



Tuesday, 26 October 1954,  
at 3.15 p.m.

New York

**CONTENTS**

	Page
Agenda item 51:	
Question of defining aggression: report of the Special Committee on the Question of Defining Aggression (continued) .....	63

**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/Rev.1) (continued)**

**GENERAL DEBATE (continued)**

1. Mr. Shushi HSU (China) recalled that the Special Committee had met not long after the armistice in Korea had been signed. Aggression had not been suppressed, as required by the provisions of the Charter, but had been overlooked, if not condoned outright. That was why he had at that time doubted the advisability of continuing with the task assigned to that Committee, as he had feared that in view of the political situation it might produce too conciliatory a definition.

2. One year had elapsed since then, but the political situation remained unchanged, and the world was as prepared as it had been in the past to tolerate aggression. In those circumstances, he continued to harbour the doubts he had expressed in the Special Committee but remained ready to make his contribution.

3. It was quite easy to sympathize with the attitude of the delegations inclined to give up any attempt to produce a definition. Most of the arguments advanced by those delegations were, however, unacceptable. The view that the results of the disarmament negotiations should be awaited was particularly disturbing; it suggested that the delegations in question feared that if a definition were formulated immediately, there would be no room for compromise on the concept of aggression in the disarmament negotiations. Generally speaking, aggression meant recourse to war or to subversion, subversion meaning the overthrow of the political or social order of the victim State. Conceivably there was some idea that if one State would make concessions on disarmament, another might be prepared to expunge the idea of subversion from the concept of aggression and allow, or acquiesce in, the overthrow of the political or social order of one or more other States. It was hard to believe that that was the intention of those delegations which were recommending that the result of the disarmament negotiations should be awaited before aggression was defined, and if that was in fact their intention, it would be useful if those delegations would confirm it.

4. Apparently, however, it was the deliberate purpose of the Soviet proposal (A/C.6/L.332/Rev.1) to expunge the idea of subversion from the concept of aggression. The USSR had submitted, one after another, three versions, the second of which (A/C.6/L.208) had been welcomed by the Chinese delegation. In that version, the USSR had inserted the notion of indirect aggression, which seemed to show that it had repented of having gone back on the concessions made in 1933 to the Committee on Security Questions of the Disarmament Conference—the Politis Committee—in the first version (A/C.1/608/Rev.1), which had not included that idea. Unfortunately, the third version now before the Committee (A/C.6/L.332/Rev.1) could only be viewed as a device to enable the Soviet Union to return to its original position.

5. The Politis Committee had taken an epoch-making decision in accepting the idea that support to armed bands who had invaded another State's territory should be regarded as an act of aggression (A/2211, para. 78), because it had recognized the existence of indirect aggression, to which aggressors had resorted more and more frequently since direct aggression had been condemned but which previously had hardly been noticed. Since the Politis Committee's decision, the idea of indirect aggression had been universally accepted.

6. For that reason the latest version of the Soviet Union draft definition was open to a number of objections. First, indirect aggression had been placed on the same level as so-called economic and ideological aggressions; secondly, the support of armed bands that had invaded another State's territory had not been classed as an instance of indirect aggression; thirdly, the subversive activities amounting to indirect aggression were described by the draft resolution as "acts of terrorism, diversionary acts, etc."; fourthly, the Soviet Union draft resolution made no mention of subversion proper, which consisted of activities aiming at the overthrow, by force or other illegal means, of the political or social order of a State. In sum, the essential core of indirect aggression had been completely omitted, and that dangerous form of aggression had been relegated to a subordinate position. Clearly, therefore, the purpose of the Soviet Union proposal was to destroy the concept of indirect aggression and to prevent any possibility of condemning subversion. In any event, the exact nature of the crime of aggression could not be defined simply by listing a number of acts of aggression.

7. The Soviet Union draft resolution was, therefore, not worthy of the Committee's consideration. If the Committee really wanted to define aggression—and it was possible to define it—it would have to keep certain essential considerations constantly in mind. First of all, it would have to try to free itself from political influence. When it came to the legal side of the problem, it had to realize that aggression was the unjustified use of force and to try to define that unjustified use.

So far as form was concerned, there was general agreement that the best formula would be one which added a number of concrete examples to a general definition, that is to say, a definition of the mixed type.

