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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 and Add.1, A/C.6/L.332/Rev.1, A/C.6/L.334/Rev.1, A/C.6/L.335/Rev.1, A/C.6/L.336/Rev.1, A/C.6/L.337 (continued))

**CONSIDERATION OF DRAFT RESOLUTIONS AND PROPOSALS
BEFORE THE COMMITTEE (continued)**

1. Mr. CHOT (Belgium) observed that although the general debate had been completed, the complexity and divergence of the draft resolutions before the Committee were such that the discussion of those texts differed little from the general debate. To continue such a discussion could serve no useful purpose, as all the concessions to be expected at the current session had already been made, and the positions of all delegations had become crystallized.
2. He therefore urged the Committee to turn to the question of its further procedure. As the French representative had explained (416th meeting), there were only three possibilities. The first was to vote on the various definitions proposed, with the risk of either rejecting them all or adopting one by so slight a majority that it would be rejected by the General Assembly, so that the question would no longer be on its agenda. The second was to refer the matter to a working group, which could hardly, however, be expected to overcome the difficulties the Committee had found insuperable; such a course would merely delay the final failure by a few days. The third, and by far the most promising and reasonable solution was to entrust the work of defining aggression to a special committee, as proposed by the delegations of Lebanon, Syria and Yemen (A/C.6/L.337).
3. He moved an amendment to that proposal, to the effect that the special committee should be asked to report to the eleventh, instead of the tenth, session of the General Assembly. As could be seen from past experience, time was working in favour of a conciliation of views; in two years, the current negotiations on disarmament might be successfully concluded, which would greatly facilitate the task of defining aggression; and the agenda of the tenth session was already heavy.

Postponing the matter by two years would greatly increase the chances of arriving at a generally acceptable definition.

4. Mr. RÖLING (Netherlands) said that the USSR draft resolution (A/C.6/L.332/Rev.1) had met with almost universal criticism. Its main failing was the insistence on the automatic application of the principle of the first shot; it would be only too easy for a potential aggressor to "arrange" for that shot to be fired by his future victim. Moreover, if it was accepted that a frontier incident did not constitute aggression, the principle of the first shot could not be decisive. Recent history had shown that it was not always easy to determine the demarcation line between frontier incidents and aggression. Thus, the fighting that had taken place on the Manchurian-Russian border in 1938-39 had been recognized at the time as border incidents and had led to the setting up of a boundary commission. In 1946 however, at the Tokyo trial, those incidents had been described as wars against the USSR. Consequently, the classification of an occurrence as either a frontier incident or a war seemed to depend on the power of the State concerned. Since any of the events mentioned in paragraph 1 of the Soviet draft might amount only to frontier incidents, the principle of the first shot was both useless and dangerous.

5. Paragraph 5 of the Soviet draft resolution, which recognized the full discretionary powers of the Security Council, seemed of scant value as a guiding principle that might assist in determining the aggressor. Paragraph 6 appeared to imply that aggression could, in certain circumstances, be justified. Such a supposition was wrong, for aggression could never be justified. The use of force, on the other hand, might even be justified in some of the circumstances expressly indicated in paragraph 6. For instance, the violation of a disarmament treaty or of a treaty prohibiting the production of nuclear weapons might call for forcible counter-measures. That fact had been recognized by the General Assembly's approval of the first report of the Atomic Energy Commission by resolution 191 (III). Paragraph 7 of the Soviet draft was an exceptionally cynical provision. The rights it granted to the threatened State had never been questioned, while its categorical prohibition against the crossing of a frontier as a defensive measure apparently obliged the victim State to wait patiently for its doom. The growing unwillingness manifested in the Committee to adopt the Russian proposal clearly showed that a solution had to be sought elsewhere.

6. The Netherlands delegation was also unable to support the Paraguayan draft resolution (A/C.6/L.334/Rev.1). The text used terms alien to the Charter and lacked consistency, while the general formula was at variance with the enumerated examples.

7. Though the Paraguayan draft relied on Article 39 of the Charter, it used the novel term "armed aggres-

sion". Other terms employed in the draft were either not mentioned in the Charter or were used in a context different from that in which they occurred in the Charter. If those terms implied some new legal viewpoint they were unacceptable, since the Committee was not entitled to change the law. If, on the other hand, they purported to indicate the established legal position, the proper expressions to use were those laid down in the Charter.

