SIXTH COMMITTEE, 1167th
MEETING

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Chairman: Mr. Gonzalo ALCÍVAR (Ecuador).

AGENDA ITEM 88

Report of the Special Committee on the Question of
Defining Aggression (continued) (A/7620; A/C.6/L.785)

1. Mr. PINTO (Ceylon) said that his delegation was among
those which, at the twenty-second session of the General
Assembly, had welcomed the renewal of efforts to formu-
late a definition of aggression. That had not been a new
endeavour, since as early as 1933 the Soviet Union had
proposed a definition, which had been discussed for more
than thirty years without gaining wide acceptance, but
significantly also without being wholly abandoned. He
recalled that in 1952 the General Assembly had adopted
resolution 599 (VI), the fourth preambular paragraph of
which stated that it was desirable to define aggression by
reference to the elements which constituted it.

2. The optimism of that paragraph had not been renewed
in succeeding years, and the reluctance of the International
Law Commission to deal with the matter, combined with
disillusion, apathy and even some cynicism, had effectively
stifled progress. Paradoxically, there had been at the same
time a proliferation of proposals regarding the definition of
aggression. But all of them fell short of being acceptable,
which was hardly strange considering the enormous diffi-
culty inherent in the task. The establishment in 1967,
pursuant to General Assembly resolution 2330 (XXII), of
the Special Committee on the Question of Defining
Aggression had fortunately created a new climate.

3. His delegation was convinced that the definition of
aggression was both possible and desirable and could prove
to be a valuable contribution to the cause of international
peace and security. Appropriately formulated, it would be
a point of reference for public opinion, a yardstick against
which to measure the conduct of States, a bulwark against
arbitrary characterization of the use of force as aggression,
and a stern warning to an aggressor or would-be aggressor.

4. But whether used for guidance in the formation of
international public opinion or to help the Security Council
to interpret the provisions of the Charter, it was essential
that the definition should enjoy the support of as many
States as possible. To its regret, the delegation of Ceylon
could not give its unqualified support to any of the draft
definitions appearing in the report before the Committee
(A/7620). A new approach appeared to be called for which
would apply scientific legal techniques such as the Commit-
tee constantly used in other areas of its work. Thus his
delegation would have liked to see terms with a known legal
content used as far as possible, and, when terms of
uncertain legal content were used, they should be defined
and used with precision. The Special Committee seemed
to have allowed itself to be led astray from a scientific
approach by the political elements inherent in the task
entrusted to it.

5. His delegation had wondered, for example, why special
prominence had been given in some draft definitions to a
declaration of war. It considered that such a declaration,
whether made initially or at a subsequent stage of armed
conflict, was not necessarily of any real significance. It
might be made long after the commencement of hostilities
merely to clarify a prevailing situation and, for example, to
enable certain laws and regulations to be applied on an
extraordinary basis. In such cases, the declaration of war
might have nothing to do with aggression nor could it be
said to demonstrate aggressive intent. An aggressor would
obviously take good care to avoid a declaration of war
which would bring his action within the definition. Another
problem was to decide what "invasion" or "blockade"
implied. It would surely be preferable to describe those
categories by reference to their basic essentials such as, in
the case of invasion, the crossing of a frontier, and in the
case of blockade, interference with the transport of goods.
And exactly what was to be understood by "weapons of
mass destruction"? Those terms, picked out at random,
were intended to illustrate his delegation's desire to see a
balanced, scientifically conceived and precisely formulated
text emerge which would be of real value to future
deliberations.

6. His delegation was anxious for the elimination as far as
possible of subjective elements, and particularly the con-
cept of "aggressive intent" which it would be virtually
impossible to prove in any given case.

7. His delegation would vote in favour of draft resolution
A/C.6/L.785.

8. Mr. BONNEFOY (Chile) said that, since his delegation
was not a member of the Special Committee, it would like
to give its views on some of the essential problems of
defining aggression, starting out from the principle that the
definition should be acceptable to the majority of States
members of the Security Council and Members of the
General Assembly.
9. With regard to the question what points should be included in a definition of aggression, his delegation thought that only States should be mentioned, and that other unduly general expressions, such as "political entity" which appeared in the six-Power draft (see A/7620, para. 11) should be eliminated. The word "States" embraced all subjects of public international law which politically could be so described, whether or not they were recognized as such by the majority of the members of the international community, since recognition of a State could not be laid down as a prior condition for the application of the definition to that State.

