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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. JUNG (Canada) said that his delegation still felt doubts concerning the possibility of agreement being reached on any one definition of aggression, and on the desirability, in the present international atmosphere at least, of defining aggression. A majority of delegations had in the past expressed themselves in favour of a definition, but, in spite of the efforts made, no real progress had been achieved in the direction of any one definition. Experience seemed to point to the conclusion that it probably was not possible, at least in immediate circumstances, to draft a definition which would have the support of most of the Member States, and it seemed beyond question that a definition would have meaning only if it was agreed to by the permanent members of the Security Council and by at least a two-thirds majority of the General Assembly.

2. Reviewing the various stages in the consideration of the question, he drew attention to the large number of meetings which had been devoted to it. The development of international law was a slow process, and the fact that the problem had been discussed at length did not necessarily indicate that it was impossible to arrive at a definition; but the record of disagreement showed the difficulty of finding a single definition which would command general acceptance. He did not wish to detract from the value of the studies that had been made, but did not think that any further useful purpose would be served by pursuing the question at least for the time being.

3. Even if a definition of aggression were possible, his delegation questioned the desirability of the definitions before the Committee. Its doubts were due in part to a consideration of the question from the point of view of common law, which avoided defining legal concepts or codifying them in advance. But his delegation was also still doubtful if a definition might not be more likely to interfere with than assist the competent organs to ensure the maintenance of peace. At the Conference at San Francisco in 1945, the majority view had apparently been to leave it to the Security Council to decide what constituted a threat to the peace, a breach of the peace or an act of aggression. Events had supported the wisdom of that decision. In the absence of a definition, the competent organs of the United Nations had dealt successfully with a number of difficult situations; they had probably been able to do so with more facility than might have been the case had there been a definition. A definition of aggression would limit their discretion to determine the existence of aggression in the light of the circumstances surrounding each particular case. It would call for assessing the blame concomitantly with the decision upon the action required to preserve the peace. A definition might, where immediate action was necessary, result in the competent organ of the United Nations treating in a precipitate manner the question of who was the aggressor, and might even result in a wrong determination of the question. In some cases it might not even be politic to determine who was the aggressor while tempers were still hot. Aggression should, of course, be chastised, but the determination of who was the aggressor should not impede the United Nations in ensuring the maintenance of peace. The all-important first step was to enable the United Nations to take quickly effective action to restore the peace. A definition of aggression might endanger such an aim.

4. Most of the definitions proposed seemed to use terms which themselves required definition. Since it was obviously impossible to cover all possible cases of aggression in an enumerative or mixed type of definition, the competent organs of the United Nations were likely to place less significance on acts not enumerated. Similarly, where the act committed did not fall within the terms of the definition, a future aggressor could use the definition in an attempt to justify his action. A general definition, on the other hand, would be likely to do no more than duplicate the provisions of the Charter.

5. For those reasons, the Canadian delegation was of the opinion that further consideration of the question should be set aside, for the time being at any rate. Some delegations felt that a decision in favour of postponement would adversely affect the prestige of the General Assembly; but the continuous expenditure of effort, time and money might do more to discredit the Organization, since for the time being general agreement was unlikely.

6. The Canadian delegation saw no use in referring the question back to yet another special committee or to the International Law Commission. Out of consideration for those delegations, however, which felt that a definition was desirable, it would be prepared to consider a recommendation which would bring the matter before a conference to review the Charter.

7. Mr. MARTINO (Italy) said that, generally speaking, a definition of aggression would constitute an important advance in the development of international law, and

would reinforce not merely the repressive efficacy of the system of international law but its preventive efficacy as well, and would help to ensure the security of the world. Nevertheless, an objective examination of the results of the efforts to obtain a definition led to negative conclusions.

8. The search for a definition had been interesting. Normally the question was associated with the definition of the lawful character of war, of what used to be called a "just war". Considerable progress would therefore be made if the problem could be solved, for many jurists and statesmen had tackled it and failed to find a satisfactory solution except perhaps on a regional scale.

