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CONTENTS

Chairman: Mr. Santiago PEREZ PEREZ (Venezuela).

AGENDA ITEM 54

Question of defining aggression: report of the Special Committee (A/3574; A/C.6/L.399, A/C.6/L.401) (continued)

1. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) said that the importance of the question of defining aggression had by now been firmly established, and most delegations agreed that a definition would be of great assistance in the maintenance of international peace and security. A country such as the Ukrainian SSR, which had twice been the victim of aggression in recent times, was particularly well aware of the desirability of a definition as a warning to potential aggressors. Furthermore, the present highly explosive international situation rendered such a definition not only desirable but vitally necessary.

2. Some delegations, unwilling to see a definition adopted, had contended that the Committee's present efforts were unnecessary and should be discontinued. That contention, however, had not been supported by a single serious argument. The representative of the United States, speaking as the leading proponent of discontinuance, had in fact abandoned all attempts at serious discussion and had resorted to unworthy political charges. His only argument, that a definition would be no panacea, overlooked the fact that the supporters of a definition had never suggested that the mere adoption of a text would guarantee world peace. They only believed that if Governments showed sufficient resolve a definition would strengthen the hand of the United Nations.

3. The United States representative had also declared that the United Nations should concentrate on deeds rather than words. That statement was largely meaningless, as action could only be taken in pursuance of decisions. The United States representative had tried to strengthen his feeble arguments by deliberately misconstruing the provisions of the Charter and by stating that any definition would necessarily diminish their force. In point of fact, a definition designed to clarify the provisions of the Charter and consistent with the letter and spirit of those provisions could only strengthen the Charter machinery.

4. In discussing the various possible forms of definition, some delegations had argued that the Soviet proposal (A/C.6/L.399) was purely enumerative. That argument was groundless, as the text in question did not confine itself to listing possible examples of aggression but also contained all the essential statements of principle. It was in fact both synthetic and analytical. Little further needed to be said in that connexion, as all the criticisms had been brilliantly refuted in the statement by the representative of Bulgaria (519th meeting).

5. The majority of the delegations advocating a definition agreed that a purely general formula would not suffice. The Belgian proposal (514th meeting, para. 29), for example, was manifestly unacceptable, as it only offered a definition of self-defence, which was a concept that needed no defining. The adoption of any such text might only introduce an element of confusion into Article 51 of the Charter.

6. Several delegations supported a restrictive mixed definition, of the type suggested by Iran and Panama (A/C.6/L.401). The various texts of that type already suggested, appearing in annex II to the report of the Special Committee (A/3574), varied to some extent, but most of them repeated at least some of the examples of acts of aggression listed in the Soviet draft resolution. That, in itself, was a promising feature, as it showed that there was much common ground between all those who desired a definition. Most of those texts, however, omitted the criterion on which the Soviet proposal laid the primary emphasis, and without which any definition would be defective: the principle of the "first act". That omission was evident, for example, in the draft resolution submitted by Iran and Panama. The acts which that text described as aggression "in all cases" were in fact aggression only if committed first. Furthermore, the negative reference to the right of self-defence in operative paragraph 1 did not stress the point that defensive measures were only permitted after an act armed attack had been committed by the opposing party. The draft resolution of Iran and Panama thus obscured the essence of Article 51 of the Charter, while the Soviet proposal was the perfect complement of that Article. Unless the principle of the "first act" was clearly stated, potential aggressors might still be left with a pretext for launching preventive war.

7. The Norwegian representative had tried to criticize the USSR definition on the ground that paragraph 5 constituted an escape clause. He had contended that the adoption of that definition might even result, through the application of paragraph 5, in the victim of an aggression being branded as the aggressor. That argument, however, was sheer casuistry. Viewed in its proper context, paragraph 5 merely meant that the enumeration contained in paragraph 1 was not exhaustive. It was designed as a warning to States which might try to invent forms of armed attack not listed in paragraph 1. The USSR definition was not intended as a snare for the innocent, but as an instrument to ensure the immediate determination of guilt. It was noteworthy that, while making that criticism, the

Norwegian representative had failed to offer a single constructive suggestion regarding possible improvements in the Soviet text.

