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Chairman: Mr. Edvard HAMBRO (Norway).

AGENDA ITEM 95

Need to expedite the drafting of a definition of aggression in the light of the present international situation (continued) (A/6833 and Corr.1, A/C.6/378, A/C.6/384, A/C.6/L.636, A/C.6/L.637 and Add.1, A/C.6/L.638, A/C.6/L.640, A/C.6/L.641)

1. The CHAIRMAN noted that the Committee had before it two draft resolutions (A/C.6/L.636, A/C.6/L.637 and Add.1), and also two amendments to those texts, submitted by Chile, Colombia, Uruguay and Venezuela (A/C.6/L.640) and Australia, the United Kingdom of Great Britain and Northern Ireland and the United States of America (A/C.6/L.638) respectively. Two more countries, Romania and Sudan, had now become sponsors of draft resolution A/C.6/L.637 and Add.1.

2. Mr. MOLINA LANDAETA (Venezuela) said that he did not intend to go into the substance of the question under discussion, since it had already been debated at some length in plenary meetings of the Assembly. He would confine himself to three aspects of the problem. First of all, was it necessary and opportune to draft a legal definition of aggression? Most Member States would undoubtedly be inclined to answer that question in the affirmative, and indeed all of them would do so if they were able to leave aside entirely the serious political problems afflicting the contemporary world. In the view of his delegation, such a definition would be very useful to the international community, because, in addition to representing a major step towards the achievement of the prime purpose of the United Nations, namely, the maintenance of international peace and security, it would considerably strengthen the influence of the law on the activities of the Organization. However, his delegation believed that the task should be accomplished without undue haste, with complete impartiality, and without losing sight of the ultimate purpose of the definition, which was to serve the interests of the United Nations and of Member States.

3. Secondly, there was the question how soon the drafting of the desired definition should be completed. That was a highly controversial question and would continue to be so, even if everyone agreed on the need to define aggression. His delegation did not think that a

precise deadline could possibly be set at the moment, and it wished to stress that it did not agree either with those who would like to rush through some of the stages or with those who would like to obstruct the process by means of delaying tactics. In 1963, when the debate on principles of international law concerning friendly relations among States had appeared to be deadlocked, the Committee, through the efforts of the delegations of the Latin American, Asian, and African countries, had succeeded in reducing the controversies to their true dimensions and adopting a properly objective approach to the question. The current situation with respect to defining aggression was similar, and a comprehensive solution must again be found, in order that the work might proceed along the right lines.

4. The third question, namely, the procedure to be followed, was the one which perhaps offered the best prospects of reconciliation, since the alternatives were very limited. His delegation believed that the Sixth Committee, which was the natural forum for dealing with the problem under discussion, could and should arrive at a proper legal definition of aggression. It had, in fact, considered the question in the past but had been no more able than the Special Committees and the International Law Commission to draw up a definition. Thus, after seventeen years of fruitless efforts, there was, in a sense, a challenge to its prestige.

5. For practical reasons, his delegation felt that the first phase of the process of drafting a definition of aggression should proceed in a special organ of the General Assembly, under very flexible terms of reference but with no authority to submit draft definitions to the Assembly. The special organ would be instructed, with a view to facilitating the completion of the complex task referred to the Sixth Committee, to perform some preparatory work and report on it to the Assembly at its twenty-third session. The Sixth Committee would then hold a debate on the substance of the question, at the end of which it would decide whether to appoint another organ to draft the desired definition or whether to undertake that task itself. In any event, the main concern should be to avoid another political debate in the Sixth Committee. His delegation would have no objection if the preparatory work in question was entrusted to the Secretariat—a course of action which would save the expense of a committee and would have obvious budgetary advantages.

6. However, if it was decided to establish a committee, it would be for the President of the General Assembly to appoint its members, and the delicate problem of equitable geographical distribution would then arise once more. In 1966, when the United Nations Commission on International Trade Law had been established, the countries of Latin America had agreed, in the interest of co-operation, to be under-repre-

sented in the Commission, but his delegation and the Ecuadorian delegation, speaking on behalf of many of the Latin American countries, had stated, as indicated in the report of the Sixth Committee, that it must be understood that that action must in no event be regarded as a precedent.^{1/}

7. Some speakers had said that the question of defining aggression must be linked to the results of the work of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States; although his delegation recognized that the formulation of the principle prohibiting the threat or use of force would facilitate the drafting of the definition of aggression, it did not agree with that view, since that Special Committee, which had not even tried to define such terms as "co-operation" and "good faith", would be even less willing to define aggression.

