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**SIXTH COMMITTEE, 1207th MEETING**

*Tuesday, 27 October 1970, at 10.45 a.m.*

**NEW YORK**

*Chairman:* Mr. Paul Bamela ENGO (Cameroon).

*In the absence of the Chairman, Mr. Owada (Japan), Rapporteur, took the Chair.*

## AGENDA ITEM 87

### Report of the Special Committee on the Question of Defining Aggression *(continued)* (A/8019)

1. Mr. MOE (Barbados) said that in his delegation's view the Charter of the United Nations employed the term "aggression" in the sense of the illegal use of armed force in international relations, thereby establishing the rule that the legitimate use of armed force was limited to clearly defined circumstances. Throughout the years, however, the term had been used to refer to a variety of different situations, including any interference by one State in the affairs of another. Consequently, a clear definition of aggression would greatly assist the bodies responsible for implementing the provisions of the Charter relating to the collective security system.

2. The Special Committee on the Question of Defining Aggression was still divided on the question whether it should limit itself to defining "direct" aggression. The Charter itself made no distinction between direct and indirect aggression, and his delegation was opposed to producing a partial definition only.

3. The "first use" principle and the concept of aggressive intent were closely related. His delegation took the view that the principle of first use was clearly a factor which should be taken into consideration when attempting to determine whether or not an act of aggression had been committed. If that point of view was accepted, the concept of aggressive intent became irrelevant. It could not be assessed either by the nature of the act itself, since the use of armed force was bound to be intentional, or from the circumstances in which the act was committed, since the use of force was legitimate only in the case of self-defence, which was already settled by reference to the first use principle. For the same reason, the principle of proportionality had no place in the definition, since the State first making use of force would not be governed by it any more than a State acting in self-defence.

4. His delegation considered that reference to the Security Council's powers was irrelevant to the definition. It was the task of the Security Council to determine whether or not an act of aggression had been committed, and in so doing it would be guided by any definition of aggression that might be produced. If any organ involved in such a determination did not automatically refer to the definition, then the Special Committee had been working to no purpose. The Sixth Committee should stop worrying about the possibility of circumscribing the powers of the Security Council and concentrate on providing it with appropriate criteria by which it could properly perform its duty.

5. There was no basis for insisting that the Special Committee reach a unanimous decision on the question of defining aggression. While it was true that if a definition was to be of any value it must command the approval of a large majority of Member States, there was nothing in the Special Committee's terms of reference or in the rules of procedure of the General Assembly stipulating that the definition had to be approved by all Members.

6. His delegation felt that the outstanding issues could be resolved in the near future and supported the recommendation to extend the Special Committee's mandate in order to enable it to complete its work during its next session.

7. Mr. NALL (Israel) said there were insurmountable difficulties surrounding any attempt to formulate a definition of aggression by the enumeration of acts of force. Even if such a definition could be produced, it could not be expected to have any impact on the development of international penal law or to eliminate provocation and aggression; indeed, it might be viewed as an unconstitutional attempt to amend the Charter.

8. Outlining the twenty-year history of the effort to define aggression, he pointed out that the problem had become more rather than less complex than it had appeared at the beginning, and there were grounds for wondering whether it was desirable or even wise to continue a search which could only lead to an imcomplete catalogue of acts. The delegation of Israel had all along expressed the hope that the Special Committee would succeed in its task of producing a generally acceptable definition—one that would make it possible to evaluate objectively all the circumstances of each particular case, so that Member States could fulfil their obligations under the Charter unreservedly and in good faith. Unfortunately, the reports of the Special Committee had led his delegation to doubt whether its expectations were attainable.

9. His delegation's apprehensions had been confirmed by the report (A/8019) now under consideration, from which it appeared that the Special Committee was still divided on most questions, including even the scope of the definition. Suggestions had been made to include matters which were entirely irrelevant and—most surprising of all—to exclude the essential concept of indirect aggression, the consequence of which would be to circumvent the application of

the principle of self-defence. In his view, the question of indirect aggression, an urgent present-day reality, should have been given priority, since it constituted as much of a threat to international peace and security as other, more direct forms.

10. In view of the Security Council's primary responsibility for the maintenance of international peace and security, it was essential that all its permanent members should accept the definition. Unless adopted unanimously by the Sixth Committee, the definition would prevent the Security Council from exercising its powers under Article 24 (1) of the Charter.