10. That being so, it was important to know whether the definition of aggression should be based on aggressive intent or on the objective nature of acts committed. The Chilean delegation was unhesitatingly in favour of the second alternative. It was difficult to prove the intentions of a State, since intent was to be seen only in certain vague indications which might easily escape the organ whose mandate was to determine who was the aggressor. Thus it was difficult to see how a United Nations body could be absolutely certain that the purpose of a State had been to "disrupt or interfere with the conduct of the affairs of another State" or "to inflict harm or obtain concessions of any sort", to cite phrases taken from paragraph IV (A) of the six-Power draft. The second and even more serious difficulty was that by taking intent as the basis, a loop-hole was provided for States to commit acts of aggression which they would subsequently try to justify by invoking the innocence of their intentions. To do so, all they would have to do was to create a suitable atmosphere and launch a diplomatic and propaganda campaign for that purpose. Hence, it was important to take as a basis only the nature of the acts accomplished. For that purpose it might be possible to enumerate certain categories of acts, as was done in paragraph 5 of the thirteen-Power draft (see A/7620, para. 10), without the necessity for specifying the types of arms used, as was done in the Soviet Union draft (ibid., para. 9), where mention was made of "the use of nuclear, bacteriological or chemical weapons or any other weapons of mass destruction".

11. Once the principle of the nature of the acts was adopted, his delegation considered that the principle of priority was a fundamental element which must be taken into account, since it was the only element which would enable a distinction to be made between armed aggression and self-defence. Any other procedure would enable States to have recourse to preventive self-defence and there would be no point in defining aggression.

12. With regard to the legitimate use of force by regional bodies, as referred to in operative paragraph 4 of the thirteen-Power draft and in paragraph III of the six-Power draft, his delegation thought it should be emphasized that regional agencies had only secondary competence in that matter, as was shown by Article 53 of the Charter, and that such bodies could therefore only apply measures of coercion with the express authorization of the Security Council. The six-Power draft was not sufficiently clear on that point.

13. With regard to the terms of reference of the Special Committee, the Chilean delegation considered that that Committee should meet again in 1970 with its mandate unchanged.

14. Mr. YASSEEN (Iraq) said that it was of the utmost importance to define the abstract notion of aggression clearly and precisely, so that it could be applied to specific situations and international peace and security could be safeguarded in the manner laid down in the Charter.

15. In his opinion, it was incorrect to claim that the Security Council could define aggression, for, while the Council could take note of a de facto situation, its role was not to define aggression, but to adopt measures to restore peace. Aggression should be defined on the basis of the principles set out in the Charter; that would ensure that the definition was objective and that it had the same binding force as the Charter. Accordingly, the international community could only benefit from such a definition of aggression, which would help States when they had to determine whether or not aggression had been committed and which would provide a safeguard for countries which did not have an equal voice in the Security Council. It was regrettable that some imperialist Powers in the Security Council had shirked their responsibilities under the Charter in order to favour a protégé or to encourage, through complicity or for some other reason, certain acts of aggression. If a definition of aggression existed and international public opinion was well informed, those Powers would be compelled to behave differently. In view of that fact, it was of the greatest importance to define aggression in order to forestall any arbitrary actions in the United Nations.

16. It was gratifying to note the number of proposals that had been submitted to the Special Committee; that showed that the idea of defining aggression was no longer seriously contested, and in itself was a step forward. As to the method to be adopted, the Charter, and particularly Article 51, should be taken as a basis, in order to assess the justification for the use of force. In that connexion the idea of "antiority", the first use of force, could not be ignored. That objective concept, which was embodied in the Charter, was of basic importance since armed aggression must precede self-defence. Nevertheless, some countries had invoked another method, not justified by the Charter, which consisted of determining aggressive intent. It was highly dangerous to take intent, which was a subjective criterion, as a basis for determining whether or not there was aggression, since it was very difficult to establish a State's intentions and, also, very easy for a State to profess good intentions, claiming that it had invaded a territory to defend itself against possible aggression, as in the case of the Nazis, who had launched "preventive attacks".

