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Chairman: Prince WAN WAITHAYAKON (Thailand).

Question of defining aggression: report by the
Secretary-General (A/2162, A/2162/Add.1,
A/2211)

[Item 54]*

1. The CHAIRMAN invited debate on item 6 [54]* of the Committee's agenda. As the question of defining aggression had been discussed at length at the sixth session, he hoped that members would be concise in their statements.

2. Mr. GREEN (United States of America) recalled that at the sixth session his delegation had opposed a definition of aggression. After further thorough study in the light of resolution 599 (VI) adopted at Paris, his delegation had been strengthened in its view.

3. The concept of aggression was a relatively new one in the history of international law and he doubted whether nations had had sufficient experience to draft a definition. Furthermore, any definition might omit certain types of aggression and might thus be circumvented by a potential aggressor. Even if the definition expressly stated that it was not exhaustive, it would tend to be regarded as the authoritative statement of all that constituted aggression. At San Francisco it had been decided not to include a definition of aggression in the Charter; rather, it was felt that the Security Council should determine the existence of an act of aggression. Since then, resolution 377 (V) on "Uniting for peace" had emphasized the role which the General Assembly itself might be called upon to play in that field. He doubted whether it was appropriate for the General Assembly to interpret the provisions of the Charter by means of theoretical generalizations, and did not believe that an effort by the General Assembly in that connexion would constitute a deterrent to acts of aggression. He hoped that the Committee would agree that it would be wiser at the moment not to recommend any definition of aggression.

4. Mr. HSU (China) thought that in its comments in connexion with General Assembly resolution 599 (VI) the French Government had said the last word,

so far as procedure was concerned, when it stated that the General Assembly should aim at combining the analytical and the synthetic approach (A/2162, Section 6, paragraph (d)). The Chinese delegation had, moreover, made a similar statement at the sixth session.

5. So far as substance was concerned, very little progress had been made. The International Law Commission had taken Mr. Alfaro's very wide definition¹ as the basis of its work. The Netherlands Government, in its comments, proposed that that definition should be restricted to cases of threat or the use of force against the territorial integrity or political independence of a State (A/2162, section 10, observations on article 2, paragraph 1). That restriction was not justified, for it repudiated a number of provisions adopted in the past. It tended to exclude indirect aggression, and was not even consistent with Article 2, paragraph 4, of the Charter, which had been cited to support the proposal. It was hardly conceivable that the use of force against international peace and security should not be considered as aggression, simply because it might not involve the territorial integrity or political independence of a State. Similarly, the fomenting of civil war in the interests of a foreign Power, an act which the General Assembly had declared to constitute aggression, might not necessarily impair the territorial integrity or political independence of the victim State. The Committee should not forget that there were subtle forms of aggression.

6. Turning to the question of self-defence, he recalled the statement of the Netherlands Government (A/2162) which to some extent echoed a statement he himself had made at the sixth session. The Netherlands Government took the view that the right of self-defence could properly be exercised only to meet a threat or the use of force. He supported that view in so far as it was equivalent to saying that the term "self-defence" might best be used only in the case of direct aggression. Indeed, the term was used in modern international law in its narrow sense. But the Netherlands proposal contained no alternative for the other

* Indicates the item number on the agenda of the General Assembly.

¹ See *Official Records of the General Assembly, Sixth Session, Supplement No. 9, chapter III, para. 46.*

forms of self-defence in its broad sense. To meet that need he suggested the term "reprisal", which consisted of retaliatory measures carried out in time of peace for the purpose of compelling a State to redress an international delinquency, and in time of war for the purpose of compelling an enemy to abandon illegitimate acts of warfare. "Reprisal" appeared to be the appropriate term to be used in connexion with indirect aggression, as was "self-defence", in its narrow sense, in connexion with direct aggression.

7. On that basis he suggested that the following paragraph should be included in any formula that might be offered: "The employment of force in self-defence, in reprisal, and in carrying out decisions or recommendations of a competent organ of the United Nations is legitimate".

8. He thought that a formula could be found to serve as a basis for the definition of aggression, but would not insist on that point if the members of the Committee considered that they were not ready for the task. He did not, however, agree with the notion that any definition, even a good one, might hamper rather than aid those who had to apply it, and recalled that Oppenheim² categorically opposed that erroneous idea and that the French Government had adopted a similar position in its comments (A/2162, section 6).

9. Mr. PEREZ PEROZO (Venezuela) congratulated the Secretary-General on his report (A/2211) to the General Assembly under General Assembly resolution 599 (VI). The Venezuelan delegation was somewhat sceptical as regards the possibility of defining aggression at the international level, on account of the difficulty of the problem and the set-back suffered by all efforts made in that connexion by the League of Nations. He recalled that the Disarmament Conference, and the London Treaties of 1933 had left no trace, although at that time the situation had been much more propitious than now, when peace was so precarious.

