

SUMMARY RECORD OF THE NINETY-SEVENTH MEETING

Held on Thursday, 2 March 1972, at 11.30 a.m.

Chairman:

Mr. ROSSIDES

Cyprus

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (General Assembly resolutions 2330 (XXII), 2420 (XXIII), 2549 (XXIV), 2644 (XXV) and 2781 (XXVI))
A/AC.134/7; A/AC.134/L.37 and Add.1 and 2, L.38, L.39) (continued)

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) recalled that it had been his country that had suggested the establishment of the Special Committee, and its proposals had always taken the interests of all countries, large and small, into account. The establishment of the Special Committee occupied an important place among the measures to strengthen world peace and security which the United Nations had adopted thanks to the efforts of the USSR. While refusing to cede to others the merit for the suggestion, his delegation was nevertheless prepared to accept all reasonable proposals, i.e., those whose sponsors sincerely wished to achieve a true definition of aggression. Such a definition should not be purely theoretical and juridical; it must also take account of political and practical realities and would have to contain a condemnation of aggression and, accordingly, provisions on the legal consequences of the act. The Special Committee must endeavour to reach a definition which covered all those various aspects. Some members now claimed that, right from the start, they had made every effort to reach a definition of aggression, but it was in fact the USSR that had worked the hardest for it. For that reason, although it was ready to co-operate and, as in the past, to make every necessary concession, the Soviet delegation could not accept proposals whose effect would be to reduce its initiative to nothing or to weaken its scope.

The question of the definition and condemnation of aggression was just as topical as when the Special Committee had been established: wars of aggression were continuing, using improved military techniques, bringing death to innocent civilians and destroying the environment. And yet, as in the past, the Special Committee was still coming up against great difficulties.

Some of those difficulties were objective and arose from the very complexity of the question; but it had always been known that they existed and if members of the Special Committee showed that they were willing to make the necessary concessions, there was no doubt that they could be overcome.

There were, however, also some subjective difficulties: ever since the establishment of the Special Committee, many delegations had not shown the least desire to co-operate; they said that it was difficult to define aggression, which

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could not be denied, but it would have been equally difficult to adopt the Charter and many other international instruments without a willingness to seek a compromise. Furthermore, some delegations were clearly trying to prepare the way for a revision of the Charter: the consideration of the legal uses of force had given them a chance to question the competence of the Security Council. But the Special Committee should stay within its terms of reference and confine itself to defining aggression. Any country was of course entitled to the view that the Charter should be revised, but that was a problem for consideration by the competent organs of the United Nations. The same could be said for the question of territorial waters: the juridical régime of the territorial waters was a complex problem which came within the competence of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction. The Special Committee was only complicating its own task by such interference in the work of other organs. Other difficulties were created because some delegations thought only of their own countries' interests; but the Special Committee, a United Nations organ, should bear in mind the interests of the international community as a whole. Furthermore, the definition of aggression should be of lasting application and no country should base its position on temporary situations. Lastly, some members were wilfully complicating the Special Committee's work by, for example, formulating proposals which they knew were unacceptable and adopting rigid positions. Attempts had also been made to confuse interference and aggression; the two concepts were of course linked, but there were very clear texts on the question of interference. Similarly, with regard to self-determination, attempts had been made to alarm the Special Committee with warnings that States might disintegrate, but, in fact whenever the right of peoples to self-determination was recognized, as was the case in the USSR, there was no such danger.

Even in those circumstances, and despite the difficulties it had faced, the Special Committee had made some progress since it had begun its work, and particularly since its 1969 session, when it had considered three draft definitions. Members of the Committee had reached agreement on several elements of the definition: the formulation of the preamble, the fact that the

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definition should reflect the Charter position on aggression, and in particular on the use of armed force, and lastly the acts which were to be included in the definition. On other questions, no real agreement had been reached but the various positions had come noticeably closer, particularly with regard to the general definition, the principle of priority, the legal consequences of aggression and the right of peoples to self-determination.