11. The principle of "first use" could not be a determining criterion in the definition of aggression. Acts of aggression such as blockades could oblige the State against which they were directed to have recourse to its inherent right of individual or collective self-defence.

12. The delegation of Israel took the view that the question of aggressive intent should be left to the discretionary power of the Security Council, which should take motives and purposes into consideration when determining whether or not an act of aggression had been committed. It would only add to the complexity of the problem if the concept of intent were included in the definition.

13. The inclusion of the principle of proportionality would not be helpful, since the victim of aggression would naturally apply such force as would repel the aggressor and could not be expected to pause to evaluate abstract notions.

14. For all those reasons, the delegation of Israel considered that the extension of the Special Committee's mandate would only serve to increase the present ambiguity, jeopardize the basic rights enshrined in the Charter, and adversely affect the powers of the various organs of the United Nations. He therefore could not support the recommendation in paragraph 147 of the report. In the view of his delegation, what was needed was not a definition which sounded well but concerted action to stop aggression, whether direct or indirect, at the outset.

15. He wished to register a formal objection to the fact that the report under discussion, adopted on 14 August 1970, had not been distributed until 12 October, so that members of the Sixth Committee had not had a proper opportunity to consult with their Governments. The same applied to the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States. The operation of law-making was a delicate one, requiring certain patterns of procedure, which consisted essentially in allowing every Government to study the drafts in depth as they were being prepared, so that in due course they could be discussed line by line before they were adopted. Under the procedures at present followed by the Sixth Committee, those essential processes were being cast aside. His delegation could not accept the idea that a consensus reached in a special committee of limited membership, frequently working in small groups off the record, could be a valid source of international legal texts.

16. Mr. PINTO (Ceylon) said that progress by the Special Committee in its difficult task, although understandably slow, was clearly discernible, and his delegation was confident that it would achieve its object. It was gratifying to see from the Special Committee's report that the desirability of the definition was not a factor impeding progress. A definition of aggression would prove a valuable guide in the assessment of States' conduct and a stern warning to aggressors and potential aggressors. Also, a suitable definition would protect States against the arbitrary characterization of the use of force automatically as aggression. If sufficiently precise, the definition would raise a presumption of responsibility in the case of acts of force falling within its terms.

17. Unfortunately, none of the proposed definitions before the Special Committee was fully acceptable to his delegation. In formulating the definition, the Special Committee should wherever possible use terms of known legal significance; where terms of uncertain juridical content were used they should be defined. The specifically legal approach traditional in Sixth Committee matters should not be sacrificed to political considerations in the task of defining aggression, in which the customary standards of legal draftsmanship should apply.

18. To take some examples at random: the notion of a declaration of war featured prominently in two of the draft definitions submitted to the Special Committee, but such a declaration was not necessarily relevant to the existence of aggression; it might be made long after the commencement of hostilities, for purely judicial or administrative reasons, in which case neither its existence nor its timing was indicative of aggression or aggressive intent. In any case, an aggressor would probably disregard a legal nicety such as a declaration of war, and might in fact avoid making it in order to escape the operation of a definition which mentioned it. The description of the concepts of invasion or blockade by reference to their essential characteristics, such as the penetration of a frontier or boundary in the first case, and interference with or stoppage of the transport of goods in the second, would be preferable to the use of the terms "invasion" and "blockade" themselves. Again, although it was acceptable to mention the use of weapons of mass destruction, since their employment might raise the question of the proportionality of an act and thus affect the burden of proof of its justification, the words "weapons of mass destruction" needed definition. In addition, the term "crime against peace" was insufficiently precise; his delegation would prefer a reference to "humanity" as the sufferers. As a final example, formulations such as "the use by a State ... of armed force ... contrary to the purposes, principles and provisions of the Charter of the United Nations" and "acts ... committed ... in violation of the Charter ..." were of little value as they begged the entire question.

19. His delegation advocated the elimination, as far as possible, of subjective notions and the establishment of objectively ascertainable elements which would enable the definition to be interpreted, and applied, judicially. Ceylon urged the inclusion of a provision that the concept of aggression had no application to acts of force by dependent peoples in the exercise of their right of self-determination in accordance with General Assembly resolution

1514 (XV), and it favoured the continuation of the Special Committee's work with a view to early completion along the lines reflected in the report of the Working Group (*ibid.*, annex II).

