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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) (*continued*)

GENERAL DEBATE *(continued)*

1. Mr. HOLMBACK (Sweden) recalled that by resolution 378 B (V) of 17 November 1950 the General Assembly had referred the question of the definition of aggression to the International Law Commission. After very careful study, the International Law Commission had rejected the various texts that had been submitted, as well as a proposal to the effect that it should not discontinue its efforts to define aggression. By resolution 688 (VII) of 20 December 1952, the General Assembly had decided to establish a Special Committee to study the question and to submit draft definitions or statements at the General Assembly's ninth session. At the beginning of its work, the Special Committee had adopted a draft working plan providing for the eventual adoption of draft definitions or statements (A/2638, para. 24). The Special Committee had not, however, itself prepared any draft text.

2. Mr. HOLMBACK agreed with the Greek representative (409th meeting) that in failing to do so, the Committee had not strictly complied with the directives of the General Assembly. Since hearing the statement of the Syrian representative (403rd meeting), who had been the rapporteur of the Special Committee, he realized that there had been no intentional non-compliance, but the fact remained that the Special Committee, like the International Law Commission, had failed to give any definition of aggression. The question that consequently arose was whether it was indeed possible to arrive at a definition that might secure general approval.

3. The topic could be approached from two different angles, depending on the desired objective. One objective might be to condemn outright certain occurrences by a declaratory resolution. In that case it was necessary to attempt some enumeration of such occurrences.

4. The USSR draft resolution (A/C.6/L.332/Rev.1) was apparently seeking that very objective, and it listed the occurrences that it wished to condemn under the comprehensive heading "aggression". The authors of that proposal might equally well have chosen the term "attack" or any other word that was not linguistically impossible. "Aggression" could be used, but only on the clear understanding that the word "aggression" did not purport to interpret that word as used in the United Nations Charter or in any other earlier international instrument. In fact, those who desired an outright condemnation of acts of a certain nature might be better advised to use some other term, precisely because "aggression" was used in the Charter.

5. The second possible objective might be to determine exactly what aggression included. In that case, it was necessary to start with the word "aggression" and to examine what occurrences were covered by the term. The debates in the Sixth Committee were described as dealing with "the question of defining aggression". Such a description was suitable only if the Committee strove after the second objective. Mr. Holmbäck had only that second objective in view.

6. "Aggression" was merely a term; and it, or its equivalent, might have different meanings in different languages. If a definition of the word or corresponding word were attempted in every language, the conclusion might be reached that its significance was always somewhat vague and that in fact it defied precise definition. It was noteworthy, for instance, that even the Dictionary of the French Academy and so authoritative a dictionary as Littré's differed in their definition of the French word *agression*.

7. In those circumstances, all that the General Assembly could do would be to state what meaning it attached to the term in certain documents, such as the Charter and other international instruments. It was arguable, however, that the General Assembly should even stop short of that. The term was frequently used in international conventions, and it would be improper for the General Assembly to express an opinion on its meaning in any instrument executed outside the United Nations. The terms should be construed in the light of each separate convention. For those reasons, it was the Swedish delegation's view that the General Assembly should go no further than express its opinion on the meaning of the term for the purposes of the Charter only.

8. It was now clear that any such interpretation given by the General Assembly could not be of binding force. A definition binding on the competent international bodies might have been framed during the United Nations Conference on International Organization at San Francisco and inserted in the Charter; the fact that the Conference had abandoned the idea testified to the difficulties involved. A binding definition could still perhaps be included in a convention signed and ratified by all Member States, but the General Assembly could only give its opinion. That fact had to be stressed, as it had not been made sufficiently clear in the Commit-

tee's discussions in previous years. Both General Assembly resolution 599 (VI) and the USSR draft resolution of 14 November 1952 (A/C.6/L.264) had spoken of "directives", thereby giving the impression that the Assembly could formulate directives for the Security Council. In that connexion, it was gratifying that the latest USSR draft resolution (A/C.6/L.332/Rev.1) spoke of "guiding principles".

9. A comprehensive interpretation was a scholarly task for legal experts. If the Assembly wanted an exhaustive commentary on the meaning of the term "aggression" as used in the Charter, it would have to ask the International Court of Justice for an advisory opinion. The Sixth Committee could only propose that the General Assembly should state that the term, as used in the Charter, covered certain acts—as it undoubtedly did.

