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CONTENTS

Page

Report of the International Law Commission covering the work of its third session (A/1858), including : (a) Question of defining aggression (chapter III) (continued)	223
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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)

1. Mr. KOVALENKO (Ukrainian Soviet Socialist Republic) said that the question of defining aggression was closely linked with the fundamental task of the United Nations : the maintenance of international peace and security. Aggression must therefore be prevented, and must not be allowed to go unpunished. Non-intervention was one of the basic principles of international law; and when intervention took the form of aggression it was regarded as the gravest of crimes, as had been recognized by the League of Nations resolution adopted by the Eighth Assembly on 24 September 1928, the Briand-Kellogg Pact of 1928, the Moscow Protocol of 1929, the London Conventions of 1933, the Nürnberg and Tokyo Charters of 1945 and 1946 and, most recently, the United Nations Charter. With the exception of the London Conventions, however, none of those documents contained a precise definition of aggression. In order to enable United Nations organs to take effective measures to counter it, aggression should be defined so as to give them guidance in determining which party was the aggressor and which the victim. The aggressor, of course, never admitted to being an aggressor, but always claimed to be the victim.

2. It was for those reasons that the Ukrainian delegation supported the definition proposed by the USSR, which was based on international law and, in particular, on the London Conventions, which were still in force. The USSR draft resolution (A/C.6/L.208) not only enumerated the various cases of aggression but also specified the motives most frequently invoked for aggression. Thus it covered aggressive acts such as those committed by Mussolini against Ethiopia and Hitler against Czechoslovakia, and such as Japan's attack on Pearl Harbour. Aggressor States always resisted any precise definition because it would hinder the execution of their plans. That was why Germany and Italy had opposed defining aggression in 1933. Aggressor States reckoned that in the absence of a definition they would be able to act

with impunity and would be able to accuse their victims. To-day, for example, the United States was charging China and Korea with aggression, whereas those countries had been the victims of American aggression.

3. Some States opposed the idea of defining aggression on the ground that to arrive at such a definition was a difficult and fruitless task. That was the attitude taken by the United States and the United Kingdom; indeed, the United States had attempted to justify certain acts of aggression, including preventive war. The attempt had been made to justify self-defence in international law by analogy with domestic penal law. Such arguments were merely propaganda intended to conceal the truth.

4. The United States representative had said that it was useless to define aggression, since it was not known what constituted aggression. That argument did not hold water; it amounted to saying that the world must wait until a series of acts of aggression had been committed, in order to allow the concept of aggression to crystallize in due time. The United States representative had also said that nations would not respect a definition of aggression unless adequate police forces existed; and he had drawn a false comparison between that situation and the United States prohibition law. That line of argument reflected the policy of the United States, which considered force the essential basis of relations between States. In order to justify preventive war Mr. Matthews, the United States Secretary of the Navy, had said that in order to guarantee peace the United States should resort to war to compel other nations to co-operate with it. No wonder, then, that the United States representative in the Sixth Committee should have said that the question was not whether aggression should be defined but whether such a definition would or would not suit the purposes of the United States. He had answered that question in the negative and explained that according to the definition proposed by the USSR the United States would have been the aggressor in Korea.

5. Similar criticisms had been advanced by the United Kingdom representative, who had tried to obscure the idea of aggression by arguing that, so as not to hamper negotiations, it would be wiser not to condemn as the aggressor a State which had committed an act of aggres-

sion. Such statements were inconsistent with British doctrine; Mr. Kovalenko cited Professor Oppenheim on that subject. The representatives of Belgium and the Netherlands had similarly tried to confuse the issue, and had slandered the USSR's foreign policy.

