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Chairman: Mr. Santiago PEREZ PEREZ (Venezuela).

AGENDA ITEM 54

Question of defining aggression: report of the Special Committee (A/3574; A/C.6/L.399)

1. Mr. ROLING (Netherlands), speaking as the Rapporteur of the 1956 Special Committee on the Question of Defining Aggression, regretted to say that the Special Committee, despite all its efforts, had not succeeded in drawing up a draft definition of aggression as requested by the General Assembly in resolution 895 (IX). The Committee had fulfilled the other part of the task entrusted to it, which was to study the question of aggression "having regard to the ideas expressed at the ninth session of the General Assembly and to the draft resolutions and amendments submitted", and to draw up a detailed report. The members of the Special Committee had had to work under extremely difficult conditions, in an atmosphere clouded by the events of Suez and Hungary and in the face of a world divided, where some had been energetically condemning measures taken by certain Governments, while others had defended the policies of their countries. Many representatives had expressed the view that a clear definition of aggression that would be generally acceptable might serve as a guide to public opinion. However, it had not been possible to arrive at such a definition. There had, to be sure, been a majority of members in favour of defining aggression, but that majority had not been homogeneous, for there had been differences of opinion regarding the form, the contents and the function of a definition. Some delegations had had strong views about the form of the definition, while many others had considered that that was not the real obstacle.

2. The contents of the definition had raised a difficulty in view of the fact that the Charter referred in Article 39 to "aggression" and in Article 51 to "armed attack". In those circumstances there was room for wondering whether the "act of aggression" referred to in Article 39 was the same as the "armed attack" of Article 51 which conferred the right of self-defence. It had been thought that the notion of aggression was wider in scope than that of armed attack. The Inter-American Treaty of Reciprocal Assistance, signed at Rio de Janeiro in 1947, and the Charter of the Organization of American States, signed at Bogotá in 1948, both referred to aggression which was not an armed attack. The notion of aggression had become even broader in embracing what was called economic and ideological aggression, and there had even been some discussion of

indirect aggression in connexion with ideological, economic, subversive and military means employed by one State to nullify the political independence of another State.

3. The wide differences of view regarding the contents of the definition were linked with the differences regarding the purpose of the definition. Should a definition be a guide to the Security Council or the General Assembly, indicating in what case they might act, or should it indicate to the individual States when they were forbidden to use force? Some delegations had expressed the view that the definition should fulfil both functions, and deal not only with war but also with many other forms of aggression. The broader the concept the greater the freedom allowed to United Nations organs, and the greater the restriction on individual States inasmuch as a larger number of acts would be forbidden to them. At the same time the scope of self-defence and the freedom of action of the State regarded as the victim would be broadened. That was one of the obstacles to any co-ordination of the various points of view.

4. Since the time when the Special Committee had met in 1956, more than twenty additional States had been admitted to the United Nations. Those States might be able to put forward some very useful suggestions, because they would be discussing a well-worn topic with a fresh mind. If the Sixth Committee should succeed in establishing a generally acceptable definition of aggression, the Charter would gain in precision and the position of the United Nations would be strengthened.

5. Mr. KUZNETSOV (Union of Soviet Socialist Republics) pointed out that the importance of a definition of aggression was becoming steadily greater. He adverted to the significance of the existing international situation as a factor that would inevitably affect the question.

6. Despite the efforts of some countries, the international atmosphere remained tense and alarming. The world continued to be divided, and the policy of force pursued by certain States prevented the normal settlement of the main problems of the world and the development of economic, commercial and cultural relations. The armaments race, particularly with regard to atomic and hydrogen weapons, was gathering speed, and the result had been an increase in the burden of taxation. The danger of a new war further poisoned the atmosphere of mistrust between States. Powerful armies were still stationed on foreign territory and numerous military bases were dispersed throughout the world to the detriment of the interests and security of the peoples on whose territory they were situated. Acts of aggression were continuing to be committed against peoples whose only crime was an attempt to bring to an end the colonial régime and the exploitation

to which they had long been subjected. Innocent people were bombed, blood flowed, and wealth was destroyed. Some countries were openly conducting propaganda in favour of war, exciting hatred between peoples and attempting to undermine the Governments of democratic countries and impose the reign of capitalism. They wanted to deprive people of their right to establish democratic systems in keeping with their vital interests. Such acts were incompatible with normal relations between sovereign States, contrary to the principles of international security and a threat to peace.

7. However, the experience gained at the price of so many human lives must be put to some useful purpose. The Charter made it clear that it was the duty of all peoples "to save succeeding generations from the scourge of war, which twice in a life-time had brought untold sorrow to mankind". A definition of aggression must take its place among the measures designed to eliminate the threat of a new war. Previous debates had shown that such a definition would serve as a warning to aggressors and would make it harder to justify aggression by hypocritically invoking the right of self-defence, as aggressors had always attempted to do. Now that war inevitably involved whole populations and that the Charter forbade the use of force in relations between States, attempts to justify and camouflage the different forms of aggression had become particularly important to the aggressor.

