

GENERAL
ASSEMBLY

TWELFTH SESSION

Official Records

Friday, 18 October 1957,
at 10.45 a.m.

NEW YORK

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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, A/C.6/L.401) (continued)

1. Mr. VALLAT (United Kingdom), exercising his right of reply, said it was regrettable that the representative of Yemen should, at the previous meeting, have made completely untrue allegations against the United Kingdom Government. The charges in question reflected a very different spirit from that on which the United Kingdom Government wished to build its relations with the Government of Yemen. Similar charges made in the past had been found to be completely unsubstantiated. As pointed out on those earlier occasions by the representative of the United Kingdom, the area to which the allegation related was within the boundaries of the Aden Protectorate.

2. Mr. CHAMANDI (Yemen) said that a definition of aggression could never be satisfactory unless it covered every possible form of unwarranted attack. His delegation had consequently drawn attention to the situation in the southern part of Yemen - and the situation had been confirmed by impartial witnesses - merely to give a typical example of the manner in which the crime of aggression could be committed.

3. Mr. GEORGIEV (Bulgaria) said that the question of defining aggression not only had to be resolved, but could be resolved. International law had reached a stage in its development which made such a definition imperative. Moreover, and that consideration was even more important, all international disputes were capable, in his delegation's view, of being settled by pacific means. War was not inevitable, but, if it was to be avoided, a veritable crusade for peace was necessary. That was a fundamental tenet in the policy of many countries, including his own and such important countries as the Soviet Union and the People's Republic of China.

4. He had the feeling that the great majority of the States Members of the United Nations favoured a definition of aggression, and that it was possible to reach some measure of agreement on at least part of a definition. There was, however, one great obstacle in the way of such an agreement; it was that certain great Powers were opposed to any definition of aggression whatsoever, possibly with the object of reserving full freedom of action to themselves.

5. There was a strong trend in favour of a general, or at least a mixed, definition. In his opinion, that was a mistaken approach. Enumeration was an essential feature of all forms of legislation. All enactments of law in all countries were subdivided into articles or sections; indeed, in the countries in which the law was embodied in codes, rules of law were identified by the number of the section or article in which they were contained. The enumerative system had become so familiar to the practising lawyer that it was hard to think of an alternative. Primitive or feudal societies, perhaps, could be content with mere general rules and dispense with legislation in the modern sense of the word. But a more advanced type of society required a set of clear and specific provisions applicable to particular cases.

6. The development of all rules of law from the general to the particular was a process which was apparent in international law as well. The point had been reached at which the general rule prohibiting aggression - a role accepted in international law - had to be spelled out in detail. In support of the correctness of his view, he pointed out that many delegations had felt it necessary to supplement their general definitions with an enumeration of specific cases of aggression which in fact contained all the important cases of aggression, such as the declaration of war, the invasion of another State's territory, blockade, etc.

7. Legal definitions had to be expressed in practical terms, so that they could be applied where necessary. A definition of aggression stating simply that aggression was the use of armed force by one State against another for purposes other than the exercise of the inherent right of individual or collective self-defence, or for some purpose other than the enforcement of a decision, or the application of a recommendation, of the competent organs of the United Nations, would be of a purely academic character. It could not be applied in practice unless the terms "self-defence", "competent organ of the United Nations" and "inherent" had first been defined.

8. His delegation supported the Soviet Union's draft definition of aggression (A/C.6/L.399). That definition was fully adequate, inasmuch as it expressed the rules of law in unequivocal terms. Its basic element was the principle of priority which made it possible to discriminate between aggression and self-defence; where the initial recourse to force constituted aggression, the victim's equally forcible reaction constituted self-defence.

9. Mr. ALFONSIN (Uruguay) recalled that during debates in the Sixth Committee on the subject - at the seventh and ninth sessions of the General Assembly - his delegation had maintained (338th and 408th meetings) that the Security Council's preventive action under Article 39 of the Charter should not be restricted by any condition requiring it first to establish the fact

of aggression and the identity of the aggressor. Pursuant to the express terms of Article 39 of the Charter, it was the function of the Council to take measures to maintain the peace, in the event of a threat, or to restore international peace and security, in the event of a breach of the peace. It was not stipulated that, before taking the measures in question, the Council had to declare the existence of an aggression. If any aggression, whatever its nature, jeopardized the peace, it was the Council's duty to act precisely because peace was in danger, not because the Council had established the existence of an aggression or of an aggressor. The evidence required for the purpose of proving the occurrence of an aggression or identifying the aggressor was very different from that proving the existence of a threat to the peace. Not until after the violence had ceased and the *status quo ante* had been restored - in other words, not until after the Security Council had discharged its primary function - would the question whether or not aggression had actually occurred and whether some particular State had been the aggressor be considered. It was at that later stage, and never at the stage at which the Council was taking preventive action, that the question of responsibility would be discussed, for at the earlier stage the fundamental issue was peace, not guilt.

