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Chairman: Mr. K. Krishna RAO (India).

In the absence of the Chairman, Mr. Gobbi (Argentina), Vice Chairman, took the Chair.

AGENDA ITEM 86

Report of the Special Committee on the Question of Defining Aggression (continued) (A/7185/Rev.1)

1. Sir John CARTER (Guyana) said that the results of the Special Committee's deliberations might raise legitimate doubts about the feasibility of arriving at a generally acceptable notion of the definition of aggression, given the expectations of the overwhelming majority of members of the international community—a community torn by war, fragmented by competing ideologies and yearning for the establishment of a legal régime that would provide a point of departure for an orderly international life based on notions of justice. Nevertheless, in view of the failure of past attempts and the deep pessimism which had attended those failures, the highly optimistic note on which the Special Committee had terminated the first part of its deliberations must be regarded as an outstanding success.

2. Despite the compelling arguments that had been advanced to prove that it was neither possible nor desirable to attempt to reach a generally acceptable definition of the concept of aggression, his delegation remained convinced that failure by the competent organs of the United Nations to accept a functional definition of aggression would have the undesirable effect of leaving to the discretion of individual States the right to determine by unilateral decision the elements constituting aggression and, *ipso facto*, those constituting self-defence under the Charter of the United Nations. His delegation considered further that an accepted definition of aggression, far from hampering the competent authorities in their decision-making, would facilitate their work.

3. Guyana was also convinced that, although the concept of aggression was so broad that it appeared impossible to arrive at a definition that would embrace all unforeseen situations, nevertheless from the juridical standpoint it contained an identifiable nucleus whose definition could act as a constraint on potential aggressors and provide for the victims of aggression

an area of certainty within which they could exercise the right of self-defence under the Charter. For those reasons, his delegation maintained its optimism about the prospects of success for the Special Committee.

4. Admittedly, the Special Committee had been unable, for lack of time, to produce a definition of aggression representing a consensus. It might be claimed that the lack of a consensus confirmed the view of those who considered that, even granting the desirability of defining aggression, existing divergencies were too fundamental to permit any optimism. It could not be denied that divergent opinions existed even among the States that were most anxious to arrive at a generally acceptable definition. Recognition of that fact should provide an added stimulus to the efforts to reach agreement.

5. An examination of the debates in the Special Committee showed that the main points of disagreement related to the need for a clear definition of the competence of the various United Nations organs to take decisions aimed at putting an end to acts of aggression; the propriety of including within a legal definition the concept of the self-determination of peoples (an essentially political concept); the question whether the definition should exclude reference to indirect armed aggression and to economic, cultural and ideological aggression; the question whether the response to indirect armed aggression should be limited to action not sanctioned in Article 51 of the Charter; the need, in the most flagrant cases of aggression, to emphasize the subjective element of the intention of aggression; and lastly, the need for an explicit reference to the priority principle.

6. That was a formidable list. Nevertheless, it should not blind the Sixth Committee to the more tangible achievements of the Special Committee, achievements which justified optimism and argued in favour of an extension of the Special Committee's life. Firstly, a factor not to be discounted was the political context of the present efforts; the influence of the great majority of the world's peoples was likely to be significant, if not decisive, in determining the direction of current deliberations. Secondly, the members of the Special Committee seemed to have reached agreement on several issues which until recently had been the subject of strong disagreement. They had accepted that it would be both desirable and useful to arrive at an agreed definition of aggression, that the chances of arriving at a consensus were not affected by the political climate prevailing in the international community, and that an analytical-descriptive approach could be used in formulating a definition. In the light of those first very promising results, his delegation was

prepared to support any draft resolution aimed at extending the life of the Special Committee.

7. Mr. DARWIN (United Kingdom) said that the report of the Special Committee reflected the serious consideration it had given to the advantages and dangers of a definition of aggression and of the various elements that might be included in such a definition. However, he regretted that so much space had been given to polemical material relating to specific examples of aggression. Clearly, it was permissible to quote examples, and it might even be necessary to do so, but it was regrettable that at the insistence of a particular delegation so many pages of the report had been devoted to such material.

