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SIXTH COMMITTEE, 1352nd

MEETING

Monday, 6 November 1972,
at 3.15 p.m.

NEW YORK

Chairman: Mr. Erik SUY (Belgium).

In the absence of the Chairman, Mr. Velasco Arboleda (Colombia), Vice-Chairman, took the Chair.

AGENDA ITEM 88

**Report of the Special Committee on the Question of
Defining Aggression (continued) (A/8719)**

1. Mr. DE CEGLIE (Italy) said that two basic questions had to be answered at the present stage: first, whether the definition of aggression was still a desirable aim, justifying the cost and efforts of a special committee, and secondly, whether the results achieved by the Special Committee on the Question of Defining Aggression were encouraging enough to warrant a renewal of its mandate. With regard to the first question, the Italian delegation considered unequivocally that a definition of aggression was highly desirable for a more effective implementation of the Charter of the United Nations; the second question, however, raised more delicate problems.

2. It was surely a matter of concern to all that the Special Committee had been unable to achieve a final result after five series of meetings. Although its most recent meetings had resulted in agreement on certain parts of the formulation, very little progress had been made in such essential areas as the principles of priority and aggressive intent, the legitimate use of force, the indirect use of force, and the concept of proportionality.

3. In his delegation's view, a definition of aggression should contain only the essential elements and should in no way conflict with the United Nations Charter, including the powers assigned by the Charter to the Security Council. Also, the definition should contain only those elements and formulations which were generally acceptable to all Members and there seemed to be no point in using any procedure other than that of consensus, which alone could ensure the necessary value and political significance for the definition.

4. Accordingly, efforts to obtain a definition should be continued, but it should be borne in mind that at the current stage the most important factor for reaching a consensus was not a further technical elaboration and clarification of texts, but rather the strengthening of the political will on all sides to accept compromise solutions. His delegation would therefore give favourable consideration to proposals for alternatives to merely convening the Special Committee again in 1973. Indeed, informal consultations to be held in an institutionalized form might create a better atmosphere

for compromises than another series of meetings of the Special Committee. Perhaps informal meetings could lead to results on which the Special Committee could reach agreement late in 1973 or in 1974. His delegation did not wish for the moment to make any formal proposal to that effect, but would be glad if the Sixth Committee would consider the advisability of allowing enough time before the reconvening of the Special Committee for serious and intensified consultations.

5. Mr. MONTENEGRO (Nicaragua) said that the Special Committee's report (A/8719) reflected a praiseworthy and viable effort to reconcile views on highly controversial issues. Aggression must be eradicated from international relations as a violation of the cherished principles of the juridical equality of States, the self-determination of peoples, non-intervention, and the like. Human rights would be meaningless if the rule of force governed international relations. The principles common to all the draft proposals in the Special Committee's report should serve as guidelines for the formulation of a final definition of aggression. The Nicaraguan delegation shared the view that the Security Council alone was authorized to use force in the cases and under the conditions to be determined by that organ in the light of the circumstances and with the unanimous support of the whole international community. That approach did not exclude the concept of self-defence or the adoption of security measures by a State which was attacked, until such time as the measures decided upon by the United Nations to restore peace and security took effect.

6. Aggression should be declared a crime against international peace, a step which would enable the international community to identify aggressors and charge them with the responsibility entailed by their actions, with a view to preventing the repetition of such acts and inducing aggressors to reflect on the seriousness of their conduct.

7. Nicaragua had itself suffered the bitter consequences of aggression designed to reduce its national territory and even to overthrow its Governments. One Power, in a typical act of aggression, was currently endeavouring to reduce the territory of Nicaragua and change its frontiers, and had displayed a panoply of military force in an integral part of its territory, over which Nicaragua had always exercised sovereignty. Fortunately, the Nicaraguan National Guard had been able to ensure the tranquillity and integrity of the country.

8. Mr. ALCÍVAR (Ecuador) said the failure of the Special Committee to reach a broad measure of agreement was due to the many political as well as legal issues involved. His delegation could not agree that Article 2,

paragraph 4, of the Charter should serve as a starting-point for the definition of aggression, since that clause was exclusively concerned with the prohibition of the use of force, a principle which had come into effect before the Second World War in connexion with the Briand-Kellogg Pact. The Nürnberg Tribunal had been established in pursuance of the same principle, as confirmed by the General Assembly in its resolution 95 (I), which laid down no new legal norms and merely reaffirmed existing rules of international law. The Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, asked to define the principle that States shall refrain in their international relations from the threat or use of force, should have defined the legitimate use of force instead of merely stating that all use of force except that authorized by the Charter was unlawful—a provision which was of no practical use to the international community.