8. Thus, the experience of the past and an analysis of the present showed how important it was to establish clearly the meaning of the Charter provisions concerning the prohibition and condemnation of all forms of aggression. Those who opposed establishing a definition of aggression, on the pretext that it would not constitute an obstacle to an aggressor, seemed to be asking for freedom to pursue a policy of force. He thought that the question could now be dealt with to good advantage, since the efforts already made should greatly facilitate the Assembly's task.

9. In 1933, he recalled, the Committee for Security Questions of the Disarmament Conference had adopted a definition of aggression proposed by the USSR (see A/3574, annex I, Sect.1), recognizing as the aggressor the State which was first to use force against another State. That definition had also made it clear that acts of aggression could not be justified by any political, military, economic or other considerations. The negative stand taken in particular by France, Italy and the United Kingdom had prevented the Conference from adopting that definition. The definition had, however, served as the basis for the bilateral agreements signed in London in 1933 by the Soviet Union with such countries as Afghanistan, Iran, Poland, Romania, Czechoslovakia, Turkey and Yugoslavia. International law had welcomed those conventions, as had been illustrated by the statement of Professor Le Fur to the effect that they had constituted a new element of security in Europe and had offered a more satisfactory solution of the problem of defining aggression than any adopted in the past. Unfortunately that definition had not been universally recognized.

10. After the Second World War, the International Military Tribunal at Nuremberg had condemned aggressive war, thereby reaffirming the principles of international law serving as the basis for identifying

the aggressor. At the time of the drafting of the United Nations Charter, the question of aggression had been carefully studied, and the relevant provisions reflected the principle that the aggressor State was the State which committed the first act of aggression against another State.

11. In 1950 the United Nations had decided to establish a clear definition of those provisions of the Charter with a view to making them more effective. The question had been discussed at several sessions of the General Assembly and by a number of committees. The importance of a definition of aggression to the maintenance of friendly relations among peoples had been recognized in particular at the sixth, seventh and ninth sessions of the Assembly.

12. In 1954, a total of forty-three States, constituting more than two-thirds of the membership at that time, had voted in favour of a decision on the matter.

13. Similarly, in 1956, a majority of the members of the Special Committee had called for an early decision. It had been pointed out that such a definition would be particularly effective if adopted by the Security Council. Obviously, however, a definition would be useful only if the States which accepted it were firmly resolved to safeguard peace. There had been a measure of agreement among many of the delegations, so that the efforts to eliminate the differences which still existed and to formulate a definition in conformity with the Charter should be based on the points on which such agreement had been reached.

14. Emphasizing the importance of the principles which should constitute the basis of a definition, he stated that the Soviet delegation had always insisted on the need to define armed attack, because that was the form of aggression which had cost more human lives and wreaked more destruction than any other. Modern methods of warfare, which had wiped out the distinction between the fighting front and the rearguard, made such a definition all the more urgent.

15. According to the definition of armed attack given by the USSR, the State which took the initiative in waging war, on whatever pretext, should be recognized as the aggressor. The draft resolution submitted by the USSR (A/C.6/L.399) enumerated the acts which constituted armed attack. In that connexion he read out paragraph 1 of the draft, drawing attention particularly to sub-paragraph (f).

16. The proposed definition established, furthermore, that recourse to force among States could not be justified by political, strategic or economic considerations, by the desire to exploit natural riches in the territory of the State attacked, or to derive any other kind of advantage, by capital invested or by any other interests. In the same way, armed attack could not be justified by frontier incidents, by the internal situation of a State, or by any act of a State, whatever it might be. As many delegations from Asiatic, Arab and Latin American countries had pointed out, there had been numerous examples of economic aggression, and for that reason the draft definition was not limited to the question of armed attack.

17. He then replied to certain criticisms which had been made of the Soviet definition of aggression. It had been maintained that any definition would prove to be a trap for the innocent and a temptation to the aggressor,

who could argue before world opinion that the act which he had committed was not covered by the definition. Yet, as Lauterpacht had said, the definition of murder, for example, was not objected to on the grounds that it might sometimes be inadequate or unjust; in such contingencies legislators and judges were relied upon to use their wisdom and intelligence.

18. An enumeration of acts of aggression could not be expected to cover all such acts. Nevertheless, the Soviet delegation believed that a definition could be formulated which would prevent the aggressor from evading his responsibility, even if he had committed an act which could not be foreseen at the present time. That was why paragraph 5 of the draft resolution submitted by the USSR contained a provision defining as an act of aggression any act which the Security Council should declare to be such.