8. Although operative paragraph 1 of the Paraguayan draft specified that armed aggression could be committed only through the employment of armed force, paragraph 2 recommended that a declaration of war and the organization of armed bands for offensive aims should also be deemed to constitute armed aggression. The Paraguayan representative had explained that those two eventualities had to be mentioned because, although they did not constitute the employment of armed force, they nevertheless amounted to such serious threats of force that they should be regarded as armed aggression. In exceptional circumstances, the threat of force might amount to aggression, but it seemed inconsistent to class as aggression the organization or toleration of armed bands, without further qualification, while the organization of enormous armies was not so regarded.

9. The joint draft resolution proposed by Iran and Panama (A/C.6/L.335/Rev.1) limited aggression to the use of armed force without mentioning the immediate threat of such use or the use of force against a territory under an international regime. Thus, although no provision was made for those two important contingencies, a frontier incident or the use of armed force to apprehend a fugitive offender would amount to aggression. The term "force" clearly required qualification. As to operative paragraph 2, if the listed examples were aggression "in all cases" the introductory phrase was meaningless. Moreover, some of the actions listed in paragraph 2 (d), such as the organization or toleration of armed bands, did not involve the use of force. For those reasons, the Netherlands delegation was unable to support the joint draft resolution.

10. The Chinese proposal (A/C.6/L.336/Rev.1) suffered from the same defects as the joint draft. Not every unlawful use of force was aggression. Moreover, the Chinese draft included in its examples events that amounted only to threats. Lastly, operative paragraph 3 seemed incomprehensible. It was not clear what measures were envisaged. If they amounted to the use of force, a distinction was being made between such use of force and "armed attack". If, on the other hand, the measures did not amount to the use of force, the provision did not belong in a definition of aggression. Consequently, the Chinese draft resolution was also unacceptable to the Netherlands delegation.

11. In the opinion of many delegations, the definition of aggression had two aspects. It had to indicate, on the one hand, what forms of forcible action were prohibited and, on the other hand, what forms of forcible reaction were permissible. In that connexion, it had to be stressed that even if the type of aggression that justified Security Council action under Article 39 was the same as that which might justify self-defence under Article 51, the latter was a more restrictive provision. In any event, however, the more sweepingly a definition prohibited aggression the greater would

be the scope of what it admitted, by implication, as self-defence.

12. It was worth surveying the present legal situation. First, there was no reason to assume that all the acts prohibited by Article 2 (4) of the Charter were acts of aggression. That provision merely traced the periphery within which the concept of aggression was situated. Secondly, Article 39 implied that aggression was a specific form of breach of the peace, approximating the former concept of war. Thirdly, Article 51 authorized in exceptional circumstances armed retaliation before United Nations intervention. The function of the United Nations to ensure peace and security was the very reason why aggression and self-defence were not complementary. Whatever might have been true in former times, today cases of aggression could arise that justified Security Council action but not defensive war. Consequently, the Committee should remember that it was defining only aggression and not self-defence. The problem of self-defence could be left aside, even if some reference to Article 51 was made.

13. If that thesis was accepted, a closer examination of Article 2 (4) was necessary. Not all forbidden use of force came under the notion of aggression. League of Nations practice had demonstrated that border incidents could never be classed as acts of aggression. The Greco-Bulgarian conflict of 1925 afforded a striking example. Similarly, the dispute between Paraguay and Bolivia in 1934 had given rise to international action that had plainly recognized that the principle of the first shot was not decisive.

14. When the Charter mentioned the use of force against the political independence or territorial integrity of any State, it meant warlike action. Such action against a territory under an international regime, or an otherwise non-self-governing territory, would doubtless come in the same category and was provided for by the last part of Article 2 (4). Nevertheless, in indicating the quality of the force required to constitute aggression, it was advisable to refer only to force directed against a State. An enumeration of all other cases of aggression would be a difficult task. In that connexion, the reference in the recent Netherlands proposal (410th meeting, paragraph 46) to a territory under an international regime might arouse certain misgivings; it might therefore be preferable to restrict the definition to aggression against a State, leaving it to the competent organs to rule on other cases by analogy.