20. Mr. NANA (Pakistan) said that world conditions made it urgently necessary to expedite the preparation of a definition of aggression and its application by the United Nations. Concerted efforts should be made to that end. His delegation reiterated its view that a generally acceptable definition of aggression should include a separate article on economic and other indirect forms of aggression, which were just as harmful as armed attack. An example he had in mind was the effect of the economic blockade by one country of a neighbouring land-locked country. Pakistan continued to support the right of self-defence laid down in Article 51 of the Charter provided it was exercised only when an armed attack actually occurred and the response was proportionate to the attack. It also considered that proportionate measures of self-defence were justified against acts violating the sovereignty and territorial integrity of a State other than armed attack. The use of force to prevent a people under colonial or alien rule from exercising its right of self-determination was a form of armed aggression. All States had a duty to help such peoples in their legitimate struggle for self-determination, and in certain circumstances the organizing of armed bands and the instigation of civil strife were legitimate means of achieving self-determination, especially when it was denied to a dependent people by the use of force and political coercion. His delegation earnestly hoped that those views would receive due consideration in the final stages of the task of defining aggression.

21. Mr. SECARIN (Romania) said that the stage of contesting the desirability of a definition of aggression was largely over, and the attitude displayed in the Special Committee towards the problems it had examined at its last session justified a fairly optimistic view of the success of its undertaking.

22. It was essential that any definition of aggression should stem from the purposes and principles of the Charter and be consonant with its provisions. Juridically, the definition should constitute a rule of law designed to prevent aggression by identifying its forms and consequences; politically, it should facilitate the determination of acts of aggression with a view to the imputation of responsibility to the State concerned and appropriate international action to restore peace and avert further illicit use of force. To serve that end, the definition should characterize aggression not merely as the illicit use of force but also as a crime involving international responsibility. It would thus rank with the formulation of the principle of the non-use of force in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the United Nations Charter (General Assembly resolution 2625 (XXV)). In his delegation's view, the words "war of aggression" as used in this Declaration covered all acts of aggression as mentioned in Articles 1 and 39, *inter alia*, of the Charter.

23. The function of the definition also demanded that it should reflect the notion of aggression embodied in the Charter. His delegation welcomed the agreement on that point in the Working Group (see A/8019, annex II, para. 4), but considered that the notion should be amplified to include the idea of the interpretation of the Charter in good faith so as to bring within the definition the illicit use of armed force in any form by a State or group of States against another State or group of States. In that context, Romania fully supported the view expressed in the second preambular paragraph of the USSR draft (*ibid.*, annex I, draft proposal A) and thought that a form of aggression which the definition should mention was that whereby a State made its territory available to another State for the purpose of an armed attack against a third State. Paragraph 1 of the USSR draft, paragraph 2 of the thirteen-Power draft (*ibid.*, draft proposal B) and paragraph II of the six-Power draft (*ibid.*, draft proposal C) contained elements which, if properly supplemented, should quickly lead to an acceptable general definition of aggression.

24. To fulfil the functions he had outlined the definition should as far as possible be based on objective criteria. His delegation therefore supported the inclusion of the principle of priority, but agreed that it should not apply automatically. The question of the inclusion of the notion of aggressive intent required further study. The analogy between intent in municipal criminal law and intent in international criminal law should not be taken too far, particularly where aggression was concerned, since the position of an aggressor State could not be likened to that of an individual accused of a crime, nor could any presumption of innocence in favour of an accused person be automatically applied to an aggressor State without weakening the force of the definition.

25. To avoid confusion, the definition should not refer to political entities other than States. It should also expressly state the only circumstances under which international law recognized the use of armed force as legitimate: in the exercise of the right of self-defence as provided for in Article 51 of the Charter; in the struggle of colonial peoples for independence by virtue of their right of self-determination, as laid down in the Charter; and pursuant to a resolution of the Security Council in the exercise of its functions under the Charter. Various paragraphs of the USSR and thirteen-Power drafts contained appropriate wording to that effect.

