United Nations
GENERAL
ASSEMBLY
TWENTY-THIRD SESSION
Official Records

SIXTH COMMITTEE, 1078th MEETING

Friday, 22 November 1968, at 3.40 p.m.

NEW YORK

CONTENTS

Page

Agenda item 86:
Report of the Special Committee on the Question of Defining Aggression (continued). . . . 1

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

AGENDA ITEM 86

Report of the Special Committee on the Question of Defining Aggression (continued) (A/7185/Rev.1; A/C.6/L.733)

1. Mr. SULIMAN (Sudan) noted that the results of the work of the 1968 Special Committee on the Question of Defining Agression were generally positive. In particular, there had been no divergent views, among the majority of delegations in favour of finding an answer to that difficult question, on the form, content or function of a definition. By affirming its preference for the declaratory form that majority had replied affirmatively to the question whether a precise legal definition of aggression was possible and desirable. Moreover, the three main proposals contained in the Special Committee's report (see A/7185/Rev.1, paras. 7-9), settled the problem of the choice between a concrete enumeration of acts of aggression and an abstract definition of aggression.

2. The Sudanese delegation had been among those which considered that the Special Committee should deal first with direct aggression or armed attack, the most serious form of aggression, which justified the exercise of the right of self-defence in accordance with the Charter of the United Nations. For that reason, it had, together with the United Arab Republic, proposed the amendment contained in paragraph 10 of the report. It was absolutely necessary, in order to avoid any confusion or ambiguity, not to mention indirect aggression at the current stage of the work. Such a mention might, through its vagueness, provide a pretext for preventive wars not justified by Article 51 of the Charter. Moreover, it was essential to guarantee, in the declaration, the exercise of the natural right to self-determination, without which the definition might provide a justification for certain overt acts of aggression.

3. He was convinced that the Special Committee had been on the point of adopting the definition when it had had to finish its work. Unfortunately, it had lacked time. There was no doubt, therefore, that if the mandate was extended, the task could be successfully completed.

4. Mr. LIANG (China) wished, before turning to the substance of the question under discussion, to pay a deserved tribute to the Chairman and members of the Special Committee on the Question of Defining Aggression for the work accomplished at Geneva. He nevertheless greatly regretted the exaggerated place given in the Special Committee's debates to the discussion of specific cases of conflict between certain States and the vehement accusations of aggression which had been exchanged. The polemics on that occasion had resembled the war the Greek root of the word suggested, a fact reflected in the Special Committee's report.

5. Noting the various opinions expressed in the Special Committee on the meaning of the mandate entrusted to it by General Assembly resolution 2330 (XXII) (ibid., paras 16 and 17), he said that if his delegation had participated in the work it would have supported the view that the Special Committee's task was to examine all aspects of the question on the basis indicated in the resolution and that it could submit a definition if it could agree on one but that otherwise its report would suffice. The General Assembly had obviously intended to request the Special Committee to do the necessary preparatory work, since the aim was to ensure that "an adequate definition of aggression may be prepared", but the body responsible for establishing the definition was not mentioned in the resolution.

6. His delegation took issue with some of the proposals submitted to the Special Committee, because they went beyond the idea of aggression as recognized in international law. Those texts, verbosely paraphrasing the provisions of the Charter, might create problems of interpretation. It would therefore be necessary, if all acts of international delinquency and violations of the Charter were not to be identified or confused with aggression, to bring their wording into line with that of the Charter. In particular, the second paragraph of the amendment (ibid., para. 10) to the thirteen-Power proposal accorded ill, in his opinion, with a definition of aggression. The saying "grasp all, lose all" might explain the failure of most of the attempts to arrive at a definition.

7. It was regrettable that the President of the General Assembly had not seen fit, at the twenty-second session, to include China among the members of the Special Committee, despite the need for equitable geographical representation and representation of the main legal systems of the world. China's participation having been prevented for political reasons, the Special Committee had been deprived of the contribution of a Member State with an ancient legal system. It should be remembered that as early as the Dumbarton Oaks negotiations, China had taken a very keen interest in efforts to prepare a definition of aggression. The United States had proposed a list of conditions, situations and acts to enable the

future Security Council to determine cases of a threat to the peace or breach of the peace, without, however, insisting that those examples which were similar to the elements of a definition of aggression, should appear in the joint proposals of the Soviet Union, the United Kingdom and the United States. The Chinese delegation, whose spokesman he had been, basing itself on the most classical arguments, had supported the need to include the definition in question among the ten essential points of the Charter. At San Francisco, where several delegations, particularly those of Latin America, had favoured such an inclusion, following the Act of Chapultepéc, the future members of the Security Council, with the single exception of China, had come out against it.