Of course there were still differences of opinion, particularly with regard to the questions of proportionality and the legal uses of force. In the case of proportionality, some members were putting forward formulas which, in the opinion of his delegation, would only serve the interests of the aggressor and would be detrimental to the victim. In the end, such formulas in fact favoured the big Powers. His delegation could therefore not accept them, considering that the interests of all States, large and small, should be given equal consideration. With regard to the legal use of force, his delegation considered that the Charter left no room for doubt: only the Security Council had the right to use force on behalf of the United Nations.

The Special Committee should now take a decision on the report of the Working Group. The report and its annexes should be approved, but the draft submitted by the informal negotiating group should only be taken note of. One delegation, a member of the Working Group, had proposed that certain parts of the Working Group's report should be deleted; but the Group had adopted its report unanimously, taking into account all the comments made during the debate. That proposal was therefore unacceptable. Furthermore, the 20-Power proposal (A/AC.134/L.37/Add.2) was not in conformity with the Working Group's report, in that it did not mention the progress made in the Group.

The proposal made at the previous meeting by the Canadian representative, and supported by the Italian representative, was not realistic as it did not take into account the views of the majority of the members of the Committee, who wanted the Committee to continue its work. It would be tantamount to saying that no progress had been made.

According to the representative of Guyana, it was necessary to formulate a definition that would satisfy world public opinion, and the question of whether or not the definition was acceptable to the Security Council was secondary.

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He could not accept that approach, particularly as the public had long since formed a fair idea of aggression and could condemn the aggressor. It would probably welcome the adoption of a fair and reasonable definition, but did not really need it. On the other hand, the Security Council needed a definition which it could use as a criterion. Lastly, some members were afraid that the definition might serve the interests of the aggressor, which might take advantage of it to justify its acts. In fact, whether or not there was a definition, the aggressor would always find good reasons to justify itself; the existence of a definition would, on the other hand, be extremely useful to the Security Council.

Mr. VELASCO-ARBOLEDA (Colombia) said that consideration of the Working Group's report revealed that progress had been made. Of course, it had not been possible to achieve the results hoped for, perhaps because of further difficulties caused by relatively recent events. The obstacles that had been encountered were not, however, insurmountable, and it might be hoped that at its next session the Committee could achieve its objective and formulate a clear, objective, and really useful definition of aggression.

The Committee should approve the Working Group's report, which not only had the merit of stating precisely the principles that had been adopted, the methods used and the objectives attained, but also of preventing reconsideration of the divergent views already repeatedly expressed.

His delegation was a sponsor of the proposal contained in annex II, part F, of the Working Group's report (A/AC.134/L.37/Add.2). The text reflected the joint determination of 20 countries to defend certain principles while not adopting too rigid a position. In such an eminently complex and delicate matter, the goal was to reach an agreement which was in no way imposed but which emerged from a consensus.

In conclusion, his delegation would take no initiative which might destroy the prospects of reaching agreement shortly and would support draft resolution A/AC.134/L.38.

Mr. KOMATINA (Yugoslavia) said that it was difficult to judge the results achieved at the current session because the summary of the informal negotiating group's report did not really reflect all the progress made. In

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fact, the representatives of the various delegations had shown willingness to hold constructive and concrete discussions and to make new proposals; that willingness in itself was progress. It was probable that the area of agreement would have been larger if the informal group had had more time. In that regard, his delegation found it regrettable that, at the beginning of the session, the Special Committee's time had been wasted on procedural questions.

Some progress had been achieved: brackets had been deleted from the general definition and from the list of acts proposed for inclusion; a solution had been found to the question of political entities other than States; and agreement had been reached on the inclusion of a sentence concerning minor incidents. Furthermore, certain solutions proposed in connexion with the legitimate use of force, the principle of priority, aggressive intent, the right of peoples to self-determination and the legal consequences of aggression represented a solid basis of compromise.

His delegation regretted, however, that certain delegations had found it necessary to restate officially their original positions, parallel to the report of the informal group, which had nevertheless been accepted by all as a basis for future work. That had compelled other delegations to do likewise, and in that connexion, the 20-Power text (A/AC.134/L.37/Add.2) had been misinterpreted; it meant simply that those countries had not had time to consider in depth the report submitted on behalf of the informal negotiating group and that they reiterated their position, taking the view that they had shown a spirit of accommodation and were ready to continue doing so in the future.