9. The task before the Special Committee was not to define the prohibition of the use of force, but to identify violations of the underlying principle of international law. In that connexion, the Charter indeed contained references to acts of aggression as violations of the obligation to refrain from the use of force, notably in Article 1, paragraph 1, and in Articles 39 and 51. The responsibility for identifying and preventing acts of aggression lay with the legally organized international community, or the United Nations. For the third world, the most important principle of the definition was the one set out in paragraph 1 of the 13-Power draft proposal (*ibid.*, annex I, draft proposal B), namely, that the United Nations only had competence to use force in conformity with the Charter. An argument which had proved to be a stumbling-block to agreement was that the sole authority of the Security Council to authorize the use of force should be mentioned in the definition. In his opinion, it was enough to state that that right was vested in the international community; it was quite unnecessary to specify in the definition what organ of the United Nations could exercise the right.

10. Critics of the 13-Power draft proposal had objected to the inclusion of the reference to sovereignty in paragraph 2 and had expressed the view that it would be wiser to adhere to the wording of Article 2, paragraph 4, of the Charter. There again, it should be borne in mind that the Special Committee's task was not to define the principle of the non-use of force which was proclaimed in that paragraph, but to set out some of the acts affecting territorial integrity, sovereignty and political independence which were contrary to international law.

11. With regard to the inherent right of individual or collective self-defence, referred to in paragraph 3, that principle was clearly an extension of an individual right to the international sphere. Just as the exercise of that right by an individual was subject to municipal law, so its exercise by a State or States was subject to international law, the pertinent rule of international law in the case at issue being Article 51 of the Charter. Similarly, enforcement action and any use of armed force by regional arrangements or

agencies was subject to a decision by the Security Council under Article 53 of the Charter.

12. Although a measure of agreement had been reached on relatively non-controversial points, other elements of the definition still presented an obstacle to the Special Committee's success. In his delegation's opinion, the notion of *animus aggressionis* had no place in the definition, since it was a subjective element: an act of aggression came into existence *per se* as soon as it was committed, and the motives for such an act were totally irrelevant. Moreover, to stipulate that aggressive intent was an essential element for determining aggression was tantamount to placing the burden of proof on the victim of aggression and might conceivably result in the aggressor being found innocent. Such an outcome was completely unacceptable.

13. It was perfectly clear that the illegal occupation of territory through an act of aggression could not be recognized. That was a reaffirmation of the principle, proclaimed at the time of the League of Nations, that an act of war could not create, modify or extinguish any right.

14. It had been argued during the debates that colonial countries and territories should not be mentioned in the definition. Ecuador strongly opposed that view, since it considered that the use of force to attain freedom and independence was a legitimate exercise of the right to self-determination. Incidentally, it did not agree that the use of force for the purpose of liberation constituted the exercise of the right of self-defence; but that was a fine legal point which in no way weakened his country's firm stand in favour of the legitimacy of the use of all means, including armed force, in the exercise of the right to self-determination.

15. His delegation considered that the Special Committee should be authorized to continue its work in 1973, despite the shortcomings of that work and the relatively broad areas where agreement had not been reached. Ecuador was opposed to undue haste in deciding on a definition; but if a consensus proved to be impossible, the democratic procedure of a majority vote in the General Assembly should be applied. It should be remembered that the purpose of the definition was not to provide guidance for the Security Council: the reason why the Council had failed to brand certain countries as aggressors and to condemn the use of force on some occasions was not the absence of legal rules, but rather the political motivation of some of the major Powers.

16. With regard to economic aggression, his delegation had concurred with the proposal made by the Cypriot delegation after the first series of meetings of the Special Committee¹ that the definition should at first be limited to direct, or armed, aggression. However, his delegation did not agree with the sharp distinction made between two types of aggression: economic aggression, though not armed, was

¹A/AC.134/L.6 and Add.1 and 2.

none the less aggression in every sense of the word, and the Latin American countries, which were the victims of such aggression on the part of the United States, could not disregard that fact. Ecuador was therefore convinced that economic aggression must ultimately be defined.

17. Mr. ARYUBI (Afghanistan) welcomed the progress achieved by the Special Committee in formulating individual elements of a definition of aggression. Its work, however, still seemed far from a successful conclusion, the failure being primarily due to differences of objectives—which were essentially political and ideological, not juridical.

18. As a non-aligned country, Afghanistan attached great importance to any efforts to strengthen the collective security system of the United Nations in accordance with the Charter. Guided by the experience of its people, who had been the victims of repeated acts of aggression, both direct and indirect, in the course of their history, it believed that the replacement of the rule of force by the rule of law in international relations should be the prime concern of the international community.