6. The International Law Commission had failed to carry out its task when it had refused to examine the USSR proposal.¹ It had likewise refused to adopt an enumerative definition and expressed its preference for an abstract definition. It had given no definition of aggression on the pretext that it did not wish to restrict the freedom of the United Nations organs which would be required to apply such a definition. Only in article 2 of the draft Code of Offences against the Peace and Security of Mankind (A/1858, chapter IV)² had the International Law Commission adopted a formula mentioning aggression; but that formula was useless since it did not define aggression and passed over aggressive acts such as the declaration of war, invasion without a declaration of war, the bombardment of a territory and naval blockade. That formula would allow the aggressor to escape the consequences of his crimes. The report submitted by Mr. Spiropoulos (A/CN.4/44, chapter II) to the International Law Commission said that it was impossible to determine *a priori* what kind of violence, direct or indirect, or what degree of violence constituted aggression, adding that the more dangerous the act of aggression and the more cunning the aggressor the less possible it was to determine the aggressor. That theory could therefore only suit the aggressor. Mr. Spiropoulos had repeated the same argument in the Sixth Committee and had presented an *apologia* for wars of aggression. That was tantamount to borrowing the theories of Hobbes, Nietzsche and Spengler, which had inspired the German Fascists. Those theories were accepted by John Dewey, who asserted that the belligerent instinct was innate in human beings; but they were condemned by peace-loving peoples.

7. Like the Hitlerites and the Japanese, the representative of Greece had argued that the aggressor was not the country which attacked first but that which had the intention of attacking. That was not a sincere argument. He had also claimed that the definition proposed by the USSR did not cover assistance to armed bands as a case of aggression; but reference to sub-paragraph 1 (f) of the USSR draft resolution would show that that case was covered.

8. The Greek representative's misleading assertions were reflected in his delegation's draft resolution (A/C.6/L.206). The third paragraph of the preamble to that resolution, which said that it was impossible to define aggression, was contradicted by the next paragraph, according to which a definition was theoretically possible. The fourth paragraph also said that the formulation of a definition of aggression might encourage the aggressor to evade it. On the contrary, it was the absence of a definition which would enable the aggressor to escape the consequences of his act. It was equally false to say that such a definition would restrict the freedom of the Security Council; on the contrary it would make it easier for the Council to take action under the Charter.

9. The USSR representative had cited a number of eminent international jurists who declared that a definition of aggression would be useful. The delegation of the Ukrainian SSR considered that the peace and security

of nations depended upon the adoption of such a definition, and would therefore vote for the USSR draft resolution.

10. Mr. EL BARAZI (Saudi Arabia) felt that since the question before the Committee had already given rise to so many brilliant interventions, it would be desirable to close the general debate as soon as possible and come to a decision. He would therefore merely comment on the draft resolutions before the Committee, which reflected the three points of view that had emerged during the discussion.

11. The Greek draft resolution (A/C.6/L.206) had the support of, among others, the representatives of the United States and the United Kingdom, whose delegations had already spoken against the USSR definition in the First Committee, at the fifth session of the General Assembly. Those delegations had said that it was impossible to find an ideal definition and had felt that no definition adopted by the General Assembly would be binding on the Security Council. He himself thought that there was no question of setting up an immutable definition since the law was essentially a living and progressing thing, nor of imposing a definition on the Security Council which would remove from it all power to use its own discretion.

12. He paid a tribute to the efforts of the International Law Commission to accomplish its task. He thought that the Greek representative had not looked at the matter realistically when he had said at the 279th meeting that even if an incomplete and imperfect definition was adopted, it would not be a legal body which would be called upon to apply it but a political body. On the contrary, that was a good reason for not binding the Security Council by an analytical or a synthetic definition.

13. The Greek representative had said that aggression was a "natural notion" which defied definition. But justice was also a natural notion; and since the law was only justice as interpreted in the light of circumstances, there could not, according to that theory, be any settled law.

14. The United States representative had said that it was not advisable to crystallize the law on aggression as long as it was still evolving. He himself thought that it would be wiser to supplement the Charter rather than to go on waiting. The General Assembly's task was to prevent international law, still an embryo, from being still-born. For all those reasons, the Saudi Arabian delegation would vote against the Greek draft resolution.

15. Turning to the joint draft resolution submitted by France, Iran and Venezuela (A/C.6/L.209), he regretted that it proposed to wait for the General Assembly to study the draft Code of Offences against the Peace and Security of Mankind before defining aggression. He also considered that it was superfluous to ask Member States, when transmitting their observations on the draft Code to the Secretary-General, to give their views on the problem of defining aggression. The representatives of Member States had made all their observations during the discussion, and there would be no point in waiting when it was possible to find a solution to the problem immediately.