10. The Swedish delegation considered that the term "aggression", as used in the Charter, did not extend to what the USSR draft resolution called indirect, economic and ideological aggression. It could not therefore support a draft resolution that implied that the term could be construed so widely.

11. For those reasons, if a draft resoluion were prepared stating that the term "aggression", as used in the Charter, had a certain scope regarding which there was no reasonable doubt, the Swedish delegation could consider giving its support to such a proposal. It would first have to be shown, however, that the advantages of such a resolution outweighed its disadvantages and that it would receive a very wide measure of support. He would add, however, that the Swedish delegation recognized that if a code of offences against the peace and security of mankind came to be approved, a definition of aggression, for the purposes of that code, could be included in the text. Such a definition, although binding on the parties to the code in their interpretation of its terms, would nevertheless have no legal force in regard to the Charter or any other international instrument.

12. Mr. PIERSON (Belgium) said that, as a majority of delegations seemed to favour the adoption of a definition of aggression, his own delegation had reconsidered its earlier position. It was certainly still far from convinced that a definition was possible, or that any text would receive the desired degree of support, or indeed that a definition of aggression was likely to have a decisive bearing on international peace and security. Still, it was prepared to admit that an attempt to elucidate the meaning of "aggression" might assist in the development of international law.

13. Nevertheless, before his delegation could support any draft proposal it had to make one serious reservation. It seemed not only undesirable but even dangerous to include in the concept of aggression such diverse notions as armed aggression, indirect aggression and economic or ideological aggression. But such departures from the rules of international conduct could be as varied as ordinary criminal offences, which ranged, in seriousness, from a petty offence to a capital crime. It was no part of the Committee's task to draw up a scale of penalties applicable to various breaches of international law. In those circumstances, if the description "aggressor" were to be equally applicable to a State guilty of armed attack as to one promoting hatred and contempt for other peoples, the term "aggression" would be bereft of substance. The word would merely acquire the meaning of an "offence".

14. The Charter itself made a clear distinction between various violations of international law. As the French representative had pointed out (405th meeting), Article 39, by its use of three distinct terms, implied a definite gradation, while Article 51 justified self-defence only in the event of armed attack. For those reasons, the Belgian delegation could not agree with the Chinese representative's contention (409th meeting), that failure to define other forms of aggression would be tantamount to saying that any act short of armed attack was lawful. The fact that armed attack was mentioned in a definition did not mean that acts not expressly mentioned were *ipso facto* lawful. He mentioned in passing that an important document at the moment before the General Assembly also used the term "aggression" in the restrictive sense of armed attack. It was precisely because his delegation could not agree to a sweeping broad definition that it could not support the definition proposed in the USSR draft resolution (A/C.6/L.332/Rev.1).

15. Another very difficult question was whether a definition of aggression should include the threat of aggression. The answer seemed to be that it should not, since the threat of an act was not the equivalent of the act itself. If the threat of aggression were to be classed as aggression proper, some might deduce that preventive war was lawful. Admittedly, the dividing line between a threat and actual aggression might be hard to draw, and occasions were conceivable in which a State had to act if it wished to avoid being reduced to impotence by the sudden outbreak of hostilities that had been threatening. Nevertheless, it seemed impossible to put aggression and the threat of aggression on the same plane. One solution might be to empower the Security Council to rule that a circumstance that logically constituted only a threat of aggression was aggression proper. That, however, was a delicate matter, as it was purely a question of fact.

16. As to the relative merits of a general and a mixed definition, a skilful definition did not normally require any accompanying list of examples. The Paraguayan resolution (A/C.6/L.334) might be termed a skilful definition if two small modifications were accepted. Operative paragraph 1 of that document might read, for example:

> "A State (or States) commits (or commit) armed aggression if it (or they) provokes (or provoke) a breach or disturbance of international peace and security, *or formally announces (announce) its (their) intention to do so,* through the employment of armed force *or the support of armed bands directed* against the territory etc."

17. Since, however, most delegations seemed to favour a mixed definition, the Belgian delegation would not object to a list of examples expressly stated not to be exhaustive. Logically, such a list might be included in an annexed comment rather than as an integral part of the definition itself. The same comment might also include the explanation that resort to force did not constitute aggression if it were undertaken in self-defence or pursuant to the recommendation of a competent organ of the United Nations.