8. He wished now to turn to some general comments on the question of defining aggression. His delegation was not opposed to establishing a definition of aggression, provided it was a satisfactory definition. It was essential that the definition should be satisfactory, because the principal reference to the concept of aggression was to be found at the heart of the United Nations Charter, in Article 39, the introductory Article to Chapter VII. That concept was an essential element in the competence of the highest political organ of the United Nations, specially charged with responsibility for peace and security, the Security Council. If a definition was to be adopted, therefore, it must be certain that the gain in clarity exceeded the loss. The definition must help the United Nations in its task of maintaining peace and security. It must not hamper the Security Council in its task, already difficult enough, by turning it away from the fundamental consideration of the facts and the necessary measures to be taken in a moment of crisis and by involving it in verbal arguments about legal technicalities. Above all, the definition must not appear to exonerate aggressors or hamper the victims in defending themselves against aggression; it must not, by omissions or otherwise, indicate to an aggressor the way in which he might safely go.

9. He reminded the Committee that at the San Francisco Conference it had been decided that it was inappropriate to include a definition of aggression in the draft Charter. As the report of Mr. Paul-Boncour had indicated, it had been feared that in view of the necessarily incomplete character of the list of cases of aggression, the Security Council might have a tendency to consider of less importance the acts not mentioned therein, and that any omissions might encourage the aggressor to distort the definition or might delay action by the Council.^{1/}

10. The United Kingdom considered that the definition must be such as to make it possible in practice for the Security Council to maintain full freedom of judgement with reference to the application of Article 39 of the Charter. The definition must be clearly and firmly based on the Charter. It must not be forgotten that the act of aggression was regarded in the Charter as a breach of the peace so serious that the Security Council was given the power, when it determined the existence of such acts, to resort if necessary to military action to maintain or restore international

peace and security, in accordance with Article 42. It was true that aggression could take many forms; an attack might be made by men in uniform with sub-machine guns in their arms, but it might also be made by a group of men in an ordinary civil aircraft flight with the sub-machine guns in their luggage. The purpose, the intent and the effect were the same. Hence there were grounds for fearing that an inadequate and incomplete definition might encourage rather than deter acts of aggression, so that a bad definition was much worse than no definition at all.

11. The Soviet Union had been a leading figure among those favouring a definition of aggression. In 1956 it had submitted a draft definition providing that a State "shall be declared the attacker which first commits one of the following acts: ... (b) invasion by its armed forces, even without a declaration of war, of the territory of another State".^{2/} That draft definition also stated that "any revolutionary or counter-revolutionary movement, civil war, disorders or strikes" might not be used as a justification for an attack. Yet without any trace of legal justification, without a trace of consent given by the legal Government, the Soviet Union had invaded the independent State of Czechoslovakia on 21 August 1968 with forces ultimately amounting to half a million men. Never had a State been so clearly condemned by its own words. If a State was not deterred by its own definition, how much would it be deterred by a definition written by others? What was needed was not more texts, but greater compliance with existing ones.

12. After repeating the principles which, in the view of the United Kingdom, any draft definition of aggression should comply with, he reserved the right to intervene again in the debate after hearing the views of other delegations, especially those which had not served in the Special Committee.

13. Mr. OSTROVSKY (Union of Soviet Socialist Republics), speaking in exercise of the right of reply, said he regretted that the United Kingdom had felt itself obliged, as a loyal ally of the United States, to repeat the slanders uttered by that country against the Soviet Union at the 1074th meeting. They were completely without foundation. He would point out, moreover, that if the delegations of all the member States of NATO imitated those of the United States and the United Kingdom and decided to introduce questions which were completely foreign to the agenda, the work of the Committee would be considerably delayed.

14. Mr. GONZALEZ GALVEZ (Mexico) said that without any doubt the draft declaration submitted jointly by thirteen countries from Asia, Africa, Latin America, Eastern Europe and Western Europe (see A/7185/Rev.1, para. 9) a significant feature of the report of the Special Committee. The draft declaration, which already in itself represented a degree of success, provided an excellent basis for the continuation of the work of defining aggression in the sense in which that term was used in the Charter of the United Nations.

^{1/} See Documents of the United Nations Conference on International Organization, III/3/42 (vol. XII, p. 448).