15. Article 2 (4) also called on States to refrain from the threat of force. Although many delegations had argued against the recognition of a threat as an element of aggression, the various draft definitions before the Committee, while restricting themselves to the use of force in the general formula, enumerated examples amounting only to threats of force. Threats, as recent history had shown, belonged to the realities of international life. The Mexican representative had recognized that a threat of force might achieve the same results as the use of force, but he had then suggested that no provision should be made for threats in a definition of aggression since such cases could be dealt with by the competent organs by means of an intelligent interpretation of the definition (415th meeting). Such a course, however, would be a departure from normal legislative practice. The definition should at least provide that, in exceptional cases, an immediate

threat of force against territorial integrity or political independence might amount to aggression.

16. By Articles 39 and 51, the Charter recognized two cases in which States were authorized to use force. In that connexion, it might simplify the issue if the definition merely referred to legitimate self-defence, without prejudicing the question whether threats might in some cases justify self-defence. The Netherlands delegation was convinced that the right to self-defence included the right to retaliate against an immediate threat of armed attack. As he had stated before, that view was borne out by the judgments at Nürnberg and Tokyo and by the decisions of the General Assembly. The Byelorussian representative had wrongly affirmed that he (Mr. Röling) had made a selective use of precedent (411th meeting). The statement that the Netherlands had been entitled to declare war in reaction to the threat of invasion was to be found in the text of the Tokyo judgment itself. Furthermore, notwithstanding the arguments of the Czechoslovak representative (413th meeting), the Nürnberg Tribunal had recognized in principle the right of defence against an immediate threat. Finally, he would point out to the Mexican representative, who had spoken of violations of atomic energy agreements, that the first report of the Atomic Energy Commission, adopted by the General Assembly by resolution 191 (III), stated that "a violation (of an agreement) might be of so grave a character as to give rise to the inherent right of self-defence recognized in Article 51 of the Charter of the United Nations".¹

17. The Netherlands delegation, although perfectly certain of its premises, would agree to leave the question of an immediate threat undecided, as the definition required was one of aggression and not of self-defence.

18. The Netherlands delegation did not share the view that it would be helpful and desirable to list specific examples of aggression in addition to a general formula. It was impossible to enumerate events that would constitute aggression in all cases and under all circumstances. Modern international instruments no longer mentioned war but spoke of the use of force, as in Article 2 (4) of the Charter. Such use of force included all warlike activities, whether the troops involved were regular or paramilitary and whatever weapons or methods were employed.

19. For those reasons, the Netherlands delegation would suggest a general formula in the following terms:

"Aggression among States in their international relations is the use of force against the territorial integrity or political independence of any State; in exceptional cases the imminent threat to use such force may amount to aggression; it being understood that this definition may never be construed to comprise acts of legitimate self-defence or any act in pursuance of a decision or recommendation by a competent organ of the United Nations".

That revised Netherlands formula might be adopted either for general use or for the code of offences against the peace and security of mankind.

20. Various procedural expedients had been proposed to enable the Committee to escape from its present impasse. The first suggestion was the setting up of a

working group. A number of working groups had been set up in the past without achieving any result. Moreover, the next item on the Committee's agenda was the code of offences, the discussion of which would be facilitated if the Committee's conclusions as to the definition of aggression were first known. Consequently, the Netherlands delegation could support the establishment of a working group only if that group were given a time limit of twenty-four hours and requested to report at the Committee's next meeting.

21. The second procedural proposal — which was that a special committee should be established — was contained in the joint draft resolution submitted by Lebanon, Syria and Yemen (A/C.6/L.337). But an earlier special committee had achieved no results despite the most serious effort. Moreover, the proposed special committee would have to report to the tenth session of the General Assembly, at which the Sixth Committee's agenda would in any case be quite heavy. Consequently, the Netherlands delegation would strongly oppose the suggestion that the special committee, even if constituted, should report at the next session.

22. The United States representative had suggested that all the draft definitions should be voted upon and rejected and the topic shelved. The Netherlands delegation believed that the debate should continue and that the proposals should be voted upon at its conclusion. Meanwhile, a twenty-four hour effort by a working group might conceivably serve some purpose. If the various positions remained irreconcilable to the very end, and no vast majority could be found in favour of a definition, the Netherlands delegation would support a long-term postponement of further consideration of the item or would even be in favour of its being dropped.