10. Unfortunately, the ideas of the delegation of Uruguay had not found much support in the Sixth Committee or in the Special Committees of 1953 and 1956. Most of the draft definitions had failed to take into account the difference between Articles 39 and 51 of the Charter, the two provisions dealing with aggression and armed attack. Whereas under Article 39 action by the Security Council was not dependent on the existence of an armed attack, under Article 51 the existence of such an attack was necessary before the victim could rightfully be said to be acting in self-defence.

11. The delegation of Uruguay could not, therefore, support any definition of aggression aimed at interpreting Article 39 of the Charter; it would only support a definition destined to achieve other ends, which should be specified.

12. Many delegations thought that a definition of aggression would make it possible to determine with certainty - and without having to apply different criteria in each case - when the Council should declare that an act of aggression had been committed, and in what cases States could properly exercise the right of self-defence under Article 51. His delegation, however, did not think it possible to frame rules which would operate automatically. For the practical effect of such rules would be to require that the United Nations should be a judicial organization, which it patently was not. The United Nations was a political organization and its measures had to be adapted to changing circumstances.

13. The delegation of Uruguay found itself in a dilemma. On the one hand, it opposed the idea of a definition of aggression in terms that would operate absolutely automatically; on the other, the terms used in the Charter needed some authoritative interpretation. On balance, his delegation was inclined to favour a definition of the enumerative type, which would declare that certain specified acts constituted aggression in all circumstances but which would also state that the absence of an express reference to other acts should not be taken to mean that acts not mentioned were in-

capable of being ever regarded as aggression. A precedent for such a definition could be found in article 9 of the Inter-American Treaty of Reciprocal Assistance, signed at Rio de Janeiro in 1947. A definition on those lines would leave the authority of the Security Council wholly unimpaired while at the same time it would increase the confidence of peoples. He added, in conclusion, that any definition of aggression, however formulated, would need the support of the large majority of the States Members of the United Nations if it was to be effective. Indeed, without the support of the five permanent members of the Security Council its practical application might be frustrated by the method of voting in the Council.

14. Mr. KLUTZNICK (United States of America) said that, in reviewing the work on the question by the jurists of the 1930's, it had to be remembered that their work had been done in a period when the United Nations, with its obligations and machinery for the maintenance of peace, did not exist. The question whether a text defining aggression should be included in the Charter had been carefully considered at the United Nations Conference on International Organization held at San Francisco in 1945. The decision of statesmen at that time, when the tragedy of war had still been present in their minds, had been not to encumber the Charter with a definition of aggression. Since then, military, political and economic events had confirmed the wisdom of that conclusion. The United Nations had taken prompt and successful action in Korea in 1950, and in the Middle East in 1956, without being in any way handicapped by the lack of such a definition.

15. The latest Soviet draft definition (A/C.6/L.399) hardly differed from that submitted by the USSR delegation to the Disarmament Conference at Geneva in 1933 (A/2211, para. 76). That definition had been embodied in a number of treaties concluded between the Soviet Union and nine of its neighbour States, but what struck the student of modern history was that only three of those nine States still retained the territories which they had possessed twenty-five years earlier. Nor had the Soviet definition, and in particular those of its provisions which were reproduced in paragraphs 1 (b) and (d) and 6 A (d) and (e) of the latest draft, protected Hungary from aggression by the Soviet Union itself - an aggression that was amply confirmed by paragraph 4 (a), (b) and (c) of General Assembly resolution 1133 (XI).

16. In considering the desirability of defining aggression, the Committee should remain cognizant of the provisions of Articles 39 and 51 of the Charter. The Committee should also bear in mind the General Assembly's powers under Articles 10, 11 and 14 of the Charter, the emergency procedures prescribed in the "Uniting for peace" resolution (General Assembly resolution 377 (V)) and the fundamental obligations of Member States set forth in Article 2, paragraphs 3 and 4. Considered together, those provisions constituted solemn, clearly expressed obligations and were accompanied by adequate machinery to ensure compliance therewith. The only effect of defining aggression or armed attack would thus be to qualify and diminish the clarity and force of existing Charter obligations. Both the obligation itself and the accompanying machinery would be weakened by verbal refinements likely to give rise to jurisdictional debate.