16. However, his remarks in no way prejudged the attitude of the Saudi Arabian delegation, which reserved the right to vote in favour of the joint draft resolution if the discussion did not later produce a better solution.

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

² *Ibid.*, Sixth Session, Supplement No. 9.

17. With regard to the USSR draft resolution, (A/C.6L/208), he said that his delegation was in favour of parts A and B of paragraph 2 but could not vote in favour of the resolution as a whole. A list could not cover all cases of aggression. He hoped that some solution would be adopted combining the enumerative formula and the abstract formula. That would result in a list of the principal acts of aggression and also in a general formula covering all other acts not enumerated. That was the method which had been used in article 9 of the Treaty of Reciprocal Assistance signed at Rio de Janeiro in 1947.

18. Moreover, the USSR draft resolution failed to allow for the subjective element or for the fact that under the Charter certain organs of the United Nations already possessed certain powers. The Colombian amendment (A/C.6/L.210) seemed to be an attempt to remedy those omissions.

19. In conclusion, he said that trust in the United Nations and the sincere desire to create a better world would bring about the reign of peace.

20. Mr. BUSTAMANTE (Ecuador) said the International Law Commission had been concerned with legal considerations; it had, in trying to work out a definition of aggression, treated it in conjunction with its other task of preparing a draft code of offences against the peace and security of mankind.

21. The discussion in the Sixth Committee went beyond the limits of a purely legal question to touch upon the problem of international peace and security—sufficient evidence of the importance of the discussion. The question was certainly a legal one, but it was also a political one since it belonged to the structure of collective security. That was recognized in the fifth paragraph of the preamble to the joint draft resolution (A/C.6/L.209). It might perhaps have been preferable if, as at the fifth session, the question had been referred to the First Committee. Still the Sixth Committee was quite competent to deal with it.

22. The definition of aggression obviously had a place in the draft Code of Offences against the Peace and Security of Mankind, but it went far beyond its limited scope. The draft Code dealt with personal liability for offences under international law, which included aggression; it therefore regarded aggression from the point of view of international criminal jurisdiction in cases where aggression had indisputably been committed. The Committee on the other hand sought to find out in what circumstances aggression could be said to have taken place. It had to consider how a definition of aggression would affect the collective security system set up by the Charter. In that respect, the question of an international police force was obviously of capital importance. Accordingly the Committee was dealing with a problem that was both political and legal. It did not seem advisable to examine two different problems at the same time nor to make the study of a political problem subordinate to decisions taken on a problem of jurisdiction. The opposite course might perhaps be more logical. The Venezuelan representative (283rd meeting) had explained, that when the draft Code came up for consideration, the General Assembly could decide to include in it a definition of aggression, or else to make a separate definition or finally to say that it was not appropriate to define aggression. In the opinion of the Ecuadorean delegation, the General Assembly should, in order to take such a decision, take into account poli-

tical considerations by endeavouring to perfect the system of collective security and to reinforce the safeguards against aggression. On the other hand, where the Code of Offences against the Peace and Security of Mankind was concerned, legal considerations should have most weight.

23. The Ecuadorean delegation could not therefore vote in favour of paragraph 1 of the operative part of the joint draft resolution. On the other hand, it was in favour of the provisions of its paragraph 2, while at the same time it felt that governments should transmit their comments on the question of defining aggression independently of their comments on the draft Code.

24. Hence, if the question was to be settled in the light of its political implications, the General Assembly's aim in taking a decision on the definition of aggression ought to be inquired into. Clearly, the purpose of such a decision should be to strengthen peace and to increase the efficiency of the collective security system. That at least was his own delegation's object in studying that question.

25. His delegation had first considered whether from the point of view of the efficiency of the collective security system aggression should be defined at all. The Security Council was responsible, under Article 39 of the Charter, for determining the existence of aggression and for taking the necessary measures to maintain or restore peace. If the Security Council, owing to a lack of unanimity among its permanent members, was unable to perform its duty, the General Assembly, under resolution 377 (V), considered the matter and made recommendations to Member States for the adoption of collective measures which might include the use of armed force when necessary. Consequently, both the Security Council and the General Assembly were in the first place required to consider the matter and to determine whether a threat to the peace, a breach of the peace or an act of aggression existed.

