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Chairman : Mr. Manfred LACHS (Poland).

Report of the International Law Commission covering the work of its third session (A/1858), including :
(a) Question of defining aggression (chapter III)
(continued)

[Item 49 (b)]*

1. Mr. SPIROPOULOS (Greece) said that the definition of aggression which the USSR delegation had proposed to the First Committee at the fifth session¹ was almost identical with the definition the USSR had placed before the second world disarmament conference of 1933². Mr. Politis, Rapporteur of the Committee for Security Questions, had taken the latter definition as basis for the definition he had submitted to the General Commission of the Disarmament Conference³, while adding a clause covering support given to armed bands invading the territory of another State. Following the First Committee's discussions in 1950, the USSR had introduced that clause into its draft resolution now before the Sixth Committee (A/C.6/L.208).

2. The USSR proposal had been discussed at length in the First Committee at the fifth session.⁴ The United Kingdom and United States representatives had opposed the idea of any definition of aggression, on account of its inherent disadvantages and the fact that no definition adopted by the General Assembly would be binding on the Security Council. The Greek and certain other delegations had opposed it for the same reasons and because they doubted the possibility of an ideal definition. The Syrian delegation and some others, on the other hand, had wanted the question of aggression to be examined. Resolution 378 B (V) had been adopted, referring the whole question to the International Law Commission for

examination in conjunction with the draft code of offences against the peace and security of mankind. Mr. Spiropoulos, as rapporteur on the code, had made a report to the Commission (A/CN.4/44) covering the question of aggression. Mr. Amado and Mr. Alfaro had also submitted memoranda (A/CN.4/L.6 and Corr.1, A/CN.4/L.8). The Commission's discussions and subsequent report (A/1858, chapter III)⁵ had been based on those documents.

3. He spoke with considerable hesitation, since the question of aggression was one which had been dealt with by jurists of the greatest eminence, and with some emotion since, while a member of the International Law Commission, he was speaking in the Sixth Committee as the representative of his country and in that capacity it was necessary for him to criticize the Commission's report. He hoped that those other members of the Commission who were representing their countries in the Committee would appreciate the distinction of capacity. After giving the matter much thought he had concluded that a complete definition of aggression, including all types of it, was an impossibility. The idea of such a definition was rooted in the belief, which was a matter of quasi-religious faith, that its achievement would result in the abolition of war. The belief was a false one. It was not borne out by the analogy of municipal criminal law.

4. The report of the International Law Commission was not a suitable basis for the Committee's discussion. It was merely a condensed record of the Commission's proceedings. The First Committee at the fifth session had referred the question of aggression to the Commission feeling that the question was legal as well as political, and that it should first of all be examined in all its aspects by a special legal body. The Commission's task was to examine the question and formulate conclusions. It had,

* Indicates the item number on the General Assembly agenda.

¹ See *Official Records of the General Assembly, Fifth Session, Annexes, agenda item 72, document A/C.1/608*.

² See *League of Nations, Conference for the Reduction and Limitation of Armaments, Minutes of the General Commission, Series B, vol. II, page 237*.

³ See *League of Nations, Conference for the Reduction and Limitation of Armaments, Documents of the Conference, vol. II, page 683*.

⁴ See *Official Records of the General Assembly, Fifth Session, First Committee, 385th to 390th meetings*.

⁵ *Ibid.*, Sixth Session, Supplement No. 9.

however, made the mistake of deciding that its task was to define aggression.

5. The Commission had made every effort to arrive at a definition. The USSR representative had been quite wrong in stating, at the previous meeting, that the Commission had not wished to define aggression. All the members of the Commission—Mr. Scelle, the Chairman, in particular—had been anxious to work out a definition. It was only himself, Mr. Spiropoulos, who had opposed the attempt, and possibly Mr. Sandstrom. In spite of all he, Mr. Spiropoulos, had said in the Commission against a definition, the Commission had worked for a considerable time to arrive at one. But it had failed to find any which commanded the support of a sufficiently large majority.

6. Inspired by the new idea that war could be abolished by defining aggression, after the First World War various organs of the League of Nations, as well as individual jurists, had considered the question of aggression. But they had all adopted an empirical approach, and no purely theoretical systematic examination of the question had been undertaken. What was required then and what was still required was a philosophical approach.

