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Chairman: Mr. Francisco V. GARCIA AMADOR (Cuba).

AGENDA ITEM 51 *(continued)*

Question of defining aggression: report of the Special Committee on the Question of Defining Aggression (A/2638, A/2689 and Corr.1, A/C.6/L.332) *(continued)*

GENERAL DEBATE *(continued)*

1. Mr. ADAMIYAT (Iran) said that, in his Government's view, it was both necessary and possible to define aggression. Such a definition would contribute to the maintenance of peace and the development of international law and was essential for the proper regulation of the use of force permitted under the United Nations Charter. Furthermore, aggression had already been declared an international crime, and persons guilty of it were liable to punishment. Like any other crime, it had to be defined. In the absence of a definition, what constituted aggression would depend on the practice of States and the decisions of the Security Council. It was bad practice, from the point of view of criminal law, for a political organ to decide whether or not a certain act constituted the criminal offence of aggression.

2. By a definition of aggression, his delegation understood a description of acts of aggression that could be used by United Nations organs and international judicial bodies in identifying aggressors. His delegation supported the idea of a mixed definition, as referred to in paragraph 37 of the Special Committee's report (A/2638), for such a definition would be more workable and flexible than any other form.

3. The use of force was the central element of aggression; and it would be remembered that the use of force, save in self-defence, was forbidden in Article 2, paragraph 4, of the Charter. That prohibition should serve as a point of departure for any definition of aggression, and resort to force—which in international relations meant armed force—should be banned. Except where collective measures were concerned, the State that first had recourse to armed force should be recognized as the aggressor. Furthermore, under Article 51 of the Charter, the use of force in self-defence was permissible only in the case of an armed attack. Thus, Japan's allegation that when it had attacked Manchuria in 1931 it had been acting in self-defence would not stand up under that Article or, for that matter, under traditional law.

4. To constitute aggression, the use of force must be sufficiently serious; otherwise the door would be open to dangerous abuses by States claiming to be acting in self-defence. As Politis had said, defensive war itself should not be tolerated except in case of absolute necessity.

5. It had been suggested that an imminent threat to the security of a State—as opposed to an overt attack—should be regarded as an act of aggression. In his view, a State that believed itself to be threatened should not resort to anticipatory military action, but should rather bring the case before the Security Council, which was the proper agency to deal with such a situation. To include the notion of threat of aggression in a definition of aggression would be dangerous to world peace, as on the strength of it States might resort to armed force on insufficient provocation. That view was borne out by Articles 1 and 39 of the Charter, which made a distinction between threats to the peace, breaches of the peace and acts of aggression, and by the "Uniting for peace" resolution of the General Assembly, 377 (V), which provided that the use of armed force as a collective measure could be recommended only in the last two cases.

6. By defining that most obvious and dangerous form of aggression—armed aggression—the United Nations would take a step forward in bringing legal order into the international community.

7. In his opinion, however, the concept of aggression was not limited solely to the use of armed force. Kelsen, in his commentary on Article 51 of the Charter,[1] stated expressly that aggression could be committed otherwise than by armed attack. The International Law Commission, at its third session (A/1858/paragraph 49), had declared itself in favour of including in the definition indirect forms of aggression, such as the fomenting of civil strife by one State in another and the arming by a State of organized bands for offensive purposes directed against another State. Debates at the seventh session of the General Assembly clearly showed that the majority of Member States were concerned over the danger of indirect aggression, as well they might be, for by that means a State could put an end to the independent existence of another State as effectively as by armed attack.

8. Economic aggression was another form that should be included in a definition of aggression. Although it was not specifically named in the Charter, it was included in the Charter's general condemnation of all acts of aggression. Strong and advanced States often did not have to resort to force to achieve their aggres-

[1] Hans Kelsen, *The Law of the United Nations — A critical analysis of its fundamental problems*, chapter 19, section 2 (Frederick A. Praeger, Inc., New York, 1950).

sive purposes; instead, they undermined the government of the victim State by economic aggression and achieved a bloodless invasion. No economically dependent State could be politically independent. Thus, economic aggression violated the principle of the sovereign equality of States and had rightly been condemned as an international crime both in the draft code of offences against the peace and security of mankind and in the Charter of the Organization of American States.

