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**Chairman: Mr. Gonzalo ALCÍVAR (Ecuador).**

## AGENDA ITEM 88

**Report of the Special Committee on the Question  
of Defining Aggression (*continued*) (A/7620)**

1. Mr. MOSCARDO DE SOUZA (Brazil) said that the question of defining aggression raised considerable if not insurmountable difficulties, irrespective of the approach adopted for its solution—a general formula or an enumerative statement. In the circumstances, even if a satisfactory definition of aggression were arrived at, it would not necessarily make it possible to identify the aggressor. His delegation was therefore among those which believed that it was not essential to attempt to settle the question at the present time; it was in fact afraid that it was impossible, in the present state of international relations, to draw up a definition which would make it possible to incriminate the real culprits or which would deter them from committing acts of aggression. Furthermore, the idea of defining aggression stemmed from the theory of collective security, which was now completely obsolete as a result of the increasing bipolarization of international relations since the Second World War. However, if such a definition was deemed useful, it would have to include various forms of aggressive behaviour other than the invasion of one State by another, namely, the organization of subversive activities and the perpetration of acts of terrorism. Such a definition would likewise have to embrace forms of aggression which did not entail the use of armed force, such as the exertion of economic, financial and political pressure which, as had rightly been emphasized, could be just as deadly as military aggression. Finally, any definition of aggression should embody a provision recognizing the right of individual or collective self-defence.

2. The proposal submitted by Colombia, Ecuador, Haiti, Mexico and Uruguay (see A/7620, para. 6) contained two main flaws: first, it included only the concept of the use of armed force and omitted all other forms of aggression; secondly, the idea, expressed in operative paragraph 4, that the definition could not prejudice in any way the powers of evaluation and decision of the competent international organs served, in fact, to make the definition useless before it was even formulated. His delegation felt that a choice

must be made between two alternatives: either the definition was to have its own intrinsic value, in which case the Security Council should respect it, or the Security Council was to retain its freedom of evaluation and decision, in which case a definition would be of no value.

3. However, his delegation recognized that some positive results had been obtained through the efforts made thus far to define aggression. For example, nobody now denied that an act of aggression, even local, was the business of the international community and that it was the duty of the United Nations to concern itself with all breaches of the peace. His delegation therefore considered that those endeavours should be continued, and was in favour of renewing the Special Committee's mandate.

4. Mr. BREWER (Liberia) observed that General Assembly resolution 2420 (XXIII), which recognized the "widespread conviction of the need to expedite the definition of aggression", formed part of a consistent attempt by various international organizations, ever since the establishment of the League of Nations, to define the concept of aggression. As far back as 1957, his delegation had expressed the view that a definition of aggression was necessary, if only to ensure the political, economic and social protection of small nations from aggression. Furthermore, it had never doubted that the exclusive competence to determine the existence of aggression was vested in the Security Council under Article 39 of the Charter. It was also convinced that no State could object to the elaboration of a precise definition of aggression, given the usefulness of such a definition in determining, when the need arose, whether or not a State was at fault; it would be noted that the Charter contained no definition of aggression, and such a definition, in the view of his delegation, could also be useful to the Security Council in exercising its functions under Article 39 of the Charter.

5. However, his delegation considered that there was no purpose in defining aggression unless the United Nations was also prepared to impose on an aggressor the sanctions provided by international law.

6. The various proposals considered by the Special Committee at its 1968 and 1969 sessions and the areas of agreement which it had succeeded in identifying represented tangible evidence of the progress achieved. The question it had to resolve had complex social, economic, political and legal overtones and deserved the entire attention not only of the members of the Special Committee but of the Members of the United Nations as a whole. Consequently, his delegation suggested that it would be expedient not to resume consideration of the matter for another two years, so that the Secretary-General could study as many relevant proposals received from States

Members of the United Nations as possible. However, his delegation would not object if the Special Committee retained its former membership when it was reconstituted.

