

GENERAL
ASSEMBLY

TWELFTH SESSION

Official Records

Wednesday, 30 October 1957,
at 10.50 a. m.

NEW YORK

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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. ILLUECA (Panama) said his delegation had consistently supported the idea of defining aggression believing that the existence of a definition would contribute materially to the maintenance of international peace and security in that it would cause a potential aggressor to weigh the dire consequences of an attack.

2. It had been objected that no definition could be complete, and that every definition would leave loopholes open to possible aggressors. In his opinion, however, the absence of a definition was infinitely worse, for without a definition it was impossible to say whether some particular act constituted the serious international issue of aggression.

3. It had also been suggested that a definition of aggression might hamper or delay action by the Security Council under Articles 39, 41 and 42 of the Charter. Actually, however, that was rather an argument in favour of a flexible definition, which would facilitate the task of the competent organs of the United Nations by giving an enumeration of the acts which constituted, unmistakably, acts of aggression.

4. He referred to the draft definition proposed to the International Law Commission by Mr. Alfaro in 1951 and embodied, with certain changes and improvements, in the Commission's draft Code of Offences against the Peace and Security of Mankind.^{1/} In essence, the draft defined aggression as the threat or use of force by a State against another State for some purpose other than self-defence or other than the carrying out of a decision or recommendation of a competent organ of the United Nations. It was hardly necessary to stress that the inherent right of self-defence, expressly recognized in Article 51 of the Charter, had been reaffirmed on several occasions by the General Assembly, notably in its resolution 378 (V), operative paragraph 1 (a).

5. The fundamental characteristic of aggression was

^{1/} See document A/3574, annex I, Section 9 and footnote, for the texts of both drafts.

force, and in Mr. Alfaro's definition the term "force", not being restricted to armed force, could be interpreted broadly to include any of the means which States could now or in future command for the purpose of launching an attack. That broad interpretation had found an echo in General Assembly resolution 380 (V), which used the words "whatever the weapons".

6. In their draft resolution (A/C.6/L.401) Iran and Panama had endeavoured to synthesize the ideas expressed by Mr. Alfaro and also to take into account the views expressed in the Sixth Committee in the course of previous debate on the item. The object of the sponsors of the draft had been to produce a generally acceptable text.

7. The most important feature of the draft was the sharp distinction it drew between force that was lawful and force that was not lawful. The contrast was evident in the terms of the Charter, which expressly allowed for the due exercise of the right of self-defence and for enforcement action authorized by the Security Council. In effect, therefore, the unlawful use of force constituted aggression.

8. Commenting on specific points in the draft, he said that it did not mention economic, ideological or other indirect forms of aggression, for it dealt exclusively with direct aggression. The preamble reproduced parts of the preamble to General Assembly resolution 599 (VI) which, in his delegation's opinion, should preface any definition of aggression. The operative part opened with the words "declares that", to emphasize that the definition did not create new law but declared existing law. Furthermore, because it was strictly declaratory it would be incapable of affecting the powers of the Security Council or of the Assembly.

9. Operative paragraph 2 of the joint draft resolution gave a list of examples of acts of aggression which was not meant to be exhaustive. It contained, however, the five elements of the Litvinov-Politis formula (A/2211, para. 78), with the exception of the declaration of war which, in the opinion of Mr. Alfaro and many other eminent jurists, did not *per se* constitute an act of aggression and could even be the consequence of an aggression.

10. Paragraphs 2 (a) and (b) were based on article 9, paragraphs (a) and (b), of the Inter-American Treaty of Reciprocal Assistance signed at Rio de Janeiro in 1947. It had been said that the definition contained in that treaty was applicable solely to conflicts between small countries. In fact, however, the preamble of that Treaty made explicit reference to the Act of Chapultepec of 1945, and hence clearly contemplated a system of regional defence and security against possible aggression from non-American States against States of the Americas.

11. Paragraph 2 (c) mentioned blockade by land or

air forces as well as blockade by sea forces. Paragraph 2 (d) was almost identical with article 2, paragraph 4, of the draft Code of Offences against the Peace and Security of Mankind prepared by the International Law Commission (A/2693, para. 54).