9. The Italian delegation did not wish to cast doubt upon the intentions of those who favoured a definition, but was of the opinion that they had often gone astray. They had grappled with their task as though the discovery of an almost magic formula were involved, a sort of panacea capable of guaranteeing the peace. That was certainly a regrettable approach as it raised unwarranted expectations. The whole subject should be deprived of the artificial halo bestowed upon it by tradition, and considered as part of the existing situation.

10. When the Roman fetiales proclaimed that a specific war was "just", it was merely a formality, a kind of ceremonial ritual. In the Middle Ages, writers had endeavoured to base their definitions of a "just war" on philosophical and moral rather than legal concepts. It was only later that the positive school of law, disregarding any notion of "just war", proclaimed that the right to make war was the prerogative of sovereignty. Although certain secondary limitations had been introduced in some treaties, the right to make war had not been contested up to the establishment of the League of Nations.

11. The provisions of the Covenant did not declare war as such unlawful, but if a State which was a member of the League of Nations resorted to war in violation of the obligations of the Covenant, such a war was unlawful and involved the application of sanctions.

12. Since the time of the League of Nations, there had been several attempts to proclaim wars of aggression unlawful, namely wars waged in violation of the rights of other States; such attempts had failed and served merely to obscure the notion of aggression, which had hitherto been simple and clear. At the Disarmament Conference of 1932-1933, several formulas for defining aggression had been proposed, and they were very similar to some of the texts now before the Committee. Those formulas had been incorporated in treaties concluded between the State which had produced them and neighbouring States; as the representative of the United States had said (519th meeting, para. 18), despite the solemn character conferred on them, those formulas had proved utterly ineffectual.

13. The Pact of Paris (Briand-Kellogg Pact) of 1928 not only contained no definition of aggression but even avoided use of the word "aggression". It had not abolished the institution of war: although outlawed as an instrument of national policy, war remained lawful in certain cases, for example, as a means of legitimate defence or as a collective measure designed to secure observance of international obligations. The Briand-Kellogg Pact which, in the words of Mr. Briand on the day the Pact was signed, had legally deprived war of its most dangerous feature, its lawfulness, had represented considerable progress, and had initiated a new system which had found its expression in the United Nations Charter. It had moreover influenced the domestic law of States. Italy had inserted in its 1948 Constitution an article 11 which declared: "Italy repudiates war as an instrument of aggression against the liberties of other peoples and as a means of settling international disputes."

14. The term "aggression", which the Pact of Paris had scrupulously avoided, reappeared in the United Nations Charter; it did not, however, require definition. Actually the Charter was more a political than a legal document, and the essential purpose of the United Nations was to maintain international peace and security. The fundamental role of the Security Council was to prevent and abolish the use of armed force, and it had been the intention of the authors of the Charter that the Council should not inquire in each instance into the identity of the guilty party. In order to leave full freedom of action to the Council, it had been decided to omit from the Charter any definition other than the one in Article 2, paragraph 4.

15. The arguments used at the time against the insertion of a definition in the Charter were still valid, and had even become more convincing in the light of subsequent events. On the one hand, formulas consecrated by treaties had proved ineffectual, and, on the other, it had been demonstrated that, in case of aggression, grave situations could be met without the help of a definition if States were prepared to uphold their obligations under the Charter.

16. Besides, what would be the legal and practical value of a General Assembly decision which, while defining aggression, would inevitably infringe the powers of the Security Council? Such a decision would clearly not be binding upon the Council and would have moral force only. Nevertheless, the Council would find itself inhibited in its action, which the Charter, in the terms of Article 24, had desired should be free, speedy and effective. Further opinions were divided concerning the nature of the majority required for the General Assembly to adopt a decision of so grave a nature.

17. Opinions were likewise divided on the different types of definition. Without wishing to take a stand in this respect, the Italian delegation would point out that general definitions ran the risk of being merely repetitious, that enumerative definitions ran the risk of not being applicable to all possible cases of aggression, and that both of these disadvantages were present in mixed definitions.