7. Mr. CEAUSU (Romania) pointed out that the need for a definition of aggression had arisen as soon as the international community had decided to prohibit the threat or use of force. Romania's view was that the security of one State could not be guaranteed in isolation from the security of all States; therefore, each member of the international community should abide by the basic principles of international law in its relations with others. Furthermore, the scrupulous observance of those principles should be accompanied by the renunciation of the use of force in all its forms, such as the application of political, economic and other pressures that could affect the normal interplay of relations among States.

8. At its 1969 session, the Special Committee had achieved a number of positive results, among which emphasis should be laid on the recognition by almost all members of the Special Committee of the importance and usefulness of a definition of aggression. It was also encouraging to note that some of the draft definitions submitted to the Special Committee had been amended in the light of the views expressed in that body or in the Sixth Committee. His delegation therefore considered that the Special Committee should now undertake detailed negotiations on the texts of the various drafts and that it should consequently be empowered to continue its work in 1970. Admittedly, the scale of the obstacles which remained to be overcome should not be minimized, but if each member of the Special Committee allowed himself to be guided by the determination to secure peace and order in the world rather than by selfish interests, that Committee would soon manage to find reasonable and generally acceptable solutions.

9. For purposes of defining aggression, various data should be taken into consideration. In the first place, account should be taken of the fact that the concept of aggression dealt with an objective phenomenon which genuinely existed, regardless of whether it was recognized by any organization; the crime of aggression was an act which was independent of the intention, aggressive or not, of its author; moreover, in the event of an act of aggression, the aggressive intention of the culprit would have to be presumed if he was not to be allowed to find *a posteriori* justifications for his act. In the second place, the principle of anteriority would have to be applied in order to determine which of two States, both claiming to be acting in good faith, was the true aggressor. Finally, a definition of aggression should establish the right of self-defence and set forth—taking account of the rules of international law, including the relevant provisions of the Charter and international jurisprudence—the conditions in which a State might invoke that right; in that case, the principle of proportionality would serve as the criterion for deciding whether the measures adopted by the victim State against the aggressor State were normal or excessive. Moreover, it should be emphasized that the right of self-defence should be recognized only as a means of defence to be applied by the victim of an act of aggression for the sole purpose of repelling the aggressor; it therefore operated as a sanction against the aggressor and not as an exception to the

principle prohibiting the threat or use of force, which ruled out any possibility of the exercise of such a right for preventive purposes.

10. At the same time, the collective measures which the Security Council could decide upon in the exercise of its functions under Chapter VII of the Charter could not be regarded as an exception to the principle in question. Where such measures were requested by a State in order to help it to maintain or restore order in its own territory, the actions of that State would no longer be justifiable as the exercise of the right of self-defence but would simply be within the context of the exclusive national competence of a subject of international law.

11. The category of acts performed in the exercise of the right of self-defence should also include the use of force by colonial peoples, which was fully justified by the continued aggression to which they were subjected.

12. In conclusion, he said that a definition of aggression should have three objectives. Its purpose should be to eliminate the uncertainty still surrounding the concept of an act of aggression; to dissuade those who might be tempted to resort to force because of the existing gaps in international law; and to help the international bodies responsible for the maintenance of international peace and security when it was necessary to determine in a particular case whether or not an act of aggression had been committed. Moreover, any definition would have to be based on the provisions of the Charter and consistent with the machinery established by the Charter for the maintenance of international peace and security.

13. Mr. ROMPANI (Uruguay) recalled that in its resolution 2420 (XXIII) the General Assembly had recognized the need to expedite the definition of aggression. For that reason, he believed that the proposal on the organization of the Special Committee's work, submitted by Uruguay and four other Latin American States (see A/7620, para. 6), still constituted an excellent programme of action, and he regretted that the Special Committee had not adopted any resolution on the subject. It was true that there had been disagreement on some details of that proposal during the debate, but, except for the principle that a definition of aggression should be based on the Charter, there had also been disagreement on every other question, including the need for a definition.

14. The Preamble to the Charter stated that the peoples of the United Nations were determined to unite their strength "to maintain international peace and security" and to ensure "that armed force shall not be used, save in the common interest". That general criterion was corroborated or confirmed by the provisions of fundamental importance contained in Article 2, paragraph 4, and Article 51 of the Charter. The main requirement therefore was that peace and security, not peace or security, should be maintained.