17. The definition of aggression should mention the aggressor's responsibility and solemnly state the principle that any advantages obtained by the aggressor should not be recognized. Furthermore, the definition should include a condemnation of the use of force against oppressed peoples by colonialist countries, or at least indicate that the definition in no way derogated from the right of oppressed peoples to rise up against their aggressors.

18. At its second session, the Special Committee had considered the role of regional agencies, which, some had
held, could take enforcement action; but Article 53 of the Charter provided that no enforcement action could be taken by regional agencies without the authorization of the Security Council. That point should be made clear in the six-Power draft.

19. With regard to the consensus question, it was clear that some countries had opposed defining aggression in order to retain absolute freedom of action. In his delegation’s view, it was therefore necessary to fall back on the procedure used in the General Assembly, i.e. majority rule. He believed that it would be unconstitutional to require the approval of the permanent members of the Security Council, as that was incompatible with the fundamental principle of sovereign equality of States. Accordingly, the definition of aggression should be adopted, when the time came, if not by unanimous consent, at least by a majority vote.

20. Mr. JAZIČ (Yugoslavia) expressed his satisfaction with the Special Committee’s report, which faithfully reflected the work of that body. It was clear that the Special Committee had made further progress, if it was borne in mind that it was dealing with a question on which views differed widely, particularly with regard to the possible legal content and validity of the definition it was proposed to formulate. Political considerations also played an essential role, since the task involved judging the behaviour of States in the most sensitive area of international relations—the maintenance of international peace and security.

21. In 1969, the Special Committee had had before it three proposals, and it was very encouraging to observe that even those who had so far most frequently voiced doubts as to the feasibility of defining aggression, had now come forward with their own proposal, which deserved full attention. It was gratifying to note that all the major trends of opinion in the Special Committee and all the main legal systems represented in the United Nations were now reflected in actual texts. That should facilitate the formulation of a definition acceptable to a large majority. The next step should be to compare the various drafts and seek points of agreement. A definition of aggression acceptable to a large majority and adopted by the General Assembly would constitute a very useful instrument in international efforts to protect the sovereignty, independence and territorial integrity of States. While it could not be expected that such a definition would completely discourage a potential aggressor, it would at least help the United Nations to expose the aggressor and to establish his international responsibility.

22. The Working Group set up by the Special Committee had already begun to select the elements which could be included in the preamble to the definition, so that the work had advanced from the stage of general considerations to the process of negotiation. The General Assembly should therefore extend the Special Committee’s mandate so that it could resume its work early in 1970; for that reason his delegation was among the sponsors of draft resolution A/C.6/L.785, which contained a provision to that effect.

23. Many difficulties still stood in the way of the formulation of a definition of aggression; the question was, how best to go about that task. There seemed to be general agreement that the Charter, whose principles should be applied in relations among all States without exception, should serve as a basis for the work of defining aggression. Although the Charter contained no definition of aggression, it did unquestionably contain the basic elements for it. The definition should therefore be firmly based on the provisions of the Charter, but it was also necessary to take into account the new forms of aggression resulting from the policy of force and hegemony pursued in different parts of the world, which the Charter obviously could not have anticipated. Nevertheless, it did contain, in Article 2, a provision relating to the most dangerous forms of aggression, namely the use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. Likewise, Article 51 stipulated that nothing in the Charter should impair the inherent right of individual or collective self-defence if an armed attack occurred. It was clear from that that the Charter linked aggression with the use of force in international relations. However, the existence of other forms of aggression, such as economic or ideological aggression, not explicitly mentioned in the Charter, could not be denied. The task was not merely to reproduce the provisions of the Charter or to rewrite the Charter, but to formulate, on the basis of the principles and in the spirit of the Charter, a definition of aggression that would be effective and mark a further step in the development of the legal system of the United Nations.