19. Those who were opposed to the formulation of a definition argued against the principle of priority embodied in the USSR draft resolution, yet that principle was in conformity with the Charter. Some had claimed that it was difficult at times to establish who had been the first to launch an attack, but those difficulties were not grounds for abandoning the effort to establish a definition. Those who held that all the circumstances must be considered before an aggression could be established betrayed their desire to evade the question and let the outcome be determined by chance. Without some prior agreement, there would be no exact criterion for identifying the aggressor, and the way would be open for political manoeuvring. The usefulness of a definition consisted in the fact that it would prevent a State from taking up arms against another State, and would condemn recourse to war. To abandon the effort to formulate a definition would be to recognize the right of States to settle controversies by force of arms, and would undermine the very foundations of the United Nations. Recognition of the principle that the first to attack was the aggressor constituted the essence of a satisfactory definition of armed aggression.

20. Some critics maintained that the definition proposed by the USSR would deprive other States of the right of self-defence and of the right to participate in the application of military sanctions in accordance with the procedure provided for in the Charter. Those allegations were unfounded, for any victim of aggression would have the right to take the measures indicated in the Charter. Furthermore, none of the provisions of the Soviet Union definition would prevent States from taking legitimate steps to maintain peace and security, in accordance with the Charter.

21. The Soviet delegation had tried, in a spirit of co-operation, to meet the objections of other States, and it hoped that the other delegations would for their part endeavour to make the necessary concessions so that it would be possible to establish a definition of aggression which would give pause to an aggressor and thus contribute to the strengthening of international peace and security.

22. Mr. ROLIN (Belgium), like the Rapporteur of the Special Committee, was fully aware of the serious nature of the situation with which the Sixth Committee was confronted. He realized that the report of the 1956 Special Committee (A/3574) - which constituted a veritable maze of contrary opinions - was at first

glance somewhat discouraging, but he was unwilling to be pessimistic, and hoped that the General Assembly, in order not to discredit the United Nations, would succeed at the current session in settling that question, which had been before it for seven years.

23. If, however, no agreement could be reached either on a definition of aggression or on an indefinite postponement of the question, the Assembly could perhaps extricate itself from the difficulty by requesting an advisory opinion from the International Court of Justice. Naturally, there would be no question of asking the Court to take the place of the General Assembly, but it would be perfectly possible to consult the Court concerning the differences of opinion on the proper interpretation of certain provisions of the Charter, if those points were reduced to very clear-cut formulae.

24. The representative of Belgium felt, as did the representative of the USSR, that the adoption of a definition of aggression was particularly necessary at that time. That attitude was dictated not so much by considerations of a legal nature, since the provisions of Article 51 of the Charter seemed to be sufficiently clear, but because public opinion was calling for a definition of aggression, because in some quarters the absence of a definition was considered to be at the root of certain abuses and of certain failures on the part of the Security Council, and because some statesmen were taking advantage of the situation to cast doubts on the actual scope of the provisions of the Charter. At the present moment, when the world had just witnessed an outstanding achievement of mankind that would be a source of new knowledge in new fields, the Sixth Committee should spare no effort to work out a definition of aggression, because in some quarters the feeling of deep admiration aroused by the Soviet Union's recent announcement that it had launched an artificial satellite into space was mingled with feelings of anxiety concerning the possibilities that were thus opened up to mankind's powers of destruction.

25. He recalled that when the Geneva Protocol for the Pacific Settlement of International Disputes was being drawn up in 1923 there had been talk of introducing a definition of aggression under which a State which refused arbitration would be described as the aggressor. Although that definition was at first welcomed with enthusiasm, it proved on further examination to be unacceptable and was subsequently abandoned. It was obvious, of course, that in defining an aggressor the refusal to accept arbitration might constitute one criterion and establish a certain presumption, but it could not constitute the sole criterion applicable in every case.

26. A comparison of the provisions of the Charter with those of the League of Nations Covenant would show that the situation at the present time was much less complex than it had been formerly. Aggression might be considered from the point of view of Article 51 of the Charter, namely, as an act giving rise to the right of self-defence, or from the point of view of Article 39, namely, as an act calling for action by the Security Council, or, lastly, without any reference to the Charter, as an act by which full responsibility was incurred by the State committing aggression. In the first case, the concept was limited, for in order for there to be aggression, there had to be an armed attack, but in the other two cases the concept became much broader, for it was generally admitted, on the one hand,

that the acts justifying action by the Security Council comprised considerably more than self-defence as justified by an armed attack, and, on the other hand, that any unlawful act by a State which caused injury to another State placed the onus on the first State. In order to avoid complete confusion and certain contradiction, such concepts as indirect economic or ideological aggression should be discarded, and efforts should be limited to defining aggression within the meaning of Article 51 of the Charter, with the specific proviso that that definition did not restrict or make subject to conditions the infinitely broader action of the Security Council.