8. Events had, however, obliged China to modify its point of view on the question of defining aggression. Thus, the Chinese representative at the General Assembly in 1967 had had to note (1616th plenary meeting) that it was open to doubt whether any definition could dissuade a State from its plans for aggression and that, in the present circumstances, the non-existence of a definition was not very important since the United Nations had been able, without a definition, to give a decision on the responsibility for certain conflicts.

9. He reviewed the stumbling blocks which had impeded the long endeavours to define aggression. He contrasted the idealistic optimism of Professor Scelle with the reasoned realism of Charles de Visscher, who considered that some definitions could provide the aggressor with the means of shifting the odium to the resistance offered by the victim. Too often, the formulas proposed had been based on the criterion of priority, which seemed completely simplistic. There had been a time when there was a sort of reward for speed for the State which wished to gain advantage by using force, as had been recognized in the French memorandum on the Venezuela Preferential Claims affair of 1904.[1] However, since the use of force had been declared illicit, things had so changed that the State which wanted to avoid being labelled the aggressor played a dodging game and the definition of aggression could thus be a trap for the innocent.

10. Even if an acceptable definition were prepared, moreover, difficulties would subsist. Its application by a body like the Security Council would pose an extremely complex problem. It would be necessary to know to what extent and in what way the definition under consideration would be binding on that body. Furthermore, as had been emphasized in a joint dissenting opinion to the Advisory Opinion of the International Court of Justice of 28 May 1948, the members of a political body responsible for taking its decisions had to examine questions from all aspects and were therefore legally justified in basing their arguments and votes on political considerations.[2]

11. It was, in his opinion, necessary to avoid undue reliance on the analogy between international and domestic law. Authors who committed that serious mistake could be referred to Montesquieu's opinion that it was ridiculous to claim to decide the rights of Kingdoms by the same principles as those by which claims to rights over a gutter were decided between private persons.[3] Professor Julius Stone had rightly emphasized that the determination of aggression was only possible after the act of aggression was over and that if it was possible to define aggression a basic distinction would have to be made between the functions of peace enforcement and the criminal punishment of individuals.

12. The most recent studies on the question had shown that the legal concept of aggression was essentially vague. He quoted, in that respect, the opinion of Professor von der Heydte and that of Professor Julius Stone, both of whom compared the concept of aggression with the equally general ones of due process, reason, fairness and justice.

13. It was to be feared that the problem posed by the definition of aggression arose from the tyranny of phrases referred to by L. Oppenheim in The Future of International Law.[4] The contemporary science of international law should try to escape from that tyranny.

14. Mr. TSURUOKA (Japan) said that the question before the Sixth Committee had a long history, for the General Assembly had requested the International Law Commission to consider it as early as 1950 see Assembly resolution 378 B (V). When it had decided to establish the 1968 Special Committee on the Question of Defining Aggression at its twenty-second session, there had naturally been no question of denying the difficulties which would have to be faced in arriving at a definition of aggression. Although they had held widely differing views as to the advisability of establishing a new special committee, delegations had been unanimous in considering that, in the last analysis, the merit of any defitition of aggression would depend on the extent to which it could contribute to the establishment and consolidation of peace and international security. It should not be forgotten in that connexion that the definition of aggression was not an end in itself; it was but one of the means which could be utilized to ensure the elimination of aggression in all its forms. Thus it was clear that if the efforts made to define aggression were to meet with success it was first of all necessary to ensure respect for the fundamental principles of the United Nations Charter. Indeed, what was essential was not so much the formulation of a perfect definition as the willingness of all Member States to observe the obligations imposed by the Charter, in good faith and in all strictness. Nearly all the acts of aggression which had been committed in the past were attributable precisely to the violation of the clearest principles of the Charter, and not to the lack of a sufficiently precise definition of aggression.

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[1] See Revue génerale de droit international public (Paris, A. Pedone, 1906), t. XIII, p. 485.

[2] See Conditions of admission of a State to membership in the United Nations (Article 4 of the Charter), Advisory Opinion of May 28th, 1948: I.C.J. Reports 1948, p. 85.