8. Lastly, while it might be premature to discuss the form of instrument in which the definition of aggression would be set out, it was reasonable to suppose that it would probably be a resolution adopted by a sufficient number of States to invest it with a special character, as in the case of General Assembly resolutions 1514 (XV) and 2131 (XX).

9. Mr. CAPOTORTI (Italy) felt that the first question to be pondered on was whether the effort required in drafting a formal definition of aggression could help to prevent or to check aggression. It should be borne in mind that a legal definition of an act was necessary only if it was intended to produce certain legal effects. The United Nations system did not need a definition of aggression; for, where the behaviour of Member States was concerned, the obligation to refrain from the threat or use of force, imposed on them under the terms of Article 2, paragraph 4, of the Charter of the United Nations, included the obligation not to commit acts of aggression, since such acts always involved the use of force.

10. Again, with regard to the functions entrusted to the Security Council by Chapter VII of the Charter, it was clear that under Article 39 the Council must take immediate action whenever there was any threat to the peace, breach of the peace, or act of aggression. However, the notion of breach of the peace was broader than that of aggression, as could be seen from Article 1, paragraph 1, of the Charter. Moreover, none of the provisions of Chapter VII, enumerating the measures which the Security Council could take, made any distinction between an act of aggression and the other two contingencies referred to in Article 39. Consequently, the Council could act even in situations to which it was doubtful that the notion of aggression applied, provided that international peace and security were at stake.

11. Some delegations had argued that the defining of aggression would make it possible to resume the work of drafting a code of crimes against the peace and security of mankind. He pointed out in that connexion that the principles of international law proclaimed in the Charter of the Nürnberg Tribunal,^{2/} which had

made the planning, preparation, initiation or waging of a war of aggression a crime, had been confirmed by the General Assembly in its resolution 95 (I). Moreover, as everyone was aware, the crux of the problem of international penal law was the difficulty of creating an international criminal jurisdiction.

12. For those reasons alone, it was doubtful whether there was any need to arrive at a definition of aggression in the near future. However, assuming that the General Assembly decided to resume its efforts to define aggression in greater detail, it would be reasonable to question whether the existence of such a definition would have the effect of improving the United Nations security system. The USSR representative had been right in saying (1017th meeting) that the development of legal rules must be continued, even if there was a risk of their being violated, but the question was whether the existence of a definition would make the Security Council action more effective. Under the terms of Article 39 of the Charter, the Security Council possessed three powers which were closely linked—the power to determine the existence of any threat to the peace, breach of the peace, or act of aggression, the power to opt for either a recommendation or a decision, and the power to indicate what measures were to be taken to maintain or restore international peace and security. It was to be feared that the discretionary nature of those powers, which reflected the structure of the contemporary international community, would be jeopardized by the existence of a definition of aggression.

13. His delegation believed that, if and when the Security Council had greater authority, based on closer cohesion among its members, it would be better able to identify and suppress acts of aggression; for it was common knowledge that the current difficulties were due, not to the inadequacy of the legal rules prohibiting aggression, but to the divergent views of States concerning their application.

14. The attempt to find a definition of aggression raised still other problems, including the problem of the link between that notion and many other related legal notions, such as territorial integrity, the threat and use of force and, most of all, self-defence. It was clear that each specific case of aggression could be defined only in the light of other rules of international law. Consequently, the preparation of an over-all definition meant delving deeply into other spheres of international law.

15. Moreover, it was impossible to ignore the existence of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States when considering the establishment of another special organ to define aggression. While his delegation agreed that the existing Special Committee could not be asked to take on that new task, it considered it undeniable that some of the Special Committee's terms of reference related precisely to the sphere of aggression. One of the Special Committee's tasks was to formulate the principle of non-intervention in matters within the domestic jurisdiction of any State and the principle prohibiting the threat or use of force, and a reading of its debates on the second of those principles disclosed exactly the same points as had been dealt with in the discus-

^{1/} See *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 88, document A/6594, para. 28.