9. Whereas armed aggression threatened both the independence and the territorial integrity of the victim State, indirect and economic aggression threatened only its independence. As defensive war was permissible only in the case of an armed attack, war was not the answer to indirect and economic aggression. To recognize them as forms of aggression would not therefore lead to an extension of the scope of lawful self-defence.

10. It had been argued that indirect and economic aggression really constituted a threat to the peace and should therefore be dealt with by the Security Council under Article 39 of the Charter. The two forms of aggression, in his view, should be included in a definition of aggression precisely in order to aid the Security Council, primarily a political body, in ascertaining their existence in a given case.

11. Turning to the Soviet Union draft resolution (A/C.6/L.332), he said that, while it contained the main elements of the different types of aggression, it would be improved by the addition of a general statement of the identifying characteristics of aggression, with a clear definition of what constituted an imminent threat of military force. The list in paragraph 6 of the draft resolution was of great interest, as it contained the excuses most commonly used by powerful States to justify aggression against weak States. The list was not, strictly speaking, necessary, as under the Charter only armed attack justified recourse to force; but its inclusion in the definition would serve to reaffirm the stand of the United Nations on the use of force.

12. He reserved the right to comment on the draft resolution in detail at a later stage.

13. Mr. CHAUMONT (France) said that, as the Panamanian representative had pointed out at an earlier meeting, the General Assembly in its resolution 599 (VI) had stated that it was both legally possible and desirable to define aggression, so that the preliminary question no longer arose. The French Government had steadily maintained that position, as witnessed by its comments in letters to the Secretary-General dated 25 June 1952 (A/2162 and Add.1 (6)) and 16 June 1954 (A/2689 and Corr.1, section 3) and its representative's observations in the Special Committee (A/2638). Whether it was practically and politically possible to prepare a definition of aggression would become manifest in the course of the Committee's work.

14. The French Government, which had always favoured the development of international criminal law, as brought into being by the Nürnberg and Tokyo trials, considered that a definition of the crime of aggression—the crucial issue at those trials—was essential both for the legislative work of drawing up a code of offences against the peace and security of mankind and as guidance for such international criminal jurisdiction as would, it was to be hoped, be established in the future. His Government had consistently supported the adoption of a definition of aggression, in particular because, in its mind, it was inseparable from the international criminal code and international criminal jurisdiction.

15. In its resolution 688 (VII), the General Assembly had requested the Special Committee to study the problem "on the assumption of a definition being adopted by a resolution of the General Assembly"; consequently, it was the Sixth Committee's task to prepare such a resolution. That resolution would not, of course, serve the same purpose as a definition in a criminal code; the former would provide guidance to States and to the political organs of the United Nations, whereas the latter would ensure the punishment of persons guilty of the crime of aggression. Nevertheless, in spite of the difference of purpose, any definition adopted by the General Assembly was bound to influence and shape the definition to be inserted in the code, since it was unthinkable that a contradiction could exist between them.

16. The political definition would, as pointed out in the Special Committee's report (A/2638, paragraph 88), constitute a serious warning to a possible aggressor; it would serve as a guide to international organs and would enable them to avoid arbitrary decisions. Such a definition would not, however, be an amendment to the Charter and could in no way restrict the powers vested in the Security Council by Articles 24 and 39 and in the General Assembly by Articles 11 and 12. It could not be absolute law for the United Nations. Consequently, it should not be either limitative or rigid.

17. It should not be limitative not only because it was impossible to foresee every eventuality in such a text, but also because the definition should in no way infringe the broad discretion left to the Security Council by the Charter. The French delegation had in the past criticized the definition proposed by the USSR as limitative; the objection no longer applied, since in its latest draft resolution (A/C.6/L.332) the USSR delegation had introduced a new paragraph 5 stating that acts other than those listed in the preceding paragraphs could be deemed to constitute aggression if the Security Council so decided in a resolution.

18. The definition should not be rigid in the sense that it should not be binding on Member States and organs of the United Nations. In fact, it could not be, since it would be contained in a General Assembly resolution and would therefore necessarily have the character of a recommendation. Besides, a definition of aggression adopted by a majority of Member States could not be imposed on the minority without violating Article 2, paragraph 1, of the Charter, which stated that the United Nations was based on the principle of the sovereign equality of all its Members.

19. Similarly, the General Assembly could not impose any definition it adopted on the Security Council, where action depended upon the agreement of the five permanent members. Without such agreement, the Security Council could not even make use of a definition prepared by the General Assembly, let alone be bound by it.