15. Secondly, the Security Council was required to take the necessary measures to "maintain or restore" peace and security. The Security Council therefore had not only the "authority" but also the "responsibility", under Article 51 of the Charter, to take at any time such action as it deemed necessary, which meant that the Council had some discretionary power, although that power must not be arbitrary.

16. Lastly, Article 39 of the Charter assigned to the Security Council, *inter alia*, the task of determining the existence of any act of aggression; and Article 1, paragraph 1, also referred to acts of aggression or other breaches of the peace, which implied that acts of aggression were not the only possible breaches of the peace and that there might be breaches of the peace which were not acts of aggression.

17. Resolution 377 (V), adopted by the General Assembly in 1950, provided that the first two objectives of the United Nations were to take collective measures for the suppression of acts of aggression or other breaches of the peace and to bring about by peaceful means adjustment or settlement of international disputes or situations which might lead to a breach of the peace. The same resolution stated that failure of the Security Council to discharge its responsibilities did not relieve Member States of their obligations under the Charter. If the Security Council failed to act, the General Assembly would make appropriate recommendations to Members for collective measures, including, where there appeared to be a breach of the peace, or act of aggression, the use of armed force when necessary.

18. Those were the means available to the United Nations for restoring international peace and security in the event of aggression.

19. What must be defined, in his view, was not the act of aggression, or any possible crime of aggression, but a concept, the concept of aggression. It could not be hoped, of course, that an unchallengeable and irrefutable definition of aggression would be arrived at. Indeed, it was impossible to overlook the fact that many other concepts of greater or lesser importance—for example, peace, security, justice and force—remained undefined. However, Members must not let that fact discourage them. The concept of “force” was not peculiar to the science or discipline of law; it also occurred in physics and there seemed to be no scientific definition for it. Moreover, in the Preamble to the Charter, in the Spanish version, the word “*fuera*” was used in two different senses.

20. The task of the Special Committee was to propose to the competent organs of the United Nations, and in particular to the Security Council, a definition which made it possible to determine in what cases action had to be taken to restore international peace and security. Like any description of the constituent elements of a concept, that definition would be abstract in character. The character of aggression itself, however, was essentially concrete. The drafting of a definition was therefore a delicate matter. But everyone knew that the rules of positive law grew out of discussion between opposing elements and the reconciliation of contradictory terms. In the sphere of municipal law it was impossible to speak merely of penal law, since every code constituted a veritable body of “policy on criminality”. The task entrusted to the Special Committee was infinitely more modest and consisted in bringing out the constituent elements of the concept of aggression, with a view to the unification of international law on the subject.

21. The term by which an act was designated should not depend on the authority that was called upon to judge it,

for that would constitute a subjective criterion; it should conform to the objective elements contained in the definition. The Security Council or the General Assembly, when necessary, should conform to the standard, according to the definition, for determining whether or not an act of aggression existed.

22. His delegation continued to believe that the thirteen-Power proposal (see A/7620, para. 10) was an excellent working document.

23. Mr. EL-ATTRASH (Syria) welcomed the work done by the Special Committee during its 1969 session, even though the results achieved were not yet entirely satisfactory. The United Nations had first taken up the question of defining aggression in 1950, at the initiative of the Soviet Union, and since that time the question had been considered by the International Law Commission and three committees established in 1952, 1954 and 1957 respectively, but no positive decisions had been arrived at. The present Special Committee, which had been established in 1967, again at the initiative of the Soviet Union delegation, had performed a constructive service. It had formally submitted a series of proposals which provided a good working foundation for arriving at a definition of aggression which, even if not adopted unanimously, would at least be supported by a sufficient majority.