26. The view had been expressed by some that it would be absurd to define the narrowest of the three—aggression—whereas the United Nations could take identical action to deal with any one of the three situations ascertained. Others had emphasized the fact that the measures taken were essentially police measures and that such measures alone counted in preventing aggression; later the judge could determine whether or not aggression existed and who had been responsible. The measures to be taken in the case of a threat to the peace, a breach of the peace or an act of aggression, respectively varied widely. In the first two cases, where peace was either threatened or broken as a result of misunderstandings or conflicting interests between two or more States, but where it was not possible to determine which was the aggressor and which the victim, the Security Council or the General Assembly would make every effort to reconcile the parties, to dispel the misunderstandings and, in the event of an outbreak of hostilities, to have them suspended. They would only use armed force to achieve that result as a last resort; however, recourse to force would not appear desirable since they would have to choose between two countries, both of which were perhaps acting in good faith and had found themselves involved in a violent conflict without any aggressive intentions. Accordingly the use of force seemed to be reserved for the third case, an act of aggression. Hence the most serious decision which it was possible to take within the collective security system depended on the act of aggression being determined first.

27. It had also been argued that the definition of acts of aggression might help the aggressor by hampering action on the part of the victim or of the competent organs of the United Nations and by offering the aggressor an opportunity of using the definition for criminal purposes. It had also been pointed out that any definition would inevitably be incomplete and that new cases which could not now be foreseen might arise. The combined formula, including a definition of aggression and also authorizing the competent organs to determine cases of aggression which were not covered by the definition, had met with the objection that it would lead to the establishment of two categories of acts of aggression: first, acts which could be immediately identified, and secondly, acts—which were undoubtedly the more dangerous—requiring careful consideration, in which case prompt action by the United Nations would be hampered.

28. All those objections seemed to originate in the same misgiving, the advantages that an aggressor would derive from the defining of aggression. But a combined formula, which either gave an abstract definition, defined typical acts of aggression or used both types of definition and also expressly recognized the power of the competent organs of the United Nations to determine any other act of aggression not covered by the definition, would meet the objection that any definition would be incomplete. With regard to the objection that that formula would establish two categories of acts of aggression, one defined in advance and the other consisting of new acts invented by the aggressor to evade the definition, it could be stated that the international community must regard cases in the latter category as the more serious. In such cases premeditation would be flagrant, since the State committing such acts would have deliberately sought to evade justice. A declaration to that effect might usefully be introduced in the definition.

29. Any definition, it was said, would contain terms the exact meaning of which would in turn have to be defined. But if an aggressor wanted to escape the consequences of his act he would not have to plead the inaccuracy of the terms of the definition; he could challenge competence, question the meaning of the "territory" of a State, "political independence", "use of force", "threats" and the other terms employed in the definition. It was also said that a definition of aggression might be used as a basis for false accusations against an innocent country. But that problem had absolutely nothing to do with the definition of aggression; it was one of verifying the facts. The aggressor invariably took advantage of the confused situation and the obscurity surrounding the rules applicable in judging him. By way of remedy, there were on the one hand the observation and investigation organs set up by the United Nations, which should be developed and perfected; on the other, it was essential that the organs responsible for determining the aggressor should be equipped with rules which were as unambiguous and exact as possible. The discussion proved the need for such rules. The various tests suggested showed that the situation was very serious.

30. Some representatives held that aggression could consist only of physical acts; others that there could be cases of aggression by omission. Some representatives had questioned the aggressive nature of a blockade while others, including his own delegation, regarded blockade as *per se* an act of aggression. Opinion was equally divided on indirect aggression, such as sending "volunteers", or economic aggression, the scope and dangers

of which had been emphasized by the representatives of Bolivia and Colombia. Such a situation could only be a source of satisfaction to an aggressor who knew that in the face of a specific act of aggression differences would again arise and hamper collective action. That proved that the United Nations must find an unambiguous test for acts of aggression.