^{2/} See Official Records of the General Assembly, Twelfth Session, Supplement No. 16, annex II, section I.

15. His delegation, which at the twenty-second session had voted in favour of General Assembly resolution 2330 (XXII), thought that the Special Committee should continue its work for the following reasons.

16. First, his delegation could not accept the argument, which had been used repeatedly, that a definition of aggression was unnecessary, since in the past such a definition had not been able to prevent aggression from occurring. Those who put forward that argument were in fact mistaken as to the role and function of a legal definition, which was not intended to prevent or to encourage certain methods of conduct, but to define the area within which the subjects of law, in the present case States, could pursue their activities. It was just as absurd to state that a definition of aggression was unnecessary because it had not succeeded in the past in preventing acts of aggression as to maintain that it was because of the effectiveness of one definition or another that no aggression had occurred. In reality, the existence or absence of aggression depended on the effectiveness of the enforcement machinery on which the definition was based, whatever that definition might be.

17. Secondly, although it was true to say that a definition of aggression would primarily serve as a guide to the political organ of the United Nations, it was also true that it would in practice be aimed at world public opinion. It was an obvious fact that world public opinion, especially in recent years, had a decisive influence on the evolution of international affairs. In so far as a definition would enlighten public opinion and enable it to be a better judge of Governments' behaviour, it might restrain possible aggressors. It was, however, undeniable that the main function of the definition would be to provide legal security, within the framework of the Charter, by helping the world to pass beyond the phase of indecision and subjectivism which existed when political judgement was not limited by law.

18. Admittedly, in special cases, it might be advisable if, in order to maintain universal peace, the competent organs of the United Nations could exercise their discretionary power, even in an arbitrary manner. But it must be agreed that if such arbitrary power was used generally and permanently, it would result in a total lack of security and a complete divorce between the political activity of the United Nations and international law.

19. His delegation was also convinced that, in order to achieve the desired goal, there was no need whatsoever to revise the Charter, since such a revision was only necessary if it was desired to establish a new legal rule within the context of Articles 39 and 51 of the Charter. In other words, the Charter would only have to be amended if it was decided that the Security Council, instead of retaining the freedom of judgement and action given it in Article 39, should be obliged to apply a definite rule such as "The Security Council shall declare any State an aggressor if it has committed one of the following acts...". It was obvious, however, that, at least for the present, no one was thinking of a rule of that kind which would be applied automatically. Whether or not there was a definition of aggression, the Security Council would retain full freedom to evaluate facts

and to decide, in discharging its mission of ensuring the maintenance of peace, that the most appropriate measure was perhaps not to declare that a State was an aggressor but to steer the question in a different direction. It was not a question of replacing one rule in the Charter by another, but of interpreting it in a legal manner, in other words, of determining its scope and content.

20. Adhering fully to those principles, Mexico had agreed to be a member of the Special Committee which had met at Geneva in June 1968. The deliberations had resulted in three draft proposals, which, despite their easily identifiable differences, were based on the following considerations.

21. Although it was true that there was agreement in recognizing that the competent organs of the United Nations should retain almost absolute power to evaluate facts and to decide what enforcement action to take, it should not be forgotten that the system of collective security drawn up at San Francisco provided for the need for Member States to resort to the use of force in certain circumstances, in other words to exercise their right of self-defence, in so far as the United Nations did not succeed because centralization was not complete. But that was an exceptional power which could not be extended when the United Nations had all the legal means, since it was for the United Nations to act even without the collaboration of its Members, in other words it was for the United Nations to reach a mandatory decision on a legal basis as to whether there was any justification or not for the use of force and as to the way in which it was to be used.

22. When reference was made in the draft definitions to self-defence, an exception was made to the principle on which international relations were based, a principle which prohibited the use of force and whose scope should therefore be interpreted strictly and precisely. It was clear from the mandatory provisions of the Charter, and in particular from the term "aggression armée" which appeared in the French text, that the only justification for self-defence was armed attack. That meant that no other act, whether consisting of serious threats or a violation of international obligations, fulfilled the condition laid down for the exercise of the right of self-defence.