18. Moreover, it should not be forgotten that a draft Code of Offences against the Peace and Security of Mankind, which included aggression, was in the course of preparation. Irrespective of the fact that criminal law conferred responsibility only on individuals and not on States, it was questionable whether there was a single formula which might simultaneously serve as a guide to the Security Council and help to define aggression from the point of view of criminal law. A formula which would leave the Council a certain latitude could not be used as a definition in criminal

law, for it would be contrary to the principle of nullum crimen sine lege. A rigid and precise definition which would satisfy the requirements of criminal law could not be imposed on the Council without violating the present provisions of the Charter. The adoption of two different formulas was hardly conceivable.

19. Lastly, it might be arbitrary to limit the definition to the single case of an act of aggression, since, in addition to the act of aggression, Article 39 of the Charter envisaged the hypothetical cases of "threat to the peace" and "breach of the peace". Why, in the case of an act of aggression, which was only one example of a breach of the peace, should the Security Council be given a definition as a guide, while it was left absolutely free in the other cases of breach of the peace, or in the case of a threat to the peace?

20. With respect to the drafts which had been submitted, the suggestion that the definition should be limited to the case of armed attack had the disadvantage of destroying the unity of the Security Council's right to consider and act on all the hypothetical cases considered in Article 39 of the Charter. From a technical point of view, the draft definition of the USSR (A/C,6/L.399) was no more satisfactory. The criterion of priority, already dubious in itself, did not seem to have been uniformly applied.

21. With respect to the other forms of aggression—economic aggression, ideological aggression, etc.—the Italian delegation, without wishing to state its views on the possibility or desirability of including them in a definition, wondered who would be the victim of ideological aggression in case a State disseminated propaganda in favour of the various totalitarian doctrines. Would that be a case of aggression erga omnes, or should it be considered that aggression only existed if the State organized that propaganda within another State, which would then be the victim of the aggression? It would be interesting to clarify that point.

22. In conclusion, the representative of Italy said that because of the difficulties and dangers involved in preparing a definition—of which the practical utility, incidentally, was doubtful—it would perhaps be desirable to take up consideration of the question again within a broader context, possibly in connexion with a general study of the principal questions affecting the United Nations. He reserved the right to speak again during the debate, if necessary.

23. Mr. HESSELLUND-JENSEN (Denmark) recalled that his Government had always doubted the possibility and even the desirability of defining aggression. Neither the report of the 1956 Special Committee nor the discussions in the Sixth Committee had caused it to change its point of view.

24. As the representative of Norway had said (521st meeting, para. 16), the expression "act of aggression" in Article 39 of the Charter was superfluous and without any legal significance, since the idea of it was already included in the broader conception of "breach of the peace" referred to in the same Article. To define an act of aggression, therefore, would not throw any new light on Article 39. Nor would it be more useful to define "threat to the peace" or "breach of the peace", for that definition would either be useless if it only expressed the same idea in different words, or even harmful if it restricted the Security Council's powers of discretion. Such restriction could not be made without amending the Charter. A definition of "armed attack" in Article 51, if deemed desirable, and if it should be more than a mere paraphrase, would also require a Charter amendment.

25. In conclusion, the Danish delegation agreed with the representatives of Brazil and Norway that the attempt to establish a definition in the form of a General Assembly resolution should be abandoned, and that the question should be referred to the general conference which would review the Charter, if, indeed, it appeared desirable to make any new attempt.

26. U THAUNG SEIN (Burma) said that the Sixth Committee was confronted with an extremely difficult task, which was not at all surprising, inasmuch as no legal term was susceptible of exact definition. One might ask, in view of the diversity of the opinions which had been expressed, whether the Sixth Committee could do any better than the Special Committee.

