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Chairman: Prince WAN WAITHAYAKON (Thailand).

Question of defining aggression: report by the Secretary-General (A/2162, A/2162/Add.1, A/2211) (continued)

[Item 54]*

1. Mr. KHOMAN (Thailand) said that, the question of defining aggression having been thoroughly studied by eminent jurists and government representatives at the time of the League of Nations and in the United Nations, he could not hope to offer any new solution; rather he would offer a few constructive comments.

2. One of the first questions that occurred to him was how the necessity for a definition of aggression could have arisen if it were true, as had been contended, that not only was aggression incapable of definition but that it would serve no purpose, and indeed that it would be an untimely and even dangerous effort to undertake to define it. The report of the Secretary-General (A/2211) made some attempt to answer that question when it said that the search for a definition of the concept of aggression had been initiated because it had been felt that such a definition would facilitate the application of the Covenant of the League of Nations and would help to develop the system of the Covenant, considered by certain Powers to be incomplete and inadequate. An examination of the relevant Articles of the Covenant revealed the close relationship between the concept of aggression and the system of collective security, the application of the latter being difficult, if not impossible, unless the elements, nature and extent of the former were known.

3. It was thus that the necessity for a definition had arisen in the days of the League of Nations, and a glance at Articles 1 and 39 of the United Nations Charter would show that the situation in that respect was no different in 1952, for it was equally necessary that the Security Council should know what the Charter meant by "acts of aggression" before it set into motion the mechanism of collective security provided for in Articles 41 to 46. That was the point

upon which there was such wide divergence of opinion, and the Secretary-General's report did not even attempt to indicate when and how the gap might be bridged.

4. It was quite understandable that jurists should consider that a definition of aggression was not only possible but also desirable, just as there were definitions of murder and larceny in criminal law. The fact that it had as yet proved impossible to obtain agreement on a generally accepted definition was simply a proof of the great difficulties which had been encountered; the existence of such difficulties should not lead to the conclusion that the best solution would be to leave it to the international bodies concerned to decide in each particular case whether an act committed was or was not an act of aggression. The absence of criteria to guide the decisions of such international bodies, together with an undue reliance upon the feelings of their members, entailed the risk of uncertainty, if no greater hazard. In saying that, he was not doubting the wisdom of international bodies but was simply pointing out that, just as it was natural for a judge to give his verdict in conformity with legal provisions, so was it natural for international bodies to base their decisions on predetermined criteria.

5. He was prepared to concede, however, that although aggression was a legal concept, any definition of it would in most cases be applicable to political entities endowed with sovereign rights and not to individuals subject to the laws and regulations of their own State. Moreover, the circumstances accompanying an act of aggression were likely to present much greater diversity and complexity than the acts of an individual. Hence, even if a satisfactory definition were agreed upon, it should not be applied with the same rigidity as were the internal laws of a State.

6. With regard to the form of the definition, his delegation felt that the combined type of definition, consisting of a general definition to which would be appended a list of major forms of aggression, would best serve the purpose. The general definition should cover all conceivable elements of aggression, so that, while the character and structure of aggression might

* Indicates the item number on the agenda of the General Assembly.

change with time, the general definition would continue to embody the essence of aggression. The illustrative list should mention only the generally recognized types of aggression, leaving the uncertain and secondary types to be decided upon in each case by the competent international organs, which should be allowed considerable latitude. By that method the disadvantages inherent in any automatic application of the definition would be avoided, and the international bodies concerned would be able to take all the attendant circumstances into consideration and to bear in mind the ultimate objectives of peace and the peaceful settlement of disputes.

7. That was the ideal, but its realization would undoubtedly meet with many difficulties—the finding of a satisfactory definition, the choice of its form, and the legal authority of the definition once it was adopted. Accordingly, the Committee should not press for a hasty solution; it would be better advised to recommend continued study of the question, with a view to arriving ultimately at a definition which lent itself to practical application. The Thai delegation would support any proposal on those lines.