24. His delegation's views on the proposals contained in the report of the Special Committee on the Question of Defining Aggression had already been stated during the session of that Committee; today he wished merely to express the hope that the Special Committee's work would be completed as quickly as possible. To that end, the Sixth Committee should adopt a draft resolution requesting the Special Committee to resume its work early in 1970 and should consider the possibility of setting a time-limit for the completion of the Special Committee's work. For example, the Sixth Committee might request that the definition of aggression should be ready for adoption by the General Assembly on the occasion of the twenty-fifth anniversary of the United Nations. His delegation would support any draft resolution aimed at expediting the work of the Special Committee, with a view to its early completion.

25. Before concluding, he wished to point out that since 5 June 1967 three States Members of the United Nations had been victims of an act of aggression unparalleled in history. Part of the territory of those States was still occupied by the aggressor under the very eyes of the free nations of the world. The population of the territories in question, numbering over a million persons, was either vegetating in refugee camps lacking in the basic necessities of life or else living under a despotic, inhuman occupation régime. The General Assembly, the Security Council and international Conferences such as the International Conference on Human Rights, held at Teheran in 1968, had condemned the aggressor State and called upon it to withdraw its troops, evacuate the occupied territories and cease the mistreatment of the civilian population, but the action taken by those bodies had been in vain. The aggressor, enjoying the military, material and moral support of a “super-Power”, was daily becoming more arrogant and despotic. The formulation of a complete legal definition of

aggression, reflecting the united determination of all nations, might perhaps assist the Security Council in making the aggressor see reason and in re-establishing the lawful status of the territories which had suffered aggression. Even if it did not accomplish the impossible, a definition of aggression would in itself be an important step towards that peace for which all mankind yearned.

26. Mr. GONZALEZ GALVEZ (Mexico) recalled that at the twenty-third session his delegation had expressed the view (1075th meeting) that the submission of a draft declaration sponsored by Asian, African, Latin American, Eastern European and Western European countries represented a positive element in the situation. At the present session, there was another positive element to be noted, namely the fact that the delegations of Australia, Canada, Italy, Japan, the United Kingdom and the United States had for the first time formulated some ideas concerning the content and form of a definition of aggression. It thus appeared that there should now be no difficulty in adopting a draft resolution renewing the mandate of the Special Committee.

27. The debate on the second report of the Special Committee (A/7620) was particularly timely, since it enabled delegations which were not members of that Committee to give their views on whether or not certain points should be included in the definition and to comment generally on the drafts which had been submitted. The opinions expressed in the Sixth Committee served, or should serve, as guidelines for the Special Committee in working out a text that was acceptable to the great majority of States. The difficulties involved in determining those elements in a possible definition of aggression on which the Special Committee should particularly concentrate its efforts had prompted five Latin American countries to submit the proposal contained in paragraph 6 of the Special Committee's report. Those countries reserved the right to decide whether or not to ask for a vote to be taken on the proposal.

28. Turning to the substance of the matter, he wished to reaffirm, first of all, his delegation's view that a definition of aggression approved by an overwhelming majority of countries would strengthen the part played by law within the United Nations. It would eliminate the element of indecision and subjectivity which characterized any political judgement for which the law failed to establish guidelines. It would also imply recognition that, although in order to maintain peace it might be expedient for the competent organs of the United Nations to exercise discretionary power that was often close to being arbitrary, accepting that situation as permanent would mean completely divorcing United Nations political activities from international law.

29. It was unfortunate that the report of the Special Committee did not contain the draft declarations submitted at that body's 1968 session, for they would have given a better idea of developments since that time.

30. He noted that the idea expressed in operative paragraph 3 of the draft submitted by the Soviet Union (see A/7620, para. 9) was similar to one put forward in the original thirteen-Power draft. The idea in question had been

omitted from the new draft (*ibid.*, para. 10), since the thirteen Powers had felt that it might be interpreted as giving the Security Council the right to decide that acts not enumerated in the definition were acts of aggression. In his view, the definition should not contain such an idea, and a final choice should now be made between the following alternatives: either the definition was of intrinsic value and the Security Council would therefore have to be guided by it, or the Security Council had complete freedom in the matter and it would have to be concluded that the definition was of no value.