20. Considering that a definition of aggression should not be rigid and imperative, he was not satisfied with the USSR draft resolution. Paragraph 5 had removed objections to the limitative character of the earlier draft definition but not the objections to its rigidity, and

paragraphs 1, 2, 3 and 4 were mandatory in form. That type of automatic operation of a definition conflicted both with Article 2, paragraph 1, of the Charter and with Articles 24 and 39; it was equally incompatible with the principle of State sovereignty and with the principle of unanimity in the Security Council. Such a definition could hardly be adopted without a prior revision of the Charter or at least the conclusion of a special convention.

21. In view of those considerations, the French delegation preferred a mixed definition, consisting of a general statement followed by a non-exhaustive list of concrete examples of acts of aggression. It had been among the first delegations at the seventh session of the General Assembly to support such a definition, which had previously been used in articles 2 and 9 of the Rio de Janeiro Inter-American Treaty of Reciprocal Assistance of 1947 and was embodied in the working document proposed by the Mexican representative to the Special Committee (A/2638, annex, IV).

22. There then remained the question whether the definition should apply to armed aggression only, or whether it should also include such other acts as indirect, economic or ideological aggression.

23. The USSR representative, in his statement at the 403rd meeting, had pointed out that while Article 51 of the Charter, which dealt with the right of self-defence, was limited to armed attack, the wording of Article 39 of the Charter was so general as to include indirect, economic and ideological aggression. It was true that the general wording of Article 39 lent itself to such an interpretation. At the same time, the Article seemed to list the various acts in the order of their seriousness, mentioning, first, threats to the peace, second, breaches of the peace and, last and most serious, acts of aggression. Yet the cases of indirect, economic or ideological aggression, as listed in the Soviet Union proposal—acts of terrorism, economic pressure, and encouragement of propaganda of national exclusiveness, for example—could hardly be said to be more serious than breaches of the peace. The French delegation had explained its views in the matter in the Special Committee (A/2638, paragraph 43), and it also agreed with the position taken by the Mexican delegation in its working paper (A/2638, annex, IV, paragraph 2 (*b*)).

24. The Committee was not at the moment concerned with anything other than armed aggression. Acts that should more properly be regarded as constituting a threat to the peace could, if it was considered desirable, be studied after, and independently of, the question of aggression.

25. France had never submitted a proposal of its own because it would obviously serve little purpose for every delegation to present a proposal embodying its own particular views. The Committee's objective was to adopt a solution which would be acceptable to the widest possible majority of its members. While the consensus seemed to be that a definition of aggression should be drafted, such a definition would have a practical value only if it was generally accepted, particularly by the States primarily responsible for the maintenance of peace and security. As he had pointed out earlier, a definition adopted by the General Assembly had no binding force in law. In the circumstances, the Committee should endeavour to persuade those opposed to a definition that the definition would constitute a danger to no one save the aggressor. For that purpose, the definition had to be flexible.

26. The French delegation was prepared to co-operate with other delegations in drafting a definition, provided that the definition was generally acceptable and in conformity with the principles it considered essential.

27. Mr. PETRZELKA (Czechoslovakia) said that his delegation had supported the original Soviet proposal for a definition of aggression (A/C.1/608, Rev. 1), as presented at the fifth session of the General Assembly. That proposal was in conformity with the purposes and principles of the Charter. His delegation's stand reflected Czechoslovakia's consistent efforts to promote peaceful co-operation among nations and to prevent the threat of new aggression.

28. The Soviet Union had submitted its first proposal for a definition of aggression at the Disarmament Conference of 1932-1933. Quoting from the documents of the Disarmament Conference, he noted that a definition of aggression had been considered desirable at the time, both because it would act as a deterrent to aggression by permitting States and public opinion to identify acts of aggression more clearly and because it ensured fair judgment by the international organs that might be called upon to determine the aggressor in a given conflict. Those considerations were still valid today. The principles of the Soviet Union proposal had been embodied in three international conventions concluded in 1933 between eleven States, of which Czechoslovakia had been one. The late Mr. Justice Jackson, who had been Chief Prosecutor for the United States at the Nürnberg Trials, had hailed those conventions as one of the most authoritative sources of international law. The judgments of the Nürnberg and Tokyo Tribunals not only confirmed that a definition of aggression was desirable, but served to clarify the meaning of aggression.