8. Mr. SPIROPOULOS (Greece) said that the Greek delegation was prepared to co-operate in any attempt to draft a definition of aggression. Although, as Rapporteur of the International Law Commission, he had reached the conclusion that a definition of aggression was undesirable and impossible and had made that position clear at the sixth session of the General Assembly, yet, if the majority advocated a further attempt to arrive at a definition of aggression, the Greek delegation was prepared to support such action.

9. Obviously, a definition of aggression would need the support of a substantial majority if it was to have any value. The Secretary-General's report (A/2211) clearly indicated the extreme divergences of opinion on the definition of aggression and showed how difficult it would be to reconcile the various opinions and the conflicting interests in one general formula defining aggression. Resolution 599 (VI) of the General Assembly had stated that a definition of aggression was desirable and possible; however, though there was nothing objectionable in saying that a definition was desirable, the opinion that such a definition was possible might more appropriately have been expressed after attempts to arrive at a definition had been undertaken. It was significant that, after great efforts, the International Law Commission had reached the conclusion that a comprehensive definition was impossible.

10. He would, however, defer to the General Assembly's view that a definition of aggression was possible and noted that three types of definition might be contemplated: a general definition, an enumerative definition and a combined definition. Each type presented advantages and disadvantages which had repeatedly been analysed. His personal view was that a definition in general terms without any enumeration would serve no purpose and would merely worsen the situation.

11. Theoretically, enumeration seemed to present no problems. In practice, however, difficulties arose in deciding what specific acts should be regarded as con-

stituting aggression. The Politis definition based on the Litvinov definitions of 1933 listed a number of acts of aggression but would not apply in special circumstances, for example, the case of the thousands of "volunteers" from a third State who had enlisted in the armed forces of North Korea. Armed aggression of the conventional type was no longer a problem of primary concern; in recent years indirect aggression—for example, intervention in the internal or foreign affairs of another State, violation of a country's political integrity by subversive action, maintenance of a fifth column, ideological aggression and propaganda—had become prevalent and must be taken into consideration. The essential distinction between direct and indirect aggression was that the one implied the use of armed force while the other did not. The former connoted war in the accepted sense while the latter assumed the form of the "cold" war. While indirect aggression had existed to some extent and in somewhat different forms in the past, it was significant that until recently such aggression had generally been confined to a restricted area of the world involving no more than two or three States.

12. The first serious obstacle to the definition of aggression was to decide which of the diverse manifestations of the "cold" war should be included as elements constituting acts of aggression. In the light of the conflicting views presented in the report of the Secretary-General, a formula likely to be satisfactory to a substantial majority seemed virtually unattainable. For example, under paragraph 3 of the draft resolution submitted by the Bolivian delegation at the sixth session of the General Assembly¹ "unilateral action to deprive a State of the economic resources derived from the fair practice of international trade, or to endanger its basic economy," was to be considered as an act of aggression. In support, the Bolivian delegation had contended that, although States were legally equal, they were not economically equal, with the result that economically powerful nations could exert pressure on weaker States; it had gone so far as to argue that the imposition of an inequitable economic treaty constituted indirect aggression. With all due respect, Mr. Spiropoulos pointed out that such a notion of indirect aggression would leave almost any economic relationship open to attack.

13. A further and even more serious consideration was that any definition of aggression should be in keeping with the provisions of the Charter, with due consideration for the repercussions of such a definition on the Charter and on the United Nations. Two articles of the Charter were most directly and vitally affected. Article 39 would create no difficulty because it imposed no limitation on a definition of aggression. A conflict would, however, arise in connexion with Article 51, which expressly referred to "armed attack" and to the right of self-defence to resist it. In view of the "cold" war and the various forms of indirect and economic aggression, it became important to consider whether the right of self-defence could be invoked in situations where no armed attack had taken place. It was significant that, except for the Soviet bloc, no States favoured a definition of aggression limited to armed attack alone. It was almost universally felt that an

¹ See *Official Records of the General Assembly, Sixth Session, Annexes*, agenda item 49, document A/C.6/L.211.

effective definition of aggression had to cover the various forms of the "cold" war. He was, however, uncertain whether a heterogeneous definition covering both direct and indirect aggression could provide for the right of self-defence and could be drafted within the context of the Charter.