8. Some representatives had suggested that the recent revolutionary advances in the field of armaments made every attempt to define armed attack completely futile. New inventions, however, in no way altered the basic concept of armed attack, and the State which first resorted to forcible measures would still be the attacker, regardless of the methods employed. Indeed, the greatly increased destructive power of modern weapons only made it even more imperative that all aggression should be forestalled.

9. Equally groundless was the argument that a definition should be deferred until there was wider agreement on the whole subject of nuclear and thermonuclear weapons and chemical and bacteriological warfare. The fact that those issues were still unresolved did not make a definition any less necessary, and continued delay merely aggravated the dangers.

10. Another dangerous suggestion was that the solution of the question of defining aggression should await the revision of the Charter. None of the advocates of a definition had either envisaged or suggested a definition inconsistent with the Charter, and the Charter already contained the necessary basic provisions. A definition was required only in order to facilitate the task of the competent organs in carrying those existing provisions into effect.

11. The French representative had suggested (521st meeting, para. 9) that the first step, before devising a definition, should be the formulation of interpretation clauses on the relevant Charter provisions. Similar proposals had previously been made by the representatives of Israel, the Netherlands and Belgium, but the Charter provisions concerned were sufficiently clear to require no additional commentary.

12. Notwithstanding such delaying tactics, the Committee's discussions had shown that there existed a substantial measure of agreement. All those who advocated a definition were now convinced that the first step should be a definition of armed attack, stressing the "first act" principle and the fact that no political, strategic or economic consideration could ever justify such an attack. The Ukrainian delegation accordingly felt confident that the Committee's long and sustained efforts would shortly bear fruit.

13. Mr. NUGROHO (Indonesia) was concerned at the fact that some delegations were still arguing about the possibility or impossibility of defing aggression. Both the possibility and desirability of such a definition had been clearly established by General Assembly resolution 599 (VI). The terms of that text had neither been revoked nor modified by subsequent General Assembly resolutions, but had in fact been implicitly reaffirmed in resolutions 688 (VII) and 895 (IX).

14. Some critics had recalled the repeated failures to arrive at a satisfactory definition of aggression during the 'twenties and 'thirties, but had omitted to mention those cases in which a definition had served a useful if not spectacular purpose. Other critics had recalled the conclusion drawn by Committee 3 of the Third Commission at the San Francisco Conference in 1945 that a preliminary definition of aggression went beyond the possibilities of that Conference and the purpose of the Charter (A/2211, para. 116). It had been rightly pointed out, however, that Committee 3 had not considered a definition as such impossible: the Committee had rather had in mind that it was impossible to formulate any exhaustive enumeration of acts of aggression.

15. Even assuming that Committee 3 had considered such a definition impossible, the Sixth Committee was not necessarily obliged to confirm that judgement as final. International law was a living organism which grew and changed in its growth. The United Nations Charter was always subject to review, and the United Nations itself was no longer what it had been in 1945; it now included more than eighty nations, many of which had only recently acquired independence, and, being militarily weak, needed protection against aggression.

16. Furthermore, the report of Committee 3 contained certain contradictory statements. It said, for example, that since the list of cases of aggression was necessarily incomplete, the Security Council would have a tendency to consider acts not mentioned in the list as of less importance: those omissions would encourage aggressors to distort the definition or might delay action by the Council. The report went on to say that automatic action by the Council might bring about a premature application of enforcement measures. Committee 3 thus feared both a delayed action and a premature action. His delegation found it difficult to follow that line of reasoning for two reasons: (a) one of the merits of a definition was that in clear cases of aggression it would automatically bring the Council into action; and (b) the application of enforcement measures was not and never would be premature.

17. It had been argued that the United Nations Charter was sufficient to prevent or suppress aggression, since acts of aggression had been successfully suppressed in the past without the aid of a definition. But it could equally well have been pointed out that wars had started and ended with and without the Charter. Yet no one questioned the value of the Charter, and by the same token there was no good reason to question the value of a definition of aggression. Admittedly it would be difficult to prepare an exhaustive list of cases of aggression, but a list of even a few, clearly-defined cases would certainly be of great help to the Council in its decisions.