27. It had been said that a definition of aggression would discourage potential aggressors. The representative of Burma would like to believe and be convinced that a definition of aggression would be a panacea for all the troubles of the world. Even if agreement could be reached on a definition, it would be subject to various interpretations; just like a criminal in municipal law, a State contemplating aggression would take advantage of the definition and present it in a light favourable to itself. Every day there were criminals who succeeded in making use of the law in order to evade it. There was a danger, therefore, that a definition might fail to achieve its purpose. Anyone proposing to commit a crime would not be deterred by a definition but only by the fear of punishment. Rather than work out an abstract or technical definition, it would be much better to take such measures that the aggressor would be sure of being punished. If it proved possible, however, to establish a watertight definition which could never be circumvented, the representative of Burma would be very glad to recommend its adoption, but he had not yet found such a definition, any more than the Special Committee.

28. Mr. MELO LECAROS (Chile) said that, although the great majority of Member States had pronounced themselves in favour of a definition of aggression on several occasions, those who held the opposite opinion had not changed their minds. Moreover, the differences of opinion between those advocating a definition had not been lessened.

29. The representative of Chile was among those who thought that it was essential to define aggression in order to determine its constituent elements and to apply the Charter correctly. The representative of the United Kingdom had said that he understood the point of view of those delegations which favoured a definition, but he had rightly stated that he was opposed to a bad definition. Any definition should be the result of the joint efforts of all the Member States. It would be useless and ineffective if it were adopted by a chance majority, and if it did not have the support of those Powers which bore primary responsibility for maintaining the peace.

30. The American countries had less need of a definition than the other Member States, because they were

already protected by the Treaty signed at Rio de Janeiro in 1947, which, although it did not give a perfect definition of aggression, confirmed the continent's solidarity in the face of aggression from any quarter and guaranteed the borders of the American countries. A great success would be achieved if it proved possible to extend the provisions of that Treaty to the entire world. Perhaps the moment was not well chosen, perhaps the situation was not yet ripe and it would be desirable to learn the opinions of the new Members first; but the American countries felt that the Rio de Janeiro Treaty was a great step forward, and thus were impelled to continue.

31. The definition submitted by the representative of Belgium (514th meeting, para. 29), as well as the statements made by the representatives of France (521st meeting) and Guatemala (520th meeting), deserved further consideration. The representative of El Salvador seemed to have exceeded the juridical scope of the Sixth Committee's work, but he had enunciated a very interesting idea (515th meeting).

32. In questions of codification, it was necessary to advance by stages. However, the first stage had already been passed; the resolutions which the General Assembly had adopted by a large majority stated that it was possible and desirable to define aggression, and it would not be proper to go back on what had already been decided.

33. The definition of aggression should be a mixed one; it should be in conformity with existing international law, including the rules established in bilateral or multilateral treaties. From that point of view, the draft resolution of Iran and Panama (A/C.6/L.401) was the best which had been submitted to the Sixth Committee. The definition should disregard, at least for the time being, ideas of indirect, ideological or economic aggression, which were not contemplated by the Charter. It should also disregard the intention of the aggressor, which could only be determined by the competent international organ. Lastly, the principle of the right of individual or collective self-defence should be expressly reserved, as well as the right of States to intervene in case of violations endangering international peace and security.

34. There might be a draft resolution which would keep the question on the General Assembly's agenda, but would defer consideration of it for a period not exceeding two years. Meanwhile, the Secretary-General could request the Member States, particularly the new Members, to submit their comments on the report of the 1956 Special Committee. In addition, the International Court of Justice could be asked to give an advisory opinion on the effect which a definition of aggression might have on the provisions of the Charter.

35. Mr. PETRZELKA (Czechoslovakia) said that, despite the obstacles raised by certain Powers, a majority had decided in favour of a definition of aggression, which it considered vital for the preservation and strengthening of international peace and security. Efforts should be made to strengthen the system of collective security for which the Charter had provided a basis. Several delegations had linked the definition of aggression to an agreement on disarmament. The Czechoslovak delegation could not subscribe to that point of view, and shared the belief of the delegations of the Ukrainian Soviet Socialist Republic, Indonesia and Ceylon that a definition of aggression would help to dispel the mistrust surrounding the negotiations on disarmament and thus create conditions favourable to a solution of that problem.