^{2/} See United Nations, *Treaty Series*, vol. 82 (1951), II, No. 251, p. 284.

sions on the question of defining aggression. In the view of his delegation, it was not until the Special Committee had completed its work that the Assembly would be in a position to reconsider the question of defining aggression and to embark on that task, if it was justified by the circumstances.

16. His delegation wished to emphasize that any special organ which might be given the task should adopt the method of consensus if it was to do work of value to the development of international law.

17. If, despite the futility of past efforts, the General Assembly should decide to press on with the drafting of a definition, his delegation would participate in the work because it believed that it was important to avoid the production of different definitions, owing to lack of co-ordination, for fundamental notions relating to one and the same question of substance. The proliferation of rules, which afflicted many contemporary Member States, was even more serious when it occurred in the United Nations, where, in the absence of any sovereign authority, everyone could invoke the rule which best served his interest. That was one more reason for not undertaking a definition of aggression until the conclusions of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States were to hand.

18. His delegation would be unable to support draft resolution submitted by the USSR (A/C.6/L.636). It appreciated that draft resolution A/C.6/L.637 and Add.1 was an improvement on the other text, but it did not think that the drafting of a definition of aggression was of such urgency that it was necessary to set up a special committee whose report would be considered by the General Assembly at its twenty-third session. That remark applied also to the amendment to that draft resolution submitted by Chile, Colombia, Uruguay and Venezuela (A/C.6/L.638), although the wording it proposed stated the terms of reference of the Special Committee in more appropriate terms.

19. Mr. KOZLUK (Poland) said that his delegation had already stated in the General Assembly (1613th plenary meeting) that it considered that a definition of aggression was urgently needed and that a special committee should be established to draw up a draft resolution for submission to the Assembly at its twenty-third session.

20. His delegation acknowledged the difficulties of the task, which had rightly been stressed by many representatives, but it could not subscribe to the conclusion that they were all insurmountable. It could not agree with those who argued that aggression did not lend itself to definition and that it was impossible to enumerate its elements. The arguments which had been advanced against the definition of aggression were the same ones as had been put forward as far back as 1933, when the USSR had raised the question in the international forum. The efforts to draw up a definition of aggression had always been linked to the struggle for collective peace and security, and history had shown that those who opposed it were those who were preparing for, condoning or justifying aggression.

21. The argument that a definition would not be sufficient to prevent acts of aggression carried no weight, because a definition would have considerable moral and political effect and would enlighten world public opinion, thus discouraging any potential aggressor.

22. It had also been said that those who favoured the definition of aggression had only propaganda purposes in view. It would, indeed, be most heartening if that were so, but, unfortunately, it was the gravity of the present situation which made it necessary to define aggression as a matter of urgency.

23. Mr. YANKOV (Bulgaria) said that it was clear from the discussions which had taken place at the plenary meetings of the General Assembly on the question of defining aggression that the threat or use of force and acts of aggression lay at the very source of the existing international tension—as was shown by the wars of aggression in Viet-Nam and the Middle East—and that the United Nations and the international community must redouble their efforts to ensure international peace and security, efforts for which the Secretary-General had called in the introduction to his annual report on the work of the Organization (A/6701/Add.1). It was thus urgently necessary to take effective measures to strengthen the United Nations collective security system and to promote the rule of law in international relations, and the overwhelming majority of delegations agreed that a definition of aggression could play an important preventive role within the framework of those collective measures. Of course, such a definition would not automatically eliminate violence and acts of aggression, but it could contribute considerably to the strengthening of world peace.

24. That view was not, however, shared by all. Those who were opposed to the definition of aggression put forward two kinds of argument. They claimed, firstly, that the drafting and adoption of a definition of aggression were neither possible nor desirable and, secondly, that the existence of such a definition would have no positive effect on the functioning of the collective security system and would not facilitate the task of the Security Council. With regard to the first type of argument, it should be pointed out that the General Assembly had long since settled the question of the possibility and desirability of defining aggression when it had adopted resolutions 599 (VI), 688 (VII) and 895 (IX) and that since 1957 the only question to be decided had been when the task should be taken up. Nevertheless, those arguments had been advanced and called for comment.