18. The Indian representative had said (520th meeting, para. 51) that any definition was futile at the present time unless it took into account the production, testing and use of atomic bombs. While the Indonesian delegation fully agreed that aggression with nuclear weapons was a very dangerous possibility, it did not for that reason think that a definition of aggression should be postponed until nuclear disarmament had become a fact. For the time being, the definition should be made to cover ordinary acts of aggression, committed with ordinary, conventional weapons; but it should also be made sufficiently flexible to keep up with the developments of modern warfare.

19. Some representatives had also said that a definition would be futile because the present world community lacked any real power to enforce sanctions. The lack of that power, however, had not prevented the world from recognizing the need for international law. Formerly based for the most part on the prin-

ciple of reciprocity, international law at present also derived its power from the principle of collective action, as evidenced by the establishment of the United Nations Emergency Force. That marked a hopeful trend in international law, which, if further developed by the formulation of a definition of aggression, might yet save the world from chaos.

20. The Indonesian delegation continued to favour the establishment of a definition of aggression which would serve as a guide for action by the competent United Nations bodies in future cases of aggression. It preferred the general type of definition, followed by an enumeration which would be illustrative and not restrictive, and which, in cases of forthright aggression, would also enable the competent bodies to name the aggressor automatically.

21. With respect to the draft definitions then before the Committee, he reserved his delegation's right to speak again at a later stage when and if it deemed necessary.

22. Mr. BHUTTO (Pakistan) said that the definition of aggression was a very considerable undertaking. In its resolution 599 (VI), the General Assembly had stated that it was both possible and desirable to define aggression to ensure international peace and security. However, lengthy examination of the question had revealed all its complexities and, under resolution 688 (VII), the General Assembly had decided to set up a special committee to study the question and submit draft definitions of aggression to the ninth session. The work of the first Special Committee had led to the establishment of another Special Committee to co-ordinate the views expressed and submit a detailed report and a draft definition of aggression to the General Assembly at its eleventh session. It was therefore erroneous to maintain that General Assembly resolution 599 (VI) had settled the question of the possibility and desirability of defining aggression once and for all; if that were so, the Special Committees would not have been set up. Neither that nor any subsequent resolution of the General Assembly had so far prejudged the issue that the Sixth Committee could not discuss whether a definition of aggression was both possible and desirable.

23. It had been argued that there was nothing that man could not achieve if he set his mind to it, and that social sciences must be kept in rhythm with other world developments. That was a double-edged argument: if man could invent sputnik, he could certainly define aggression; but if he could define aggression, he could as certainly find means of circumventing his own definition. In those circumstances, the effect of a definition might be disastrous.

24. International law had made great strides, especially in recent years, but in comparison with municipal law it was still in its infancy. It had no means of enforcing sanctions. In 1935 Hans Kelsen, an eminent international lawyer, had said that international law was still at a primitive stage: it had no central organisms for making and executing the law; there were no central tribunals to apply rules in particular cases; and a State injured by another State was obliged to take the measures of coercion peculiar to international law, war or reprisal.

25. Although international law had progressed since 1935, the difference between international law and municipal law was still wide. The International Court of Justice existed, but its decisions were not binding. The Security Council had been set up, but even so paragraph 3 of Article 27 of the Charter had to be reckoned with in all matters of consequence. As the representative of the United Kingdom had said in the General Assembly (685th plenary meeting), the United Nations was not a super-State that could enforce its decisions upon nations: it could only blunt the edges of international disagreement. Those words represented reality. International law still bowed before national sovereignty.

26. The Charter itself was a political instrument, and any discussion of the question of defining aggression had inevitably to give consideration as much to political as to legal issues; in isolation, the attempt to define aggression was utterly futile. Were there then to be two definitions—one political, based on power, and the other objective and legal? If that were permitted, it would ensure the ascendancy of politics over law and endanger all attempts to establish permanent peace through the rule of law.