17. The Charter was not a perfect instrument; many of its provisions were the results of compromise. Nevertheless, the United States delegation firmly believed that both the Charter itself and the machinery which it had created would be bound to suffer from the adoption of any definition of aggression. In the light of experience, such a definition would be a retrogressive step. The United States therefore based its opposition to a definition of aggression on the merits, rather than on the difficulties, of framing a definition. International security could best be guaranteed not by the elaboration of Charter provisions but by the readiness of Member States to fulfil their solemn obligations in good faith. In the light of those considerations, he took the view that none of the definitions which had been suggested at different times would add one iota to the spirit and power of the Charter. In some instances, those proposals seemed to be mere repetitions employing different words; in others, the proposals merely complicated and confused the issue.
18. For those reasons, it was clear that a definition of aggression would be no panacea. In the past the United Nations had never suffered from the lack of a definition, and any definition that might be adopted could only foster a false sense of security. The conduct of a major Power which had long espoused a particular definition made it clear that any such text was useless in the face of determined government policy. The most constructive step, therefore, would be to recognize that those efforts had proved unprofitable and ought to be discontinued.
19. Mr. MOROZOV (Union of Soviet Socialist Republics) said that the United States representative's slanderous remarks constituted a most regrettable attempt to vitiate the debate. The United States representative had demonstrated that he was unwilling to deal with a juridical question in a juridical manner, and that he was determined to prevent the Committee from fulfilling its task.
20. Mr. Morozov would not enter into the substance of the United States representative's charges regarding the help given by the USSR to the Hungarian Government. The coarse and unwarranted references had been made solely with a view to provocation, but the USSR delegation would not be drawn into polemics. Representatives should concentrate on the item under discussion and refrain from employing tactics which they might later regret.
21. Mr. USTOR (Hungary) said that the United States representative had strayed from the subject and launched a propaganda attack against the USSR. Since that representative's diatribe had given some prominence to the events in Hungary in 1956, Mr. Ustor wished to state formally that what the USSR had done then had only been for the good of Hungary and its people. The action taken by the USSR had been requested by Hungary's only legitimate Government, and had prevented the resurgence of fascist forces bent on starting a local, or even general, war.
22. Mr. MALOLES (Philippines), speaking on a point of order, said that the Committee was not discussing the question of Hungary but the question of defining aggression. Consequently, purely political statements on Hungarian events were manifestly out of place.
23. On the other hand, the USSR representative could not validly contend that the United States representative's references to the findings of the Special Committee on the Problem of Hungary (A/3592) were not pertinent. It was perfectly legitimate, in a debate which was to produce certain juridical conclusions, to inquire into the relevant lessons of experience. The value of precedent in legal theory and practice could hardly be disputed.
24. Mr. KLUTZNICK (United States of America) said that whatever the Hungarian representative might say would not affect the validity of the General Assembly's findings. Legal questions could not be considered in a vacuum. Every legal problem should be resolved in the light of experience, and it was perfectly proper to study historical events in order to see if they offered any guidance concerning the merits of some particular procedure.
25. Mr. SHIMODA (Japan) said that the report of the Special Committee (A/3574) was of special value to new Member States, whose representatives had not taken part in any of the previous discussions on the subject and who were now appraising it with an open mind. The Japanese delegation, having examined the documentation, felt somewhat sceptical about the possibility and desirability of defining aggression. The question had been debated by the Sixth Committee intermittently, since 1950, but no definite conclusion had been reached. The International Law Commission had either failed to agree on a definition or prudently avoided attempting one. Moreover, the 1953 and 1956 Special Committees had decided not to vote on any of the drafts submitted. Experience thus suggested that it might be virtually impossible to work out a definition. The impression his delegation had formed was not contradicted by the number of draft definitions submitted, for none of those proposals had much chance of obtaining the support of a reasonable majority.
26. On the question of the desirability of a definition, he said that his delegation could not understand the argument that a definition would afford guidance to the responsible bodies and so help to ensure international peace and security. The Brazilian representative (515th meeting, para. 4) had rightly said that a definition would not in fact facilitate the task of the Security Council and the General Assembly. What the United Nations needed was not a definition, which would necessarily be restrictive, but absolute freedom to judge each act independently.
27. Lastly, the Japanese delegation could not support the idea of the concept of aggression being extended to the economic and ideological fields. Such an extension would only further confuse a question which was already complex enough.
28. After mature reflection, the Japanese delegation concurred with the view which had been expressed by the representative of China (517th meeting).

The meeting rose at 1.5 p.m.