31. In view of the previous discussions on the subject, he did not believe that, for example, the Soviet Union would agree that, on the basis of operative paragraph 3 of its draft, the Security Council could make a finding that the threat or use of force was an act of aggression.

32. The question inevitably arose whether the view he was setting forth did not mean that the United Nations would find its freedom of action restricted by a definition which omitted certain cases of aggression, and that thus the idea would be implicitly accepted that the definition might give rise to unjust situations. But was that not the case in criminal law and, indeed, in all branches of law? Any legal system or law constituted a restriction or limitation. In his view, the aim of law was not to do justice directly or immediately in each specific case; its essential purpose was more modest but not for that reason any less important: to ensure security for all.

33. It had also been pointed out that there was a risk that certain acts might not be covered by a definition of aggression. Did that imply that such acts would not be punishable and that the failure to make provision for them would constitute an invitation to commit the acts in question? In domestic law, when the legislator limited the concept of homicide and its penalties to cases where death occurred, were citizens being invited to attack each other without taking life? Homicide was not the only crime under domestic law, just as aggression was not the only crime under international law. However, that did not by any means signify that an act which did not exactly fit into a specific category of offence should go unpunished.

34. The second major problem was whether the criterion of priority should be adopted for the purpose of determining which side was guilty of aggression, or whether another criterion, such as "aggressive intent", should be established. His delegation felt that the concept of the first step was of fundamental importance; it was not alone in that opinion, since the concept in question was embodied in the 1969 thirteen-Power draft and in the Soviet Union draft. It was, in his view, a logical and inevitable idea. Even greater problems would be created by trying to eliminate it, for those who argued that the question was not who had crossed the frontier or attacked first but who had prepared for war were forgetting that, as a matter of practical fact, the question of preparation for war could not be separated from that of the arms race. It would be impossible to identify the aggressor without first making a historical and strategic study, and the difficulty of drawing a line between preparations based on self-defence and preparations for a war of aggression must be borne in mind.

35. Article 51 of the Charter provided further evidence that it was essential to apply the criterion to which he had

referred. The use of the words “if an armed attack occurs” in the text of that Article was a clear indication that the right of self-defence arose only where there was an armed attack.

36. Finally, he felt that the Sixth Committee would have to take a decision on another matter of general interest, i.e. a decision to the effect that any draft declaration must make it clear when the right of individual or collective self-defence could be invoked. Because of the divergent views that appeared to exist with regard to the concept of “armed attack”, the latter’s meaning required more detailed study.

37. His delegation would take full account, in the course of the Special Committee’s work during the coming year, of any comments made by countries which were not members of that Committee.

38. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) said that the question of defining aggression was not new. It had been discussed by the League of Nations as early as 1923. The Soviet Union had been the first to submit, at the 1933 Disarmament Conference, a proposal on the definition of aggression,<sup>1</sup> on which no action had been taken. That failure to act had had tragic consequences for mankind, for the Second World War had cost tens of millions of human lives; in the case of Byelorussia, the losses had been as high as one person in four. The material loss suffered in the war had been enormous. If wars of aggression and the arms race were not brought to an end, the world might face a tragic future. It was worth noting, in that connexion, that current arms expenditure amounted to more than the total national income of all the developing countries. It was therefore essential to agree on a definition of aggression without delay. The question had been studied in 1945 at the San Francisco Conference and since 1950 in the General Assembly by two Special Committees on the Question of Defining Aggression set up in 1952 and 1954 respectively, as well as by the Special Committee set up under Assembly resolution 1181 (XII) of 29 November 1957. The latter had met from 1958 to 1967 but had been unable to carry out its task owing to the obstructive tactics employed by certain capitalist countries which had thought it unnecessary to define aggression. In 1968, the Committee set up under General Assembly resolution 2330 (XXII) of 18 December 1967 had met at Geneva. It had made a good beginning and had reached agreement on certain of the points to be included in the definition of aggression. A majority of the members had agreed that the definition should contain a provision recognizing that it was legitimate for dependent peoples to use force in order to exercise their right of self-determination.