36. The Committee's work had been made more difficult by the failure of the 1956 Special Committee to reach an agreement, but the number of proposals submitted only confirmed the fact that General Assembly resolution 599 (VI) had settled, once and for all, the question of the possibility and desirability of defining aggression. Any definition must be based on the Charter, and aggression constituted the most dangerous breach of peace and the gravest offence against international law.

37. A definition ought to concentrate on the most dangerous form of aggression, armed attack. There was no difference of opinion on the possibility of defining aggression both juridically and technically. His reply to those who believed that a definition in the form of a General Assembly resolution must not be adopted, was that in that case it would be senseless for the Assembly to consider other important questions as well; the Universal Declaration of Human Rights, moreover, had been adopted in the form of a resolution. A resolution would become part of international customary law and a principle of international law. It would also serve as a guide to world public opinion in a given case of aggression, and the force of the principles set forth therein would extend beyond the relationship between Member States and become universal. It would provide the Security Council with a speedy means of identifying an aggressor, help to clarify the concept of the responsibility of States, and also strengthen the principle set forth in Article 1, paragraph 1, of the Charter.

38. It was true that Article 39 did not draw a precise distinction between the expressions "threat to the peace", "breach of the peace" and "act of aggression", but that Article did not embrace only the armed attack mentioned in Article 51, and Article 1, paragraph 1, specified the notions contained in Article 39. The provisions of the entire Chapter VII were based on that paragraph; thus all the elements of a definition were already in the Charter, and there was no need to amend it to define aggression.

39. As early as 1928, aggression had been condemned as the gravest offence against international law, and a definition of it was more necessary than ever today in the face of atomic weapons and the danger of a nuclear war. Article 2, paragraph 4, of the Charter absolutely forbade the use of force against the territorial integrity or political independence of any State. The Charter thus forbade not only armed aggression but all other forms of aggression as well, such as indirect, economic and ideological aggression. Certain parties claimed that the appearance of new developments in modern warfare meant that the definition of aggression should be postponed. But armed attack was not the only form of aggression, and the aggressor was always the one who first resorted to force. Article 51 must not be regarded otherwise than as a special rule against the most dangerous of all forms of aggression.

40. The representative of El Salvador had said (515th meeting, para. 17) that the aggressor was that State which refused to comply with the decisions of the

competent organs of the United Nations; Mr. Petrzelka considered that conception to be contrary to the Charter, in particular to Article 2, paragraph 4. As the representative of Romania had said (520th meeting, para. 44), with that conception even the victim of aggression could be declared the aggressor. To adopt such a solution would mean to abandon the system of collective security and return to the system of the League of Nations which had led to the Second World War.

41. Since the Charter already contained the elements of a definition, the point at issue was simply one of procedure and method. Three types of definition had been put forward: an enumerative definition, also referred to as empirical or analytical; a general definition, also called synthetic or abstract; and a mixed definition, which consisted of a general formula, followed by a non-exhaustive enumeration of the most common forms of aggression. The Czechoslovak delegation favoured a definition containing the basic elements of aggression, such as that proposed by the representative of the Soviet Union (A/C.6/L.399). That definition was based on the principle of anteriority, the validity of which was not endangered by the development of nuclear weapons. Without that principle, the various forms of using armed force described in the different draft definitions could be considered as both aggression and justified self-defence. It was therefore indispensable to state the principle of anteriority, which made it possible to identify the aggressor in all circumstances. In view of the complexity of international conflicts, it was essential to consider only the bare facts. That principle was recognized by the Charter, in Article 1, paragraph 1, and in Article 2, paragraph 4, for example, in which the threat of force was distinguished from the use of force. Aggression had always been the result of the use of force, and Article 51 allowed the exercise of the right of self-defence only in the case of armed attack. Thus the Charter, in accordance with international law, did not recognize so-called preventive war.