8. The formula offered by the representative of Panama (406th meeting, paragraph 8) was interesting. By defining aggression as the employment of force for any purpose other than national or collective self-defence or in pursuance of a decision or recommendation of a competent organ of the United Nations, that formula had, quite properly, excluded acts of economic and ideological aggression that did not constitute indirect aggression.

9. In practice, however, it seemed doubtful whether the formula covered all cases of aggression. In its enumerative part, it made no mention of subversion, the archetype of indirect aggression; that could be taken to mean that subversion did not constitute aggression. It was admittedly desirable to supplement a general, abstract definition by means of a list of examples, but as such a list could not be exhaustive, it would be necessary to ensure that it contained the most typical and most important examples. Thus, the omission of such a type of indirect aggression as subversion would be a really dangerous flaw, and the Panamanian proposal that the competent organs of the United Nations should be empowered to add to the list would not be sufficient. That form of aggression was so serious that it could not be omitted. When once the traditional forms of aggression had been banned, aggressors had hesitated to resort to them and had made freer use of certain forms of indirect aggression, such as support for armed bands. That particular form of aggression having also been banned, would-be aggressors might well hesitate to resort to it and instead turn to other types of indirect aggression that had not been expressly forbidden, such as subversion.

10. While subversion was a form of aggression less frightening than war, it was much more insidious and quite as dangerous. War implied the invasion of the territory of the victim State and was accompanied by bombardment, military occupation and naval blockade; subversion was conducted by organizations working for the overthrow of the political and social order of a State and using such means as propaganda, action by diplomatic and consular officials and, to some extent, sabotage and espionage. In short, while war was an armed attack from without, subversion was an armed attack from within. Consequently, if war was outlawed, subversion should receive the same treatment. Subversion, of course, was a relatively new form of aggression that formerly was little known. However, the rapid changes of recent years no longer justified today the same ignorance or the same doubts.

11. It was sometimes said that international society was not an institution for the mutual insurance of established Governments and that therefore subversion was out of place in a definition of aggression. As long as international law provided no remedy against the abuse of governmental power, international society could certainly not be regarded as an institution of that kind, but it did not follow that the concept of subversion should be left out of a definition of aggression. The point was whether subversion was purely an internal affair or an instrument of policy of a foreign Power. If subversive activities were conducted by the people of a particular State it was obvious that the

question of aggression did not arise, but if such activities were fomented, assisted or directed by a foreign Power, that was clearly an indirect use of force just as effective as a direct act of aggression.

12. Some were reluctant to include subversion because it was a crime that the victim State could control. Such a criterion should not be accepted, because the important point was whether the inclusion of such-and-such a form of aggression was necessary from the point of view of the interpretation of the definition. The action of armed bands, mentioned in the formula proposed by the representative of Panama, could also be controlled internally.

13. Subversion was dangerous for all States, both great and small, whose political or social position was not secure. He therefore appealed to all States, whether they supported a definition or not, to favour the inclusion of the concept of subversion in the definition that would eventually be drawn up.

14. Later, he would submit an amendment to the Panamanian proposal, recommending the inclusion, among the forms of indirect aggression, of the activities of a State aiming at the overthrow, by force or any other illegal means, of the political or social order of another State.

15. Mr. SPIROPOULOS (Greece) congratulated the Special Committee, and particularly its rapporteur, on its work. Yet the Committee's report did not contain any draft definition; that might appear somewhat surprising, for the Committee had been expressly requested by resolution 688 (VII) "to submit to the General Assembly at its ninth session draft definitions of aggression or draft statements of the notion of aggression". The omission was not the fault of the Committee which, he repeated, had discharged its task as best it could, but was due to the complexity of the problem itself. After weighing the problem, the Committee had come to the conclusion that it was very difficult, if not impossible, to define aggression.

16. It was regrettable that the General Assembly had been imprudent enough to state at its sixth session that it was possible to define aggression (resolution 599 (VI)). Indeed, that had been a premature assertion, since it was precisely by trying to prepare a definition that one could find out whether or not it was possible. He recalled how, in the past, the International Law Commission had met with a similar setback, which he himself had predicted.