29. A proposal for defining aggression had been submitted at the United Nations Conference on International Organization at San Francisco. The Conference had decided against incorporating a definition in the Charter, not, as could be seen from the records of the Conference, because it had objected to a definition as such, but because it had felt that the drafting of a definition was outside its competence. The sixth session of the General Assembly had subsequently recognized in resolution 599 (VI) that it was possible and desirable to define aggression by reference to the elements that constituted the offence—the method proposed by the Soviet Union. The seventh session of the General Assembly had recognized, in resolution 688 (VII), that continued and joint efforts should be made to formulate a generally acceptable definition, and had appointed a Special Committee for that purpose.

30. Although, owing to the biased attitude of some of its members, the Special Committee had been unable to agree on a definition, its discussions had helped to clarify the position of the States represented on it, so that consideration of the subject at the current session should be facilitated.

31. After careful study, his delegation supported the new Soviet Union proposal (A/C.6/L.332), which was in complete conformity with the Charter and, if adopted, would have the same authority. Naturally, like the Charter itself, it would only be effective if respected by the Member States.

32. The proposal rightly stressed armed aggression, which under Article 51 of the Charter constituted the most serious breach of the peace and justified self-defence. In view of present techniques of warfare, armed aggression was more dangerous than it had ever been, and it must be prevented. While there was no need to make a detailed analysis of the Soviet draft, which was based on mankind's bitter experience, he wished to stress some of its practical advantages.

33. The first advantage was that the definition was both analytical and enumerative. The complete list of acts had the effect of placing the burden of proof on the aggressor rather than requiring the victim to prove that the action complained of was aggression, as would be the case under a general definition. Moreover, the clear and precise language made it possible to determine promptly who was the aggressor, whereas a general definition would be open to varying and subjective interpretation. That was particularly important in view of the provision of Article 51 of the Charter, which recognized the right of self-defence in cases of armed aggression only.

34. The principle advantage of the Soviet Union proposal was that it was based on the principle that the State that first committed a specified act would be considered the aggressor. That principle was in conformity with Article 2, paragraph 4, of the Charter.

35. It was well known, and the Czechoslovak people had learned from bitter experience—they had not forgotten Munich and the massacres of Lidice—that after resorting to armed attack, the aggressor endeavoured to justify his action. The Nürnberg trial showed that it had been Hitler's plan throughout to prepare for attack and to overrun a country in a lightning war, alleging some pretext to justify his recourse to armed force.

36. Further, the new Soviet Union proposal took into account the views expressed by some countries regarding other forms of aggression. Economic aggression, for example, was particularly dangerous as it was not always obvious and immediately recognized. Indirect aggression by subversive activities, sabotage and terrorism that were likely to threaten a State's security and, consequently, international peace, had also been included. The evidence concerning the Sudeten Freikorps, produced at the Nürnberg trial, proved that point. The proposal also covered ideological aggression, which formed an important part of an aggressor's strategy. Peace could be maintained successfully only if aggression could be stopped while it was still at the stage of preparation. Moreover, according to the principles of the Nürnberg judgment, preparation of aggression was an international crime. For those reasons, it was most important that provision should be made against ideological aggression. His delegation attached great importance to that problem and had submitted a special item (A/2744), relating to the prohibition of propaganda in favour of a new war, for inclusion in the agenda of the current session.

37. Lastly, in deference to the views of those countries which feared that any enumeration, however full, might not be exhaustive, paragraph 5 of the Soviet Union proposal provided that, in addition to the acts listed, any other act could be deemed to constitute aggression if so declared by the Security Council. Far from diminishing it, the provision increased the practical value of the draft resolution.

38. The terrible experiences of the twentieth century were a serious warning of the dangers of aggression. The Military Tribunals of Nürnberg and Tokyo had condemned aggression as an international crime. Adoption of the Soviet proposal would make prompt and sure identification of the aggressor possible and thus help the United Nations to carry out its basic task of safeguarding international peace. For that reason, his delegation supported the proposal.

39. Mr. AMADO (Brazil) said that it was difficult to see what further contribution could be made to the subject under discussion, which had been so exhaustively treated over a number of years. Every relevant text and authority had been cited, and the divergencies of view on the advisability of agreeing on a definition of aggression had become increasingly more apparent. It was perfectly clear from the Report of the Special Committee on the Question of Defining Aggression (A/2638) that a complete deadlock had been reached.