14. A definition restricted to armed attack, supplemented perhaps by a general formula permitting the competent international organ to take other elements into consideration in individual cases, would fail to satisfy the almost universal desire for a broader and more comprehensive definition. If Article 51 of the Charter were interpreted as authorizing the use of force to counteract indirect aggression, no problem would arise. At first sight, however, that interpretation did not seem possible and the Article seemed restricted to cases of armed attack. If it were held that the victim of indirect aggression did not have the right of self-defence, it could appeal to the Security Council, which would then decide, on the basis of Article 39, whether a threat to the peace or breach of the peace had occurred. The individual State would, however, have no right to act in self-defence. A final consideration was that ideological aggression and propaganda as well as other forms of indirect aggression, though serious, could hardly be treated on the same footing as armed attack.

15. Therefore, while his delegation felt that it was utopian to hope for a definition acceptable to a substantial majority, it would, if the majority decided to make the attempt, co-operate in the efforts to define aggression.

16. Mr. QUENTIN-BAXTER (New Zealand) said that the attempt to define aggression was in fact an attempt to deal in the abstract with the whole problem of the maintenance of international peace and security, which was the principal task of the United Nations. He did not doubt the importance of the attempt but he did question the advisability of pursuing the matter at that stage, since it seemed unlikely that the attempt would succeed. The representative of Greece, among others, had dwelt at length on the difficulties involved in the question of defining aggression and there was no need to add anything on that point. The discussion had been useful in that it had focused attention on the difficulties, but there was no indication that the Committee had come any nearer to formulating a definition which would receive a large measure of support. He therefore doubted whether any new committee of experts would be able to make much progress.

17. The problem of maintaining international peace and security was extremely complicated, but in practice it should not be too difficult for the competent organ to take a decision, provided that it could adequately assess all the facts of the case. It had been on that understanding that the San Francisco Conference had decided not to include a definition of aggression in the Charter, and a similar idea had prevailed when the charters of the two international military tribunals had been drafted. In concrete cases, it was not too difficult to decide when aggression had taken place, and none of the definitions suggested would really have been of any help in practice.

18. Some countries seemed to hope that a definition of aggression would serve as an effective guarantee of their own peace and security, but unfortunately it seemed unlikely that those hopes would be fulfilled in the immediate future. The speeches made by the members of the USSR bloc were in themselves an adequate illustration of that point. The definition that they recommended had been included in conventions to which the USSR was a party, and there was no reason to believe that it had served the interests of the other parties to those conventions. During the discussion on the question of an international criminal court, most delegations, while recognizing the very serious obstacles, had stated that the establishment of such a court was a development which they hoped might materialize in the future. Only the representatives in the USSR bloc had been unable to accept the idea, even in principle, that States might have to cease to be the judges in their own courts.

19. In the political field, therefore, he felt that there could not be any abstract or general solution to the problem of maintaining international peace and security and that that purpose would not even be furthered by the existence of a definition of aggression. In international criminal law, it seemed that there was little value in adopting positive rules of law until States were prepared at least to work towards a situation in which they could allow the international community to be the judge.

20. Mr. GREEN (United States of America) said that at an earlier (331st) meeting the USSR representative had referred to the series of non-aggression treaties which the USSR had concluded with a number of countries before the Second World War and had alleged that since those treaties had contained a definition of aggression proved it was possible and practicable to define aggression. It was sufficient, however, to consider the fate of those countries since they had concluded the treaties in question to realize that, far from being of assistance to them, the definition of aggression had helped only the aggressor, to wit the USSR.

21. The USSR representative had spoken also of an alleged desire on the part of the United States Government to direct Nazi-German aggression eastward and of its support of Japanese and German expansionist plans. Such had never been the desire of the United States Government, although the 1939 pact between the USSR and Nazi Germany had indeed suggested a willingness on the part of the USSR Government to direct German aggression westward.