23. Mr. JORDAN (Bolivia) reviewed the efforts made in international agreements and at international conferences to ensure the settlement of disputes by peaceful means and to prevent aggressive wars. The Sixth International Conference of American States in particular had condemned aggression and the fomenting of civil war. At the Seventh Conference, Mexico had proposed a draft code of peace that had included an enumerative definition of aggression. The Inter-American Conference for the Maintenance of Peace had instructed its committee of experts to study a Bolivian proposal for a definition of aggression and for the punishment of the aggressor. The Pact of Paris (1928) and the Treaty of Non-Aggression and Conciliation (1933) prescribed a procedure for settling disputes by peaceful means. The 1936 Convention to coordinate, extend and assure the fulfillment of the existing treaties between the American States condemned wars of aggression and provided that all questions affecting peace in the Western Hemisphere should be settled by friendly and peaceful means. The Declaration of American Principles, adopted at Lima in 1938, prohibited intervention by States in the internal affairs of other States and the use of force as an instrument of national and international policy. The Third and Fourth Meetings of Consultation of Ministers of Foreign Affairs had laid down penalties for countries that committed acts of aggression and obstructed co-operation for defence; they also had expressed support for the efforts of the United Nations to maintain peace and prevent aggression.

¹ See *Official Records of the Atomic Energy Commission, first report to the Security Council*, part III, 4.

24. Unfortunately, the various instruments he had cited had not always been able to prevent acts of aggression and dismemberment of the victim State and spoliation of its natural resources. The Bolivian Government strongly believed that States had the right to dispose of their own natural resources and that interference by one State in another State's economic life constituted a form of aggression (A/2638, annex, V). That view was also reflected in General Assembly resolution 626 (VII), which had been inspired by an analysis of those principles made by the Bolivian and Uruguayan delegations.

25. The provisions of Chapter VII, and in particular Article 51, of the Charter concerning the right of individual or collective self-defence corresponded to those of Chapter V of the Bogotá Charter and of article 3 of the Inter-American Treaty of Reciprocal Assistance, signed at Rio de Janeiro in 1947.

26. With reference to the type of definition to be adopted, he said the Bolivian delegation favoured a mixed definition that would include a reference to economic aggression.

27. Reserving the right to comment in greater detail on the various proposals before the Committee, he supported the suggestion to set up a working group to formulate a single text, taking into account the different views expressed.

28. Mr. EL ERIAN (Egypt) noted that in the joint Iranian and Panamanian draft resolution (A/C.6/L.335/Rev.1), the French text of the last phrase of paragraph 1 of the operative part diverged from the English text and the Spanish original. In the French text appeared the following phrase: "*soit l'exécution d'une décision, soit l'application d'une recommandation d'un organe compétent des Nations Unies*". The English text stated merely "in pursuance of a decision or recommendation of a competent organ of the United Nations".

29. Mr. HSU (China) agreed to delete paragraph (c) of the first operative paragraph of his delegations draft resolution (A/C.6/L.336/Rev.1) in the light of the United States representative's objection to it (415th meeting) which were justified.

30. Concerning that representative's comments on paragraph 3 of the draft resolution, he noted that the paragraph was intended to supplement paragraph 2 by providing for cases of aggression in which there was no armed attack. For example, in the case of support of the incursion of armed bands — which involved no armed attack — self-defence under Article 51 would not be justified. On the other hand, the victim State should not be denied the right to resort to measures other than armed attack to prevent such activity until the United Nations was able to intervene. The provision in the paragraph to the effect that such measures must not involve armed attack should allay the Netherlands' representative's fear that the paragraph might be used as a justification for preventive war. Naturally the provision would not in itself keep States from waging preventive wars, but so long as the United Nations was in existence, it would take appropriate action to stop such wars. Nothing would be more dangerous than to neglect the adoption of practical measures against preventive war on the pretext that it was outlawed.

