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CONTENTS

	Page
Agenda item 54: Question of defining aggression: report of the Special Committee (continued)	55

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. PERERA (Ceylon) was of the opinion that since the Sixth Committee had been requested by the General Assembly to define aggression, there was no need for it to discuss the advisability of that assignment. The political consequences of a definition should not be confused with the definition itself, nor should it be said that the time was not ripe. Even in common law countries, the present tendency was to formulate definitions, as that was the only way to avoid doubt and ambiguity.

2. The representative of India, in stating that the time was not ripe for a definition of aggression in view of the prevailing atmosphere of distrust (520th meeting, para. 48), had mistaken effect for cause. In reality, the absence of a definition itself caused tension in international relations. To wait until the political climate was free of fear and aggressive intentions would be to give in to a prevailing notion that was both widespread and mistaken. The intensive efforts made since the First World War should be turned to account and the lesson of experience should be learned.

3. The Protocol for the Pacific Settlement of International Disputes (Geneva, 1924) had aimed at defining aggression and establishing a system of automatic sanctions against the aggressor. Its failure was partly due to the inadequacy of its provisions, and in particular to the vagueness of its definition of aggression. Nevertheless, the debates to which it had given rise had had an important psychological effect by obliging politicians to take cognizance of the fact that the peoples of Europe were living under the constant threat of invasion. Later there had been the Pact of Paris (Briand-Kellogg Pact) of 27 August 1928, in which the parties condemned recourse to war and renounced it as an instrument of national policy. Between 1929 and 1933 a series of non-aggression pacts had been concluded between the Soviet Union and Estonia, Finland, France, Latvia, Lithuania and Poland; and the Convention for the Definition of Aggression had been signed on 3 July 1933 by Afghanistan, Estonia, Latvia, Persia, Poland, Romania, the Soviet Union and Turkey. Other countries had acceded to it soon after. Thus, as of that date, sovereign nations had been able

to agree on a definition of aggression. The annex to article III of that Convention was particularly interesting in view of the fact that it specified the circumstances which could not be cited as an excuse for aggression, for example, the act of interfering with the rights or interests of a foreign State or foreign nationals, or border incidents. As further source material there was the Charter and Judgement of the International Military Tribunal at Nuremberg and the Charter and Judgement of the International Military Tribunal for the Far East.

4. The Ceylonese delegation was gratified to note that the USSR in its draft resolution (A/C.6/L.399) had endeavoured to present as complete a definition as possible, and had specified in paragraph 6 that aggression could not be justified by any considerations of a political, strategic or economic nature.

5. The Charter did not contain an unconditional prohibition of the use of force; consequently, it could not be considered adequate. The fear that a definition of aggression would deprive the competent bodies of their discretionary power in each case was groundless. No definition could be applied automatically, and it was always necessary to apply the elements of the definition to each specific case. National legislative bodies formulated definitions and trusted to the wisdom of the courts for their application. Definitions presented an element of certainty which was no less indispensable to international relations than to a State's internal affairs. A definition of aggression could help prevent States from treating self-defence as identical with the defence of interests to which they themselves attached importance. The development of nuclear and thermo-nuclear weapons had rendered wholly inadequate the definitions of aggression, either implied or explicit, contained in the Charter and other instruments. Recent discoveries called for a definition broad and flexible enough to be applied to all the forms of war which men's folly could conceive. No explicit definition of aggression had been included in the Charter, partly so that Articles 39 and 51 might not be too rigid, and partly because at the time the question did not seem to demand immediate attention. The Charter had hardly been drafted before it had been outstripped by events and it was realized that revision was necessary. But it was not necessary to wait until the Charter was revised in order to define aggression. The tension between the opposing sides could be relaxed only if a definition was agreed upon.

