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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) (continued)**

1. Mr. NOGUEIRA (Brazil) pointed out that at the United Nations Conference on International Organization, held at San Francisco in 1945, Committee 3 of the Third Commission, of which Mr. Paul-Boncour had been Rapporteur, had examined the question of aggression and had decided against including a definition of it in the Charter. Since 1950 many States had urged that such a definition should be formulated and embodied in a General Assembly resolution. However interesting the efforts made in that direction might be, they revealed the extreme technical difficulty of achieving the desired result, the impossibility of formulating a definition which would be supported by a large number of States - and particularly the more powerful ones - and, finally, the inexpedience of such a definition.

2. The report of the Special Committee (A/3574) admitted of no other conclusion. Nearly all the important aspects of the problem engendered serious divergencies of opinion, and nearly all the solutions proposed were likely to give rise to dangerous interpretations. The Brazilian delegation had never perceived the usefulness, feasibility or desirability of a definition; and in the light of the exhaustive studies of recent years, the Assembly should adopt a more cautious attitude.

3. At previous sessions of the General Assembly, Mr. Amado, the representative of Brazil, had shown that no enumerative, exhaustive definition could cover all cases of aggression; that agreement was impossible as to what acts constituted acts of aggression; that States tended to become more and more concerned with new forms of aggression - economic, ideological, indirect, etc.; that treaties avoided defining aggression; that the mixed definition contained in the Inter-American Treaty of Reciprocal Assistance, signed at Rio de Janeiro in 1947, could not be invoked as an example because it applied to a region more united than the world community; that a general definition would merely repeat the provisions of the Charter; that the defects of the collective security system were not due to the absence of a definition of aggression; that, from the legal point of view, the weakness of the Charter was the existence of the "veto", which resulted from the political conditions obtaining at the time of the San Francisco Conference; and finally, that the General

Assembly and the Security Council, not being courts of justice, were not competent to set themselves up as judges.

4. The Brazilian delegation therefore felt that a general definition would be misleading if it did more than refer to the Charter, and that, if it did merely that, it would be superfluous. Similarly, an innumerative definition could not include all the forms in which aggression might occur, and an eclectic definition would combine all the defects of the various other definitions. In case of aggression, the important thing was that the system of collective security should be applied. However, its working did not depend on a definition of aggression, but on the will of all Member States and particularly the more powerful ones. A definition of aggression would hardly facilitate the task of the Security Council or the General Assembly, since it would restrict the flexibility and discretion which they possessed under the terms of the Charter. A General Assembly resolution would not be mandatory, and it might create a certain ambiguity and introduce an element of inflexibility which the Charter had avoided. If aggression was to be defined, why not define other expressions such as "a threat to the peace", "breach of the peace", "situation endangering peace"? The interpretation of the Charter would lead to changes in the whole structure of the constitutional instrument of the Organization. If ever an agreement was reached on a definition of aggression, it would be better to amend the Charter rather than to adopt a General Assembly resolution.

5. He recalled the opinion expressed in 1921 by Mr. Raoul Fernandes, representative of Brazil in the League of Nations, who advised that the Covenant should be interpreted as little as possible in order to avoid controversy. To interpret a constitutional text in the abstract was still more dangerous. Neither the Security Council nor the General Assembly had reason to do so, since they were essentially political organs and not courts of justice. He pointed out, however, that at the seventh session of the General Assembly the Brazilian delegation had stated in the Sixth Committee (332nd meeting) that the question should be re-examined should it be felt necessary to define aggression in the context of a code of offences against the peace and security of mankind.

6. Mr. LIMA (El Salvador) paid a tribute to the work of the Special Committee. Although his delegation was disappointed to find that the Committee had not been able to formulate a draft definition of aggression that would be generally acceptable, it had made a careful study of the Committee's report, and had been able to reach certain conclusions which might be helpful in solving the problem.

7. His delegation believed that a formula might be agreed upon if the question of defining aggression were

considered apart from the drafting of a code of offences against the peace and security of mankind and the establishment of an international criminal jurisdiction, and if the definition were placed on a new basis more in conformity with the principles of present-day international law and the Charter of the United Nations, particular attention being paid to the practical functions that the definition might be called upon to exercise.

8. The question of the definition of aggression had first been brought before the United Nations in 1950 at the fifth session of the General Assembly, when the delegation of Yugoslavia, during the discussion of an agenda item entitled "Duties of States in the event of the outbreak of hostilities" proposed the establishment of some system whereby the aggressor would be identified automatically (A/1399). As the debate had made it clear that such a system would have certain practical drawbacks and might have serious consequences for the State against which the aggression had been committed, the Soviet delegation had submitted a draft resolution (A/C.1/608) in favour of defining the notion of aggression; the draft had been submitted to the International Law Commission, and that had been the beginning of the studies which had reached their final stage in the report of the Special Committee.

9. The various committees and commissions that had studied the problem had concerned themselves with the following questions: (a) the possibility and desirability of a definition; (b) the function of a definition; (c) the kinds of activity covered by a definition; (d) the various types of definition; (e) the essential elements in a definition, and (f) the legal and moral value of a definition. It was obvious that before any definition could be generally accepted, agreement would have to be reached on each of those questions.