22. He would remind the USSR representative that when the USSR had been attacked by Germany in June 1941, the United States Government had immediately started to supply the USSR with military material, the value of which had amounted by the end of the war to a total of \$11,000 million. The United States had been proud to take that stand against aggression and later to participate with all its strength in the defeat of the Axis Powers. It had hoped that, on emerging from the terrible ordeal of war, the USSR would co-operate with other nations in strengthening peace and building up a system of collective security against aggression. Yet today, unfortunately, the United Nations was forced to deal with the ag-

gression in North Korea without the co-operation of the USSR.

23. The USSR representative had said that a definition of aggression could be an instrument of peace in the hands of the Security Council, which, guided by such a definition, would decide each case in the light of the circumstances. Mr. Green would remind him that when the authorities and forces of North Korea had ignored the Security Council's appeal to cease their attack upon the Republic of Korea, the Council had recommended that Members of the United Nations should assist the Republic of Korea. The United Nations had subsequently made history in its defence of the Republic of Korea. There was no need to remind the Committee of the part the USSR had played in that great undertaking for collective security.

24. In conclusion, he stressed that the difficulties of achieving collective security had not been due to the absence of a definition of aggression such as that proposed by the USSR representative. They had arisen from political, rather than legal, causes. If Member States genuinely endeavoured to live up to the standards of conduct prescribed by the United Nations Charter and to refrain from the threat or use of force in any way that was inconsistent with the Charter, and if all worked towards the preparation and operation of a disarmament programme which would provide a safeguard against any successful aggression, a great step would be taken towards the establishment of collective security and general peace.

25. Mr. SALAMANCA FIGUEROA (Bolivia) said that ever since the San Francisco Conference his delegation had maintained the need for a definition of aggression. He quoted the draft resolution incorporating such a definition which his delegation had submitted at the sixth session of the Assembly² and said that that text still reflected his delegation's attitude. For the discussions during the current session, the Committee should take as its starting point the provisions of the Charter, the records of previous discussions on the subject, the excellent report prepared by the Secretariat (A/2211) and the documents submitted by various members of the International Law Commission. It had become clear that the Committee could not at that stage embark upon a detailed study of the problem and he would therefore confine his remarks to a consideration of the desirability and possibility of defining aggression.

26. The existence of a system of collective security could not in itself prevent aggression and, of course, neither could the existence of a definition. However, a definition would at least make it clear who was the aggressor in a given case. It would thus prevent mutual recriminations and would, to a certain extent, act as a deterrent. Like a definition of homicide, a definition of aggression would serve a dual purpose: it would deter potential aggressors because they would know in advance what acts were regarded as constituting aggression, and it would also make it possible to hold the aggressor responsible for his acts subsequently.

27. He recalled that the proposal to define aggression in the Charter had been rejected by only a small number of votes at San Francisco. His delegation had

never argued that a definition could cover every conceivable case, but the mere fact that there would be exceptions was no justification for stating that the rule itself was incapable of definition. The existing position was quite illogical. The Charter demanded a definition and no definition existed. It was as though a country which provided in its constitution for the protection of life and property were at the same time to fail to define the offences against the person and property. It was true, as the representative of Greece had stated, that the cases of aggression were extremely varied, but then so were the criminal offences defined in the internal law of every country.

28. The necessary elements for a definition were all contained in the Charter, and in fact the provisions of the Charter demanded a definition of aggression if they were really to be put into effect. There was no need to introduce the definition by an amendment to the Charter, or even to include it in an international convention, although the latter course would be desirable. The definition could be incorporated in a resolution of the General Assembly and, as such, it would become part of international law and be binding upon Member States and upon the organs of the United Nations.

29. There were always three influences at work in the United Nations: the influence of power politics, the purely legal approach and the concept of the United Nations as an idea upheld by world public opinion. Those three influences would all play their part in the preparation of a definition of aggression. If a definition existed, the Security Council would have to take the legal as well as the political aspects into account in naming the aggressor. Any other solution would mean that the principles of law and justice were being subordinated to political expediency in a manner contrary to the Charter. In order to prevent the abuse of the veto, the Assembly itself might determine who was the aggressor in a given case. That was no more than a suggestion, but there clearly were possibilities of devising some procedure whereby the United Nations could name the aggressor.