10. It was not so much the manner of defining aggression as the consequences of that definition which raised difficulties. The object was to give not an academic definition but one which would serve the aims of peace and security as well as the development of international law. Hence the question should be studied from the point of view of the international bodies which were to apply the definition.

11. He doubted whether it was necessary, for example, to formulate a definition of aggression for use by the Security Council, as that body had been set up expressly to deal with particularly difficult situations and its competence should therefore be extremely flexible. It was for that reason that his delegation had expressed its misgivings as regards a *répertoire* of the practice followed by the Security Council when the Committee had studied the question of documentation relating to customary international law. The Security Council's work should not be hampered by precedents and should be determined only by the international situation. Should a frontier incident occur between two small States the solution adopted in that case by the

Security Council must not constitute a binding precedent in case a great Power found itself involved in a similar incident. The discretionary power of the Security Council must be protected even if such action resulted in an error of law, though, on the other hand, peace was not something to be preserved regardless of the price. That was why the danger of an automatic definition of aggression had been emphasized before.

12. Although he did not wish to comment on the merits and demerits of each of the suggested ways of defining aggression, he emphasized that, by giving an incomplete list of acts of aggression, an analytical definition might present the danger of allowing an aggressor to take advantage of any omissions. A synthetic definition was bound to be vague and imprecise; the terms of the definition would themselves have to be defined. A mixed definition would merely combine the disadvantages of the other two ways of defining aggression. At least that was the inference to be drawn from the discussions of the International Law Commission and the Sixth Committee, and also from the Secretary-General's report.

13. After thorough consideration, his delegation felt that it would be better not to define aggression, because no definition could be reached which would enable international action to be taken, and because it was impossible to define such concepts as self-defence, provocation and preparatory acts. Such definitions were possible in domestic law, as the text of national penal codes showed; but in international affairs, considerations of policy prevailed over law. In the course of the debate on the establishment of an international criminal court, it had been pointed out that the General Assembly or the Security Council could, if the interests of peace so required, stop a case brought before the court. That would probably lead to the conclusion in some quarters that justice changed its identity according to circumstances.

14. Everyone knew what aggression was. Primitive man had known it and public opinion instinctively named the aggressor in international disputes, whatever the chancelleries might say to the contrary. It should be possible, however, for the proposed definition to be used by the international organs responsible for the maintenance of peace and security. Still, great difficulties arose in applying the definition to the specific cases dealt with by those organs, and a definition, far from being an advantage, might well upset the international order, or indeed, be less precise than the terms of the Charter, according to the type of definition adopted.

15. The International Law Commission had perceived those difficulties, in confessing by implication its inability to implement General Assembly resolution 378 B (V). The fourteen members of the Commission, though eminent jurists and though unaffected by political emotion, had failed and it was therefore hardly likely that the sixty political members of the Sixth Committee would be able to reach agreement on what was a purely legal definition.

16. The Venezuelan delegation's scepticism grew when it looked back on the historical development of the problem, for the notion of aggression was necessarily affected by changes in human history. Mr. Politis' definition was not very old, yet already new

² See *International Law* by L. Oppenheim, M.A., LL.D., Vol. II, Disputes, War and Neutrality, Seventh Edition, edited by H. Lauterpacht, LL.D.; Longmans, Green and Co., London, New York and Toronto, 1952.

ideas such as indirect, economic, ideological and bacterial aggression, had appeared which would have to be taken into account. By contrast, certain factors previously regarded as ingredients of aggression, such as mobilization or the expansion of war industries, had ceased to carry the same weight. The idea of aggression was constantly evolving, so that any rigid definition was ruled out.

17. The difficulty of solving the question as part of international law was akin to that of the establishment of an international criminal court; a formula could not be devised unless sufficient data concerning its application were available. The General Assembly had given no specific directives in the matter in its previous resolutions. Resolution 378 B (V) seemingly invited the International Law Commission to consider the question in connexion with the draft code of offences against the peace and security of mankind. That in any case was how the Commission had interpreted its terms of reference and, although the draft code contemplated the establishment of international justice by punishing the offences of individuals, whereas aggression was an act of States, the Sixth Committee might, he thought, follow the example of the International Law Commission.

18. Mr. FITZMAURICE (United Kingdom) congratulated the Secretariat on its admirable report on so important a question as the definition of aggression.

19. Before making a preliminary statement of his delegation's views, he urged the Committee to treat the matter with complete objectivity, uninfluenced by ideology and political controversy. Only objective consideration would lead to the right solution.