[3] De l'esprit des lois (Paris, Editions Garnier Frères, 1949), t. II, livre XXVI, chapitre XVI, p.187.

[4] See L. Oppenheim, LLD., The Future of International Law, (Oxford. The Clarendon Press, Humphrey Milford, 1921), para. 70, p.58.

Thus, the tragic events which had taken place in central Europe the previous summer had not been due to the absence of a clear and precise definition of the relevant legal principles embodied in the Charter. The recent invasion by force of the territory of another State, which his country believed to be a clear case of infringement of the fundamental principles of the Charter, should provide some food for thought in that connexion. His delegation wished to remind the Committee, therefore, that its task was not to formulate a definition of purely theoretical interest, but to arrive at a formula which would have to be strictly observed by all States.

15. At the twenty-second session of the General Assembly, his delegation had had certain doubts about the feasibility of arriving at a satisfactory definition of aggression. Those doubts had been prompted by the following considerations. First of all, the serious divergence in views on the matter seemed practically insuperable, as had been amply demonstrated by the failure of all the efforts made by the General Assembly since it had begun to consider the question. Secondly, it was essential to reach a formulation on the basis of a consensus among all Member States of the United Nations.

16. The report of the Special Committee was clear evidence of the divergence of views among Member States on various aspects of the question, as well as a useful reminder of the immense difficulties that divergence entailed. His delegation therefore regretted that the discussion in the Special Committee had confirmed the misgivings it had expressed when that Committee had been established. However, it did not wish to take an entirely negative attitude towards the view of the majority of the members of the Sixth Committee, who were motivated by the best of intentions. It merely wished to draw attention to the practical implications of a definition of aggression. The problem was to arrive at a generally acceptable definition which would neither prejudice the ability of the United Nations to maintain international peace and security, nor be misused for political propaganda. In regard to the generally acceptable nature of the definition, he emphasized that it must be acceptable, in particular, to the permanent members of the Security Council, which were primarily responsible for maintaining international peace and security under the United Nations Charter. It was also essential to arrive at a formula of that sort, in view of the fact that the definition could have far-reaching effects on the security of nations.

17. Going over some of the salient points in the report of the Special Committee, he turned first to the type of definition to be adopted. His delegation had a certain apprehension about the dangers which might result from an enumerative definition; on the one hand, it was wishful thinking to believe that all the possible types of aggression could be enumerated, while any enumeration which was not exhaustive was likely to leave serious gaps which could not immediately be foreseen; in addition, such a definition would lend itself to abuse. The same observations were applicable, mutatis mutandis, to a so-called mixed definition.

18. In the second place, his delegation wished to stress the desirability of remaining strictly within the framework of the Charter in endeavouring to define aggression. It was essential not to limit the flexibility of the powers of the Security Council under Chapter VII of the Charter. His delegation therefore associated itself entirely with the view, expressed in paragraph 41 of the report, that a definition of aggression, in order to be acceptable to a large majority, must be general enough to leave untouched the powers of the Security Council under the Charter.

19. In the third place, with respect to the scope of the definition, his delegation considered that the task should be limited to defining the "acts of aggression" referred to in Article 39 of the Charter, without including such broad concepts as "threat to the peace" or "breach of the peace", which were also mentioned in the same Article. From a theoretical point of view, it seemed evident that those three concepts were not identical; they were different in gravity and in nature.

20. Again, from a practical point of view, his delegation wished to draw the Committee's attention to the relationship between the Special Committee on the Question of Defining Aggression and the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States. It was important to co-ordinate effectively the work of those two Special Committees, which might be entrusted with the consideration of the same principles, in order to avoid confusion and conflict, as well as a waste of time and energy. His delegation would therefore be in favour of limiting the task of the Special Committee on the Question of Defining Aggression to considering "acts of aggression", stricto sensu, within the meaning of Article 39 of the Charter. It should be mentioned that it was inadvisable to stretch the concept of aggression into the economic and ideological field. In regard to the distinction between the so-called direct and indirect forms of aggression, his delegation felt that it was useless to discuss the question in the abstract, since the scope of those concepts was not precisely defined; however, it was not opposed to examining certain acts normally classified as acts of indirect aggression, if those acts possessed the same characteristics as the naked use of armed force.