7. Although there were certain agreements between groups of States which contained definitions of aggression, as for example the Treaties of London concluded in 1933 between the USSR and adjacent States⁶, there was no general treaty in existence containing such a definition, nor was there anything in customary law which could act as one. Nevertheless, the Security Council and the General Assembly could not act arbitrarily and adopt any criterion of aggression they pleased. The criterion they must adopt was the "natural" notion of aggression referred to in Mr. Spiropoulos' report to the Commission. It was a notion inherent in human nature, an innate idea. Two children fighting would appeal to that notion, not to any criterion capable of legal definition. The same applied to a judge in a criminal court: though the dozen criminal codes he had examined spoke of assaults, they did not define the means of assault, so that it was left to the judge to decide according to the circumstances of the offence, whether or not an assault had taken place. Similarly, States decided what was or was not aggression in the light of the natural notion of that offence, which included, *inter alia*, invasion by armed forces, bombardment by land, sea or air forces and similar tangible evidence.

8. The natural notion of aggression contained two elements, one objective and the other subjective. The objective criterion of aggression was violence, direct, indirect or concealed, committed by a State before any similar act was committed by the other party. It was impossible to enumerate all imaginable cases of such acts because they were in a constant process of evolution. The USSR definitions given at the Disarmament Conference and at the fifth session, and the Politis definition, all included invasion and naval and air attack. The Politis definition however, which was binding upon the USSR in its relations with neighbouring States, included "provision of support to armed bands formed in its [the aggressor's] territory which have invaded the territory of another State, or refusal, notwithstanding the request of the invaded State, to take in its own territory

all the measures in its power to deprive those bands of all assistance or protection." That was a new idea, which was taken up in the USSR draft resolution before the Committee (A/C.6/L.208).

9. It was impossible to forecast what further classes of acts would be recognized in the future by the international community as constituting aggression. According to the law in force, no State was obliged to prevent its nationals from fighting in foreign armies as volunteers, provided they had not been trained for the purpose in their own country. Greeks had fought in the French army in the First and Second World Wars. But volunteers were legitimate only when their numbers were small. If half the adult male population of a State were allowed to fight in a foreign army as private individuals, the State of which they were nationals would undoubtedly be guilty of aggression. That was a very unlikely case, but all possible cases would have to be included in any exhaustive definition. At the previous session the General Assembly had added to the list of acts of aggression incitement to civil war in another State (resolution 380 (V)). Further additions might be made *ad infinitum*. His provisional conclusion was that it was impossible to give an *a priori* definition which included all types of aggression.

10. Beside the objective criterion there was the subjective criterion of aggression. The act as such did not always constitute aggression. There must also be aggressive intention. If the USSR representative had studied Mr. Spiropoulos' report, he would not have referred to the idea of aggressive intention as something mysterious and obscure. The right to shoot first in self-defence was recognized in all criminal codes. When there was impending aggression a State had the right to attack first in self-defence, although no actual act of aggression had taken place to counter the aggressive intention of the other State. The League of Nations Permanent Advisory Commission (opinion of the Belgian, Brazilian, French and Swedish delegations) had expressed a similar idea.⁷ Moreover, conflicts were possible in which there was no aggressor. In a case in which two States, through a series of misunderstandings, were finally driven to armed conflict there would be no aggressor, unless one of the States had aggressive intention and the other was acting in self-defence; if they both desired to settle their differences by war neither State would be a victim acting in legitimate self-defence and there could consequently be no aggression.

11. The objective and subjective criteria of aggression together constituted a single whole. The total circumstances had to be taken into account. The idea of aggression was a thing in itself, and as such could not be defined by the enumerative method. In the words of the League of Nations Permanent Advisory Commission, "under the conditions of modern warfare, it would seem impossible to decide even in theory what constitutes a case of aggression".⁸ The same conclusion had been arrived at by various practical men and men of science. For example when the United States had tried to win acceptance for the Politis definition at the International Conference on Military Trials, held in London in 1945, which drew up the Charter of the Nürnberg Tribunal, General Nikitchenko, representing the USSR, had said that though aggression could be identified in particular cases

⁶ See *League of Nations, Treaty Series*, vol. CXLVII, No. 3391 and vol. CXLVIII, Nos. 3405 and 3414.

⁷ See *League of Nations, Official Journal, Special Supplement No. 16*, pages 114-118.

⁸ *Ibid.*, page 116.

it was not yet possible to draft a definition of it.⁹ So much for the idea of an exhaustive definition, enumerating all the elements of aggression.