19. The delegation of Afghanistan shared the view that an agreed definition of aggression would influence the behaviour of a potential aggressor, unmasking it and facilitating the task of the Security Council in determining the existence of aggression. A definition would not, however, cause a potential aggressor to refrain from aggression, and States must rely mainly upon their national resources to repel it.

20. The inclusion of concepts alien to the Charter and contemporary international law in a definition would lead to confusion. It should include only objective criteria. In defining the concept of aggression, the principle of priority was the basic criterion in identifying an aggressor, since it would prevent States from committing acts of aggression under the pretext of waging a so-called preventive war.

21. It was important to differentiate between aggression and the legitimate use of force. The only exceptions to the prohibition of the use of force were individual or collective self-defence and participation in United Nations enforcement actions. It should be pointed out, however, that the right of unrestricted self-defence was terminated when the Security Council had taken measures necessary to maintain international peace and security. As to the legal use of force by regional agencies under Article 53 of the Charter, such agencies must not undertake enforcement actions without prior authorization from the Security Council, and the supremacy clause in Article 103 should be strictly observed.

22. The definition of aggression should contain a clause recognizing the legitimate right of peoples under colonial and alien domination to use force in exercise of the right of self-determination. The use of force by dependent and oppressed peoples stemmed directly from the right to self-defence under Article 51 of the Charter in that such peoples were the victims of a permanent attack upon their

sovereignty and territory. Armed aggression was the most dangerous and naked form of aggression, but other forms—economic, political or cultural—were equally dangerous. One of the most notorious forms was the economic blockade of countries, and it was regrettable that none of the three draft proposals in the Special Committee's report mentioned it. Economic blockades were a matter of the utmost concern, particularly to land-locked countries such as Afghanistan.

23. His delegation supported the proposal that the Special Committee should resume its work in 1973.

24. Mr. DEDE (Zaire) said that since its accession to independence the Republic of Zaire had been the victim of many violent acts, instigated mainly by foreign sources, against its territorial integrity, its political independence, its established authorities and its security, law and order. Zaire's position as a focal point for African liberation movements explained the importance it attached to the question of defining aggression and the variety of forms of aggression to which it had been or might still be subjected. Zaire had had painful practical experience of aggression, and would continue its struggle until the whole of Africa was liberated.

25. His delegation was gratified to note the results achieved by the Special Committee on the Question of Defining Aggression. It was particularly pleased that the Special Committee had adopted Zaire's suggestions made at the 1273rd meeting, during the previous session, for the formulation of a general definition of aggression accompanied by a list of illustrative cases in which bellicose intent would be presumed.

26. His delegation was opposed to any definition of aggression based on hypothetical aggressive intent. It was impossible to establish the existence of aggressive intent, a notion which would also lead to confusion between the concept of individual responsibility and that of social corporate responsibility. Furthermore, the very expression was vague. If it was necessary to retain that notion at all, it would be preferable to use the term "bellicose intent", which was much clearer. However, his delegation believed that it would be appropriate to avoid any reference to motivation, since in the case of aggression it was difficult to distinguish cause from effect or form from substance.

27. The proper application of the concept of proportionality was in distinguishing between aggression and self-defence. Even there, however, the legal maxim *summum jus summa injuria* should be followed, since if the means of defence were sharply disproportionate to the means of attack, self-defence might degenerate into another form of aggression. It was with that consideration in mind that, at the 1273rd meeting, his delegation had voiced misgivings concerning the legitimacy of a preventive war undertaken on the grounds of self-defence and involving reprisals or retaliatory measures, when such measures were clearly disproportionate to the means of attack. It was still opposed

to regarding minor offences against international law and order as a *casus belli*, since a certain degree of tolerance was essential for the maintenance of peaceful relations between States.

28. His delegation firmly supported the principle of priority as a criterion for evaluating aggression. However, care must be taken: a case of provoked or carefully camouflaged aggression could arise in which the primary aggressor fell into a trap set by the true aggressor.

29. It was not enough merely to attempt to deter a potential aggressor, to unmask him or to make him pay for the consequences of his actions: the definition of aggression must be accompanied by the establishment of special judicial machinery for dealing with aggression. Such machinery, which would not prejudice the use of peaceful, political means of settlement or detract from the competence of the Security Council in that field, would combine the functions of arbitration and judgement, providing a ruling on the responsibility of the aggressor and the nature of the reparation to be made. That solution would fill a gap in the Statute of the International Court of Justice.