21. Mr. LILLAS (Norway) said that the report was an excellent account of the debates in the Special Committee on the Question of Defining Aggression and showed the serious and constructive efforts made by representatives so that that Committee might fulfil its mandate. He wished to stress that the Special Committee would have closed its session in the friendly atmosphere that had prevailed until the final day if that atmosphere had not been destroyed by an unjustified statement and by the submission of a draft resolution to which there had been many objections.

22. Since his delegation's position on the question of defining aggression was well known, he confined himself to making some general remarks. First of all, his country looked with favour on all measures which might be taken with a view to promoting world peace. It was well known that the United Nations Charter prohibited the use and even the threat of

force and that the Security Council held the primary responsibility for the maintenance of international peace and security; it had the power to determine the existence of any threat to peace, breach of the peace or act of aggression, and to decide on the measures to be taken in such a case. The doubts expressed by his Government as to the utility of defining the concept of aggression as used in the Charter were based on two considerations. First, it was for the Security Council to decide when aggression had taken place, and it must have full freedom in that respect. Secondly, the definition would have to be complete and supported by the great majority of States, among them the permanent members of the Security Council, in order to be of any value. An incomplete definition without such support would be worthless and perhaps even dangerous.

23. Judging from the report of the Special Committee, it seemed clear to his delegation that there remained little hope of reaching general agreement on a definition. It was apparent that, even among those delegations which believed most strongly in the necessity and possibility of defining aggression, there were divergences of opinion on several important aspects of the problem, such as, for instance, the object of the definition. In his delegation's view, the problem of aggression was not in substance a legal problem, but essentially a political problem which could not be solved by the adoption of legal formulas alone. Such formulas, in the form of a General Assembly resolution, might have great moral value, but the determining factor would still be the relevant provisions of the Charter. Moreover, all the members of the Committee agreed that the discretionary authority of the Security Council to determine the existence of acts of aggression, threats to the peace and breaches of the peace, should be fully preserved. Admittedly, the security system of the United Nations had not functioned in perfect accord with the intentions of those who had drafted it. That was regrettable, but the reasons for its shortcomings had nothing to do with the lack of a definition of aggression. The primary problem was the failure of States to respect their obligations under the Charter. As was known, the Soviet Union had been the leading country in favour of a definition of aggression, and the draft definition it had submitted in 1956[5] was apparently still before the Sixth Committee. According to that draft, the State should be declared the attacker which first committed one of the following acts: "... (b) Invasion by its armed forces, even without a declaration of war, of the territory of another State"; moreover, according to the same definition, attacks might not be justified, in particular, by the internal situation of any State, as for example: "... (d) Any revolutionary or counter-revolutionary movement, civil war, disorders or strikes". Clearly, according to the very words of that draft definition, the invasion by the Soviet army of the independent State of Czechoslovakia in August 1968 was a clear-cut case of aggression, in violation of all the fundamental principles of the Charter. The fact that the Soviet Union denied that the invasion was aggression indicated clearly the uselessness of trying to define the term.

[5] See Official Records of the General Assembly, Twelfth Session, Supplement No. 16, annex II.

24. For those reasons, his delegation considered that it would not serve any purpose to reconvene the Special Committee on the Question of Defining Aggression, at least for the time being. However, it thought that the question might be referred to the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States for the reasons stated by the Netherlands representative the preceding day (1076th meeting). His delegation also saw some merit in having the principle prohibiting the threat or use of force considered before the question of defining aggression was examined.

25. Sir Kenneth BAILEY (Australia) said that the report of the Special Committee on the Question of Defining Aggression showed that it had discharged faithfully the task entrusted to it by the General Assembly. Since the Special Committee's recommendation that it should resume its labours during the twenty-third session of the General Assembly had not been given effect, the question before the Sixth Committee was whether the mandate of the special Committee should be renewed, and if so, when it should reconvene.

26. At the Geneva session, his delegation had abstained from voting on the draft resolution containing that recommendation (A/7185/Rev.1, para. 117). While it had not disputed the theoretical possibility of formulating a definition of aggression, it had been pessimistic about the prospects of formulating an acceptable one. In the Australian view, a definition could be regarded as acceptable unless it was supported by all the permanent members of the Security Council; indeed, the definition would also need to represent the consensus of the States Members of the United Nations. His delegation thought that a definition which was not generally acceptable would be useless, and perhaps even worse than useless, because at best it would give rise to interminable disputes and at worst, as the United Kingdom representative had said (1075th meeting), it could encourage aggression. Furthermore, his delegation thought that a definition would not have much utility either in deterring potential aggressors or in guiding the Security Council in dealing with breaches of the peace under Chapter VII of the Charter. It therefore did not think that the formulation of a definition of aggression was of major practical importance.