25. It had been pointed out, first of all, that the failure of all efforts to draft up a generally acceptable definition of aggression was ample proof of the impossibility of the task. That amounted to a capitulation in the face of the difficulties and was certainly not an approach which would produce positive results in the codification and progressive development of international law. It had also been maintained that it was impossible to draw up a generally acceptable definition of aggression owing to differences in the philosophical and ideological conceptions of aggression and to the political, moral, military, legal and other implications of such a definition. It was true that aggression was

an extremely complex notion which reflected a great diversity of legal theories and that in practice the distinction between an act of aggression and self-defence was very difficult to establish.

26. Nevertheless, international practice bore witness to the fact that the concept of aggression was already embodied in a number of international instruments and that some of its constituent elements were recognized as rules of *jus cogens*. The concept of aggression as an international crime was embodied in the Briand-Kellogg Pact of 1928,^{3/} the 1933 London Conventions,^{4/} the Charter and Judgement of the Nürnberg International Military Tribunal, and a number of important statements of the Allied Governments during the Second World War, and in the United Nations Charter and a number of subsequent bilateral and multilateral agreements. All that proved that the meaning and implications of aggression had the character of *lex lata* in international law and that it was possible to draw up a definition of aggression.

27. Secondly, with regard to the role which a definition of aggression might play, he recalled that the General Assembly, in resolution 599 (VI), had expressed the view that it would be of definite advantage if directives were formulated for the future guidance of such international bodies as might be called upon to determine the aggressor. The General Assembly, in resolution 688 (VII), and the Secretary-General, in 1952, had recognized the potential usefulness of a definition of aggression, which had been stressed also by the sponsors of draft resolutions A/C.6/L.636 and A/C.6/L.637 and Add.1. Indeed, a definition of aggression might strengthen the United Nations collective security system and augment, in particular, the effectiveness of the functioning of the Security Council. It would promote the progressive development of international law and, in addition, serve to reaffirm the principle of the inadmissibility of the use of force and to enlighten world public opinion. In short, the adoption of a definition of aggression, with all its moral, political and legal implications, would give the United Nations a greater role in determining the existence of acts of aggression and establishing the responsibility of the aggressors.

28. To those delegations which maintained that the adoption of a definition of aggression would tie the hands of the Security Council and restrict its freedom of judgement, he replied that the Council would still be able to determine the existence of an act of aggression, as it was authorized to do by Charter, while bearing in mind the elements of a generally accepted definition of aggression. As Oppenheim had rightly pointed out, the adoption of a definition of aggression did not necessarily deprive Governments or tribunals of the freedom of appreciation of the merits of a particular situation. No definition acted automatically. It always rested with a tribunal, a State or any other agency to apply the elements of the definition to the case before it. In municipal law, no one would dream of asserting that the adoption of

a definition was dangerous on the ground that its rigid application might give rise to injustices. The Bulgarian delegation wished to stress that a definition of aggression must not be regarded as an automatic formula which would restrict the powers of the Security Council or any other competent organ.

29. The definition of aggression was a law-making endeavour with many facets. The scope of the definition, whether general or enumerative, should be broad enough to embrace all forms of unlawful use of force against the territorial integrity and political independence of States, taking into account the right of self-defence and the legitimate character of the struggle of colonial peoples for independence. Moreover, the definition of aggression should not be confined to the most recent acts of aggression, although it could not be denied that the present international situation called for more effective action.

30. The drafting of a definition of aggression with the necessary caution and precision could be carried out only by an organ with a specific assignment. The draft resolutions before the Committee (A/C.6/L.636 and A/C.6/L.637 and Add.1) both met that requirement, but the draft submitted by the Soviet Union (A/C.6/L.636) placed greater emphasis on the urgency of the matter in view of recent acts of aggression. The Bulgarian delegation would be inclined to prefer that draft, but thought that it would be possible to combine the two texts. It would not be able to support the four-Power amendment contained in document A/C.6/L.638 because it introduced an element of uncertainty regarding the future course of action.