17. The Greek delegation, which had previously taken up a negative position—in the sense that it did not believe that it was possible to solve the problem as it had then been presented—had changed its attitude precisely because the problem was now being approached from a different angle. The Soviet Union proposal, for example, was no longer the same as in the past. It might almost be said that the Soviet Union delegation had to some extent abandoned the idea of a definition of aggression, for its latest text (A/C.6/L.332/Rev.1) was not a definition in the orthodox sense of the term. The new proposal listed a number of cases of aggression, to be supplemented by the Security Council. In fact, the Security Council was being given the power of decision, except in certain cases expressly listed. Paragraph 5 of the Soviet Union draft could easily be placed at the beginning of the text, and it would then come very close to the definition contained in the Inter-

American Treaty of Reciprocal Assistance concluded at Rio de Janeiro in 1947. Generally speaking, the Greek delegation was not opposed to a formula of that kind.

18. He shared the French representative's view concerning economic and ideological aggression. If those two ideas were introduced side by side with the idea of armed aggression, the consequences of those two forms would have to be dealt with separately, for obviously they could not have the same effects as armed aggression. The USSR representative had said as much when he had stated that the idea of self-defence, which was valid for armed aggression, could not be taken into consideration in the case of the other two forms of aggression. He felt therefore, in agreement with the French representative, that the Committee would do better to concentrate on the idea of armed aggression and leave out—though they might be treated separately—economic and ideological aggression, which, while certainly reprehensible, were not perhaps always violations of international law.

19. Most of the definitions that were based on the Politis definition prepared in 1933 by the Committee on Security Questions of the Disarmament Conference and were more especially concerned with the use of armed force contained a list of acts of aggression such as invasion, bombardment, and naval blockade. No one would doubt for a moment that those acts were acts of armed aggression. There was hardly any useful purpose served in enumerating them, and it might be preferable to enumerate certain doubtful cases. However, the Greek delegation was not opposed to that formula, which seemed acceptable to the majority.

20. It had been pointed out by some speakers that it was customary in penal law to define offences. The crime of aggression, however, had existed since the most remote periods of history, and it had always been identifiable without the help of legal texts. The general notion of aggression was, of course, known to the legislation of many States. The Greek Code, for example, referred to it in connexion with self-defence. Nowhere, however, was there any enumerative definition of the kind that the Committee was thinking of drafting. Similarly, the Charter, in Article 2, paragraph 4, for example, gave a kind of broad definition of aggression that left some discretion to the competent organ. In any case, instead of enumerating the elements that went to make up aggression, no one had anything more in mind than the definition of the various ways in which force could be used.

21. The Politis definition and those based on it had been said to be defective. An attempt had therefore been made to fill their gaps, partly by enumerating other acts of aggression and partly by leaving it to the Security Council, for example, to determine in each particular case whether or not certain acts constituted aggression.

22. He was in favour of a formula of that kind, a formula that, apart from certain specified cases, would enable the Security Council and also the General Assembly to decide, in the light of the circumstances, whether or not armed aggression had occurred. The general formula could either follow the enumeration, as proposed by the Soviet Union, or precede it, as proposed by Panama.

23. With regard to the general formula that introduced the Panamanian proposal (406th meeting, paragraph 8), he remarked one might ask if there did not

exist certain cases in which the use of armed force, for a purpose other than self-defence or in pursuance of a decision of a competent organ of the United Nations, might fail to constitute an act of aggression. By way of example, he mentioned the hypothetical case of two States one of which had in its territory an ethnic minority composed of nationals of the other. If State A began to exterminate that minority, and State B, after appealing in vain to the competent organs of the United Nations, decided to use force against State A, would State B be an aggressor or not? Such cases were of course unlikely to arise, but the example showed that it was dangerous to exclude such contingencies. Incidentally, he expressed regret that a similar formula had been used in article 2 of the draft code of offences against the peace and security of mankind prepared by the International Law Commission (A/2693, chapter III).

24. As for the notion of self-defence, it was actually only the counterpart of the notion of aggression. Since the two notions were related, neither could be defined in terms of the other until that other had itself been defined. Actually, a definition of self-defence was not indispensable, and it would be preferable if the competent United Nations organs were left free to decide whether or not any particular case of recourse to force constituted an act of aggression.