27. In his view, it was not really essential to the performance of any function entrusted to the Security Council or to any other United Nations organ to define aggression. The position had been different under the Covenant of the League of Nations, where the power to act had been based on the existence, or threat, of external aggression. Under the United Nations Charter, on the other hand, the basic purpose of the Organization was expressed more broadly, in terms of maintaining or restoring international peace and security, removing threats to the peace, and suppressing acts of aggression or other breaches of the peace. In order to fulfil that purpose, the Security Council had been given certain authority by the Charter. That authority was the same in a case where the Security Council determined that an act of aggression had taken place as when it determined that there

was a threat to the peace or a breach of the peace, without any act of aggression. The Charter, therefore, took its position in the field of moral or political judgement, not in the field of legal rights, powers or duties. He observed, incidentally, that when the Charter mentioned aggression it spoke not of "aggression" as a concept or general idea but of "acts of aggression", which served to emphasize breaches of the peace and excluded forms of aggression relating to other spheres than that of international peace and security.

28. While the Charter did not select "acts of aggression" for specific prohibition, that did not mean, of course, that it permitted them. It meant only that to commit an act of aggression would always involve violation of one or more specific provisions of the Charter. Thus, the draft resolution submitted to the Security Council in August 1968,[6] following the invasion of Czechoslovakia by the armed forces of the Soviet Union and four other Warsaw Pact countries, had contained no determination that there had been an act of aggression on the part of invading States. It had been sufficient for the purposes of Security Council action to make it clear, as the draft resolution had done, that there had been a violation of the Charter principle that all Members should refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, and of the principles of equal rights and self-determination of peoples, sovereign equality of States and non-intervention in matters within the domestic jurisdiction of any State.

29. In deciding whether further work should be undertaken on the question of defining aggression, the Sixth Committee must naturally take into account the nature and extent of the progress made at the Geneva session of the Special Committee. On that point his delegation took a less optimistic view than some other delegations. It was true, as the Mexican representative had pointed out (1075th meeting), that a draft definition had been submitted by thirteen States drawn from several geographical groups. It must be admitted, nevertheless, that that text had fallen far short of general acceptability, even to all the permanent members of the Security Council. The areas of disagreement were many and important. They included first of all as vital an issue as the scope of self-defence, individual and collective, which was an inherent right of all States, recognized as such by the Charter, and in the exercise of which Members of the United Nations must comply with Article 51 of the Charter. Secondly, the list of contested matters included critical questions arising under Chapter VIII of the Charter, and in particular the extent to which and the circumstances in which regional agencies might employ armed force for the maintenance of international peace and security. Lastly, there was the problem of the use of armed force by a dependent people in the exercise of its right to self-determination.

30. Since the Geneva session had ended, new and far-reaching doctrines of international law had been asserted in areas which had hitherto been regarded as definitively settled by the Charter. He referred to the legal arguments stated by way of explanation of the invasion and occupation of Czechoslovakia by armed forces of the Soviet Union and other Warsaw Pact countries. Those doctrines, as his delegation understood them, would add a new and wholly unacceptable chapter to the Charter. The representatives of the Soviet Union had maintained that the military action taken by the Soviet Union and its allies had been necessary in order to defend the interests of members of what the Soviet Union Foreign Minister had called the "socialist commonwealth". Those representatives had not attempted to establish the lawfulness of that action under the Charter; on the contrary, they had asserted that the mutual relations of socialist States were regulated by their own arrangements and were their own internal business. In his delegation's opinion, that was equivalent to the assertion of a new doctrine whereby the principles of the Charter were not applicable to those mutual relations. In order to give effect to such a doctrine, it would obviously be necessary to add a supplementary chapter to the Charter excluding such relations from its operation; a similar paragraph would also have to be added to every one of the texts which had been under consideration by the Special Committee at Geneva, and to the draft definition which had been submitted by the Soviet Union itself. Such a doctrine would create two radically different systems of international law; in one the Charter would apply, but in the other it would not. Furthermore, the existence of that system could not be reconciled with the Charter itself, which by virtue of its own express words prevailed over any inconsistent obligations that Members might assume. Neither could that system be justified on the grounds that some Members would waive the duties owed to them by others.