30. Despite apparent differences, which were more of form than of substance, the three draft proposals before the Special Committee possessed striking similarities; it was therefore possible to merge them into a single working document for the Special Committee's next session. However, for reasons already explained, his delegation favoured a text worded as precisely and firmly as possible, and in that respect the text submitted by the USSR (*ibid.*, draft proposal A) was the best of the three draft proposals. The formula contained in paragraph 2B (c) of that text, as complemented by paragraph 6 and subject to the clarification of a number of terms requiring more precise definition, fully covered the situations which Zaire had experienced since its accession to independence, and his delegation would therefore support it.

31. His delegation failed to see the point of including in the definition of aggression the concept of "rebuttal", as proposed in alternative 1 of the proposals concerning questions of priority and aggressive intent in the summary of the report of the informal negotiating group in annex II, appendix A, of the Special Committee's report. That notion would introduce no new element but would merely add to the confusion.

32. Mr. SAM (Ghana) said that the main aim of the Special Committee was to provide the machinery of prevent armed force or aggression from being used any longer as a means of settling international disputes, to devise a definition of aggression which would serve to restrain would-be aggressors and provide solutions for the threat of war and illegal acquisitions resulting therefrom. That the formulation of a definition of aggression was feasible was shown by the results achieved by the Special Committee since its establishment. The successful completion of the Special Committee's work would go some way towards achieving a lasting solution to the problem of aggression, and for that reason his delegation could not support the view

that the Special Committee's work should be suspended to allow time for reflection on the whole question. The Special Committee was the fourth special United Nations body to deal with that question since 1952; and to abandon the task only to establish a further committee to deal with it was wasteful in terms of both human and financial resources. Moreover, recent advances in the development of weapons of mass destruction had given fresh urgency to the task of arriving at a definition.

33. Even when a generally acceptable definition had been achieved, States would of course need to display goodwill and to co-operate actively in implementing it. His delegation entertained some doubts as to whether such co-operation and goodwill would be forthcoming unless the definition was arrived at by consensus. On the other hand, the work of the Special Committee was being held up year after year by the deliberate efforts of some representatives to render the achievement of a consensus on the vital issues impossible, and serious consideration should be given to an alternative. Not all the issues before the Special Committee were of such importance as to require a consensus, and, as had already been pointed out, even the founding fathers of the United Nations had not considered it essential to obtain a consensus on all the Articles of the Charter.

34. Another matter which required consideration was the timing of the Special Committee's sessions. In the past, the Special Committee had met in the period January-March, too soon after the closing of the session of the General Assembly to enable Member States to consider the results of the Assembly's work, formulate new policies and issue any fresh instructions to their representatives. His delegation therefore wished to propose that the Special Committee should meet not earlier than 1 May of each year. It also wished to support the proposal that, since the previous two sessions of the Special Committee had been held in New York, the next one should take place at Geneva.

35. The United Nations must not fail the peoples of the world, who looked to it to find a definition of aggression that would help to prevent war.

36. Mr. NAKAGAWA (Japan) said that the work accomplished during the Special Committee's most recent session constituted a substantial advance. Agreement had at first appeared difficult of achievement, given the clear differences of views then prevailing. Yet, a virtually agreed text had been achieved on the question of acts proposed for inclusion and on the understanding of the term "State". Although those agreements could not be regarded as final, the progress made was encouraging. At the same time, it was unfortunate that the Special Committee had once again failed to complete its task. There had been no major breakthrough in the negotiations, although the report of the informal negotiating group contained a number of valuable proposals on important constituent elements of a definition. The sponsors of the six-Power draft proposal (*ibid.*, draft proposal C), among them Japan, had made great efforts to reconcile divergent views in the negotiations in the Special Committee, in particular by proposing concrete new formulations on the legitimate use of force and the question

of priority and intent. The six Powers had wished to show clearly their willingness to try to find a mutually acceptable solution but, to their regret, their proposals had not met with a positive response. It was to be hoped that such a response would eventually be forthcoming and that existing difficulties would be overcome so that a meaningful and universally accepted draft definition of aggression could be achieved on the basis of a consensus.

37. The Japanese delegation supported the Special Committee's recommendation that it should resume its work in 1973. The positive results achieved by the Special Committee had been reached mainly in informal consultations rather than in the more formal meetings; that might be an indication that the stage had been reached where only a process of mutual accommodation through discussion conducted informally and candidly could yield substantial

results and that such an approach would be of great value in the conduct of future negotiations.

38. Mr. SILVEIRA (Venezuela) said that the Special Committee's report revealed that it had made positive and real progress and was nearing a satisfactory definition of aggression. The delegation of Venezuela nevertheless considered that the Special Committee's work should be limited in time. It was aware of the complex and difficult nature of the work and of the role of political considerations. It also appreciated the historic responsibility which such a sensitive task entailed. It believed, however, that a period of time should be fixed during which the Special Committee should discharge its mandate.

The meeting rose at 5 p.m.