10. The delegation of El Salvador was particularly concerned with three points. In the first place, the function and scope of a definition of aggression had not so far been thoroughly studied in relation to their practical effect, although that was a major aspect as far as the aims of the Charter were concerned. Secondly, it appeared that there had been no attempt to define who were the legal parties involved in an aggression, or, in other words, who was the author of the aggression and who the victim. It had merely been taken for granted that the author was the State committing the aggression and the victim the State suffering it. Yet the author and the victim were certainly among the elements constituting an aggression, and it should be remembered that, according to resolution 599 (VI) of the General Assembly, aggression should be defined by reference to the elements which constitute it. Thirdly, the problem had been dealt with mainly from the theoretical point of view rather than in its relation to the Purposes and Principles of the Charter and the procedures of the organs of the United Nations.

11. On the first point, his delegation considered that the question of the function and scope of a definition of aggression could not be approached entirely from the theoretical point of view. Such a definition would have to serve as a guide to the competent organs of the United Nations, and its aim should therefore be to enable those organs to achieve the purposes of the Charter, namely the maintenance of international peace and security.

12. With regard to the second point, at the time when the concept of the international community had not yet been accepted, it had always been held that the aggressor was the State which had committed the act of aggression and the victim the State against which the said act was carried out. It had therefore seemed necessary, in order to maintain peaceful relations between States, to give a clear definition of acts of aggression and to condemn them. Definitions were accordingly included in many international treaties.

13. At the end of the Second World War a consciousness of belonging to an international community had grown up, which had led some States, linked together as fellow-inhabitants of a single continent, to declare that any aggression against one of them would be considered as having been committed against all. Such a declaration had been made by the American States in the Act of Chapultepec of 1945. Subsequently, after the founding of the United Nations, the feeling of continental solidarity was replaced by a feeling of universal solidarity, so that at the present time the victim of an aggression was not only the State against which it was launched, nor even a group of States bound together by common ties, but the whole international community that had joined together to maintain international peace and security. Any definition of aggression which disregarded that truth would be an anachronism and would be unlikely to gain general approval.

14. But to declare that the whole international community was the victim of any aggression did not solve the problem. To define aggression meant discovering what were the other elements that constituted the crime, and in the opinion of his delegation that should be done in the light of the provisions of the Charter, and of its basic principles.

15. Clashes of interest were unavoidable in an international organization like the United Nations, but they could always be resolved by the peaceful means indicated in the Charter, provided that Member States were resolved to comply faithfully with its provisions.

16. The provisions of Article 2, paragraph 3, and of Chapters VI and VII of the Charter, and General Assembly resolution 377 (V) entitled "Uniting for peace", not only enabled but obliged the competent organs of the United Nations to take cognizance of any international dispute that endangered world peace and security. Whether aggression took place or not, those organs had to intervene in order to maintain peace.

17. Since the main purpose of a definition of aggression was to assist the competent organs of the United Nations in performing their functions, it was necessary to decide at what point in a dispute those organs would need such a definition. Looked at from that point of view, any international dispute could be divided into five stages: its beginning; its development, leading to intervention by the organs of the United Nations; the decision or recommendation of those organs with a view to a peaceful settlement of the dispute; the attitude of the States parties to the dispute towards such decision; and finally the reaction of the United Nations to that attitude. During the first three stages there was no need for the United Nations to know who was the aggressor; whether there had been an aggression or not was immaterial, since the sole object was to put an end to the dispute, the functions of organs of the United Nations being merely to find a peaceful solution. Those principles were sometimes forgotten,

and a particular State was named as aggressor or victim before a peaceful solution had been found, which merely increased international tension. If, during the fourth stage, the States in disagreement accepted the decision of the United Nations, the problem of deciding who was the aggressor would lose its point. The problem would only have to be faced if any of the States concerned refused to accept the decision, and at that point it would be necessary to determine who was the aggressor from the point of view of the United Nations and its purposes. The aggressor would therefore have to be defined, not as the State that had started the dispute but as the State which had refused to comply with the decisions of the competent organs of the United Nations, since in so doing it was endangering international peace and security. The State that had started the dispute would not necessarily be the aggressor, since it might comply with the United Nations decision and thereby cease to be a threat to peace. From the point of view of the Organization, aggression might be defined as follows: in the event of an international dispute, whatever its origin, the fact of a State acting towards the community of nations in such a way as to endanger international peace or security or to cause a breach of peace, through failing to comply with the decisions or recommendations adopted by the competent organs of the United Nations in application of the Charter or the "United for peace" resolution.

18. The argument put forward by his delegation received some support from the Protocol for the Pacific Settlement of International Disputes, signed at Geneva on 2 October 1924, article 10 of which provided that, in the event of hostilities having broken out, any

State should be presumed to be an aggressor which (a) had refused to comply with a unanimous recommendation of the Council of the League of Nations, and (b) which had violated provisional measures enjoined by the Council.

19. He recognized that the proposed definition was open to criticism, in view of the complexity of the situations that might arise. Nevertheless, it was necessary to find a broad definition of aggression and one that would have practical applications. The definition should not take into account the acts that had led to the outbreak of the dispute. From the point of view of the United Nations considered as a political entity, the initial acts were immaterial. The United Nations was not a court for convicting States of wrongdoing; it was a political body whose task was to stand guard over international peace and security. Finally, the United Nations could take coercive measures against States that refused to comply with its decisions.

20. To sum up, the purpose of the definition of aggression proposed by his delegation was: First, to deal with the problem of aggression in a manner in keeping with the principles of present-day international law; second, to strengthen those provisions of the Charter that were concerned with the peaceful solution of disputes; third, to reaffirm the willingness of States to comply with the provisions of the Charter; and fourth, to lay down the principle that the United Nations should refrain from premature censure that might tend to increase international tension.

The meeting rose at 11.45 a.m.