30. The existence of a definition would protect the small Powers because it would enable them to pin the responsibility on the aggressor. It would of course give no physical protection, but it would provide some legal protection and the absence of a definition simply meant that aggression could be committed with impunity.

31. Some had argued that it was impossible to define aggression and that it was better to have no definition than to have an incomplete definition. The diversity of views in the Committee simply showed that the aim was difficult; it did not prove that it was impossible. An examination of the work of the International Law Commission showed that it was in fact possible to define aggression. The proposals submitted by Messrs. Córdova, Alfaro, Amado, Yepes and Scelle all contained possibilities of a satisfactory solution. Those proposals were based largely on the provisions of the Charter and were logical in their construction, a quality which was missing from most of the enumerative definitions proposed. Some representatives had argued that a general definition would be unsatisfactory because it would be too abstract, but all definitions

² *Ibid.*

were, by their very nature, a mixture of the abstract and the concrete. For example, a definition of homicide would be abstract in that it must cover all possible cases of homicide, but it would also list certain specific cases and thus, to a certain extent, it would also be concrete. A possible solution would be to combine the general and enumerative methods and, although it had been argued that a combined definition would simply have all the disadvantages of the other two methods, it would surely also have all their advantages.

32. The United Nations had at its disposal all the necessary material to enable it to prepare a satisfactory definition for the present period of history. Naturally it could not cover all possible future developments, but the essential concept would always remain the same, so that the definition would always retain its validity. He was convinced that it was both possible and necessary to define aggression. It would in fact be quite illogical to state, on the one hand, that it was impossible to define aggression and, on the other, to suggest that further study should be given to the possibility of establishing an international criminal jurisdiction. However, in the existing state of international tension, it would perhaps be inadvisable to press the question of a definition of aggression, particularly as a simple majority would not suffice to make the definition effective.

33. He would therefore be prepared to accept a proposal providing for the postponement of the question for the time being, pending further study.

34. Mr. RECHENDORF (Denmark) recalled that the question of defining aggression, with a view to determining beforehand which State would be considered responsible in the event of an outbreak of hostilities and to deterring States from resorting to war, had arisen after the close of the First World War and had been the subject of serious study by the League of Nations. It had been discussed at length during the sixth session of the General Assembly of the United Nations, on the basis of an extensive study and special reports made by the International Law Commission, but it had proved impossible to reach agreement, owing to the diversity of opinions con-

cerning not only the necessity and value but also the form of such a definition.

35. At that time the Danish delegation had expressed doubts concerning the possibility of finding a satisfactory solution and had thought it desirable that the question should be submitted to governments for further examination. In its comments on the draft Code of Offences against the Peace and Security of Mankind and the question of defining aggression (A/2162, section 4), the Danish Government had stated that the proposals for a definition of aggression submitted up to that time could not be considered satisfactory and that it doubted whether it was possible or desirable, at least for the time being, to formulate any such definition.

36. After hearing the lucid exposition just given by the Greek representative, in which he had declared that any modern definition of aggression must of necessity take into consideration the various forms of "cold war" and the question of self-defence in that respect, he felt more than ever convinced of the futility of attempting to reach an agreement on the subject for the time being.

37. The Danish delegation therefore shared the views of those delegations that had maintained that it would be wiser not to recommend any definition of aggression at the moment. It would support any proposal to that effect.

38. The CHAIRMAN said he proposed to close the list of speakers on the item. He explained that the closure would apply only to the general debate and would not affect the right to reply or to discuss any specific proposals.

After a procedural discussion in which the representatives of the USSR, the United States of America, the Ukrainian SSR, Mexico and France took part, the Chairman put to the vote his proposal to close the list of speakers.

The Committee decided, by 20 votes to 11, with 17 abstentions, that the list of speakers should not be closed.

The meeting rose at 5.25 p.m.