20. Those supporting a definition of aggression were doubtless inspired by the desire to prevent aggression or to make it more difficult. His Government understood their idea very well and was not in any way opposed to it in principle. It did not think, however, that any of the many definitions yet placed before the Committee for its consideration was likely to have the desired effect. Furthermore, a definition of the crime might well hamper victims of aggression in their measures to resist aggression or even in their actual self-defence; and might well also make the task of any international organ called upon to determine the existence of aggression more difficult.

21. In the existing state of international relations and in the light of modern methods of warfare, a definition of aggression, far from being of real value would be very dangerous for it could not be free from pitfalls, ambiguities or serious omissions. The time was not ripe for settling a definition of aggression. There was no need to decide that a definition was impossible, or that it was undesirable in principle. It was enough to recognize that the time was not right for embarking on such a task.

22. He reviewed the various attempts made since the First World War to define aggression for purposes of application on a world-wide scale and not merely as part of purely local or regional agreements, and noted that every proposal for that purpose had been rejected. Whether one was for or against a definition of aggression, that fact led to the conclusion, first, that the framing of a definition was an exceedingly difficult matter,

requiring a very great degree of care and caution, and secondly that the attempt, with all the risks it involved, should not be made unless it was very certain that it would be of some use. He was convinced that the Committee, as a body of jurists and as the main organ responsible for advising the Assembly on that vital matter affecting the maintenance of international peace and security, could not assume the responsibility of counselling the Assembly to adopt a definition of aggression unless it was absolutely certain that some real gain would be achieved by it and that it would not do any harm.

23. The only gain that would justify the efforts needed for defining aggression would be the contribution that such a definition would make to the maintenance of international peace and security. Now, a definition of aggression might assist the maintenance of peace and security if it had the effect of deterring the potential aggressor and assisting the victim, and secondly, if it made it easier for an international organ to establish the existence of aggression and to organize collective resistance to it.

24. The United Kingdom, speaking out of the experience of its long record of successful resistance to aggression, was very certain that a definition would not deter any potential aggressor and would, if anything, handicap the victim. The conduct of aggressors was determined only by the risks involved and by the chances of success or failure. To be convinced of that, it was enough to apply any definition that had yet been proposed to any case of aggression and to ask whether the existence of the definition would have prevented the aggression. By way of illustration he cited eight cases of aggression which had occurred within less than thirty-five years and in which either a great Power had attacked a small Power or a militarily strong had attacked a militarily weak Power. In none of those cases would a definition of aggression have offered any protection to the victim. Accordingly, if governments considered its inefficacy and the dangers and difficulties that a definition could create for the State resisting or preparing to resist aggression, they would, in duty bound towards their own peoples and towards humanity in general, have to conclude that no definition should be attempted at the moment.

25. With regard to the question of whether a definition of aggression would assist a competent international organ in determining the existence of aggression or in organizing resistance against the aggressor, the United Kingdom Government was of the opinion that it could not.

26. In the first place no definition, not even the best, could apply automatically to every possible case of aggression. For the purpose of deciding whether or not aggression existed, the facts of the case, the actual situation, the intentions and actions of the parties had to be taken into account. An international organ would experience greater difficulty and would certainly take more time if it had to apply a definition to a specific case than if it considered the facts by themselves and decided whether the impression given by them was that aggression had taken place.

27. Secondly, a competent international organ would have little need of any definition of aggression in reaching a decision on cases submitted to it, for the factors

to be taken into account were obvious. Furthermore, the existence of a rigid set of criteria, an obligation to base a decision on certain principles, might have a delaying effect and lead to unforeseen and regrettable results. That had already occurred and was referred to in the Secretary-General's report.

28. Lastly, and most important, the competent international organ did not base its decision on any particular fact in the case, but on the general impression created by the behaviour and policies of the countries involved. No definition could possibly influence that impression, and it was that excellent process which enabled the international organ to determine that aggression had occurred, despite every attempt to confuse the issue, to invent pretexts or justifications, or to disguise the aggression. It was that process, rather than any set of criteria or any agreed formula, that con-

stituted the protection of smaller States. As he had said before, the real safety of potential victims of aggression lay precisely in the fact that the existence of aggression was not a matter to be determined by rigid rules or definitions, but was a matter submitted to the judgment of the whole world.³

29. For all those reasons, his Government concluded that a definition of aggression would be unlikely to contribute to the maintenance of international peace and security. He therefore hoped that the Committee would decide to recommend to the General Assembly that the action taken in the matter should not be proceeded with, for the time being.

The meeting rose at 4.15 p.m.

³ See *Official Records of the General Assembly, Sixth Session, Sixth Committee*, 281st meeting, para. 20.