23. Similarly, in order to justify the use of force, it was no longer possible, as in the past, to invoke the violation of international treaties, for example, or the rights of other States or of their nationals, subversion, terrorism, military preparations which did not properly constitute an armed attack, or the intention of imposing a political, economic or social system. To decide otherwise would be to admit the legal validity of the doctrine of necessity, which taught that a State could intervene militarily against another State if it considered that its military, economic or political interests were threatened. That doctrine had indeed been invoked by one of the countries which had intervened against the United Arab Republic during the crisis of 1956, but the majority of States Members of the United Nations had not accepted it and had considered that the most appropriate way of guaranteeing the vital interests of a State was to

use the methods for the pacific settlement of disputes laid down in the Charter.

24. It should not be forgotten, moreover, that the right of self-defence, as defined in Article 51 of the Charter, had completely replaced everything which had existed on the subject in international law before the San Francisco Conference. There was now no legal standard, customary or conventional, bilateral or regional, which could be contrary to the mandatory and restrictive provisions of the Charter, since, according to Article 103 of the Charter, the provisions of the Charter were to prevail over those of any other international agreement. On the other hand, certain customary rules and established valid conditions with respect to subjects on which the Charter was silent, by laying down that there must be a direct link and a certain proportion between the unlawful act which gave rise to the act of self-defence and the defensive reaction.

25. His delegation thought that at its next session the Special Committee should seek a more technical formulation, confining itself solely to what constituted aggression resulting from the use of armed force in its classic and direct form, as the Special Committee had defined it in paragraph 91 of its report. The report did not indicate that a consensus had emerged on that point; he hoped that the Secretariat would take note of that and see to it that the necessary correction was made to the document. Like the representative of the United Kingdom, he thought that it was better to avoid alluding to specific cases and he hoped that in the future the report would refrain from mentioning any.

26. The Special Committee should also include in the definition the principle of priority which made it possible to determine the aggressor. That was an inescapable necessity, and any attempt to avoid it would create other serious problems. The search, not for those who were the first to attack or to cross a frontier but for those who had prepared the war, would lead to an impasse, since at the present time war preparations were too closely identified with the arms race. As the United States delegation to the Special Committee had proposed, it might be opportune to see whether the definition could not apply to political entities that were not recognized as States.

27. The Special Committee should again focus its attention on the interpretation to be given to the expression "use of force". His delegation considered that the expression should cover only the use of armed force. He wished to stress once again the influence that a definition of aggression could have on the interpretation and application of Article 51 of the Charter concerning the right of self-defence; if acts other than the use of force were included in the definition there would be an increased possibility of recourse to armed force in the exercise of the right of self-defence.

28. Those who held the view that the objectives of economic, ideological or indirect aggression were the same as those of armed aggression might be reminded that the question was essentially one of legal terminology, and that international law embodied a principle for countering such aggression, namely, that of non-intervention, which had been sanctioned by the

Charter of the Organization of American States,^{3/} under whose terms the activities he had just referred to did not constitute acts of intervention.

29. The Special Committee should also consider whether the definition of aggression should include or exclude border incidents. In that connexion it would be appropriate to study in greater detail the concept of "armed attack" and to establish whether it could convey the idea of threats to use force, since some countries traditionally held the view that such threats sometimes constituted just as grave a danger as the use of force itself. Two specific examples would perhaps throw light on the problem; the occupation of Austria in 1938 and Czechoslovakia in 1939 by the German army. In both cases it could be maintained that force was used or equally that there was a mere threat to use force. In fact, it could well be argued that in the cases in point the threat to use force was equivalent to the use of force and, consequently, that aggression had taken place. However, his delegation felt that any problems of that nature should be solved by the bodies applying the definition of aggression, giving it an intelligent and flexible interpretation and with due regard to the circumstances of the particular case.

30. In the opinion of his delegation, the best solution would be a General Assembly resolution which included a definition of aggression not strictly binding either on States or on the Security Council. But even then the problem would not be solved, since the Assembly's recommendations represented something more than mere moral pressure. True, they were not binding on United Nations organs, but who could state categorically that they possessed no legal value whatsoever? Since the notion of the illegality of aggression had been established by many international treaties, could the hypothesis be dismissed *a priori* that a definition of aggression solemnly approved by an overwhelming majority in the General Assembly would not, in the course of time, assume an obligatory character and become definitively incorporated in international law?