12. The ultimate purpose of a definition of aggression was to realize a workable and effective system of collective security. A definition had become even more necessary since the adoption of General Assembly resolution 377 (V)—the "Uniting for peace" resolution—under which the Assembly was competent to act in cases where the Security Council was unable to take action under Article 39 of the Charter. Hence, if the United Nations system of collective security was to function efficiently, the terms employed in Article 39 had to be defined. And it was the intention of the draft resolution of which his delegation was a co-sponsor to offer such a definition. He would add, in conclusion, that the problem of the maintenance of international peace could not be treated in isolation or in strictly legal terms, for lasting peace demanded a state of mutual trust among the nations, and constant efforts to promote the economic, social, cultural, and humanitarian purposes set forth in the Charter of the United Nations.

13. Mr. EL-ERIAN (Egypt) said that, throughout the long history of the discussions on the question of defining aggression both before and since the establishment of the United Nations, his Government had consistently expressed its belief that a definition of aggression was both possible and desirable, as it would contribute to international peace and security and to the development of international law.

14. In his delegation's opinion, a general definition should be drawn up, followed by an enumeration of acts of aggression that would not be exhaustive but drafted in such a way as to allow for expansion in the light of circumstances.

15. He would divide his comments on the report of the Special Committee (A/3574) into three parts. The first part included general considerations stating his delegation's reasons for favouring a definition of aggression; the second part discussed objections raised by those who opposed a definition; and the third part set forth the form that a general definition should take.

16. The general considerations on which the Egyptian delegation based its approval of the idea of defining aggression were legal, political and moral in nature. A general definition of aggression was essential for the development of international criminal law. It was universally recognized that crimes, whether municipal or international, should be precisely defined. A definition of aggression was also essential for the maintenance of international peace and security. The use of force was no longer a national prerogative of sovereign States, but was entrusted, in the interests of collective security, to the United Nations. Lastly, the definition of aggression was a problem that interested world public opinion. The very complexity of the problem should act as a challenge. The Middle East, in view of past experience, was particularly interested in the drafting of a definition.

17. Many objections had been raised to the idea of a definition of aggression, ranging from opposition to the idea itself, to fears regarding the dangers inherent

in a definition and to doubts regarding the possibility of reaching agreement on the nature, form, scope, function and contents of a definition. Some had maintained, for instance, that the notion of aggression was incapable of definition. The Egyptian delegation did not agree with that view; it was possible to define not only aggression but also other new concepts, such as sovereign equality, the status of Non-Self-Governing Territories, regional arrangement, and human rights, which had been introduced in the Charter of the United Nations. The Charter of the United Nations was a constitutional instrument setting forth general principles which had to be defined and elaborated by the United Nations.

18. One objection had been raised, to the effect that it was not possible to make a complete definition of aggression, and that it was inadvisable to adopt an incomplete definition; indeed, some contended that the exclusion of any principle from a definition might be equivalent to a denial of the existence of that principle. Similar objections had been voiced in the past both to the definition of concepts such as "sovereign equality" and to the enumeration of the seven principles contained in Article 2 of the Charter. It had in practice proved sufficient to define such concepts clearly, and to enumerate the most important of such principles, without automatically denying the existence of others.

19. Another objection was that a definition of aggression would necessitate a revision of the Charter. The Egyptian delegation did not agree with that view. The authors of the Charter had simply set forth a group of general principles for the new world order, and it had not been appropriate in 1945 to discuss more detailed questions at length. At that stage the time had not been right for a definition of aggression; indeed, throughout the world people had been thinking only in terms of peace. However, much had happened since 1945, and the United Nations had acquired sufficient experience to attempt a definition of aggression with some hope of succeeding. The General Assembly, in adopting a definition of aggression, would be exercising its function of applying and interpreting the Charter.

20. To make a definition of aggression conditional upon a revision of the Charter would be a dangerous precedent, likely to hinder the progressive development of the law of the United Nations.