31. His delegation was convinced that the unresolved issues must be disposed of before an acceptable definition could be established. In the present circumstances, therefore, it could make no commitment on whether it was wise to continue immdeiately with an attempt to formulate a definition of aggression.

32. Mr. OSTROVSKY (Union of Soviet Socialist Republics), said he wished to speak not in exercise of the right of reply but on a point of order.

33. Certain delegations were persisting in making slanderous attacks. They were all members of a discordant orchestra, playing the same boring tune under the same conductor's baton. To avoid creating further difficulties and to facilitate the task of the Chairman, the USSR delegation would not reply to each delegation separately but reserved the right at a later stage to give one general reply to all the slanderers. It would be doing too great an honour to the junior partners of the United States in NATO and other military and political blocs if it replied to each of them individually.

34. Mr. ALCIVAR (Ecuador) said that both at the twenty-second session of the General Assembly (1615th plenary meeting) and in the course of the Special Committee's work, his delegation had clearly stated its position on the need to define aggression. That position was essentially a doctrinal one and was

[6] Official Records of the Security Council, Twenty-third Year, Supplement for July, August and September 1968, document S/8761 and Add. 1.

situated beyond the political controversy which hampered consideration of the question, but it did not mean that a definition of aggression could pay no heed to political reality in the world. It was based on the existence of the United Nations Charter, which was not a mere bilateral treaty, but represented the present legal constitution of the international community. Whereas pacts concluded between States traditionally began with the words "The High Contracting Parties", the Charter began with the words "We the peoples of the United Nations". That new wording attested to the fact that the philosophical concept of the international community had undergone a profound change; it was now regarded as a community of peoples having real sociological substance and completely universal in character, with the result that there had also been profound changes in all juridical values. In an international society of that nature, power had necessarily been centred in the world Organization, with the result that the notion of sovereignty had been transformed. The State represented the national legal order, and in domestic affairs sovereignty was its essential, single and exclusive quality. But above it was the international legal order governed by the norms of international law, which were derived from custom, treaties, general legal principles and the decisions of international bodies. In other words, the notion of sovereign competence had replaced that of sovereign power.

35. There was now in existence a centralized international legal order resembling the national legal order. Thus, the system set up by the San Francisco Charter (which was the immediate consequence of what had been implicitly established in the 1928 Briand-Kellogg Pact) was a system which centralized power in the hands of the international community, as organized in the United Nations. It therefore followed that both in the national legal order in the international order, it was society which had the sole right, through the agency of its representative bodies to which the exercise of authority was entrusted, to use force for the repression of an illegal act which disturbed social peace.

36. That analysis showed that the use of force by any State constituted aggression, irrespective of whether it was a Member of the United Nations or not. Self-defence was not an exception to the principle set forth in Article 2, paragraph 4, of the Charter; it was recognition of the inherent right to repel not any type of aggression but solely and exclusively armed attack. It was essential to make it quite clear that the exercise of that right beyond the limits strictly laid down in Article 51 of the Charter also constituted aggression. The Charter prohibited the threat or use of force and, if those two types of action did in fact constitute acts of aggression, the threat was not in itself sufficient to justify the use of force in exercise of the right of self-defence. In short, the principle which prohibited the use of force was a rule of jus cogens which admitted of no exception. In order to maintain international peace and security, the United Nations applied the direct enforcement measures provided for in Chapter VII of the Charter or utilized regional arrangements or agencies in accordance with Article 53. With regard to self-defence, it should be noted that, just as in domestic law the Penal Code did not empower anyone to take the life of another person, but if an individual was attacked and was obliged to take the life of his assailant in order to protect his own, the law exempted him from responsibility only in so far as the act had been committed in the circumstances specified in the law it self, so also the United Nations Charter did not empower any State to use force, but Article 51 nevertheless recognized the inherent right of self-defence only in so far as it exempted from responsibility a State which used force to repel and armed attack until the Security Council had decided on means of maintaining international peace and security. That was the only possible legal interpretation of the right of self-defence as provided for in the Charter.

37. Operative paragraphs 2 and 3 of the thirteen-Power draft proposal (see A/7185/Rev.1, para. 9), of which Ecuador was a sponsor, clearly outlined those legal principles. Similarly, operative paragraph 4 of that draft provided that regional agencies might resort to enforcement action or any use of armed force only in cases where the Security Countil, acting under Article 53 of the Charter, decided to utilize them for the purpose. Operative paragraph 8, however, authorized the exercise of the right of individual or collective self-defence only in circumstances provided for in Article 51 of the Charter.