31. Some representatives had said that a definition of aggression would impede the action taken by competent organs of the United Nations and so help the aggressor; they had also pointed out that such a definition might force those organs to determine the aggressor prematurely in cases when it might be better not to do so in the interests of international peace and security. It might be asked, however, whether that was desirable. The Greek representative had referred to the aggression against Greece and to the fact that neither the Security Council nor the General Assembly had named the aggressor. That was perhaps the crux of the objections to the definition of aggression. If that idea were accepted, any potential aggressor with sufficient armed forces and resources could embark on aggression in the knowledge, or at least in the hope, that the Security Council and the General Assembly would not condemn him and would be tempted to hush up his crime and negotiate peace, to the point even of sacrificing the victim or placing the victim on the same footing as the aggressor. Even if the possibility of sacrificing an innocent party to appease the aggressor were accepted, at least the fact should not be proclaimed in such a way as to give an all-clear signal to potential aggressors.

32. It had also been said that a definition of aggression would be useless as it would not be binding on the Security Council. Describing the procedure which had to be followed by the Security Council in order to determine the aggressor, he noted that the Council must, by examining the circumstances and motives, consider whether the act in question was justified or not. Paragraph 2 of the USSR draft resolution (A/C.6/L.208) specifically listed grounds which could not be pleaded in justification. Some delegations had discussed what might constitute sufficient justification for considering that an act which might physically appear to be an act of aggression should not be regarded as such. It could be said that, the material fact being recognized, there was a presumption of aggressive intention on the part of the country committing it, unless that country could prove otherwise. In any event, it rested with the competent organs and not with a State acting unilaterally to decide whether aggressive intention existed. When they discussed motives they were discussing the causes not the effects, of the act. It would always be difficult to decide what motives could be accepted as justifying an aggressive act, but it was possible to decide which could never be accepted as justification. The motives enumerated in paragraph 2 of the USSR draft resolution were in that second category.

33. To define aggression was certainly desirable; the question remained whether it was possible to define it. The work of the International Law Commission was merely a first and a most useful stage in a study which must be continued. The discussion in the Committee was also making a useful contribution. It would also be valuable to study the specific definitions contained in treaties now in force. Finally, the objections made with regard to the constructive draft resolutions submitted to the Committee should also be thoroughly examined. As things stood, his delegation was unable

to support any one of the draft resolutions. It regarded the Bolivian draft resolution (A/C.6/L.211) as interesting because it embodied a prohibition of indirect aggression and dealt with economic aggression as well as the threat of aggression. At the present stage of the discussion, it seemed that the constructive draft resolutions would not be put to the vote; if they were, the Ecuadorean delegation would vote in favour of certain specific passages or would decide to abstain, since it felt that further explanations were required on some points.

34. He hoped that those representatives who were opposed to defining aggression would agree that the question should be studied further. He thought that the establishment of an *ad hoc* Committee as proposed by the Colombian delegation in its amendment (A/C.6/L.214) to the joint draft resolution (A/C.6/L.209) would be a satisfactory solution.

35. Mr. ABDON (Iran) referred to the different opinions expressed in the Committee during the long and careful discussion on the question of defining aggression, an important problem which the International Law Commission had been unable to settle owing to lack of time. Some representatives considered that it was impossible to produce a complete definition and stressed the serious dangers of an incomplete one. Others thought that it was possible to find an exact definition of aggression on the basis of the enumeration contained in the USSR draft resolution. Others, again, thought that it was possible to define aggression *in abstracto*. Many delegations would prefer to combine the advantages of the analytical and synthetic systems. Lastly, some delegations believed that the question of defining aggression was to a certain extent bound up with the question of the draft Code of Offences against the Peace and Security of Mankind. They therefore recommended that, when governments had communicated their observations on both the draft Code and the question of defining aggression, the two matters should be studied simultaneously. His own delegation held that view; it considered that it was possible to describe aggression, even if not to define it logically, and it believed that it would be a mistake to be discouraged by the failure of the attempts made thus far. The problem had been tackled in the past twenty-five years, when States had not been prepared to accept the limitation of the right to wage a just war, a right which had been recognized until a recent date. By definition of aggression the Iranian delegation understood a description of an act of aggression which would place at the disposal of United Nations bodies and any judicial body the means of identifying it.