24. Turning to the three proposals contained in the Special Committee’s report—the thirteen-Power draft, the Soviet Union draft and the six-Power draft—he said that a definition of aggression should contain a preamble specifying the purposes and objectives of the adoption of a definition by the General Assembly. The preamble could also embody certain principles of the Charter, which need not necessarily also constitute a part of the operative provisions of the definition. It was regrettable that the six-Power draft was the only one which did not contain a preamble, but he hoped that was not an indication that its sponsors were opposed to having one. The preamble should state that the use of force by any State designed to influence the social and political development or to cause changes in the internal systems of other States was incompatible with the Charter and contemporary international law. As stated in the seventh preambular paragraph of the thirteen-Power draft, no considerations whatever could provide an excuse for the use of force by one State against another, except in the cases provided for in Article 51 of the Charter. In the debate in the Special Committee, his delegation had already pointed out that the preambles of the Soviet Union draft and the thirteen-Power draft contained a number of paragraphs that could serve as a basis of agreement with a view to arriving at the final text of a preamble. On the other hand, he disagreed with the formulation of the fourth preambular paragraph of the Soviet Union draft, which applied the principle of peaceful coexistence only to relations among States with different social systems. That principle should be applicable without exception to all States.

25. The thirteen-Power proposal was the one that most closely approached a formulation of the notion of aggression, since it was based on objective criteria. The six-Power draft, however, introduced a subjective criterion in laying stress upon so-called aggressive intent. A definition based
on that criterion would pose two major questions. First, how to establish the existence of aggressive intent in order to determine whether or not an act of aggression had been committed. Second, whether or not the alleged existence of aggressive intent would serve as an excuse to a real aggressor for launching a surprise attack or starting a preventive war. He also believed that a definition founded upon an objective criterion was a more reliable factor for determining the occurrence of an act of aggression. However, he would be prepared to discuss the scope of so-called aggressive intent in the context of a definition of aggression.

26. As to the enumeration of possible acts of aggression, all three drafts contained concrete lists of such acts. According to the Charter, there appeared to be no doubt that a State which used armed force except for the purpose of repelling an armed attack was to be regarded as an aggressor. It might thus be possible to resolve the controversy concerning the principle of first use. In the opinion of the Yugoslav delegation, the list would, in any case, have to enumerate the most obvious acts of aggression.

27. The determination of acts of aggression was closely linked to the competence of United Nations organs. In that respect, any definition of aggression had to follow the provisions of the Charter. The definition should adequately reflect the competence and functions of the Security Council, as stipulated in Articles 24, 39, 41 and 42 of the Charter, without overlooking the powers of the General Assembly.

28. With regard to the principle of the right of self-defence, the Yugoslav delegation considered it most important that the relevant provisions of the Charter should be strictly interpreted and that account should be taken above all of Article 53, which provided that no enforcement action should be taken under regional arrangements or by regional agencies without the authorization of the Security Council. In that respect, the thirteen-Power draft was the most consistent one, while the six-Power draft contained an unacceptable proposal that was the contrary to the provisions of the Charter. It provided that the use of force by a regional organization “consistent with the Charter of the United Nations” did not constitute aggression, even if it did not possess the authorization of the Security Council or did not come under Article 51 of the Charter. Any attempt to go beyond the provisions of the Charter in the matter of self-defence could only lead to dangerous violations of the fundamental sovereign rights of a State.

29. The Yugoslav delegation had always maintained that the use of force against a people exercising their right to self-determination constituted a flagrant violation of the Charter. The thirteen-Power draft did not limit the scope of the Charter’s provisions concerning the right of peoples to self-determination, sovereignty and territorial integrity. The Special Committee should endeavour to resolve the differences of opinion existing on that subject.

30. Lastly, his delegation deemed it essential that the Special Committee should continue its work at its next session so that it could complete its task as soon as possible and submit a comprehensive report on the question of defining aggression.

31. Mr. ENGO (Cameroon) said that he was glad that, in its second report, the Special Committee had, for the first time, submitted a collection of concrete proposals reflecting the different schools of thought and illustrating the views—which often differed widely—of various delegations. He still believed that the attempts made to define aggression were of limited value in furthering the codification and progressive development of international law. That view was strengthened by the existence of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States. He recognized the role of aggression in international affairs and also the fact that the term had become part of the vocabulary of political animosity. However he felt that the time was not ripe for defining aggression, that the task should not be undertaken by the Special Committee and that the efforts that were being made to elaborate such a definition had little practical relevance. The subject itself was a source of political and ideological polemics which could only hamper the realistic consideration of legal principles which were more important to contemporary international society. His delegation had not opposed the establishment of the Special Committee, or the continuation of its work, because of the interest shown by some of the developing countries. However, it maintained its attitude, because it believed that the task should have been undertaken by another body, such as a political organ.