27. Sovereign States had been asked to submit their disputes to the International Court of Justice. That they had not done so was hardly surprising, since under Article 94, paragraph 2, of the Charter the International Court of Justice was brought under the domain of a political body. As Hans Kelsen had pointed out in 1950, the Statute of the International Court of Justice contained no provisions guaranteeing the execution of the Court's decisions against a recalcitrant State. The injured party could appeal to the Security Council which might either give effect to the Court's judgement or else make recommendations of its own; such recommendations would be based upon political considerations and might well reverse the Court's judgement. Recourse to the Security Council under Article 94, paragraph 2, brought the Court under the control of the Council.

28. Accordingly, any purely legal definition of aggression would be pointless. It would be valid only if the International Court of Justice had exclusive jurisdiction over all disputes, and the world was far from achieving such an aim. A juridical definition of aggression at the present stage would therefore lead to the application of double standards—political and legal—and ensure the subordination of the latter to the former. Hence the only possible definition was a political definition.

29. Many problems would remain, however, even if a juridical definition were possible. There would be disagreement on the scope, content and function of the definition. Should it include simply "armed attack" or be more comprehensive in scope? Would an "act of aggression" include indirect as well as direct aggression? While a limited definition might defeat its own object, a wider definition, including aggressive intentions, indirect, economic and ideological aggression, might have the effect of turning aggression from an abnormal to a normal or natural concept.

30. Even if a definition of aggression were possible, there was doubt whether it was desirable. Its immediate effect would be to hamper the progressive growth of international law. The law of torts was an example of a branch of municipal law that would have suffered from premature codification; the fact that it had

escaped codification in certain countries had enabled it to develop more fully. If it was wise to allow for the development of law in the highly centralized system of municipal law, how much wiser it would be to follow that policy in the highly decentralized system of international law. Experience showed that the codification of law often raised problems far greater than those that existed earlier.

31. Law was a coercive order; without force it was useless. It was therefore sometimes asked whether international law was true law, as its only effective sanction was war. Some maintained that the theory of bellum justum was an indispensable part of international law. The theory had been eclipsed in the period of unbridled national sovereignty, but was once more coming to the fore. The Pakistan delegation would not express any views on the merits of that theory; it would merely point out that the theory and its implications must be taken into account if aggression was to be defined and declared an international crime. The theory of bellum justum did not only include self-defence against aggression: it might even in certain circumstances include aggression itself, for the line of demarcation between self-defence and aggression was not always clear-cut. The Ukrainian representative had said that the State that was the first to attack was automatically the aggressor. But it was not always easy to determine who was the prime aggressor, and such a situation might lead as in Korea to a series of accusations and counter-accusations. Some maintained that Article 51 of the Charter was an effective barrier to abuse of the principle of self-defence, but its effectiveness was nullified by the right of veto in the Security Council.

32. The Pakistan delegation believed that in the present circumstances it was neither possible nor desirable to define aggression. Adequate flexible machinery already existed for dealing with breaches of the peace and threats to the peace as they arose. As a definition of aggression would necessarily lead to a revision of the Charter, it might be more expedient to shelve the question until the Charter itself came up for revision. He could not agree with the Ukrainian representative that it was wrong to link the revision of the Charter with the definition of aggression.

33. His delegation had stated its views on the possibility and desirability of defing aggression, but, impartial in that as in all issues, it was prepared to examine objectively any suggestions or proposals that might dispel its doubts.

34. There were some points, however, on which his delegation must take a stand. If other delegations insisted upon a definition of aggression, that definition must include economic aggression. In that respect, paragraphs 3 (a) and 3 (c) of the Soviet draft resolution (A/C.6/L.399) were not sufficiently specific. There must, for instance, be a provision stating clearly that economic aggression or indirect aggression was perpetrated if riparian States were deprived of their rights with respect to rivers flowing through more than one country. Interference with rivers rising outside Pakistan would be disastrous to that country.

35. The economic blockade of land-locked countries might have similar results, and his delegation would accordingly support the proposal made by the representative of Afghanistan (520th meeting, para. 14).

The meeting rose at 5.30 p.m.

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