36. He did not share the Greek representative's view that aggression was a "natural notion". An act of aggression was composed of material elements which could be described. A description would be useful since it would make it possible to identify the aggressor and to take prompt action under the Charter. It would also serve the interests of the small and medium-sized Powers which were always the first victims of aggression. His delegation did not harbour the illusion that such a description could effectively prevent acts of aggression, since only the sanctions which might be applied could cause a potential aggressor to hesitate. It still remained a fact, however, that in the present international community, when certain Powers had a tendency to justify their actual aggression on political, economic and strategic grounds, a description of aggression could be of value to small Powers which had not sufficient strength and resources for their defence. It might indeed produce some

hesitation on the part of those who, by the threat of aggression if not by aggression itself, were intent upon undermining the resistance of peoples who wished to defend their political and economic independence.

37. With regard to the USSR draft resolution, the Iranian delegation, while recognizing that the enumeration which it contained was not exhaustive, believed that the draft represented a valuable contribution to international law. It attached particular importance to paragraph 2 of the draft; any definition of aggression should, indeed, state explicitly that aggression could not be justified by arguments of a political, strategic or economic nature, or by the other arguments enumerated in the paragraph. He mentioned some recent threats of aggression which it had been sought to justify on the grounds that the life and property of nationals of a foreign country had been in danger—an allegation which had, incidentally, been belied by events.

38. He did not believe that the enumeration set forth in the USSR draft resolution would be equivalent to a negation of international law or, as the United Kingdom representative (281st meeting) had claimed, that they virtually held out an invitation to countries to embark on certain acts contrary to international law by arming them with the certain knowledge that any armed retaliation would be immediately stigmatized as aggression. It appeared that the United Kingdom representative had been at great pains to gain acceptance for the proposition that armed retaliation would be authorized, for example, if its object was to continue the exploitation of the territory of a State which, under the Charter, had the right to be treated as a sovereign equal. If such was indeed the United Kingdom representative's view, Mr. Abdoh was strongly opposed to such a way of thinking which was contrary to all the principles of international law.

39. He also felt bound to refer to a number of other points in the United Kingdom representative's statement, in order to draw the latter's attention to the exact significance of his remarks. It had not been without some anxiety that he had heard the United Kingdom representative state that when, in any given case, an attempt was made to determine the aggressor, account must always be taken of the motives and circumstances, adding that, for example, deliberate invasion of the territory of a State with the object of conquering it clearly constituted aggression. One might wonder, indeed, whether it was to be understood by that that the invasion would constitute aggression only when it had been carried out with the object of conquest. No less fraught with significance was the statement that in cases where it was perfectly clear that aggression had occurred, it might be politic to refrain from actually naming the State concerned an aggressor. When it was remembered that the United Nations had the task of maintaining peace in keeping with justice and not in defiance of it, such an attitude was clearly indefensible.

40. On the other hand, he agreed with the United Kingdom view that the object of aggression was almost always to cause the victim to conform to the will of the aggressor, an aim which could be achieved just as certainly by means of subversion as by the use of physical force.

41. In brief, the Iranian delegation considered first that, although the International Law Commission had not succeeded in establishing a precise definition of aggression, it was nevertheless possible to define aggression; secondly, that that definition could serve as a guide to United Nations bodies and at the same time have

mandatory force for a judicial body to be established in the future.

42. Also, since the question of defining aggression was bound up with that of the draft Code of Offences against the Peace and Security of Mankind, the two questions should be studied concurrently. That did not mean that the General Assembly would have to give a final answer to both questions simultaneously; at its seventh session the General Assembly could either find a final solution for the two problems or, if it considered that the adoption of the draft Code was not called for, merely settle the question of defining aggression. If the two questions were considered simultaneously the solution of the problem of defining aggression would not be unduly delayed, as some delegations seemed to fear.

43. Finally, the Iranian delegation, while recognizing that the USSR draft resolution and the amendments to it constituted a valuable contribution to international law, was not for the moment in a position to support the draft or the amendments thereto. It believed that a serious effort to combine the analytical and synthetic methods would lead to the enunciation of a satisfactory definition of aggression.