39. At its 1969 session, held in New York, the Special Committee had had three proposals before it. Many members had agreed that the draft submitted by the Soviet Union (see A/7620, para. 9) provided a good working basis for defining aggression. The draft contained a general definition of aggression and an enumeration of the principal acts which constituted aggression. Among the most serious acts of aggression, it mentioned the use of nuclear,

bacteriological or chemical weapons or any other weapons of mass destruction, and it provided that dependent peoples had the right to use armed force in order to exercise their inherent right of self-determination in accordance with General Assembly resolution 1514 (XV).

40. The Special Committee had also had before it a six-Power draft (see A/7620, para. 11) which made no mention of certain very important elements in a definition of aggression. It did not provide for the right of dependent peoples to use armed force in order to exercise their right of self-determination and therefore did not take into account the Declaration on the Granting of Independence to Colonial Countries and Peoples. It placed regional organizations on the same footing as the United Nations, which was contrary to Article 53 of the Charter. It must therefore be noted with great regret that certain provisions of the six-Power draft were not in conformity with international law and the United Nations Charter.

41. On the other hand, the third proposal, submitted by thirteen Powers (see A/7620, para. 10), was greatly superior to the six-Power draft and could serve as a basis for the future work of the Special Committee.

42. It must be acknowledged that the Special Committee’s most recent session had represented progress over its previous sessions. Apart from a few delegations which remained sceptical, most members had recognized the necessity of adopting a definition of aggression. The Special Committee, which had until now confined itself to studying the different points of view, must get down to work and start drafting the definition. The Soviet Union draft provided an acceptable basis for that task. Defining aggression was particularly important in the light of the current international situation and the arms race, which constituted a threat to world peace and security. The policy pursued by the imperialist Powers was an obstacle to any relaxation of international tension. That goal could be achieved only by implementing the Security Council resolutions calling for the withdrawal of troops from the territories of occupied States and by putting an end to measures designed to crush the just struggle of national liberation movements to throw off the yoke of the colonialist Powers. The formulation of a satisfactory definition of aggression would therefore further the cause of peace and make it possible to establish a world-wide system of collective security.

43. In conclusion, he proposed that the Special Committee’s mandate should be renewed so as to enable it to continue its work in 1970.

44. Mr. AKYAMAC (Turkey) said that the Sixth Committee’s discussion of the question of defining aggression was very valuable, since it provided an opportunity for certain delegations which were not members of the Special Committee to make known their points of view. The discussions in the Special Committee showed that it would be useful to include the six-Power proposal in a comparative table which already existed for the Soviet Union and thirteen-Power drafts. The question of defining aggression had to be approached in a realistic manner and in strict conformity with the provisions of the Charter. Only in that way would it be possible to work out a definition which

<sup>1</sup> See *Official Records of the General Assembly, Seventh Session, Annexes*, agenda item 54, document A/2211, para. 76.

was acceptable to the great majority of States and therefore effective.

45. In conclusion, he expressed his support for renewing the Special Committee's mandate.

46. Mr. NALL (Israel), speaking in exercise of his right of reply, said that the delegations which persisted in referring to his country as an aggressor were unaware of the true facts. He had already given an account of the acts of aggression committed by Syria against Israel and had exposed the part played by Syria in starting the six-day war. Two Israelis were currently being detained in Syria as a result of the forced diversion of an Israel plane to Damascus.

47. Mr. YASSEEN (Iraq), supported by Mr. EL-ARABY (United Arab Republic), Mr. EL-ATTRASH (Syria) and

Mr. GASTLI (Tunisia), speaking on a point of order, observed that the hijacking of aircraft was not the subject under discussion.

48. Mr. BERNAL (Panama), supported by Mr. ROSENSTOCK (United States of America), said that the Committee must confine itself to the discussion of legal questions and not get side-tracked by political issues. It should not digress from the question under consideration, which was that of defining aggression.

49. Mr. NALL (Israel) said that he reserved his right of reply.

50. Mr. EL-ARABY (United Arab Republic) said that he would exercise his right of reply at a later stage.

*The meeting rose at 1.10 p.m.*