6. In its resolution 377 (V) of 3 November 1950, entitled "Uniting for peace", the General Assembly had not hesitated to introduce innovations. It had believed that it could intervene in the event of a threat to the peace, a breach of the peace, or an act of aggression, whenever the Security Council could not act owing to disagreement among its members. The Sixth Committee too should bring the law into line with the new

political circumstances. Furthermore, the Security Council was in need of a legal frame of reference to enable it to act. It was absolutely necessary to define the terms of Article 39 in order to ensure the functioning of collective security. The least the Sixth Committee could do was to get down to the task of defining aggression. Such a definition was not only desirable; it was of vital importance if the objectives of the Charter were to be achieved. The Charter was not sacrosanct; the situation had completely changed in the twelve years of its existence. Certain sceptical or despairing statements made one wonder whether politicians were too absorbed by their controversies to change their ideas. It was easy enough to declare in favour of peace, but jurists could not be satisfied with vague statements. By formulating a definition of aggression, they could contribute to the momentous task of maintaining peace.

7. Mr. CHAUMONT (France) said he would not go back over the reasons why his delegation had been in favour of defining aggression; he would merely refer to the summary records of the Sixth Committee since 1952 and of the 1953 and 1956 Special Committees. At the same time, his delegation had consistently emphasized that any attempt to define aggression would be useless if the definition was not acceptable to the majority and notably to the Powers which, by virtue of Article 24 of the Charter, had primary responsibility for the maintenance of peace. The Soviet Union representative had, indeed, recognized that fact (514th meeting). The United Nations should act as a unifying agent in that respect, but in the past no effective majority had emerged; there had merely been a general sentiment in favour of a definition, and that was not enough. Unlike the representative of Romania, he felt that the divergencies which had become apparent were not merely formal differences: a gulf separated those who favoured the Soviet idea of an enumerative definition and those who advocated a general definition; a similar gulf separated those who wished to limit the definition to armed attack and those who wished to extend it to other concepts. A purely superficial agreement would be of little use.

8. His delegation did not wish for the moment to hark back to past controversies. Chapters II and III of the Special Committee's report (A/3574) were eloquent on that score. If the Committee decided to discuss in detail the draft definitions before it, his delegation would certainly take part in the discussion. It had already indicated that, as matters stood, the Soviet draft could not win general approval. He reminded the Committee of the report presented to the United Nations Conference on International Organization at San Francisco in 1945 by Mr. Paul-Boncour, which stated that there could be no enumerative definition without amendment of the Charter. As for the various general definitions submitted so far, they had the defect either of paraphrasing the Charter or of going beyond it.

9. A practical approach to the problem might be to make no attempt for the moment to draft a definition *ex cathedra*, but to begin by assembling, and if possible interpreting, the most serviceable and pertinent provisions of the Charter on the matter. He read out the seventh paragraph of the Preamble which gave perhaps the best and most succinct definition of aggression, and also Article 2, paragraph 4, Article 42, Article 51, and Article 106. As a first stage, that procedure should give rise to no objection, whereas

the general definitions annexed to the report of the 1956 Special Committee, and the suggestions put forward by the representatives of Belgium (514th meeting) and Syria (517th meeting), all had an element of arbitrariness and subjectivity, in that they departed, albeit very slightly, from the Charter, and had therefore no chance of being accepted.

10. Once that first stage had been completed, an attempt might be made to analyse what exactly constituted armed attack and the other forms of aggression which various States considered definable. Some aspects of that analysis would obviously depend on the results obtained in regard to disarmament and economic and social co-operation, and more particularly in regard to assistance to under-developed countries.

11. If the definition of armed attack was to be a comprehensive definition in line with the latest developments of the means of war and types of strategy, it must, as the Indian representative had demonstrated (520th meeting), be linked to United Nations action for the limitation of armaments, inasmuch as that action aimed at defining such means of war and types of strategy in relation to organized collective security. The features of aggression involving the use of conventional weapons, and aggression involving the use of nuclear weapons, were not identical. From the purely political point of view, in a period of change such as the period through which the world was now passing, a period of general distrust, Governments would be reluctant to accept a detailed definition of aggression without knowing exactly what military means of aggression States would be permitted to retain under the disarmament agreements. If the detailed definition of armed attack was not to be made contingent on the work on disarmament, it would be better to limit the study to the provisions of the Charter, without modifying them in any way whatever.