44. Mr. SASTROAMIDJOJO (Indonesia) said that many of the observations which he had intended to make on the most important question on the Committee's agenda had already been made by previous speakers. He would therefore merely speak on a number of points which had not in his opinion been sufficiently stressed.

45. Three points of view had emerged during the general debate: first, that it was unnecessary to define aggression, either because an exact definition would be a legal impossibility or because it would be politically dangerous; secondly, that it was possible to define aggression by means of either an abstract formula or a list of acts of aggression; thirdly, that although it might be possible to reach a definition it would be wiser to postpone doing so until the international situation was more favourable.

46. As a young, under-developed and consequently weak country, Indonesia realized that it was more vulnerable than some other countries in case of attack. Indonesia, determined as it was to preserve its dearly-bought freedom and sovereignty, attached great importance to the question of defining aggression.

47. The Indonesian delegation did not believe that it was legally impossible to define aggression, by means either of an abstract formula or of a list of acts of aggression, or by a combination of the two methods, both of which, as had been pointed out, were used in municipal and international law to define legal terms. The task would not be easy, but it should not be assumed because previous efforts had been unsuccessful that it was impossible. Today's commonplaces would have seemed legally impossible in the nineteenth century, or even just before the First World War; the United Nations was a case in point. It was only through the goodwill and co-operation of all the Member States that the United Nations had been established. He agreed with the Burmese representative that only genuine co-operation between States could lead to a definition of aggression such as would be likely to prevent it. Efforts to work out a definition should proceed as part of the progressive development and codification of international law as defined in article 15 of the Statute of the International Law Commission.

48. It was regrettable that the International Law Commission's study should have dwelt on the *animus*

aggressionis rather than on the ultimate aims of aggression. The object of the aggressor, in the last analysis, was always to dominate the State which was attacked, to annex part of its territory, or at least to obtain a preponderant influence in its internal and foreign policy. In support of that assertion he quoted President Wilson's and Baker's commentaries on Article 10 of the Covenant of the League of Nations.³

49. That object, however, could be attained by what was commonly called "peaceful penetration" as well as by threats and the use of force. As the Netherlands representative had pointed out, with commendable frankness, a country could conquer another by "military" aggression, "economic" aggression or "ideological" aggression. History was full of instances of economic and ideological aggression, which were just as dangerous as military aggression. In fact, some of the members of the Committee had expressed the view that those forms of indirect aggression were more dangerous than a direct attack, since it was more difficult in such cases to distinguish between aggression and disinterested help to the victim, especially when the latter had not asked for help.

50. That being so, he did not agree with those representatives who considered that any definition of aggression should adhere closely to the terms of the Charter. The aggression spoken of in the Charter was always material aggression and no other form. The purposes and principles of the United Nations as laid down in the Charter were to maintain peace and to condemn the subjugation of one State by another, especially by means of aggression; he did not consider that to use the word "aggression" with a slightly different meaning to cover the various methods of subjection of one State to another would be inconsistent with the terms of the Charter.

51. It had been suggested that the solution of the question might be postponed until the General Assembly's next session; but he felt that the adoption at the fifth session of resolution 277 (V) on "Uniting for peace" and at the present session of those on methods to maintain international peace and security (A/L.26) made it necessary to find a solution during the current session. Moreover, while the state of international relations might improve by the seventh session it might also deteriorate, and the question of defining aggression was so important that its solution should not be made dependent on speculations concerning the probable international situation then.

52. Whatever form the definition took it should stress the ultimate aim of any aggression, irrespective of the means employed by the aggressor to accomplish his purposes. In that connexion, his delegation supported the Pakistani representative's suggestion to insert a provision relating to economic or other indirect forms of aggression into the resolution.

53. His delegation would therefore support any draft resolution or amendment which corresponded in general to the views he had just expressed, and it reserved the right to submit suitable amendments later in the discussion.

54. Mr. BERNSTEIN (Chile) requested that under rule 114 of the rules of procedure, he should be allowed to answer some remarks made by the Belgian representative at the 287th meeting.