18. Mr. AYCINENA SALAZAR (Guatemala) said that the history of the question of a definition of

aggression was long and well known. From the draft treaty of mutual assistance prepared under the auspices of the League of Nations in 1923, in which aggression had been proclaimed as an international crime, to General Assembly resolution 380 (V), affirming that aggression was the gravest of all crimes against peace and security, various attempts had been made to define that crime. In saying that aggression should be relatively easy to define, Politis could hardly have predicted the unsuccessful attempts of the United Nations to agree on a definition.

19. The peoples of the world were traditionally accustomed to the principle that law must not be retroactive. The difficulty arising out of a lack of a definition at the time of the Nürnberg trials had been clearly analysed by Justice Jackson and Mr. Chaumont (A/2211, footnote to paragraph 249). Hence, while the existence of the crime of aggression might be inferred from the circumstances peculiar to each case, it was desirable to have a definition that, while sufficiently flexible to cover all types of aggression, would serve as a warning to would-be aggressors.

20. Twice, in its resolutions 599 (VI) and 688 (VII), the General Assembly had stated that a definition of aggression was possible and desirable. Yet no definition had materialized, the reason being that views were so deeply divided. Some States, including the Soviet Union, believed that a definition was legally and technically possible and desirable to clear up the existing uncertainty over what constituted aggression. Others, like the United States, felt first, that the concept of aggression did not lend itself to a definition (*a*) because it was not purely legal, and (*b*) because the basic, natural idea of aggression could not be defined; secondly, that both the general and the enumerative types of definition would be ineffective; thirdly, that an enumeration was dangerous because (*a*) it could never be exhaustive, (*b*) it might be misused to justify aggression and (*c*) it might be applied automatically and literally by the organs concerned; and fourthly, that a definition was undesirable in the present circumstances.

21. Nevertheless, without disregarding the political aspects of the problem, it should be possible for a legal organ like the Sixth Committee to reconcile the two opposing views. The Guatemalan delegation believed that a compromise could be reached by adopting a mixed definition consisting of a flexible and comprehensive statement, followed by an enumeration of classical cases of aggression with a provision to the effect that in addition the organs concerned could declare other acts to constitute aggression in the light of the circumstances of the case. The enumeration should not be exhaustive, it should not establish an order of priority or give the impression that any acts not included were of secondary importance. Furthermore, the definition should not be too rigid, not only because the right of self-defence should be safeguarded but also because the Security Council which would use it, functioned under the unanimity rule. Lastly, according to General Assembly resolution 599 (VI), and in the view of Mr. Paul-Boncour in his report to the San Francisco Conference (A/2211, paragraph 116)—although he was opposed to formulating one—a definition should serve as a working basis and guide rather than constitute a strict rule.

22. While it might not be perfect, a mixed definition would overcome a number of difficulties presented by the other types of definition. It would at least be a beginning, and it could subsequently be improved in the light of experience. Progress of international law was necessarily slow, because there was no way to enforce its provisions. Nevertheless, difficult as the problem was, the United Nations had no right to admit defeat. He was not so optimistic as to think that an ideal formula would free the world from the shadow of war. He also recognized that a really effective contribution to the problem would be not a definition of aggression but a reduction of armaments. Moreover, such a formula required a unanimity of views.

23. He had noted in the Panamanian representative's first statement (403rd meeting) the beginnings of a plan that in the second statement (406th meeting) had acquired shape and was seen to be clear, sincere and realistic.

24. He trusted that agreement would be reached on another draft definition of aggression, which had been submitted at the previous meeting by the Paraguayan representative (A/C.6/L.334) and was being studied by a group of Latin American countries.

25. In conclusion, he expressed his confidence in the principle of the sovereign equality of all Members of the United Nations, for the guarantee of which there must be a system of law making aggression in all its forms impossible.

26. Mr. ROLING (Netherlands) said that a discussion between States was necessarily a slow and lengthy process; nevertheless, even making due allowance for that fact, he thought that the time was ripe for a decision on the question of defining aggression. He suggested that the Committee should attempt to adopt a definition at the current session, and that if it should fail the issue should be postponed for a period of several years, in the hope that the debates on disarmament and on the amendment of the Charter conducted in the meantime might facilitate the final solution of the problem.

27. There were several reasons for an immediate decision. First, sufficient preliminary work had been done on the definition of aggression to enable the Committee to take action. Secondly, a number of major political problems—such as those of Trieste, Indo-China and European defence—had recently been settled outside the United Nations, a sequence of events that certainly did not contribute to its authority. The United Nations had, indeed, entered upon a very difficult phase of its existence, since it was playing only a small role in the solution of world problems. But the United Nations had another task to perform in its endeavour to promote and develop friendly relations among nations and to strengthen universal peace—the task of developing international law. The Sixth Committee was directly concerned with that aspect of the United Nations' work; having postponed and evaded the consideration of a number of issues in the past, it should make an effort to achieve some result in the matter of defining aggression.