25. The definitions prepared in the past had been heavily criticized—in particular, the principle enunciated in the Politis definition that the State that *first* resorted to force was the aggressor. It should not be forgotten, however, that the body responsible for applying the definition would in each particular case have to deliberate and to place a reasonable interpretation on the definition. The principle of the Politis definition was, therefore, not in itself open to criticism; only its injudicious application might be so. Every definition had to be interpreted logically and reasonably, lest it produced absurd consequences.

26. While not convinced of the ultimate value of a definition, he was prepared to collaborate in the preparation of a reasonable definition in order to satisfy the wishes of the majority. Furthermore, his delegation was as ready as most members seemed to be to adopt a fresh approach.

27. Mr. TARAZI (Syria) pointed out that the decision whereby the Special Committee had adopted the working plan given in paragraph 24 of its report (A/2638) had been a unanimous one.

28. Mr. MAURTUA (Peru) said that in developing international law the United Nations must proceed cautiously and gradually. Binding provisions might be of preventive value but might clash with the legitimate interests of States. The principles of justice were never fully embodied in positive law because numerous factors had to be taken into account. The development of international law must take into account actual situations and the often divergent philosophies born of history and experience. It followed that the work must be undertaken slowly and cautiously, but that need not be a source of regret or discouragement. Those who devoted their lives to the development of international law must never forget that they were working not for the present alone but in many cases for the distant future. They should seek to formulate principles that were acceptable to all; when resistance was encountered,



they must spare no effort to achieve a compromise, even if it meant that further progress must temporarily be abandoned.

29. In that connexion, he reminded members of the difficulties that had been encountered in the development of such institutions of international law as conciliation and arbitration.

30. There was a certain rhythm in the history of mankind's advance towards the goal of international peace and security. That progress was influenced less by events than by psychological factors. At some periods, nations were obsessed by the fear of war. It was at such times that security pacts, regional agreements and collective alliances flourished. The United Nations had been created in that way as a result of the effort to achieve security by the use of certain methods of peaceful persuasion.

31. Despite the difficulties, mankind was marching towards the ideal of unity and solidarity. The outlook of statesmen and the psychology of nations changed under the pressure of compelling needs. From the political and military points of view, war was productive only if total victory could be achieved. From the human point of view, only the ineluctable and terrifying consequences of war counted. It was utopian to seek to abolish war. Nevertheless the danger of war had been partly eliminated by the advances of science that had made it an unduly risky enterprise. The relative unproductiveness of violence should facilitate an agreement on the neutralization of force.

32. The Peruvian delegation was accordingly ready to join in affirming a principle that regulated the will of States. It was necessary and possible to define aggression and thus to establish a legal criterion to determine responsibility. Moreover, the United Nations was in a sense a court before which every people, weak or strong, sought to justify its actions.

33. Some criticism voiced during the debate might have given the impression that the institutions of international law were passing through a critical phase. It was certainly true that certain principles were not universally accepted and met with resistance. Nevertheless, great progress towards the pacific settlement of disputes had already been made through the conclusion of treaties and regional unions such as the Organization of American States, which was an instance of the balance of interests.

34. With those considerations in mind, he felt that the difficulties, although considerable, could be overcome. The essential elements of the law must be defined, and those on which agreement could be reached must be singled out. In the present state of the law, the Committee must not seek a formula covering every possible case of aggression. Treaties like the London Treaties of 1933, the 1947 Rio de Janeiro Treaty and the United Nations Charter showed what could be considered acceptable in the light of experience. It would be possible to work on that basis. A more ambitious attempt would raise too much legitimate opposition and reduce the possibility of success.

35. He reviewed the many similarities and differences between the Soviet proposal (A/C.6/L.332/Rev.1) and the Panamanian draft definition (406th meeting, paragraph 8).

36. The Peruvian delegation felt that the definition of aggression should not be extended to cover cases

of indirect, economic and ideological aggression. While States should be able to defend themselves against certain forms of indirect aggression, those forms were covered by the principle of international law prohibiting intervention in the affairs of another State and giving grounds for appeal to international authorities. Such forms could not be included in the definition of aggression. The Committee should try to find the common denominator of the two draft definitions. The United Kingdom representative's arguments against including declaration of war among cases of aggression (406th meeting) should be studied. The notion of a threat, in which the element of intention must be present, should be taken into account. There was also the question of the provisional measures that the Security Council might decide to adopt under Chapter VII of the Charter.