40. The attitude of the Brazilian delegation had been consistent from the very outset. Within the framework of the existing Charter, it was entirely impossible to arrive at a definition that would have any legal effect. In so far as the Charter spoke of "aggression", it referred only to a war of aggression. Chapter VII could not be interpreted as providing for any form of aggression other than a forcible physical attack. He adhered to his views, as summarized in paragraph 75 of the report (A/2638), that the idea of indirect aggression in all its forms had not been raised at the San Francisco Conference. In the absence of any physical attack, action could be taken only if the Security Council were confronted with a threat to the peace. And nothing could be construed as constituting such a threat until a code of offences against the peace and security of mankind was drawn up.

41. Any general definition of aggression would be only a repetition, in one form or another, of the pious truisms so dear to international conferences. A mixed definition, as advocated by the French representative, could never be agreed upon, as it was impossible to decide on the initial approach. The mixed definition arrived at by the American States at the Inter-American Conference for the Maintenance of Continental Peace and Security, held at Rio de Janeiro in 1947 was applicable only to the American hemisphere, where the signatories shared a number of common ideals and enjoyed a high degree of mutual confidence. That definition could not serve as a pattern for a universally acceptable instrument. Finally, an enumerative definition could never be satisfactory, because even a person endowed with the most remarkable gift of clairvoyance would not venture to envisage every possible act that various Governments might, from time to time, regard as aggression.

42. As the French representative had pointed out, a most delicate issue was raised by the fact that the Charter required unanimous agreement, on the part of the great Powers, in the Security Council. Brazil had always been proud of the fact that it had been among the smaller Powers that had vested the right of veto in the great Powers. It was only the use to which that right had at times been put that could be deplored.

43. There seemed to prevail an erroneous tendency to regard the political organs of the United Nations as tribunals. The Charter was a political instrument,

and those organs were called upon only to examine how the cause of peace could best be served. In view of the vastness of the problem, no definition of aggression could, therefore, have a chance of success until such time as the Charter was revised. As things stood, any definition adopted by a General Assembly resolution would be only a general recommendation, the moral and persuasive force of which would be of little practical value.

44. Consequently, the Brazilian delegation, while hoping that the problem might be resolved at some future date, could not deviate from its traditional course of opposing any attempt to define aggression.

45. Mr. SERRANO GARCIA (El Salvador) recalled that in 1952, when the question had been discussed, it had been concluded that a mixed definition was possible.

46. None of the texts that had been submitted at various times really attempted a general definition. They tended to be merely lists of acts held to constitute aggression, and, with due respect to any contrary opinions, a list could never be regarded as a definition. The term "aggression" implied a violation of the rights of another by the use of force. In international relations, that force, although not necessarily physical, had to be directed against the territory, integrity or vital interests of a State. The term presupposed that there was a breach of the accepted rules of international law and that such breach was forcible.

47. Of the various types of definitions of aggression, the delegation of El Salvador supported the mixed definition. It appreciated, however, that a number of States favoured the enumerative definition. In either case, provision would have to be made for the very important right of self-defence.

48. It semed that the topic had been studied exhaustively. The opinions exchanged had raised every conceivable theoretical and practical consideration. It was consequently the Committee's duty to agree on a definition, based on those points on which a wide measure of agreement already existed. Any postponement of the matter would be viewed as deliberately dilatory.

49. The objection that a definition would not be fully comprehensive was met by the provisions of Article 39 of the Charter, which required the Security Council to determine the existence of an act of aggression. The Security Council would therefore compensate for any deficiencies in a definition, and the listed examples needed to cover only the most predictable forms of aggression. The treaty drawn up at the Rio de Janeiro Conference of 1947 might serve as an example. Although a definition would certainly not put an end to acts of aggression, the position would thereby be considerably clarified.

50. He reserved his delegation's right to speak again on the USSR draft resolution.

51. Mr. ROBINSON (Israel) pointed out a number of errors, which might be very misleading, in the various translations of the USSR draft resolution. A meticulous revision of those translations was a *sine qua non* of any reasoned debate.

52. Mr. MOROZOV (Union of Soviet Socialist Republics) thanked the Israel representative for his comments, which complemented the corrections already drawn up by the USSR delegation for communication to the Secretariat. He felt, however, that those minor errors would not make it necessary for him to reintroduce the draft resolution, the general terms of which were sufficiently clear.

The meeting rose at 5.55 p.m.

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