³ See Oppenheim's *International Law*, 7th edition, edited by Lauterpacht, London, 1948, page 356.

55. The Belgian representative had expressed surprise at the assertion—and he had apparently been referring to the Chilean representative's statement—“that in the face of an armed threat the person threatened had to wait until the blow had fallen before he took action in self-defence”. He invited the Belgian representative to refer to the summary record of the 281st meeting which reproduced the text of the Chilean statement. It was there stated that the Chilean delegation “could not accept the suggestion that had been made that a State which believed itself threatened by another State could provoke war without being named as an aggressor”. Mr. Bernstein had added that under national penal law, which had been mentioned by way of analogy, “there was no penal code in any civilized country that authorized such self-defence of a preventive character. A person anticipating an injury could take precautions, but if he killed his opponent before being attacked he was a criminal”. Those were the exact words used at the meeting to which the Belgian representative had referred.

56. He quoted the relevant provisions of the Chilean, Netherlands, Italian, French and Polish (Code of 1932) penal codes in support of that statement. All those codes defined self-defence as an act dictated either by the actual need for self-defence or for the defence of another person, or prompted by a real or unjust act of violence, or by a sudden illegal attack, in short by an inchoate act. The Chilean penal code was even more strict, since it spoke of the reasonable need for the means used to repel the attack, and stated that there must not have been any provocation by the person pleading the excuse of self-defence. None of those codes justified an attack upon an individual merely on the grounds that he was thought to harbour aggressive intentions. The Belgian penal code, of which he quoted articles 416 and 417, was no exception and it was apparent from Belgian case-law that self-defence had been defined, in many cases, as presupposing an actual attack.

57. He did not wish on that point to enter into controversy with the Belgian representative, but he wished to repeat his earlier statement that it was the right and duty of an individual having reasons to fear an attack on his person to be prudent and to be prepared to defend himself; nevertheless, if he killed before being attacked he was a criminal. Similarly, in international relations, no State could justify recourse to violence against another State by arguing that it had suspected the latter of harbouring aggressive intentions.

58. Mr. VAN GLABBEKE (Belgium) in turn claimed the right under rule 114 of the rules of procedure to answer the Chilean representative.

59. The ideas developed in the Committee about self-defence were to be explained by its close relationship with the notion of aggression. As he himself had pointed out, as one of those notions was extended, the other must be restricted automatically. He was not sure whether the members of the Committee were in full agreement about the precise meaning to be attached to the term “self-defence”, on the one hand, and “aggression”, on the other, in municipal as well as in international law.

60. He was still surprised at the assertion that a person who was the victim of an armed attack should wait until a first shot was fired before using a weapon, and he continued to believe that, if such an idea were accepted, the right of self-defence would become illusory in many cases.

61. The various penal codes did, it was true, stipulate, that the lawful exercise of the right of self-defence had to be preceded by an attack, the beginning of an attack, an act of violence, actual necessity or similar events; but it should be known what exactly was meant by those terms. An individual could not be expected to wait to defend himself until the first shot was fired at him. As soon as an overt attack occurred, the person had the indisputable right to defend himself.

62. Contrary to the USSR representative's impression as voiced at the 288th meeting, and now recalled by the Chilean representative, Articles 416 and 417 of the Belgian code, which Mr. van Glabbeke had quoted in the course of his statement, referred to two very different cases.

63. Article 416 referred to the case where a person pointed a weapon at another, for example in a public thoroughfare. The person threatened was entitled to believe that the weapon was loaded, whether that was actually the case or not. From that moment he could rightfully feel he was defending himself and could use a loaded weapon if he had one readily at hand.

64. Article 417, on the other hand, referred to the case where a person, whether armed or unarmed, entered at night the private property of another, and so to speak crossed the boundary demarcating the other's territory (that was the point not dealt with in Article 416), an act which entitled the individual whose property was threatened to consider himself in a state of self-defence.

65. Likewise in international law, it could be considered that, once a direct threat to a State was evident from the signs of an impending attack, the State threatened was in a state of self-defence and the head of the State was justified in exercising the corresponding right.

- The meeting rose at 6.10 p.m.