28. Admittedly, it was very difficult to find what the General Assembly had called a "generally acceptable" definition; the Special Committee, although it had included in its report (A/2638) proposals from individual delegations, had been unable to fulfil its terms of refer-

ence and to present a definition adopted by the majority. Yet only a generally acceptable definition would have the necessary moral authority. In his delegation's view, in order to be generally acceptable the definition had to command at least a two-thirds majority—but not necessarily the votes of all the permanent members of the Security Council, as had been suggested by the French representative.

29. That criterion of general acceptability was commensurate with the definition's importance. He did not think, however, that the primary purpose of a definition was to provide guidance to the Security Council or other organs responsible for the maintenance of peace. There was no instance in the history of the Security Council when it had been in need of such guidance; moreover, under the Charter, the Security Council had been given considerable freedom of decision, which should not be hampered either by the obligation to brand certain acts as acts of aggression or by the inability to do so. In that connexion, the USSR proposal (A/C.6/L.332/Rev.1), really gave no guidance to the Security Council, since it permitted the Security Council to regard as aggression acts not mentioned in the definition.

30. He did not agree with those who held that a definition of aggression would be helpful in connexion with the current discussions on disarmament. It was not enough to say, as the Franco-British proposals (DC/53, annex 9) of 11 June 1954 did, that the use of nuclear weapons was forbidden except in defence against aggression. Under the Charter, all use of armed force was forbidden except in that contingency. Consequently, the use of nuclear weapons should be permitted only in defence against a specific form of armed aggression, and the definition of aggression in general, which the Committee sought to establish, therefore had no bearing on the problem of disarmament.

31. The third reason often advanced for the drafting of a definition of aggression was that it was necessary for the development of international law, in application of the principle *nullum crimen sine lege*. He agreed that a definition would serve that purpose; moreover, it would inform the peoples of the world of what was currently considered to be a crime in international relations, and would confirm the revolutionary concepts established at the Nürnberg and Tokyo trials.

32. Another purpose that in his view the definition could usefully serve was that of making it clear in what cases a State had the right to resort to armed force. Although the Charter left little doubt on that point, there was still room for a definition that would indicate, for example, that wars to "liberate" a people from its present regime or to achieve the unification of nations split into two parts in consequence of the Second World War would be wars of aggression.

33. Lastly, the adoption of a definition would, he hoped, make clear the distinction between armed aggression and what had come to be called "economic aggression". While, admittedly, economic measures might have very great effects on a State, to the point of endangering its political independence, the purpose of defining aggression was not to safeguard the political independence of States but to help to eliminate war. Economic pressure should be countered by means other than the use of force. If such pressure amounted to a threat to the peace, any State was entitled to bring the issue before the Security Council; but it should not be included in a definition of aggression, for States should not be given the right to meet economic pressure with armed force. That right should be restricted to cases of military aggression.

34. His delegation was in favour of defining aggression, provided that the Committee arrived at a good definition and that the definition was generally acceptable. It would therefore vote in the Committee for any definition it considered good, while its vote in the General Assembly would be determined by whether the definition adopted in the Committee had commanded sufficiently general support.

35. With reference to the relative merits of a general, an enumerative or a mixed definition, he said that an enumerative definition did not indicate the essential elements of the concept defined, and was therefore an enumeration rather than a definition. It would answer its purpose only if an exhaustive list could be compiled, and that had proved impossible. Moreover, any enumeration of facts tended to separate them from other facts with which they were in reality inextricably connected. An enumerative definition would therefore be too rigid for practical use and would lead to undesirable and undesired results.

36. So far as a mixed definition was concerned, he questioned the need for the list of examples appended to the general statement. The five most common types of military aggression, which had been cited by the Panamanian representative (406th meeting), for example, were too well known and too generally recognized to need enumeration. To list them, however, might give the impression that they could be considered apart from the specific circumstances surrounding them and that other forms of armed attack were of minor significance.

37. The Chinese representative had suggested (409th meeting) that subversion should be included in the definition. Subversion that involved the use of armed force would be covered automatically; to include subversion that did not would widen the notion of aggression beyond the point of applicability and would thus do more harm than good.