12. Another possibility was to adopt a general abstract definition of aggression rather than a complete enumerative definition. The International Law Commission had decided to consider an abstract definition and, although only twelve members had been present during the discussions, six consecutive drafts had been submitted by as many members, because in each case the author of the new draft had felt that the former draft was not quite satisfactory. If a similar pattern were followed in the Sixth Committee it would have to deal with about thirty different drafts. The idea underlying the drafts most discussed by the International Law Commission had been that aggression consisted of any use of armed force by one State against another for purposes other than self-defence or the execution of a decision by a competent organ of the United Nations—an idea that occurred in Article 16 of the much earlier League of Nations Covenant and was also fully covered by the United Nations Charter. Consequently, it added nothing to the existing provisions and did not meet the wishes of the USSR delegation which, when first submitting the item for the Assembly's consideration, had stated that it was necessary "to define the concept of aggression as accurately as possible", the intention being clearly to find a more precise definition than the language of the Charter offered. Although the Commission had devoted considerable time to the detailed discussion of an abstract definition, it had in the end failed to adopt that definition and had in fact reached no conclusions whatever on the subject, even though the General Assembly had asked it expressly to "formulate its conclusions as soon as possible" (resolution 378 B (V)).

13. It would of course always be possible to define the term "aggression" just as it was possible to define any other word, but a definition of aggression would always be artificial because it would inevitably leave out some possible cases of aggression and at the same time include certain acts which, if considered in their proper context, would not be felt by the conscience of the international community as being acts of aggression at all. It depended on the circumstances of each act whether or not it really constituted aggression. For example, no one would ever dream of denying that the incident at Pearl Harbor had constituted aggression, but, on the other hand, if a small group of soldiers fired across a frontier and wounded some soldiers on the other side, that could hardly be termed aggression even if the soldiers had been acting on the instructions of their Government. Both cases would, however, be regarded as aggression under sub-paragraph 1 (b) of the USSR draft resolution (A/C.6/L.208). Obviously, a rigid definition could never apply to all cases; each case had to be considered on its merits. Consequently, although it would be possible to adopt a definition of aggression in theory, the definition could never be complete and perfect in every respect and would be extremely difficult to apply in practice.

14. Having dealt with the question of the possibility of defining aggression, he turned next to the question of the desirability of adopting such a definition. He doubted whether a theoretical definition of aggression, although it might be possible to achieve one, would be of any real

value in practice. In complicated cases—and it was only in such cases that a definition of aggression would have any practical value at all—the difficulties of determining the aggressor would be so great that the existence of a definition of aggression would appear a rather unimportant, in some cases even a disturbing, factor. Thus, for instance, in the case of an armed conflict between States or among a group of States, preceded by a period of misunderstandings, political tension, general armament, mobilization, etc., the fact that there was a definition of aggression enumerating acts to be considered as a test of aggression, would scarcely have any practical importance. Moreover, the existence of an imperfect and incomplete definition of aggression might even be extremely dangerous. Mr. Spiropoulos quoted from the report of the Rapporteur of Committee III/3 to Commission III of the San Francisco Conference to illustrate that point:

"Although this proposition (to insert a definition of aggression in the Charter) evoked considerable support, it nevertheless became clear to a majority of the Committee that a preliminary definition of aggression went beyond the possibilities of this Conference and the purpose of the Charter. The progress of the technique of modern warfare renders very difficult the definition of all cases of aggression. It may be noted that, the list of such cases being necessarily incomplete, the Council would have a tendency to consider of less importance the acts not mentioned therein; these omissions would encourage the aggressor to distort the definition or might delay action by the Council. Furthermore, in the other cases listed, automatic action by the Council might bring about a premature application of enforcement measures".¹⁰

The Committee had therefore decided to adhere to the text of the draft charter drawn up at Dumbarton Oaks and to leave to the Security Council the entire decision as to what constituted a threat to peace, a breach of the peace, or an act of aggression.

15. Without being unduly cynical, he felt that a realistic approach was needed. There could never be a perfect definition of aggression and, even if a somewhat imperfect and incomplete definition were adopted, it would not be a legal organ but a political one which would be called upon to apply it. He had no wish to enter into a political discussion and he was not looking for any reply to his remarks, but he thought it would be useful to mention two examples in order to show how the matter had been dealt with by the political organs of the United Nations in the past. Firstly, there was the case of Korea, where the existence of an act of aggression had been recognized immediately after the first invasion. Secondly, there was the case of Greece, where the General Assembly had recognized all the facts but had never called them by their proper name.