21. He then gave a broad outline of the form, scope, and content of a definition of aggression as envisaged by his delegation. The Egyptian delegation had always favoured a mixed type of definition that would synthesize and clarify the general notion of aggression as contained in the Charter. The scope of the definition should be limited to the concept of aggression as set forth in Chapter VII of the Charter, for the inclusion of other illicit activities contrary to the Charter might not really fall within the scope of international law, and might, by extending the idea of aggression beyond its actual context in the Charter, weaken the whole concept of aggression.

22. Hence, the definition of aggression should stress the concept of armed attack and the prohibition of the use of armed force as specifically laid down in the Charter of the United Nations. That principle should be emphatically reaffirmed in the light of recent unfortunate events, as there were still some who were prone to use armed force as an instrument

of national policy. Only armed attack justified self-defence.

23. The definition of aggression should include reference to such principles of the Charter as sovereign equality, political independence, self-determination, and the rights of peoples to their national resources.

24. Lastly, a definition of aggression should be extended to include territories and peoples that had not acquired independent statehood. The Egyptian delegation reserved the right to submit a formal proposal to that effect.

25. In conclusion, he said that he felt optimistic about the possibility of a definition of aggression being elaborated, since sentiment in the Committee seemed to be veering towards support for a mixed definition, with a precise formulation of the concept of armed attack. It should be made clear in what context the United Nations was defining aggression.

26. He believed that the work on a definition of aggression would give the United Nations yet another opportunity to show its ability to reconcile conflicting points of view and reach agreement.

27. Mr. BUDO (Albania) said that, although the Albanian delegation had not previously participated in the debates on the question of defining aggression, the Albanian Government had followed the developments in that field with the greatest interest. That interest was indeed only natural, as the Albanian people had experienced centuries of foreign domination, and even after the attainment of its independence in 1912 Albania had been the theatre of three wars.

28. The Albanian Government, which reflected faithfully the aspirations of the Albanian people, was wholly dedicated to a policy of peaceful coexistence and co-operation with all States, regardless of differences in political and social systems. It was consequently well aware of the vital need of a definition of aggression, especially in the prevailing tense international situation.

29. After a careful study of the relevant documents, and after listening to the discussions in the Sixth Committee, the Albanian delegation believed that substantial progress had been made in the study of the subject. Many important issues had been successfully clarified. It was consequently all the more regrettable that the task set by the General Assembly had not yet been completed. The current discussions had admittedly shown that there was now a wider measure of agreement among the majority of delegations, but certain essential differences of opinion subsisted.

30. As far as the question of the desirability of a definition was concerned, he said that most delegations favoured such a text, some hesitated to commit themselves, while others obstinately contended that a definition would serve no useful purpose, and that the adoption of such a text would even be dangerous. In that connexion, the Albanian delegation felt in duty bound to support the majority opinion. It believed that the adoption of a definition by the General Assembly would be of great value to States, and would assist the Security Council in its determination of any eventual aggressor. Furthermore, a definition would help to enlighten public opinion and discourage any State contemplating aggression. A definition would also constitute a major contribution to the development of the law of nations.

31. Some delegations had contended that the Security Council was not a judicial body, and that, consequently, it could never be bound by a definition. The Security Council was, however, the organ vested with the primary responsibility for the maintenance of peace, and, as such, could not disregard a principle of international law recognized by the General Assembly.

32. With reference to the argument that the adoption of a definition would be not only useless but even dangerous, he said that General Assembly resolution 599 (VI) expressly recognized the desirability of a definition. Furthermore, the judgements of the International Military Tribunal at Nuremberg and at Tokyo had underlined the need of such a text. The purely negative arguments advanced by certain representatives, especially the United States representative, failed to stand the test of logic, and seemed to have been dictated by considerations other than a concern for the maintenance of world peace. It was noteworthy that the great Powers which opposed the adoption of a definition were also those which impeded a solution of the related vital problems of disarmament and of the prohibition of nuclear explosions.