26. The definition should state that the use of armed force by regional bodies was to be exercised only as expressly permitted by the Charter. Romania therefore supported the principle contained in paragraph 4 of the thirteen-Power draft. In addition, the definition should include a paragraph designed to prevent a State from invoking any consideration relating to another State's internal or foreign policy to justify the use of force against the latter.

27. Romania favoured a definition which spelt out the legal consequences of aggression and precluded the aggressor from benefiting from his aggression. In that connexion, it saw merit in paragraph 4 of the USSR proposal and paragraph 8 of the thirteen-Power draft. The formulation of the principle of the non-use of force in the Declaration on Friendly Relations contained appropriate wording on the subject.

28. Finally, the definition should expressly safeguard the powers of the Security Council as the United Nations organ primarily responsible for the maintenance of international peace and security. In applying the definition to individual cases of aggression, the Security Council would be acting according to Article 24 (2) of the Charter, and not exercising "discretionary power", a term frequently used, but nowhere to be found in the Charter.

29. His delegation confirmed its support for the recommendation of the Special Committee with regard to the resumption of its work early in 1971.

30. Mr. GARCÍA BAUER (Guatemala) said that his delegation considered it most important to formulate a definition of aggression and was therefore pleased with the progress made by the Special Committee. Since the definition would obviously have to be based on Article 39 of the Charter, there was a danger that it might interfere with the authority of the Security Council. A possible solution to that problem would be for the text to be adopted by both the General Assembly and the Security Council, either simultaneously or successively.

31. No one would deny that the forms of aggression envisaged in the Charter had evolved considerably in the past twenty-five years, and it was reasonable that the principle of self-defence as set out in Article 51 should be interpreted in the light of developments in outer space, on the sea-bed, in nuclear weapons and in satellite communications.

32. Referring to the Inter-American Treaty of Reciprocal Assistance, signed in 1947,[1] he pointed out that it contained provisions on the subject of aggression in articles 6, 7 and 9. Article 9 of the Treaty established two cases of aggression and also authorized the Meetings of Ministers of Foreign Affairs of the American Republics to determine that certain acts constituted acts of aggression. In pursuance of that authority, in July 1964, the Ninth Meeting of Consultation of Ministers of Foreign Affairs of the American Republics, when taking up the Venezuelan complaint against the Cuban Government had ruled in its resolution I[2] that international subversion by means of terrorism, sabotage, assault and guerrilla warfare were forms of aggression. By virtue of the provisions of the said article 9, the Meeting of Consultation of Ministers of Foreign Affairs of the American Republics had discretionary powers to determine acts of aggression in the American continents, quite apart from those held by the Security Council under Article 39 of the Charter. The definition of aggression being drawn up by the Special Committee should take account of the provisions of the Inter-American Treaty. It should have universal validity and should be taken into account in all the regional systems for the maintenance of peace and security, including the Organization of American States (OAS).

33. Although it regretted that the General Assembly had not given the Special Committee more specific terms of reference, the Guatemalan delegation was satisfied with the progress made and believed that the goodwill demonstrated by the members at the 1970 session should encourage the Sixth Committee to recommend to the General Assembly to invite the Special Committee to continue its work in 1971. There was no doubt that if it succeeded in reaching agreement the definition would receive widespread support and be successful in application. Unfortunately, however, there were still a number of controversial issues on which the sponsors of the three draft proposals submitted to the Special Committee had differing views.

34. His delegation believed that the definition should be comprehensive and should include all forms of aggression; the Charter, after all, did not state that armed force was the only form. If, however, it was impossible to define all forms at present, it agreed with the suggestion that the definition should be confined to the use of armed force and expanded to include other forms subsequently.

35. With regard to the question whether States alone or, as was suggested in the six-Power draft, all political entities should be referred to in the definition, his delegation believed that it would be easier to achieve a general consensus if the Committee accepted the suggestion of the representative of Iraq (1202nd meeting) and omitted for the time being political entities not recognized by international law.

36. The question of aggressive intent had also produced divided views. His delegation, like others, was against the inclusion of subjective elements and urged that the definition should be as objective as possible. It believed that the principle of priority should be taken into account as a factor in determining an act of aggression, since it would facilitate the task to know which State had been the first to use force.

37. There were also divided views on the legal consequences of aggression and on whether questions like the rejection of military occupation and the non-recognition of territorial gains acquired by force should be included. Although his delegation was doubtful as to whether such matters fell within the Special Committee's terms of reference, it believed that a determination of those legal consequences would be a useful addition to the definition.