16. He cited various passages from the reports of the United Nations Special Committee on the Balkans and from General Assembly resolutions where it was fully recognized that the Governments of Albania and Bulgaria were giving aid to the Greek guerrillas, that the guerrillas depended largely on the food and supplies they received from abroad and that they often returned into Albania and Bulgaria where they could rest, re-form their units and obtain new supplies in safety.

17. The General Assembly had recognized that such a situation constituted a threat to the political independence and territorial integrity of Greece. In its most recent

⁹ See Report of Robert H. Jackson, United States Representative to the International Conference on Military Trials, Department of State Publication 3080, Washington, 1949.

¹⁰ See Documents of the United Nations Conference on International Organization, San Francisco, 1945, vol. XII, Commission III, page 519.

report (A/1857)¹¹ the Special Committee described a change in tactics on the part of the Greek guerrillas but emphasized that their dominant aim was still to overthrow the Greek Government by force. In General Assembly resolution 380 (V), fomenting civil strife in the interest of a foreign Power was recognized as an act of aggression, but in spite of that and in spite of article 1, paragraph (5) of the Politis definition, the General Assembly had never stated in express terms that the activities of Albania and Bulgaria constituted aggression against Greece.

18. He did not wish to enter into recriminations. The United Nations was obviously not perfect and could not always take its decisions solely on the basis of the acts committed but had to take the world situation as a whole into account. In the case of Greece, the victims could not but feel that that was rather hard on them, but he was perfectly ready to admit that some decisions which might seem unjust to the victim might appear the only possible solution to the international community as a whole. He had only mentioned the case of Greece in order to show that the existence of a definition of aggression would be of no practical value.

19. In spite of their disappointment over past actions of the General Assembly, the Greek people would be prepared to collaborate in the elaboration of a definition of aggression were it not for the obvious dangers that the existence of such a definition would present. It was because his country was convinced that the dangers of a definition would be far greater than any of the advantages that it had submitted its draft resolution (A/C.6/L.206). He did not believe that he could really be accused of adopting a negative approach, for it was surely not particularly constructive or positive to attempt to build upon sand. What was really constructive was to see things as they were and to adopt a realistic approach, even if such an approach led to a negative conclusion. The problem of defining aggression had been discussed at length between the two world wars, and now that it had been brought up once more he felt it was essential to settle the matter once and for all.

20. Mr. P. D. MOROZOV (Union of Soviet Socialist Republics) wished to make some preliminary comments on the Greek representative's statement, which, he felt, could be divided into two parts, the first being an attempt to adduce legal arguments to prove that it was impossible to define aggression by enumerating specific acts and the second, an attempt to introduce political considerations to show that it was impossible to adopt a precise definition of aggression. Both parts contained errors of law and of fact.

21. Dealing first with the political aspect, he said that the Greek representative's comments on the events in Korea were in direct contradiction to the documentation submitted by the USSR delegation to the United Nations on the Korean question. The events in Korea were clearly the result of intervention in the internal affairs of Korea by the United States of America. Yet the Greek delegation represented them as the result of a very different sort of aggression, despite the fact that certain charges in the documentation in question had not been disproved by the United States.

22. Very understandably the Greek representative was reluctant to receive a reply to his mis-statement of the facts. His arguments would convince no one, and it

was clear that his intention had been to divert the attention of the members of the Committee from the substance of the question at issue and to prevent a calm analysis of the problem by quoting from the report of the illegally established Special Committee on the Balkans. It was not the first time that the Albanian and Bulgarian authorities had been attacked in United Nations meetings; the intention of all such allegations of aggressive intentions on the part of those Governments was to camouflage what was taking place in Greece in preparation for a third world war.

23. The Committee should deal with the question of the definition of aggression in a sober and objective manner; nothing constructive could come of the adoption of the course taken by the Greek representative.

24. The Greek representative had somewhat lightly taken a hypothetical frontier incident as an example to prove that the act referred to in paragraph 1 (b) of the USSR draft resolution (A/C.6/L.208) was not suitable for inclusion in a definition of aggression, but had failed to note that in paragraph 2 of the USSR draft resolution it was stated that frontier incidents might not be used as justification for attack.