31. As his delegation had pointed out at the twenty-second session, the problem warranted serious and detailed study, since it raised the question whether, in the event of a definition of aggression becoming an integral part of international law, the powers of the Security Council would be correspondingly curtailed. Such a formulation of the question focused attention on the part that should be played by law in the life of the United Nations, whereas some held the view that law had a less important function in the Charter than was assigned to it in the Covenant of the League of Nations. Those considerations would provide food for thought to delegations which maintained that a definition of aggression would be useless because it would not be binding on the Security Council.

32. Mr. SAGBO (Dahomey) felt that the need to produce a definition of aggression was particularly great at the present time, in view of the irreparable damage that might be caused by the application of certain features of scientific and technical progress. The search for such a definition should indeed concentrate on the purely legal aspects of the problem,

^{3/} United Nations, *Treaty Series*, vol. 119 (1952), I, No. 1609.

but at the same time abstractions must be avoided and recent events and the requirements of international life borne in mind. The proposed definition should not be exclusively either general or enumerative, as inadequacies resulting from omissions would raise very real dangers. His delegation favoured a mixed definition comprising both a statement in general terms and a list of specific acts of aggression, with examples. Its flexibility would thus make it applicable to new and subtle forms of aggression.

33. At the same time, account should be taken not only of the most common and obvious form of aggression, namely the use of force, but also of covert aggression, which was just as frequent and no less reprehensible, as well as being especially dangerous for the young developing States. True, the use of force was authorized in the exercise of the natural right of self-defence as set out in Article 51 of the Charter, but that right could never be interpreted in such a way as to justify a preventive war. Further, any enforcement measure envisaged by regional agencies, apart from the case provided in Article 51 of the Charter, should be duly authorized by the Security Council in accordance with Article 53 of the Charter.

34. His delegation shared the concern of some members of the Special Committee who had maintained that a State which was the victim of subversive or terrorist acts supported by another State was allowed to "take reasonable and adequate steps to safeguard its existence and its institutions". It believed that such acts did not justify the exercise of the right of self-defence envisaged in Article 51 of the Charter. But the expression "reasonable and adequate steps" was subjective and could give rise to abuses by allowing States to take steps out of proportion to the indictable acts.

35. In the other hand, his delegation did not agree with those members of the Special Committee who had taken too exclusive a view of the powers vested in the Security Council under Article 39 of the Charter. The Article should be considered in conjunction with others, particularly Article 24, which mentioned the "primary responsibility", and hence the non-exclusive responsibility, of the Security Council. Peace was everyone's concern, and as the Security Council could be paralysed by certain procedural devices, so great a responsibility could not be vested in that body alone.

36. Mr. BEN LAMIN (Libya) said that his country, which had for a long time been deprived of its right to self-determination as a result of aggression, fully supported efforts to prevent aggression in all its forms, and expressed the hope that a definition would be worked out which would provide guidance for Member States and the United Nations in maintaining peace. The Security Council, in particular, would thus be assisted in carrying out its duties without suffering any limitation upon its discretionary power.

37. The three proposals contained in the Special Committee's report contained draft definitions of the mixed type, i.e., both general and enumerative and, in the opinion of his delegation, they covered acts of aggression committed at the present time. Priority

should be given to attempts to arrive at a definition of the direct use of force, in order to prevent political, economic and ideological considerations from being invoked in justification of aggression. The indirect use of armed force should not be included in the definition, because indirect aggression came within the scope of the study of the principle of non-intervention and also because the only cases which required the intervention of the United Nations were those in which the threat or use of force was directed against the territorial integrity or political independence of a State.

