft code of offences against the peace and security of mankind. By that method it would no doubt be possible to avoid certain difficulties that might have prevented the Special Committee from successfully completing its task. During the discussion of the draft code each of the other forms of aggression could be defined as separate offences likely to jeopardize the peace and security of mankind.

36. He reserved the right to speak again later in the debate.

The meeting rose at 5.20 p.m.