31. Mr. YASSEEN (Iraq) said that his delegation had indicated in the debate in the General Assembly (1615th plenary meeting) the reasons why it considered it useful and necessary to define aggression. If law was not to be an abstraction, it must be formulated in the light of realities. When a legal concept had to be defined, the usual solution was to entrust the task to the organ that would have to apply it, but that organ, whether in the international or the domestic sphere, might not be in a position to perform its task if irreconcilable views existed among its members. That was the situation that had obtained within the United Nations since it had proposed to define aggression.

32. The purpose of defining any concept, and particularly that of aggression, was to provide an objective criterion which would make it possible to avoid abuse and arbitrariness. If it were well formulated, the definition of aggression would not impede the exercise by the competent organs of their discretionary powers; it would serve to reveal the bad faith with which certain States pursued a policy of self-seeking and favouritism. By the very fact of being drawn up in advance, the definition would guarantee the objectivity of the criterion it provided and make it possible to attain the desired goal, which was to achieve a just solution.

33. The definition of aggression could be useful for the implementation of international law and, in particular, of certain rules which involved the notion of aggression and which fell under Article 2, paragraph 4, of the Charter, even though the word "aggression" did not appear in that provision. Moreover, the police

^{3/} General Treaty for Renunciation of War as an Instrument of National Policy, signed in Paris on 27 August 1928 (League of Nations, *Treaty Series*, vol. XCIV (1929), No. 2137, p. 57).

^{4/} League of Nations, *Treaty Series*, vol. CXLVII (1934), No. 3391, p. 69; *ibid.*, vol. CXLVIII (1934), No. 3405, p. 81.

action which was the principal task of certain United Nations organs did not exclude the need to determine responsibilities so as to promote the establishment of lasting peace.

34. In his delegation's view, the failure of previous attempts to define aggression was in no way due to the lack of elements by which to define it. Those elements existed and a sincere effort should lead to a formulation. When work was started on the definition of aggression, thought must, of course, be given to clarifying the scope of the concept and, consequently, to defining the limits to be placed, as a counterpart, on certain provisions of the Charter and of international law generally.

35. The interests of certain countries were a major factor in past failures. Some opponents of the enterprise had declared with remarkable bad faith that they failed to see how Article 39 of the Charter could be applied, since the efforts to define aggression were not succeeding. Furthermore, they had invoked Article 51 of the Charter as grounds for categorizing armed attack as self-defence—an argument reminiscent of a well-known Nazi tactic.

36. A clear definition of aggression would also have the important advantage of strengthening the control exercised by world public opinion, which remained the most effective guarantee of respect for the law.

37. The value to be attributed to the definition of aggression ultimately adopted would depend on the value generally placed on the type of text in which it appeared. In international legal practice, the recommendations of the General Assembly appeared to be recognized as having a force which, though less than that of legal obligations, was greater than that of moral obligations. However, the Assembly could, if it wished, go much further than that and define aggression in an amendment to the Charter.

38. Because of its technical nature, the task of defining aggression could not be entrusted to an organ with as large a membership as the Sixth Committee. Nor, in view of the need for a rapid solution, could the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States be asked to assume the task, since it was already overburdened with work. The best course was to establish a special committee for the purpose, which should draw up a draft definition to be submitted to the General Assembly at its twenty-third session.

39. Mr. ANDRIAMISEZA (Madagascar) said that he had listened with the greatest interest to the different statements of views on the question of defining aggression. His delegation considered that the three questions to be answered, namely that of the desirability of defining aggression at the present time, that of the form which the definition should take and that of the content of the definition itself, could not be separated from one another. For its own part, his delegation could not conclude that the proposed definition would serve no purpose. It considered that if the definition that was formulated was incomplete, it could always be improved. The greatest possible effort must nevertheless be made to make it a lasting definition and accordingly, though short-lived political considera-

tions had, of course, to be taken into account, they must not be allowed to predominate.