33. The Albanian delegation, believing that the absence of a definition of aggression benefited nobody but a potential aggressor, could not agree with the delegations which proposed the adjournment of the question *sine die*. Equally unacceptable was the proposal of the French delegation (521st meeting) regarding the procedure to be followed. The French representative had suggested a two-stage approach: the first to consist solely of attempts to construe the relevant provisions of the Charter; and the second—the preparation of the actual definition—to be deferred until after the solution of other outstanding international problems, such as disarmament and the development of economic and social co-operation. The relevant Articles of the Charter, however, were sufficiently clear in themselves, while the argument that the adoption of a definition should be made conditional on the previous solution of the problem of disarmament could equally well be reversed. The French proposal thus seemed to be a mere expedient, designed to delay final agreement.

34. With reference to the various possible types of definition, he said that, although each type had its usefulness in certain circumstances, a concept such as aggression called for a mixed definition. The definition proposed by Iran and Panama (A/C.6/L.401) was nevertheless unsatisfactory, as it lacked clarity and failed to stress the principle of the "first act".

35. The draft definition proposed by the USSR (A/C.6/L.399) was both the best drafted and the most complete of all those submitted. It was consistent with the principles of the Charter and of international law, and was best adapted to the needs of the prevailing international situation. The text understandably gave priority to a definition of armed attack, which was the most serious of all international crimes. The seriousness of that form of aggression was even acknowledged in Article 51 of the Charter, which recognized the victim's right of self-defence. Furthermore, the Soviet definition contained both general statements of principle and an enumeration of the known forms of aggression. Above all, by stressing the principle of the "first act", the Soviet text would preclude any form of subterfuge. Other very important provisions were

those in paragraph 5, which anticipated the possibility of an aggressor inventing new forms of aggression, and paragraph 6, which emphasized that no aggression could be justified by considerations of a political, strategic or economic nature. The need for that last provision had been clearly demonstrated by history: Albania itself had been the victim of aggression, in April 1939, which the attacker had tried to justify by inadmissible arguments on the lines of those mentioned in paragraph 6 of the Soviet draft definition.

36. For those reasons, the Albanian delegation would firmly support the USSR draft resolution, the adoption of which would, in its opinion, represent a major contribution to the cause of peace.

37. Mr. CHAUMONT (France) said that the Ukrainian, Czechoslovak and Albanian representatives seemed to have misunderstood his proposal. He had only proposed a compromise procedure, designed to reconcile the views of the advocates of a general definition with those of the proponents of a detailed text such as the Soviet draft. He believed that the Charter already contained the elements of a definition, and the San Francisco Conference in 1945 had only rejected the idea of specifying criteria that would be applicable automatically. Consequently, he had proposed that the first stage of the work should consist of a thorough sifting and co-ordination of the relevant Charter provisions which he had cited. That process would lead up to a general formula.

38. The second stage of the work would then be devoted to the elaboration of the details to supplement that general formula. He had suggested that that stage should await the solution of certain other outstanding problems, because he believed that the relevant details could not be properly ascertained until

those issues had been clarified. That applied equally to a final definition of armed attack, which would necessarily be influenced by the provisions of a disarmament agreement, and to a text on the other forms of aggression envisaged in the Soviet draft resolution, which were inevitably linked with the question of economic co-operation.

39. In conclusion, he said that the debate had demonstrated that there was no conceivable chance of immediate agreement, even on a definition limited to armed attack. His proposal had thus been dictated by logic, and those who insisted on a comprehensive detailed formula at the current session were being unrealistic.

40. Mr. MOROZOV (Union of Soviet Socialist Republics) said that the critics of the French proposal had clearly understood it very well. They had accurately said that the French representative was merely trying to delay agreement on a definition by proposing an unnecessary interim exercise. The provisions of the Charter were sufficiently clear, and no further discussion on their meaning was necessary. For example, no further study of Article 51 could possibly reveal any meaning other than the obvious one—that the right of self-defence could not be exercised until after an attack had occurred. Further efforts at interpretation could therefore serve no purpose whatsoever, unless their sole object was to distort unambiguous provisions in order to arrive at false conclusions.

41. The best course for the Committee would be to concentrate on the definition of armed attack. That definition obviously deserved priority, and agreement on the subject at the current session would in itself be a major achievement.

The meeting rose at 12.45 p.m.