12. As for the definition of other forms of aggression, he thought it would have to be deferred until the United Nations had assembled the collective resources for international economic assistance and could take over the activities previously undertaken by individual States. Until then it would appear rather difficult to determine, in the abstract, when the economic relations between two States involved an element of aggression: the mere fact of giving and receiving economic assistance was sometimes enough to place one State in a position of dependence on another, which was scarcely compatible with the principles of Article 2 of the Charter. Similarly, notions such as indirect aggression and ideological aggression could hardly be defined for the moment with sufficient precision.

13. Whatever procedure the Committee adopted, his delegation would give sympathetic consideration to any course of action that would take into account the possibility of agreement between Member States and ensure that the task of defining aggression was taken up at the time and in the circumstances when it had the best chance of succeeding.

14. Mr. STABELL (Norway) noted that there was not yet any agreement as to what was to be defined; some speakers had been concerned only with the concept of armed attack, others with that of the act of aggression, and others with both concepts simultaneously. It would be impossible for the Committee to make headway unless it concentrated on one term at a time. While

there was no difference between "aggression" and "act of aggression", the Charter showed clearly that the terms "act of aggression" and "armed attack" had different meanings. Any attempt to define both terms in a single formula would only create confusion and uncertainty.

15. He emphasized one fact that was too often overlooked, namely that it was absolutely essential to be clear, first, what was the purpose for which the definition was required, and, secondly, whether a definition formulated by the General Assembly could achieve that purpose.

16. As far as the term "act of aggression" was concerned, the principal objective was to interpret Article 39 of the Charter. That Article contemplated three situations which had exactly the same consequences; hence it was necessary to define not only the term "act of aggression" but also the terms "threat to the peace" and "breach of the peace". The "act of aggression" was the least important of the three terms, because, in the context of Article 1, paragraph 1, it was only one form of breach of the peace. The value of defining the three terms would be to provide guidance for the Security Council in the performance of its duties under Chapter VII of the Charter. Such guidance was, however, unnecessary and undesirable, as Article 39 was perfectly clear, and a certain flexibility should be left to the Security Council. It was also open to question what would be the standing of a definition of the term "act of aggression" promulgated as a recommendation of the General Assembly, inasmuch as the provisions of the Charter could be amended only pursuant to the rules of Chapter XVIII.

17. In the case of "armed attack", on the other hand, it was of the utmost importance to eliminate as far as possible any doubt concerning the meaning of the term, because Article 51 of the Charter provided for an important derogation from the general prohibition against the use of force. Unless the meaning of the words "armed attack" was made clear, a law-abiding State might find itself in a tragic situation if it started a war in the mistaken belief that it was exercising its right of self-defence.

18. In the light of those remarks, the USSR draft resolution (A/C.6/L.399) and that submitted by Iran and Panama (A/C.6/L.401) suffered from the same weakness.

19. In the USSR draft resolution only paragraphs 1 and 5 were concerned with the problem which arose in regard to Article 51 of the Charter. Those two paragraphs did not provide the clear guidance which would be needed by States finding themselves in the situation contemplated by Article 51. If State A, having pressed State B for the redress of a wrong, and having refrained from any act which might fall within the definition of "armed attack", subsequently found itself invaded by State B, it would run the risk of being condemned by the Security Council on the grounds that one of the acts committed by it before the invasion was of the same nature as the acts enumerated in paragraph 1 of the Soviet definition. He was unable to see the use of a definition containing such an escape clause.

20. The draft resolution submitted by Iran and Panama embodied a similar clause, drafted in still vaguer terms, in the first sentence of paragraph 2: that clause

also might easily prove to be a trap for a law-abiding State.

21. If the General Assembly wished to define the term "armed attack" it would inevitably be confronted with a dilemma—either it would work out a precise and exhaustive definition, which would amount to a surreptitious attempt to amend the Charter, or it would draft a definition which, like the draft resolutions before the Committee, contained a reservation safeguarding the supremacy of the Charter. Such a definition would be ambiguous and dangerous.