38. An amendment had been submitted to the thirteen-Power draft proposal by the delegations of the Sudan and the United Arab Republic (ibid., para. 10), which would deserve special attention if the General Assembly instructed the Special Committee to continue its work.

39. He said that priority should be given to defining armed aggression, which was the form of aggression that presented the least difficulties, but his delegation did not agree that a definition of the other forms of aggression should be neglected. While a definition of aggression could not impair the sovereign right to determine the existence of acts of aggression vested in the Security Council by the Charter, it would be impossible to ignore the content of a definition of aggression adopted by the General Assembly. If the Charter had not defined aggression, it was because the great Powers wished to reserve discretionary power for the Security Council; the weak arguments which had been advanced at San Francisco were no longer appropriate at the present stage of development of international law.

40. It should, however, be borne in mind that the legal value of any definition of aggression adopted by the General Assembly in a resolution would be its interpretation of rules of law contained in the Charter. That problem was bound up with the general theory of law—the legal obligation resulting from the link which was forged between the terms of any rule of law and the assumption or legal phenomenon which fashioned it. The Charter did not, and could not, deviate from the logical pattern of the rule of law, and doctrine accorded to the Assembly the power to determine by means of a resolution on what assumption and in what circumstances a rule of the Charter might be applied. It was not his intention at the present time to examine that subject at length, but he was placing on record his delegation's views,

which would be discussed in depth at the appropriate time.

41. He was convinced of the need for the Special Committee to continue its work, and regretted that it had not been resumed during the twenty-third session of the General Assembly. He hoped that the progress achieved at Geneva would not have been in vain. Aggression must be defined if there was to be a means of exerting moral pressure against real or potential aggressors until such time as the norm acquired the irrefutable force of law.

42. Mr. DUTT (India) recalled that, during the twenty-second session, his delegation had explained both in the General Assembly (1618th plenary meeting) and in the Sixth Committee (1022nd meeting) why it felt that an attempt should once again be made to find an appropriate definition of aggression. The concept of aggression had acquired a particular significance in international law, at least since the establishment of the League of Nations in 1920; a clear and precise definition of aggression would not solve all problems, but it would help to improve United Nations peace-keeping procedures and would thus strengthen the collective security system of the United Nations Charter.

43. Even in modern times, aggression was not an unusual phenomenon; it took many different forms, thus making it particularly difficult to seek and formulate a sufficiently precise definition. His delegation, although perfectly aware of the difficulties inherent in an undertaking of that nature, believed nevertheless that it was not an impossible task and that its successful completion would help the United Nations organs to discharge their functions under the Charter. For that reason, in 1956, it had shared the views of the majority of representatives who had taken part in the last discussion of the question in the General Assembly and had supported the establishment of the Special Committee on the Question of Defining Aggression, whose report was now being considered.

44. It was encouraging to note from the report, that, if it had not been possible to reach agreement on a draft definition of aggression, it was not for lack of co-operation or goodwill, but for lack of time. As the representative of Mexico had said at the 1075th meeting, it was significant that—for the first time in the long history of that question—thirteen States from four different continents had proposed a common draft declaration on aggression. Such promising progress indicated that the Special Committee should resume its work in 1969 in order to prepare an adequate definition of aggression.

45. That being so, his delegation wished to comment on some of the broad features of the report, in the hope that the Special Committee would take them into account in its future work.

46. His delegation had examined the thirteen-Power proposal (see A/7185/Rev.1, para. 9), worked out by its sponsors to combine the two proposals of the non-aligned members and the Latin American members of the Special Committee (ibid., paras. 7 and 8). It believed that the proposal formed an excellent basis for the continuation of work, since its sponsors, who had already taken into account some of the comments and criticisms on the two other proposals considered in the Special Committee earlier, could now benefit from the comments made during the present debate, particularly by countries which were not members of the Special Committee, and could try to improve the text of their own proposal.

47. His delegation endorsed the basic idea reflected in the fourth and fifth preambular paragraphs of the thirteen-Power draft proposal, under which such a draft would be limited to the formulation of certain principles that would provide guidance for the appropriate organs of the United Nations in determining aggression. The Security Council should, in fact, consider the circumstances of each particular case in order to determine the existence of any threat to the peace, breach of the peace, or act of aggression under Article 39 of the Charter and to decide on the appropriate action to be taken under Chapter VII of the Charter.