31. He had answered, in his preceding statement (412th meeting), the United Kingdom representative's misgivings about including subversion in the definition. The United Kingdom representative had questioned the possibility of drafting a suitable definition in general. Although none of the drafts before the Committee was perfect, they were proof that a definition was possible. In reply to other points raised by the United Kingdom representative, he said that the landing of Allied forces in Iceland would, in current international law, be regarded as aggression, as no State could lawfully land forces in the territory of another State without the second State's consent, secured directly or under Article 49 of the Charter. Further, while it was true that aggressors always purported to be acting in self-defence, where such claims were made, it would be for the competent organs to determine whether there had been an attack or the imminence of an attack to justify armed self-defence. The Charter made only two exceptions in its prohibition of the use of force: self-defence, and action in pursuance of a United Nations decision. Article 52 did not, as had been claimed, expressly provide for regional enforcement action, and even if it were admitted that that provision was implied, any such action could be regarded only as a sort of self-defence. The commission of atrocities by a State against its own nationals would be a case of an offence against the peace and security of mankind rather than an act of aggression, and armed intervention in that connexion would be justified only if taken in pursuance of a United Nations decision under Chapter VII of the Charter. In the case of frontier incidents, it would be for the competent organs to decide whether they constituted acts of aggression on the basis of whether there had been aggressive intent on the part of any one of the States involved.

32. Turning to the other proposals before the Committee, he thought that the Paraguayan (A/C.6/L.334/Rev.1) and Iranian and Panamanian (A/C.6/L.335/Rev.1) drafts had serious shortcomings that made them unacceptable.

33. After aggressive war had been outlawed, potential aggressors had been forced to devise new methods to achieve their ends. As a consequence, indirect aggression had been invented. That in turn had led to attempts to ban indirect aggression. Unless the Committee faced the situation squarely and made provision to outlaw the promotion of organized subversive activities it would not be doing itself justice. The defect of the joint draft of Iran and Panama was that, although it mentioned the incursion of armed bands and pacific blockade — both forms of indirect aggression — it neither drew attention to indirect aggression in the abstract part of the definition nor mentioned organized subversive activities in the illustrative part. What was more, it spoke of "armed force" in the abstract definition, which, as he had pointed out in his previous statement, not only seemed to exclude indirect aggression but was contrary to Article 2, paragraph 4, of the Charter, which referred to "force" alone. Any abstract definition should include a reference to either "threat or use of force" or "use of force directly or indirectly".

34. Consequently the joint draft resolution represented no advance over the Politis definition, perhaps because too many concessions had been made in order to make it acceptable. The draft was also unfortunate from

the scientific point of view because it was not empirical. The idea of a mixed definition had found general acceptance simply because no list of acts of aggression could be exhaustive; but those acts should still be the basis and the core of the definition, and the draft resolution left out the most important acts.

35. It had been suggested that he should move an amendment to the joint draft resolution with a view to including subversion; he hoped that the authors of the draft would themselves remedy the flaws to which he had drawn attention so that no such amendment would be needed.

36. Some delegations felt that certain provisions that had been proposed for inclusion in the definition of aggression would better be covered in the draft code of offences against the peace and security of mankind. Even if that code was adopted, which was by no means certain, it would apply to individuals rather than to States, and it would be grossly unfair to prosecute individuals for offences that States could commit with impunity.

37. Mr. OLAVARRIA GABLER (Chile) said that, while he had no intention of in any way limiting representatives' freedom of expression, he thought it would be wiser to suspend any further discussion of substance and to take a decision on the two procedural proposals before the Committee.

38. Mr. HAKIM (Syria) supported those remarks and pointed out that, under rule 132 of the rules of procedure, the proposals submitted jointly by Lebanon, Syria and Yemen (A/C.6/L.337) should be voted on first.

39. After a brief exchange of views, the CHAIRMAN invited the Committee to continue its discussion of both the substantive and the procedural proposals before it.

40. Mr. MAHONEY (United States of America) said that the course of action proposed in the joint draft resolution of Lebanon, Syria and Yemen (A/C.6/L.337) was not likely to serve a useful purpose. The work done on the subject of defining aggression during the past two years had not lessened the existing difficulties; in matters of this kind, divergent views became more entrenched through reiteration. A breathing space, providing an opportunity for calm consideration, offered the best hope of a successful solution.

41. Another reason for not establishing a special committee was that at its tenth session the General Assembly would consider the question of a Charter review. If, as his Government hoped, a conference was called to review the Charter, there would be an opportunity to survey the entire field of international peace and security, and fresh insight into areas such as the question of aggression might be gained. In any further consideration of defining aggression, Governments would wish to take into account developments with respect to Charter review and the disarmament negotiations. To constitute a special committee was unnecessary and might be interpreted as merely a face-saving device. It would be better to leave the matter in abeyance and to allow Governments time to advance co-operation in closely related fields preparatory to any further consideration of the aggression problem.

The meeting rose at 1.5 p.m.