38. Article 53 of the Charter referred only to "enforcement action", such action taken under regional arrangements or by agencies requiring the prior authorization of the Security Council. The article did not draw a distinction between the use of armed force and enforcement action. However, the wording of paragraph 4 of the thirteen-Power draft appeared to indicate that regional agencies could not take certain measures not implying the use of armed force, without obtaining the prior authorization of the Security Council. If that was the intention, it would deprive regional agencies of the authority to take measures not involving the use of armed force, e.g. those referred to in Article 41 of the Charter. In the case of the Americas, the Inter-American Treaty of Reciprocal Assistance would be weakened, since article 8 allowed such measures to be taken. Since the point touched on the question of relations between the United Nations and regional organizations, his delegation considered that it should be duly taken up by the Special Committee.

1 See United Nations, *Treaty Series*, vol. 21 (1948), No. 324 (a), p. 93.

2 See Organization of American States, *Official Records*, OEA/Ser.F/11.9, Doc. 48/Rev.2 Corr.

39. Mr. ZAVOROTKO (Ukrainian Soviet Socialist Republic) said that post-war history provided many examples of armed attack on sovereign States and attempts to put down national independence movements by force. The aggressors had frequently sought to defend their "right" to attack other States and on occasion had even posed as the victims of aggression. It was therefore clear that a precise and internationally recognized definition of aggression would be of great assistance in maintaining world peace. Discussions in the United Nations over a number of years had shown that such a definition, though difficult, was possible. He therefore welcomed the Special Committee's report and the efforts made by the Working Group.

40. His delegation supported the majority view that priority should initially be given to the definition of direct armed aggression, on the understanding that the question of indirect aggression could be taken up at a later stage. He regretted that the sponsors of the six-Power draft had not yet adopted that approach and wished to emphasize that his Government in no way minimized the threat posed by indirect aggression.

41. The welcome consensus emerging on the subject of priority augured well for its inclusion in the definition. Not only was it an easy principle to apply, but it provided objective criteria both for defining the concept of armed aggression and for establishing State responsibility. Moreover, the principle of priority had already been embodied in several international treaties, including the Locarno Treaty of 1925 and the Franco-Romanian Treaty of 1926.

42. The inclusion of the concept of political entities other than States in the definition was not only superfluous but invalid, legally and politically. It would constitute a departure from the Charter, which contained no mention of any such concept. The existence of a State did not depend on its recognition by other States, as was proved by the case of the socialist countries, which had long been referred to as "geographical expressions" by the imperialist Powers but had nevertheless continued to exist and now played an important part in the development of international co-operation. There was a danger that the concept might be used to undermine the right of peoples to self-determination or to sanction the use of force against colonial peoples struggling for their independence.

43. The three draft proposals before the Special Committee all referred to the legitimate use of force. He particularly commended the Soviet Union text, which distinguished clearly between aggression and collective action in accordance with the Charter, including the use of force by dependent peoples in order to exercise their inherent right of self-determination in accordance with General Assembly resolution 1514 (XV). In addition, the Soviet Union draft rightly emphasized the functions and powers of the Security Council in preventing acts of aggression. That provision was most important, since an attempt had been made in the Special Committee to circumvent the Security Council by giving the General Assembly power to authorize the use of armed force —which was contrary to the Charter.

44. Referring to the concept of aggressive intent contained in the six-Power draft, he pointed out that an act of aggression could never be entirely "accidental"; it was always intentional.

45. His delegation attached great importance to the provision in both the Soviet Union and the thirteen-Power proposal to the effect that no territorial gains or special advantages resulting from armed aggression should be recognized. The aggressor must not be allowed to enjoy the fruits of his wrongdoing. In that connexion, the question of the responsibility of the aggressor was highly significant and had already been embodied in international practice, for instance at the Nuremberg and Tokyo tribunals. The Soviet Union draft rightly stated that armed aggression entailed the political and material responsibility of States and the criminal responsibility of the guilty persons. Such a provision would serve as a deterrent to aggression, and he was glad to note that there was broad agreement on that subject in the Special Committee.