32. With regard to the financial implications entailed in the Sixth Committee’s decisions, it was with deep regret that he had heard that four of the major Powers had asked the Secretary-General to take steps to limit the growth of the United Nations budget in all fields. The growth of the activities of the international community responded to the demands of the present generation and the Secretary-General ought not to be coerced into taking undesirable restrictive measures. It was for Member States to exercise restraint, and if that had been done it would have been possible to avoid the task which was now confronting the Special Committee and which was of no particular urgency. He had had no objection to a Geneva session of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, in view of the urgency of its task, but the same considerations did not apply to the Special Committee on the Question of Defining Aggression. It was therefore a pity that the organization of a session of the Special Committee at Geneva should entail extra expenditure of some $100,000, as had been indicated by the United States representative, since the question dealt with by the Special Committee was not a matter of priority and, in his view, only high-priority items warranted extra expenditure.

33. Mr. ALVAREZ TABIO (Cuba) said that the first comment that came to mind on reading the report of the Special Committee on the Question of Defining Aggression was that it had not yet been possible to arrive at a generally acceptable formulation, although, since 1952, the General Assembly had maintained that it was possible and timely to define aggression.

34. Some conclusions, could, however, be drawn from the Special Committee’s report. First, the question whether or not it was desirable to define aggression did not arise; the Special Committee considered that its task was to consider
concrete proposals with a view to arriving at a definition. Second, the majority of the Special Committee’s members favoured a mixed definition, in which a flexible description would precede and lead up to a list of specific acts of aggression that would serve purely as an illustration.

35. It was impossible to compile an exhaustive catalogue of acts of aggression and, in any case, there was no doubt that recent history provided the most characteristic examples of imperialist aggression and of the pretexths of self-defence which were invoked to justify such acts.

36. Although it was clearly defined in Article 51 of the Charter, the right of self-defence had served on countless occasions to cover up or justify acts of aggression or brutal reprisals. In the world of today, in which force predominated, it was hard to imagine that a list of the more notable acts of aggression could effectively serve to deter aggressors; however, it would at least have the merit, as was pointed out in the preambles to the Soviet Union draft, of simplifying the determination of such acts and the implementation of measures to stop them and also facilitate the rendering of assistance to the victim of aggression and the protection of his lawful rights and interests.

37. The Cuban delegation did not support the argument that a definition of aggression would infringe on the discretionary powers vested in the Security Council under Article 39 of the Charter. There was no reason why the General Assembly should not draw up some model formulations that could serve as a guide to the supreme organ of the United Nations so that its decisions were based on objective criteria agreed upon by the majority of Member States.

38. With reference to the draft submitted in 1968 by thirteen countries,¹ his delegation felt that a general definition should mention the use of armed force, since it was the most dangerous form of aggression, while at the same time the enumeration of specific cases could cover other direct or indirect ways of using force, such as political and economic pressures. Also, the draft might dangerously enlarge the scope of self-defence, for the concept of armed aggression could include, in addition to the acts enumerated in operative paragraph 5 of that draft, other cases—not defined—of the indirect use of armed force. That danger would be seen to be even more serious if it was noted that the fifth preambular paragraph did not indicate who was to determine whether aggression had been committed.

39. Operative paragraph 2 seemed to support the view that certain United Nations bodies other than the Security Council were competent to use force in conformity with the Charter. His delegation would not be able to support that view.

40. Operative paragraph 4, although it was based on the provisions of Article 53 of the Charter, would nevertheless permit a regional agency to determine whether an act of armed aggression had been committed; it would thus be possible to invoke the right of collective self-defence without referring the case to the Security Council. It was true that operative paragraph 10 did not contemplate that an act other than those referred to in paragraph 5 could be considered an act of armed aggression in the absence of an express declaration to that effect by the Security Council. However, it should be remembered that an act of self-defence could be judged only a posteriori, which meant that action which was claimed to constitute self-defence could go unpunished if the Security Council reached no conclusion.