38. For those reasons, his delegation was in favour of a general definition, based on the principles of the Charter and embodying the elements contained in Article 2, paragraph 4, and Article 51.

39. The definition would both impose on States the obligation to refrain from the threat or use of force and grant them the right to use force in self-defence. The obligation, however, was much wider in scope than the right, since a State was entitled to take up arms in self-defence only if its survival was at stake; where the danger was less pressing, the State would still be bound to bring the matter before the United Nations.

40. In his view, aggression covered not only the use of force, but also the threat of force, both of which were prohibited in Article 2, paragraph 4, of the Charter. The "threat or use of force" as mentioned in that paragraph corresponded to "aggression" as used in Article 39, and was not the same as the "threat to the peace" mentioned in the same article. That view was supported by Kelsen in *The Law of the United Nations*.[1] A threat to the peace could be the consequence

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

of legitimate activities, and should be dealt with by the Security Council. The threat of force, on the other hand, was always illegal. Nevertheless, as the USSR proposal rightly provided expressly, not all instances of threat or use of force constituted aggression. To do that, they had to attain a certain magnitude. In determining what that magnitude was, it would help to remember that in the Charter, the word "aggression" had been used in lieu of "war", which the drafters had been anxious to avoid. The decisive criterion was not the intent of the agent but the scope of the act.

41. Aggression consisted of the threat or use of force against the territorial integrity or political independence of another State or against the territorial integrity or political status of a territory under international regime. The use of force was justified only in self-defence or as a collective measure authorized by the United Nations—and it should be noted that in those cases it would not be directed against the political independence or the territorial integrity of a State.

42. In international, as in domestic law, self-defence was an inherent right, but it was justified only to the extent to which protection by a higher authority was not provided. The same applied to the principle of the adequacy of the defence. As was presupposed in Article 51, the defence should be commensurate with the attack.

43. The question arose whether self-defence was likewise justified in the case of threat of the use of force. In his delegation's view, under Article 51, the concept of armed attack covered specific cases of threat of force, namely those of imminent threat where a State had no time for any other action than immediate self-defence. Hitler's ultimatum to Czechoslovakia was an example of such imminent threat. It might be claimed that recognition of the right of self-defence in the face of imminent threat of force might be used by would-be aggressors as a pretext for preventive wars. The possible abuse of legal provisions should not, however, deter the Committee. The right of self-defence in the case of immediate threat had been recognized, in the Nürnberg and Tokyo judgments and by the General Assembly. The threat of the use of force had gained great significance with the coming of the atomic age. The General Assembly had approved in resolution 191 (III), the principles set forth in the 1946 report of the Atomic Energy Commission to the Security Council, to the effect that a violation of a treaty concerning control of atomic energy might be of so grave a character as to justify self-defence under Article 51 of the Charter.[2] The violation in question would have been a threat of attack, rather than attack itself. The General Assembly had taken that decision deliberately, after rejecting a USSR proposal to delete the provision in question, and there was no reason to suppose that it had changed its position since. The Committee should therefore seek a formula restricting the right of self-defence as far as practicable.

44. The only other case in which the use of force was justified was where it was applied in pursuance of the decision of competent United Nations organs. Those organs had been entrusted by the Charter with the responsibility of maintenance of peace. Men who could no longer claim immunity by pleading the orders of the State, could now claim it for carrying out the decisions of the United Nations. That was the great development of modern times. It did not mean that the organs of the United Nations were infallible; it meant that their authority could not be questioned by any State.

45. There might of course be other cases in which the use of force would be justified, such as the one cited by the Greek representative at the 409th meeting. No law could be so worded as to cover every possible situation. The Committee could only endeavour to do its best.

46. In conclusion, the definition should be an interpretation of elements contained in the Charter since in any case the Committee had no authority to go beyond the Charter. His delegation tentatively proposed a definition worded as follows:

> "Aggression is the threat or use of force by a State or Government against the territorial integrity or political independence of another State or against the territorial integrity or political status of a territory under an international regime, whatever the weapons employed and whether openly or otherwise, it being understood that this definition may never be construed to comprise individual or collective defence against armed attack (including the imminent threat of armed attack) or any act in pursuance of a decision or recommendation by a competent organ of the United Nations."

The meeting rose at 1 p.m.

[2] See *Official Records of the Atomic Energy Commission, 1946, Special Supplement*, Part III, para. 4.

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