46. The Ukrainian delegation welcomed the growing area of agreement within the Special Committee, which gave grounds for hoping that it might be able to complete its work successfully. The best way of solving the outstanding problems would be by seeking to reconcile the positions of the groups of States which had submitted draft proposals. In that respect, the Soviet Union and thirteen-Power texts, which were the most closely related, could provide the basis for a generally acceptable definition. He supported the proposal to extend the Special Committee's mandate.

*Mr. Engo (Cameroon) took the Chair.*

47. Mr. CRUCHO DE ALMEIDA (Portugal) said that in view of the difficulty and complexity of formulating a definition of aggression, it was small wonder that serious doubts had been expressed when the General Assembly had decided to set up a Special Committee on the question. A definition of aggression required a firm position by Member States on the primary and most delicate responsibility of the United Nations, namely the maintenance of international peace and security. The task was further complicated by the question of whether and how to divide responsibility for the maintenance of peace not only among the principal organs of the United Nations but also between the United Nations itself and the regional organizations. Fortunately, the United Nations system for the maintenance of peace and security was preventive as well as repressive, and did not rely solely on the notion of aggression. That had enabled a number of difficulties of concept to be overcome in practice.

48. His delegation was in agreement with a number of the views that had been put forward, such as that expressed in the last preambular paragraph of the six-Power draft, and could therefore support the work of the Special Committee, which had already succeeded in throwing light on the various problems involved. There would be a temptation to speed matters up by having recourse to a simple majority vote, but such a procedure would weaken the definition irreparably and prevent any subsequent meeting of minds. The definition should be agreed by consensus.

49. Although the aim of the definition should be to interpret the Charter and respect the system established thereby, it should also be as comprehensive as possible and

include all forms of armed aggression, whether by regular troops or by the infiltration of armed bands and terrorists or by the provision of support for such subversive activities.

50. With regard to recourse to armed force in the exercise of the right of peoples to self-determination, his delegation recalled that the use of the expression "armed struggle" had been consistently rejected in all the texts adopted by the General Assembly and that the reasons for that were quite realistic. He noted that according to paragraph 142 of the Special Committee's report self-determination and the administration of dependent Territories had been carefully regulated by the Charter, which had instituted an effective system that did not envisage the use of armed force by dependent Territories. Of course, that prohibition of the use of force did not mean that colonialism did not violate certain rules of international law, assuming that the term "colonialism" was used to mean the exploitation by one people of another people and the absence of a Government to represent the population of the territory as a whole, without distinction as to race, creed or colour.

51. Another point to be considered was that any recognition of the legitimacy of the use of force on the ground that aid should be given to dependent and oppressed peoples might in fact provide a pretext for carrying out what were manifestly acts of aggression. In view of the universal scope of the right to self-determination, there were large numbers of cases in which such abuses might occur.

52. No definition should provide criteria that would be applied automatically and in such a way as to cause an unjust determination of fact, and the definition should recognize not only that the primary responsibility for the maintenance of peace lay with the Security Council but also that self-defence could be invoked by States, only as provided in Article 51 of the Charter.

53. Mr. MIRAS (Turkey) said that his delegation welcomed the considerable progress made by the Special Committee and the spirit of co-operation that had prevailed during its discussions at Geneva. It hoped that the work would continue, and it considered that whatever terminology was used, the definition should cover all forms of aggression, direct or indirect. A formulation on such lines would undoubtedly help the Security Council to determine the existence of acts of aggression.

54. As had already been pointed out, the areas of agreement that had emerged from the Special Committee's discussions were much wider than was indicated in its report, which could only record official positions. There had, for instance, been great flexibility on the questions of priority and intent, and although there was still much to be done, it was clear that the Special Committee was working along the right lines and that the Sixth Committee might reasonably expect it to emulate the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States and in due course deliver the much-desired consensus text.

55. His delegation supported the recommendation that the Special Committee on the Question of Defining Aggression should reconvene as early as possible in 1971; and Turkey would continue to make its contribution as a member.

56. Mr. AL-SABAH (Kuwait) said that the question of defining aggression was extremely complicated, not only because the text produced would become binding on sovereign States, but also because some States, which condoned and even approved existing cases of aggression, were unwilling to tackle the problem seriously. Nevertheless, it was apparent that the Special Committee had made valuable progress during its 1970 discussions.