41. Operative paragraph 8, moreover, was somewhat contradictory, for while prohibiting recourse to the right of individual or collective self-defence, it authorized the States concerned to take all reasonable and adequate steps to safeguard its existence and its institutions; that was tantamount to an implicit acceptance of a form of self-defence which was contrary to the Charter. If that provision was to be interpreted as referring to internal measures, it was pointless, for two reasons. First, internal security was a matter to which the concept of the sovereignty of the State applied; secondly, international law could not settle problems which fell within the internal jurisdiction of States.

42. In general, his delegation had very serious reservations with regard to indirect aggression and it could not accept an equivocal drafting which could easily be transformed into a two-edged sword endangering that which it was supposed to protect.

43. His delegation considered that the amendment submitted by Sudan and the United Arab Republic² to that draft was highly constructive, for two reasons: it recommended the deletion of the words “direct or indirect” in operative paragraph 1 of the thirteen-Power proposal, and it proposed the addition of a paragraph providing that any use of force tending to deprive any people of its inherent right to self-determination, sovereignty and territorial integrity was a violation of the Charter.

44. However, it was important to recognize the legitimacy of recourse to force, in exercise of the right of self-determination, by peoples subjected to imperialism, colonialism or racial discrimination.

45. With regard to the six-Power draft (see A/7620, para. 11), his delegation could not accept the position reflected in the last part of paragraph II, which dealt with provisional lines of demarcation. Acceptance of that position would have the effect of perpetuating artificial divisions which infringed the fundamental rights of peoples, such as those of Viet-Nam and Korea.

46. His delegation considered that the definition of aggression given in that same paragraph II was equally unsatisfactory. It might give the impression that certain notorious cases of intervention—such as those involving Veracruz and Santo Domingo—did not constitute acts of aggression because theoretically they did not affect the territorial integrity or the political independence of another State and were not inconsistent with the purposes of the United Nations. Paragraph IV A seemed to his delegation to

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² Ibid., para. 10.
be equally dangerous. Interpreted *a contrario*, it would suggest that acts of aggression excluded from that concept could be committed if their purpose was a supposedly noble one. It should be remembered that there had never been an act of aggression which the perpetrator had not sought to justify by attributing to it a noble purpose.

47. Mr. TIN AYE KYAW (Burma) said that his delegation had long been convinced that a definition of aggression could help to settle conflicts between States. Article 1, paragraph 1, of the Charter specified that the maintenance of international peace and security was one of the purposes of the United Nations and that the suppression of acts of aggression was one of the means to that end. In fact, two of the three proposals for a definition of aggression the texts of which appeared in the report of the Special Committee were based to a large extent on the provisions of that paragraph. Those two drafts also explicitly mentioned the need for a definition of aggression, and the third—the six-Power proposal—at least acknowledged that the States which considered a definition of aggression possible and desirable were not entirely wrong.

48. With regard to the substance of the matter, his delegation felt that a definition of aggression should not be limited to direct armed attack involving a breach of international peace, but should cover other forms of aggression which were less obvious and more insidious but which nevertheless were aimed at infringing the political and territorial integrity of another State. The three proposals in the report of the Special Committee included that aspect of aggression, but appeared to attach relatively minor importance to it. His delegation wished to emphasize that for the victim an indirect attack had consequences at least as serious as those of an armed attack, and that it was certainly more likely to occur.

49. His delegation would also like to refer to the question of the exercise of the right of self-defence as enunciated in Article 51 of the Charter. Even when that right was exercised in response to armed aggression, it was a limited right which should not prejudice the right of the Security Council to act in the interests of maintaining international peace and security. His delegation felt that any reference to the right of self-defence in a definition of aggression should reflect the spirit of that Article.

50. His delegation hoped that a legally adequate and politically useful definition of aggression would result from the work of the Special Committee and that that definition would help to mark the twenty-fifth anniversary of the United Nations.

51. His delegation would vote in favour of draft resolution A/C.6/L.785.

*The meeting rose at 12.45 p.m.*