22. As for drafting a definition based entirely upon the Charter and saying, for example, that "armed attack" constituted an act of aggression and a breach of the peace, that would not provide any guidance for a State finding itself in the situation contemplated in Article 51, and it would therefore be useless because it would add absolutely nothing to the Charter.

23. The only way of obtaining a useful and binding definition would be to amend the Charter. On that point he agreed with the Brazilian representative that an amendment of the Charter would be preferable to a General Assembly resolution. If that idea gained support, the Assembly might decide to abandon its search for a definition of aggression by resolution, and refer the question to the General Conference envisaged in Article 109 of the Charter. In that connexion he referred the Committee to General Assembly resolution 1136 (XII).

24. In conclusion, he said that while his delegation would prefer any efforts to be confined to the task of defining armed attack, it did not consider that the General Assembly need necessarily take any action at the current session.

25. Mr. ALVAREZ AYBAR (Dominican Republic) recalled that his country had participated in the work of the 1956 Special Committee; together with Mexico, Paraguay and Peru, it had sponsored a draft resolution (A/3574, annex II, section 6) containing an objective formula based on the various definitions proposed, and on the principles of the Charter of the Organization of American States, signed at Bogotá in 1948, and the Inter-American Treaty of Reciprocal Assistance, signed at Rio de Janeiro in 1947. The Dominican Republic was still convinced that a definition of aggression could be worked out, even though it might not be perfect. In practice, cases not only of direct but also of indirect aggression occurred, which, at the economic level, might be compared to unfair competition or economic discrimination, much as indirect aggression committed by means of subversive action might be compared to poisoning in private law.

26. International events in 1956 had shown the importance of viewing the problem of aggression from a new angle. For want of a proper system of evidence, the application of certain United Nations decisions had proved impossible. That state of affairs had led his delegation to consider aggression not merely as a norm, but as a "set of norms", indeed an "institution" and to conclude that it was not enough to define aggression; the definition had to be linked to machinery by means of which the condemnation of culpable acts could be backed up by evidence.

27. To those who based their opposition to such an idea on Article 2, paragraph 7, of the Charter, he

would reply that it should be by no means impossible to reconcile a definition of aggression with the provisions of that paragraph, and thus to institute a system of evidence, even if that were regarded as a revision of the Charter.

28. At the seventh meeting of the 1956 Special Committee (A/AC.77/SR.7), he had asserted that the rule of law was as essential in the international community as it was in national communities, and that the rule of law not only served to maintain order, but also fulfilled an educational role. That was why a study of aggression regarded as a set of norms should comprise both a definition of the institution itself and the preparation of effective machinery for the proper administration of means of proof. Such a study would involve an examination of related questions, such as disarmament, the manufacture of new weapons, an international police force and collective regional action.

29. His delegation was anxious to see an effective rule of law established; hence it viewed the problem from a positive and realistic angle; it would always be ready to co-operate in any constructive action by the Sixth Committee.

30. Referring to the Bulgarian representative's statement (519th meeting), he would add that in his view the simple enumeration of specific cases was not the best method. The various codes had been compiled with par-

ticular reference to the societies for which they were intended, but they nevertheless all contained general principles of universal application. The development of rules of law could not lead, as the Bulgarian representative maintained, to the total exclusion of general principles in favour of specific cases, because it was impossible to work out a legal provision sufficiently detailed to be applicable in all cases and in all circumstances.

31. Mr. BODY (Australia) said that his delegation had always held that, at least as the international situation now stood, it was neither desirable nor practicable to define aggression. He would not repeat the reasons for that attitude; his delegation had already explained them, particularly at the 285th, 330th and 408th meetings of the Sixth Committee, and the arguments had been very well summarized in paragraph 30 of the Special Committee's report (A/3574).

32. None of the arguments advanced in the Special Committee or the Sixth Committee by those who favoured a definition had led his delegation to change its attitude. It would therefore not support any of the draft resolutions designed to define aggression, but it reserved the right to speak again in the debate, should any new draft resolutions be submitted.

The meeting rose at 12.45 p.m.