38. On examining the three proposals, he had noted that the thirteen-Power proposal (A/7185/Rev.1, para. 9) did not mention violation of the Charter through the use of force to deprive dependent peoples of the exercise of their inherent right to self-determination. In that connexion, the International Conference on Human Rights held at Teheran in 1968 had appealed to all States and interested organizations to give political, moral and material assistance to peoples struggling for their freedom.^{4/} The twelve-Power proposal (A/7185/Rev.1, para. 7) and the thirteen-Power proposal legitimately considered that the military occupation or annexation of the territory of a State constituted an act of aggression. His delegation was of the opinion that such an act represented one of the most flagrant cases of aggression. The thirteen-Power proposal rightly maintained that measures not reasonably proportionate to an armed attack could not be justified on grounds of self-defence. That principle was generally established by the national legislations of States and should be taken into account in international relations in order to discourage the abuse of rights and prevent acts of aggression.

39. With regard to the principle of priority, which had given rise to controversy in the Special Committee, his delegation believed that it should be related to the right of self-defence. A definition might stipulate that the State which first committed any constituting aggression was assumed to be an aggressor unless the contrary was proved, but that that did not entitle the other State to take steps which were not reasonably proportionate. He believed that the use of bacteriological or chemical weapons expressly mentioned in the four-Power draft proposal (*ibid.*, para. 8) should be included in the definition among acts of aggression, since it violated fundamental human rights.

40. His delegation was in favour of extending the mandate of the Special Committee, so as to enable it to complete its work.

41. Mr. PARTONO (Indonesia) said that his delegation, which had been one of the thirty-five members of the 1968 Special Committee and had co-sponsored two of the draft proposals submitted, was convinced that that Committee's inability to reach a consensus on a definition of aggression was due not so much to a lack of understanding among members as to lack of time. In the light of the failure of previous efforts, there were grounds for optimism at the results achieved, even if they were incomplete.

^{4/} See Final Act of the International Conference on Human Rights (United Nations publication, Sales No.: E.68.XIV.2), chapter III, resolution VIII, p. 9.

42. The existence of an agreed definition of aggression would be a valuable instrument in preventing the possibility of acts of aggression and in solving problems resulting from such acts. There was indeed some truth in the view that the question of defining aggression was basically a political problem, but political and legal problems, as was often the case, had a tendency to be so intimately intertwined that it became difficult to distinguish between them. The problem of indirect armed aggression was a real and contemporary one; Indonesia itself was still experiencing it, and his delegation expressed the hope that the formulation of a definition of aggression would not ignore that particular form.

43. In view of the prevailing atmosphere of understanding among its members, his delegation believed that, if it resumed its work in 1969, the Special Committee could expect concrete results for submission to the twenty-fourth session of the General Assembly.

44. Mr. KASEMSRI (Thailand) said it was still pertinent to inquire whether a consensus on the definition of aggression could be expected if the Special Committee resumed its work in 1969, as it had recommended. Admittedly, the majority of the members of the Committee had voted in favour of the recommendation and none had voted against it. In addition, a perusal of the report and the proposals submitted indicated certain areas of agreement, but the areas of disagreement were barely concealed and seemed to be preponderant. It therefore remained an open question whether aggression could be defined. His delegation was convinced that the formulation of a definition consonant with the realities of modern international life would serve to enhance world peace and the security of smaller

nations; but it seriously doubted whether it was possible to define aggression if such realities were ignored, especially if a legal definition was sought.

45. The mandate contained in General Assembly resolution 2330 (XXII) instructed the Special Committee "to consider all aspects of the question so that an adequate definition of aggression may be prepared". His delegation believed that the Special Committee's exercise of the mandate would be incomplete if it were to attempt to define only one particular form of aggression. No argument based on timeliness could justify such a course, since the question whether or not aggression should be defined had already been decided by the establishment of the Special Committee itself. If such action was taken, it was difficult to see how an increased amount of time would help to expedite the fulfilment of its mandate, at any rate in the foreseeable future.

46. Thus, a legal definition should include the two categories of aggression which appeared to be practised at the present time, namely direct or armed aggression and indirect aggression. The only hopeful approach to a constructive search for a legal definition of aggression was to take into consideration every possible manifestation of aggression, particularly indirect aggression, which was becoming increasingly common.

47. For all that, his delegation was prepared to give the Special Committee the benefit of the doubt and endorse the recommendation in the report, on the understanding that, if it continued its work, it should take into account the remarks made in the Sixth Committee concerning the definition of aggression.

The meeting rose at 5.5 p.m.