The need for a definition had been clearly recognized by the General Assembly. The difficulties encountered and the slowness of the progress achieved arose from the complexity of the question and the political repercussions of each idea considered. It was therefore inadmissible for certain delegations deliberately to prolong such an important task by their unwillingness to co-operate and their desire to defend their countries' interests without regard for the interests of the vast majority of the international community.

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His delegation considered that the 13-Power draft came closest to the Charter and best took into account the interests of all countries, particularly those of the third world; it should therefore be taken as the basis for future discussion. To be valid, however, the definition must be universally accepted, in other words, adopted by means of a consensus. Despite the slowness of the progress achieved, his delegation still hoped that it would be possible to achieve that aim, and it was ready to consider all compromise proposals. It felt that the force of inertia exerted by certain delegations was unacceptable to the extent that it constituted a kind of veto against the definition of aggression. In consequence, his delegation supported the renewal of the mandate of the Special Committee.

Mr. ALCIVAR (Ecuador) said that, when, at the 95th meeting, his delegation had introduced document A/AC.134/L.37/Add.2, lack of time had prevented it from stating its position in detail on the report of the informal negotiating group. It reserved the right to do so in the Sixth Committee at the twenty-seventh session of the General Assembly. However, it wished now to make several clarifications in order to reply to the statements made by certain delegations.

When the United Nations had first been established, the small countries, which were nevertheless in the majority, had hardly been able to make their voices heard. It was better understood today why, during the elaboration of the Dumbarton Oaks proposals, the big Powers had desired to take advantage of "political realism" to rule the world. But it was much less understandable that they should still invoke the same political realism to rule the world of 1972, which was no longer that of 1945.

It had been rightly stressed that the General Assembly had succeeded in adopting important declarations regarding certain principles of the Charter, such as resolution 1514 (XV) on the granting of independence to colonial countries and peoples and resolution 2131 (XX) on the inadmissibility of intervention in the domestic affairs of States, the Declaration on Friendly Relations and the Declaration on the Strengthening of International Security, and that all those declarations, with the exception of resolution 1514 (XV) had been adopted by consensus. But they had been adopted by somewhat distorting the meaning of the

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Charter provisions regarding United Nations organs. The same thing had been true at the twenty-fifth session of the General Assembly, when his delegation had found it necessary to make a long statement on the draft of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, certain points of which it found quite unacceptable.

It was necessary to repeat that the preparatory work at Dumbarton Oaks and San Francisco showed that the big Powers had been motivated solely by the idea of creating for their own benefit a body endowed with wide powers. The Latin American countries had never had any illusions on that subject and time had shown that they were right. As one of their representatives had stated at the twenty-sixth session of the General Assembly, the Security Council was no more than a club of five with 10 guests. However, the determination of the existence of an act of aggression lay indisputably within the powers of the Security Council. What the countries of the third world wanted was protection against aggression and, to that end, a good definition of the international crime of aggression. In that respect, they could make no concession. Nor could they compromise on the fundamental question of principle represented by the legal use of force by the United Nations. To compromise on that point would be to agree to being deprived of all protection against future aggression. The definition of aggression should be first and foremost, a matter for the Security Council, if an atmosphere of confidence prevailed within it. But the Council was not discharging its duties; it was not fulfilling its obligations. Genuine political realism would be to recognize that fact and to say so.

The countries of the third world were of course ready to seek agreement, but in their eyes, the legitimate use of force was none the less an essential question, a question of principle that must be taken into account in any definition of aggression. There was no need to amend the Charter to solve the fundamental problem posed by the legitimate use of force. It was enough to state the principle that force could be used only within the framework of the United Nations. Failure over a period of 22 years to solve the problem of deciding what body should be entrusted with the use of force was no reason for neglecting the question of defining aggression.

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As to the position adopted by the 20 sponsors of document A/AC.134/L.37/Add.2, he explained that the report of the informal negotiating group had given rise to divergencies of views among those delegations. They had therefore held meetings, but there had not been time to carry out the necessary consultations. The 20 delegations in question had therefore simply taken note of the report submitted on behalf of the group and reiterated their position on the basis of the 13-Power draft, by whose principles they stood. In conclusion, he appealed to the representative of Guyana to withdraw his proposal (A/AC.134/L.39).

The meeting rose at 1.05 p.m.