27. The French text of Article 51 of the Charter contained the words "agression armée", whereas in the English text the expression used was "armed attack". The Spanish, Russian and Chinese versions used an expression corresponding to the English version. It therefore seemed incorrect to consider that an armed attack was only one of the forms which aggression might assume.

28. In order to define aggression within the meaning of Article 51, it was necessary to determine the criteria which should govern the matter. In the first place, there must be the use of weapons or armed forces; in the second place, the initiative must be taken by the State resorting to weapons or armed forces, in other words, that State must be the first to act; and in the third place, the armed attack need not have any particular scope or specific objective. Furthermore, the right of self-defence, whether individual or collective, was not the only exception to the prohibition against armed attack; there was also participation in a collective action that might be motivated by other considerations than an armed attack committed by a State. The Soviet Union definition seemed to have lost sight of the fact that the Security Council might act without there having been any armed attack, and that, in accordance with the power conferred upon it by the Security Council, a State might make use of its armed forces without being declared an aggressor.

29. He accordingly proposed that the General Assembly should declare "that any use of weapons or armed forces by a State against the armed forces of another State, or against its territory, or any use of such forces which penetrated that territory without the permission of the Government concerned, should be regarded as an armed attack within the meaning of Article 51 of the Charter, unless its purpose was individual or collective resistance against a previous act of armed aggression committed by that State, or unless it was carried out pursuant to a recommendation of the Security Council taken by virtue of Article 39 of the Charter". He did not claim that that was an entirely satisfactory definition; he was proposing it merely as a working document, and reserved the right to submit it later as a draft resolution. The draft resolution submitted by the USSR (A/C.6/L.399) contained a much longer enumeration of the forms which aggression might assume, but no progress would be made by adopting it. For example, paragraph 1 (f) of the Soviet Union draft, concerning armed bands, would be extremely difficult to apply in a case of civil war.

30. The Sixth Committee should make clear that Article 39, specifying the cases in which the Security

Council should act and referring to police measures, had an entirely different purpose than Article 51, which, to a certain extent, placed limits on the rights and duties of individual States. Although there were undoubtedly cases where both Articles applied simultaneously, it was also possible that the Security Council might not take action in a case where an armed attack was not of a serious nature but could, on the other hand, take action without waiting for an armed attack to take place. If, for example, the Netherlands decided to close the Schelde to navigation, Belgium would appeal to the Security Council even though there had not been any armed attack and even though Article 51 could not be invoked. It was therefore unnecessary and dangerous to use the term "aggression" where in reality there was a threat to the peace, an eventuality expressly envisaged by the Charter. Situations might arise where there was no armed attack in the beginning, but where one State incurred responsibility toward another. If the situation became more acute, it might result in a state of war in which the injured party would take the initiative. In such a case, the Security Council's task would not be eased if it had to limit itself to determining the author of the initial armed attack. Another example would be where a State committed an armed attack and indisputably violated Article 51, but where the victim of the armed attack made use of its right of self-defence so successfully that it penetrated and occupied the territory of the aggressor State. Ought the Security Council to do no more than find that the State whose territory had been occupied was the aggressor State? The Council ought to be able to address an injunction to both States.

31. Article 5 of the Charter, providing for the suspension of a Member of the United Nations, and Article 40, providing that in case of non-compliance with provisional measures the Security Council should duly take account of that failure, both showed that there was no need for an aggression in order for the Security Council to intervene. Its action was not necessarily connected with Article 51 but consisted in maintaining and restoring peace, and consequently covered situations which were infinitely broader than aggression. For that reason, the representative of Belgium suggested that the Assembly should declare in a second paragraph "that in adopting that interpretation of the words 'armed attack' within the meaning of Article 51 of the Charter, the Assembly in no way intended to limit or restrict the action of the Security Council envisaged in Chapter VII of the Charter for the maintenance or restoration of international peace and security, inasmuch as such action was not confined merely to acts of armed attack constituting a breach of the peace, but included all cases where one State infringed or endangered the vital interests of another State, whether or not in the form of an armed attack and whether or not such act was qualified as aggression, in view of the threat to the peace which would thereby result".

32. The third aspect of the problem was that of responsibility. In that regard, the Sixth Committee could refrain from passing any resolution, relying on international law and the arbitral organs which, as necessary, would deal with violations of the Charter not provided for in the proposed definition.

33. The representative of Belgium was convinced that the Sixth Committee would succeed in its work if it wanted to do so, if it kept to essentials, and if its members tried to achieve that mutual understanding

which would make it possible to resolve all legitimate points of concern.

The meeting rose at 12.55 p.m.