48. His delegation also agreed with the decision of the sponsors of the thirteen-Power draft proposal to attempt a mixed definition of aggression giving both a general description of the concept of aggression and enumerating, as examples, specific acts which would constitute aggression. Such a definition had the merit of being neither too flexibile nor too rigid, as the purely descriptive or the purely enumerative definitions tended to be. It was most important, however, that the specific acts enumerated should not in way prejudice the general character of the definition or preclude the possibility of other acts being considered by the United Nations in the future as acts of aggression. His delegation therefore considered appropriate the inclusion of a provision on the lines of the opening words of operative paragraph 2 of the twelve-Power draft declaration (ibid., para. 7).

49. The report stated further that the consensus of the Special Committee was that the definition of aggression should be restricted, at least for the time being, to the use of armed force by a State against the territory of another State otherwise than under the authority of the United Nations or in the exercise of its legitimate right of individual or collective self-defence. However, operative paragraph 5 of the thirteen-Power draft proposal referred, by way of example, to the use of different forms of armed force by a State against the territory of another State. His delegation wished to point out in that connexion that the use by a State of irregular forces, armed bands or armed volunteers for incursions into the territory of another State, or failure by that State to prevent incursions from its territory by such forces, were acts as dangerous and serious as the use of regular armed forces. Such incursions should be regarded as equivalent to the use of armed force and should be covered by a valid definition of aggression. Indeed, the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, which was at present considering the meaning and scope of the principle prohibiting the threat or use of force, had not yet reached a consensus on the definition of the term "force", but there was virtually a consensus on the point that the principle prohibiting the threat or use of force included the duty of a State not to use or

allow its territory to be used for incursions by irregular forces into the territory of another State (see A/7326, para. 111). Undoubtedly that Special Committee would continue its efforts towards an appropriate formulation of the principle prohibiting the threat or use of force in international relations, but the Special Committee on the Question of Defining Aggression should also address itself to that aspect of the matter, so that it might be more clearly brought out in its definition of aggression.

50. In conclusion, he expressed appreciation of the valuable work accomplished by the Special Committee and said he believed that it should continue its work in 1969 within the scope of the mandate given to it in General Assembly resolution 2330 (XXII). His delegation had therefore submitted draft resolution A/C.6/L.733, together with twenty-five other delegations, and hoped that the draft resolution would receive wide support.

Mr. Secarin (Romania), Rapporteur, took the Chair.

51. Mr. LAMPTEY (Ghana) said that he would present his delegation's views on the definition of aggression at the Sixth Committee's next meeting and he now wished to introduce the twenty-six-Power draft resolution (A/C.6/L.733). Although the draft as a whole was self-explanatory, his delegation thought it would be useful to give certain clarifications regarding its preamble and operative part.

52. In the preamble, the second paragraph reflected the sponsors' view that the report of the Special Committee on the Question of Defining Aggression had shown that progress had been made towards a definition of aggression. The third paragraph explained why the Special Committee was unable to resume its work before the end of 1968, contrary to the wishes it had expressed in the recommendation contained in section V of its report. The sponsors of the draft considered that it was not feasible for work to be resumed, for the technical reasons given by the Secretariat. The fourth paragraph, referring to General Assembly resolution 2330 (XXII), explained why the Special Committee should bring its work to a successful conclusion.

53. As for the operative part of the draft resolution, paragraph 1 again recalled Assembly resolution 2330 (XXII), which had established the Special Committee and laid down its terms of reference.

54. The sponsors of the draft resolution wished to examine the comments already elicited by it, and they would come together after the present meeting in order to sum up those comments. They hoped that the draft would be adopted by the largest possible majority, but they could accept no amendment that questioned its essential objective, namely, the resumption of work by the Special Committee under the terms of its mandate.

55. Mr. GONZALEZ GALVEZ (Mexico) said he wished merely to stress that the twenty-six-Power draft resolution, although undoubtedly capable of improvement, was among those least likely to give rise to controversy. He therefore recommended it to the attention of the members of the Committee, while at the same time reserving the right to explain at the conclusion of the debate why his country was among its sponsors.

The meeting rose at 6 p.m.

Litho in U.N. 77601—June 1970—2,150