40. His delegation did not share the view that aggression was a political concept capable of evolving with the international situation, thus making any valid definition impossible. Nor did it believe that the political character of such organs as the General Assembly and the Security Council, which were responsible for applying that concept, could set a political stamp upon it. It did not question the possibility of giving the concept a juridical expression which would be of undeniable value. It was the duty of the Members of the Organization to draw up such a definition, to which the United Nations organs could at least refer.

41. In so far as they both recognized the need for the proposed definition, the two draft resolutions A/C.6/L.636 and A/C.6/L.637 and Add.1 were equally acceptable to his delegation. All undue haste must be avoided in the work that lay ahead and the task must consequently not be entrusted to the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, which would be overburdened with work. However, before setting up a new special committee, the Sixth Committee should study the financial implications of the proposal and decide on the composition of the proposed body and the method of appointment of its members. Clearly, a balanced membership was the primary condition for fruitful work by that committee.

42. Mr. TILINCA (Romania) said that the efforts to define aggression were particularly important in the present circumstances and should contribute to international security, to respect for the norms of law and to the mobilizing of world public opinion against acts preparing for aggression. Romania's position on the item under consideration was directly linked with the principles that guided its foreign policy. It believed that only those international relations which were based on respect for the right of each nation to determine its own future and its way of development without any interference from outside and to reaffirm its personality and dignity were consistent with the principles of international law governing friendly relations and co-operation among States.

43. Stressing the changes brought about by the broadening of the international community, he recalled the statement his delegation had made in the General Assembly pointing out the ever-increasing influence of the small- and medium-sized countries and their interest in being protected against aggression (1612th plenary meeting, para. 49). The international community had already attempted to define aggression by enumerating its elements, as in the case of the 1933 London Convention for the Definition of Aggression, for example. Admittedly, the absence of a clear definition had not prevented Nazi aggression from being condemned, but the existence of such a definition would have been a positive factor in mobilizing world public opinion against the aggression that was being prepared. In any event, experience showed that uncertainty and arbitrariness as well as subjectivity led to contradictory interpretations.

44. His delegation was in favour of referring the formulation of a definition of aggression to a special committee, which would study carefully the principles involved and formulate them, taking into account international practice, so as to propose a definition that would be generally acceptable. It was for those reasons that his delegation had joined in sponsoring draft resolution A/C.6/L.637 and Add.1.

45. Mr. KHASHBAT (Mongolia) said that his delegation had already expressed its views on the item in the General Assembly (1618th plenary meeting, paras. 179-198). He praised the initiative taken by the USSR, which was making it possible for a large number of young African and Asian States, some of which had been victims of aggression in the past or were being subjected to violence at the present time, to take part in the debate on the definition of aggression begun in 1957. Mongolia, for its part, was convinced that the proposed definition would have important moral and political effects, since it would give the Security Council specific means of thwarting attempts at aggression and identifying aggressor and victim promptly.

46. The fact that both draft resolutions before the Committee proposed the establishment of a special committee to draw up a definition of aggression clearly showed that the need for a definition was recognized despite the arguments advanced by its opponents. Those arguments, which had been refuted by the Soviet delegation in particular, concealed the

political motives of their proponents, who were the very ones who had engaged in or benefited from aggression. For example, the argument that it was unnecessary to define aggression because the United Nations possessed means of acting against it was unconvincing, having regard to the fact that because of the position adopted by certain States the Organization had been unable to stop the aggression in the Middle East.

47. His delegation, which was in favour of setting up a special committee to define aggression, reserved the right to state its position on the draft resolutions before the Committee later on.

48. The CHAIRMAN announced that Morocco should be included among the sponsors of draft resolution A/C.6/L.637 and Add.1. He also announced that he had received from the Chairman of the Committee on Conferences a letter (A/C.6/L.641) indicating that if it was decided to set up a special committee on the question of defining aggression, that body could meet at Geneva from 4 June to 5 July 1968. In accordance with rule 154 of the rules of procedure of the General Assembly, the Sixth Committee should study the financial implications of setting up such a committee before taking a decision.

49. Mrs. CHESSON (Liberia) asked that Liberia should be included among the sponsors of draft resolution A/C.6/L.637 and Add.1

The meeting rose at 1.10 p.m.