37. He proposed that the Panamanian draft definition should be made more precise by the use of the words "unprovoked armed attack" and "unjustified blockade". Lastly he felt that so far as support for armed bands was concerned a distinction should be drawn between active assistance by the authorities of a State and mere toleration for which the State was responsible only indirectly.

38. Mr. SAPENA PASTOR (Paraguay) felt that the Committee should concentrate on its real task, that of defining aggression, and for the time being put aside the study of irrelevant questions, such as whether the Security Council should have sole jurisdiction in cases of aggression or whether the General Assembly should share in that jurisdiction.

39. A definition was a clear statement of the particular characteristics of an object or idea; accordingly it stood to reason that, in view of their diversity, it was impossible to include in a single definition all the different forms aggression might take. Each of them would have to be defined separately. That being so, a start should be made by defining armed attack, with which the Charter dealt specifically, and which in the opinion of many was the only real form of aggression. The other cases could be considered later.

40. Reviewing the various drafts which had been submitted, whether formally or not, he observed that the Soviet Union draft (A/C.6/L.332/Rev.1) contained an enumeration of typical cases of armed aggression. The provision in paragraph 5 avoided the dangers inherent in any enumeration for the reason that it was always incomplete, and the effect of paragraph 6 was to make it impossible to disguise an attack. In the Mexican draft (A/2638, annex, IV) the enumeration was prefaced by a general declaration. The drafts submitted by China (A/2638, annex, II and II) and Bolivia (A/2638, annex, V) were of the so-called "mixed" type and mentioned also forms of aggression other than armed attack.

41. For several reasons the Paraguayan delegation could not support the draft submitted by Panama (406th meeting, paragraph 8). That draft failed to specify the constituent elements of an act of aggression. The general formula it contained was unacceptable, for it was no definition merely to state that everything that was not just was unjust and that everything that was not forbidden was allowed. A statement that everything that was not "self-defence" was "aggression" merely shifted the difficulty by necessitating a definition of self-defence. The draft also contained a list of typical cases of

aggression, which, with some modifications, was acceptable. On the other hand, the passage dealing with the jurisdiction of United Nations organs could not be accepted. The study of that question would involve endless discussion, and it certainly appeared that in the present circumstances it would be impossible to reach agreement. Lastly, as the draft covered only armed attack it would be desirable to add that expression to the first paragraph if the draft was not to be construed as eliminating from the definition other forms of aggression, such as indirect aggression.

42. Analysis of the various drafts showed that the constituent elements of aggression were as follows:

1. The agent or aggressor, i.e., one or more States Members of the United Nations, for sanctions could be applied only to them.

2. The victim, i.e., a State or Non-Self-Governing Territory. It would be useful to specify what was meant by those expressions and to indicate that, if the victim was a State, the vulnerable elements were its territory, population, armed forces, sovereignty and political independence, while the vulnerable elements in a Non-Self-Governing Territory were its population, territory and armed forces, if any.

3. The effect or result, i.e., the violation or disturbance of international peace and security. Hence, minor frontier incidents should not be considered as acts of aggression.

4. The means or instrument, which could be expressed as "the use of armed force" and did not entail embarking upon an enumeration that the progress of science would inevitably render incomplete.

5. The last constituent element of aggression was the idea of initiative or provocation, which appeared in the Soviet Union draft resolution.

43. He read a definition of armed attack that included and specified the meaning of the elements he had enumerated.

44. In his view, that general formula made it possible to dispense with the enumerations of specific acts given in paragraph 1 (b), (c), (d) and (e) of the USSR draft resolution and paragraph 2 (a), (b), (c), and (e) of the Panamanian draft.

45. The formula had the double advantage of covering all the innumerable cases that could be imagined and of leaving the competent United Nations organ or organs to decide each case on its merit.

46. He thought that all the acts dealt with in his formula were acts of armed attack but he could not maintain the converse, namely that every possible act of armed attack was covered by that definition. It would accordingly be desirable, among other things, to insert after the general formula a provision covering both the declaration of war—which amounted to a threat of the use of armed force (the proposed definition avoided referring to threats in order not to justify aggression in the guise of preventive war) but was more than that because the immediacy of that threat actually constituted aggression—and the support for armed bands referred to in paragraph 2 (d) of the Panamanian draft.

The meeting rose at 6 p.m.