42. The Mexican draft (A/3574, annex II, section 5) included that principle of anteriority, as did the Paraguayan draft (Ibid., section 2) by implication. The other proposals submitted to the 1956 Special Committee, insofar as they introduced the notion of self-defence, indirectly recognized it. It was recognized in both the theory and practice of international law, and had been applied, for instance, by the International Military Tribunal at Nuremberg. He quoted an extract from the documents of the Disarmament Conference of 1932-1933,1/ which stated that the only way to determine the aggressor "was to observe the chronological order of events—namely, to ascertain who had been the first to commit one of the forbidden acts".

43. A definition of aggression must be objective as well, and exclude any subjective elements. He referred to paragraph 6 of the Soviet Union draft resolution and the corresponding section of the Mexican draft. Aggression constituted such a grave crime that no State could avoid its international responsibilities in that respect, as it followed also from Article 2, paragraph 3, of the Charter. It was therefore necessary to preclude all possibility of applying the so-called theory of aggressive intent, which had been invented to protect the aggressor and justify preventive war. What would the situation be, if the aggressor tried to prove that he had committed a subjective error, when the State attacked was already defending itself with arms? That was why the Soviet draft was right in providing in paragraph 7 that the State threatened with aggression might take countermeasures of a military nature, without, however, crossing the frontier. That provision was in accordance with the duties imposed by the Charter, especially under Article 2, paragraphs 3 and 4.

44. Only a definition recognizing the principle of anteriority could serve the intended purpose. Such a definition must deny the title of self-defence to measures which were nothing more than intolerable intervention or even outright intervention. With a view to facilitating the action of the Security Council, the Soviet Union's definition also enumerated the acts constituting obvious aggression, and left decisions on the nature of other possible acts of aggression to the discretion of the Security Council. The principle of priority ought to apply even to the latter cases. That principle had to be rigid, since it would be equally applicable to Article 51.

45. The Soviet Union's draft, because of the inclusion of its paragraph 5, turned out to be a mixed definition, with special emphasis on the acts of aggression set forth in Articles 2, 39 and 51 of the Charter. The burden of proof thus rested on the aggressor, the flexibility of the definition was guaranteed, and the freedom of the Security Council safeguarded.

46. For reasons it had already expressed in the Sixth Committee (418th meeting), at the ninth session of the General Assembly, the Czechoslovak delegation could not vote in favour of the draft resolution submitted by Iran and Panama (A/C.6/L.401).

47. Although two-thirds of the delegations present at the ninth session had favoured defining aggression, and three-fourths of the members of the 1956 Special Committee had also favoured such a definition, a few delegations were still trying to thwart the progress of the Committee's work. The Czechoslovak delegation joined in the conclusions reached by the Ukrainian representative at the 522nd meeting, in reply to the representatives of the United States and Norway. The representatives of the United Kingdom and Pakistan had claimed that it would be necessary to revise the Charter, if they wished to define aggression. The United Kingdom representative had asserted that Article 39 was concerned solely with armed aggression, and the Pakistan delegate had said that a purely legal definition of aggression would otherwise be impossible. Attempts were being made to create the impression that the Committee's present efforts were doomed to failure, as those of the 1945 San Francisco Conference had been; whereas the representative of France had recalled that the negative report of Mr. Paul-Boncour concerned only the enumerating definitions, and not the principle of definition as such. It was surprising that there was talk of revising the Charter, but that no such suggestions had been made in the course of the sixth session in 1951. He said that there was no need to revise the Charter in order to draft a definition of aggression, and that the Czechoslovak delegation would spare no effort to assist the General Assembly in the fulfilment of that task.

The meeting rose at 5.15 p.m.

1/ Records of the Conference for the Reduction and Limitation of Armaments, Series B, Minutes of the General Commission, vol. II (League of Nations publication IX. Disarmament.1933.IX.10) p. 500.

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