25. Lack of time prevented him from going more fully into the Greek representative's legal arguments, and he would merely observe at that point that the latter had at the beginning of his statement made a distorted interpretation of the USSR draft, then had rejected that interpretation, and then had taken the whole subject out of the scientific realm and transferred it to that of religious faith. That was surely an unprecedented and highly artificial approach to such a subject.

26. Instead of dealing with the substance of the USSR draft resolution, the Greek representative had merely questioned the belief that a definition of aggression could prevent a war of aggression. He had even tried somewhat ineffectually to confuse the issue by urging that, as a definition of aggression would not prevent war, there was no point in adopting one. But it had never been contended that the adoption of a definition of aggression would prevent war or that war could be prevented without serious efforts on the part of the peace-loving peoples of the world. No one had contended that it was sufficient to define aggression. The Committee was in the process of discussing the need for working out a definition of aggression so as to discourage aggressors and to prevent them from bringing excuses to justify their acts. History as well as the present international situation showed that an aggressor never admitted that he was an aggressor, and the aggressors of the past had sought to justify their aggression by specious propagandist slogans.

27. It was regrettable that the Greek representative had relied mainly on his own report to the International Law Commission in justification of the position taken by his delegation. He might well have left other delegations to reinforce their position, if they thought fit to do so, by reference to his report and have sought to find justification for his own position in the works of the authorities on the subject, with which he was perfectly familiar. He fully realized that the Greek representative was the Rapporteur of the International Law Commission on the question of aggression, but he had already criticized Mr. Spiropoulos' report, and the Commission's report could not be regarded as presenting a scientific and legal approach to the question. The Greek representative had not, as he himself had done, referred to such a legal authority as Professor Lauterpacht. Pro-

¹¹ See *Official Records of the General Assembly, Sixth Session, Supplement No. 11*.

fessor Lauterpacht, in the sixth edition of Oppenheim's *International Law*, had expressly denied that attempts to define aggression were legally unsound or inimical to justice. Mr. Spiropoulos had relied on certain League of Nations material; but it was interesting to note that the League's Committee on Security Questions had in May 1933 strongly emphasized the value of a definition of aggression.

28. The fact was that the Greek representative's references were a mockery of all past efforts to define aggression and so to rob an aggressor of any possible excuse. Despite his disclaimer, Mr. Spiropoulos had actually approached the matter in a cynical manner, because he clearly wished to promote a situation that would in fact be helpful to an aggressor and make it difficult for others to judge the aggressor's action.

29. There was thus a marked contrast between the Greek draft resolution and the USSR draft resolution. It would be noted that the USSR definition of aggression had been used in a number of treaties and met with the support of international jurists. While the Greek draft resolution would assist an aggressor, the USSR delegation's proposal quite explicitly described an aggressor as a State that committed any one of the acts enumerated in paragraph 1. There was nothing vague about that enumeration and the acts in question were patently inconsistent with the Charter of the United Nations.

30. Mr. Spiropoulos' position contained internal contradictions: he had said that certain acts obviously constituted aggression, but had still opposed the formulation of a definition. Moreover Mr. Spiropoulos was not

consistent with the position of the Greek delegation in other organs of the United Nations. That delegation had repeatedly based its claim that aggression existed on the allegation of various acts enumerated in the USSR draft.

31. While reserving his right to analyse in greater detail the clearly unfounded legal arguments adduced by the Greek representative, Mr. Morozov submitted that the object of the latter's statement was political and that he was endeavouring to undermine all that had been done to define aggression and thus to make it easier for the potential aggressor to justify his action. He had made no attempt to improve upon the USSR draft resolution but had merely urged that, as a definition of aggression was not sufficient to prevent war, there was no need to adopt one. His approach was unscientific and his arguments were unconvincing.

32. Mr. MAKOTOS (United States of America) said he could not reconcile the USSR representative's version of the Korean affair with his plea for objectivity of approach to the question under consideration.

33. Mr. P. D. MOROZOV (Union of Soviet Socialist Republics) replied that he had based himself on specific documents, and mentioned in particular a report submitted in 1947 by General Wedemeyer to the President of the United States¹² containing plans for aggressive action in China and Korea and on which, according to Mr. Acheson, United States action in Korea had been based.

The meeting rose at 6.10 p.m.

¹² See *United States Relations with China*, Department of State Publication 3573, Far Eastern Series 30, annex 135, pp. 764-814, and *Report*

to the President submitted by Lt. Gen. A. C. Wedemeyer, September 1947: Korea; United States Government Printing Office, Washington, 1951.