57. His delegation believed that the definition of aggression should be divided into two parts, one dealing with direct aggression and the other with the equally important question of indirect aggression. The Special Committee had been wise in deciding to deal with direct aggression first and to postpone its consideration of indirect aggression to another occasion.

58. There were a number of key elements that should be contained in the definition. It should take account of the relevant provisions of the Charter. It should not encroach on the powers and functions of the Security Council, and indeed it should be accepted unanimously by all States Members of the United Nations, including the permanent members of the Security Council. It should also contain a comprehensive though not exhaustive list of acts which constituted aggression; it should state that any intervention, whether armed or not, in the domestic affairs of another State was an act of aggression; and it should lay down the responsibilities and liabilities of the aggressor State, including matters like the non-recognition of territory acquired by force. Furthermore, it should recognize that the right of self-defence should be exercised in a manner proportionate to the circumstances and that the principle of priority was an important factor for the Security Council to take into account when determining whether aggression had taken place.

59. Turning to the controversial question whether or not aggressive intent should be included in the definition, he said that although *actus reus* and *mens rea* were essential elements in criminal law, they were irrelevant to the determination of responsibility in international law. If aggressive intent was included in the definition, States would be able to commit an act of aggression and then plead lack of intent in justification of their action. He believed that the principle of absolute liability should govern any determination of aggression.

60. Subject to minor alterations, both the Soviet Union and the thirteen-Power drafts were acceptable to his delegation, and it hoped that a formula could be found for fusing the two.

61. Mr. MAÏGA (Mali) said that the points of disagreement which had emerged from the Special Committee's discussions were the need for a sound definition of the Security Council's competence in regard to decisions on measures against acts of aggression; the inclusion in the definition of the notion of self-determination of peoples; the exclusion of any reference to indirect aggression; and the inclusion of the notions of aggressive intent and priority.

62. His delegation agreed that the real task was to define a legal régime for dealing with aggression rather than the term

"aggression" as such. The use of armed force was certainly the most dangerous form of aggression, but new kinds of aggression were spreading, and the definition should therefore refer not only to armed force but to all other uses of force. It should emphasize the criminality of aggression and recognize both the right of self-defence as provided for in the Charter and the legitimacy of the use of force by colonial peoples in the exercise of their right of self-determination. The definition should include the notion of aggressive intent but should exclude any considerations of motivation. It should determine the legal consequences of aggression, since failure to do so would create a source of uncertainty, and it should demonstrate that an aggressor would not be allowed to derive any advantage from his acts.

63. His delegation did not share the view that a definition of aggression would conflict with the discretionary power of the Security Council under Article 39 of the Charter, for the Council's task was to apply the law, not to create it. A definition of aggression would be helpful in the performance of that task. The principle of priority was an important element in the issue of aggression and a long-standing rule of international law derived from Article 51 of the Charter. It should therefore be included in the definition with a view to preventing States from committing aggression under the guise of preventive wars. To be satisfactory, the definition would have to be acceptable to a majority of Member States, so as to ensure an ample juridical basis for relations between States.

64. Mr. ALVAREZ TABÍO (Cuba), speaking in exercise of the right of reply, said that the decision of the Meeting of Consultation of Ministers of Foreign Affairs of the American Republics referred to by the representative of Guatemala had been immoral and arbitrary. The illegal measures taken against Cuba for alleged armed aggression constituted a permanent act of aggression by those responsible for the decision and were in breach of Article 51 of the Charter. In any event, OAS had no authority to take any measures against Cuba, and indeed it was no longer a representative regional organization, since it had arbitrarily expelled Cuba from membership. It also lacked the moral authority to maintain peace and security in the continent, since from its inception it had been used as an instrument for continual aggression against Cuba on the part of the United States–with the assistance, incidentally, of the Government of Guatemala. The most appropriate definition of OAS was an association, comprising twenty mice and a cat, to defend the cat.

65. The representative of Guatemala had no moral authority to set himself up as a defender of peace and security in the continent, since the expedition of mercenaries against Cuba that had been defeated in forty-eight hours at the Bay of Pigs had been trained and organized in his country.

66. The CHAIRMAN urged members of the Committee not to refer to past events or existing situations extraneous to the item under consideration. Such diversions were likely to provoke statements in exercise of the right of reply and hold up the Committee's progress on the specific legal questions before it.

*The meeting rose at 1.15 p.m.*