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CONTENTS

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. PETREN (Sweden) paid a tribute to the Secretary-General's report (A/2211), which had greatly facilitated the work of the Committee.

2. It was clear that the definition of aggression only assumed real importance within a system of collective security, based on the principle that an organization of States would intervene against the aggressor, in accordance with objective criteria. In the normal type of treaty or alliance, each of the allies decided for itself whether there was indeed a *casus foederis*. Such formulas as "unprovoked aggression" were often used to stress the fact that the obligation to render assistance would not operate according to simply automatic rules. Generally speaking, a treaty of alliance meant that the parties were already agreed whence the danger was likely to come and who was the common foe. There was therefore no need for specific rules regarding the naming of the aggressor in case of conflict; by choosing the expression "unprovoked aggression", however, the signatories wished to reserve their position in the event of one of them, without the agreement of the others, following an imprudent and aggressive policy and thus provoking the common enemy.

3. When, however, there was a security organization which was supposed to apply sanctions against the aggressor in the event of an aggression against any State member of the organization, the situation was quite different. It was not then a question of a community of interests among a group of States with regard to a potential enemy identifiable in advance. The obligation to take part in the sanctions might arise even if certain member States were not directly concerned in the action or were exposing themselves to incalculable dangers by doing so. The specific definition of the *casus foederis* was then of the greatest importance. It was not possible, or right, that all the member States should be bound simply by the decision of one of their number which might be engaged in hostilities.

4. In reviewing past wars, it was the custom for historians to express their opinion concerning the State which was responsible for any given war: that they did by establishing a chain of events which they could impute to one of the parties, whereupon they qualified that State as the aggressor. When, however, an organization of States had to intervene quickly against a State which had committed a breach of the peace, it was not possible to study the history of the chain of events that led to the outbreak of war; the organization had to be able to decide promptly on the basis of objective and easily identifiable criteria. It might well be that the aggressor would be less guilty than appeared at first sight, having been subjected to a series of annoyances that finally drove it to aggressive action; nevertheless, if security was to be maintained, all acts of aggression, whatever the psychological or moral reason for them, had to be suppressed. Only when peace had been restored and sentence pronounced against the aggressor could the latter's motives be taken into consideration.

5. In the opinion of the Swedish delegation, therefore, the League of Nations Permanent Advisory Commission for Military, Naval and Air Questions had been mistaken when, in 1923, it had based its comments on the definition of aggression on the aforementioned historic method, stating that the violation of a frontier would not necessarily constitute an aggression and that for the purpose of determining aggression such symptoms as the aggressive political attitude or the industrial mobilization of either of the parties had to be taken into account.

6. Another special committee of the League of Nations, set up by the League's Temporary Mixed Commission for the Reduction of Armaments, had kept to the same line of thought but had brought in some new ideas. It had agreed that military invasion of a territory should in principle be regarded as aggression, but had suggested that in certain cases the Council of the League of Nations should request the conflicting parties to withdraw their forces to a given line, whether or not hostilities had actually broken out. The Council could

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

then warn the parties that if either rejected that proposal, that rejection might be regarded as one of the factors to be taken into account in naming the aggressor. Another factor was to be the refusal of a party to accept the Council's proposal that the dispute should be submitted to arbitration.

7. The concept of aggression had been the subject of much consideration by the Assembly of the League of Nations in connexion with the Geneva Protocol of 1924. The relevant report stated that the definition of aggression was a relatively easy matter, for the aggressor would be the State which resorted to force in violation of the engagements contracted by it, but that it was more difficult to ascertain the existence of aggression, for the question which party had initiated hostilities was one upon which opinions might differ. The Protocol had finally established a series of presumptions, which could be rejected only by a unanimous decision of the Council. The most important of those was that, in the event of the outbreak of hostilities, a party which refused to submit the dispute to arbitration or to any other procedure laid down in a treaty in force at the time would be deemed to be the aggressor. In the event of the Council being unable to name the aggressor and the presumptions of the Protocol also failing to do so, the Council was to enjoin an armistice, the terms of which were to be fixed by a two-thirds majority.

8. At the Disarmament Conference in 1933, the USSR had submitted a proposal for the definition of aggression,[1] based on the idea that the State which was the first to take up arms against another would be considered the aggressor. It was emphasized that prior events would not be accepted as justification of the aggression. The USSR proposal, with some amendments, had been recommended by a Committee of seventeen States, including France, the USSR, the United Kingdom and the United States. That Committee had also considered the question of determining aggression and, on the basis of a Belgian proposal, had recommended that a list should be prepared of the diplomats and military attachés accredited to each signatory State, so that if the need arose a committee of five persons could be chosen from the list for the purpose of determining possible acts of aggression.

9. The USSR proposal of 1933, like the USSR draft resolution before the Sixth Committee (A/C.6/L.264), was based upon a correct idea. Aggression being a crime subject to penalties, any definition of it had to cover all acts of military violence against another State which led to the outbreak of war. The Swedish delegation considered, however, that there should be no attempt to draw up an exclusive enumeration of such acts of violence but that it would be sufficient to mention a few typical cases of aggression. Furthermore, the definition should make it clear that it referred to unlawful aggression; that had been the position in the Geneva Protocol, which had spoken of resort to force in violation of contracted obligations. Another method would be to declare aggression to be allowed in exceptional cases, if it was part of a collective defence action or of enforcement action by the United Nations.

10. The Swedish delegation agreed with the French delegation that the appropriate place for a definition of aggression on those lines would be in a general code of offences against peace and humanity. Such a code would serve to emphasize the fact that aggression was not the only offence against peace; for instance, the threat of aggression might itself amount to such an offence. The code could also qualify as an offence against peace the refusal of any State to comply with a recommendation of the Security Council to withdraw its forces behind a specified line, either before or after the outbreak of hostilities.

11. At the moment, however, any definition of aggression would be of little practical value. Although a definition of aggression which included a list—though not an exhaustive list—of different types of acts of aggression might be a guide to the Security Council, it had to be remembered that the use of the veto could reduce or even nullify the practical value of any such definition. Even if the clearest and most specific rules were drawn up for the termination of aggression and that type of decision was not subject to the veto, there would still be no guarantee that an aggressor would abandon his aggressive plans.

12. The experience of the last few years was sufficient to prove that. Despite the existence of a Treaty of Non-Aggression[2] between the USSR and Finland and the fact that Finland had acceded to the Convention for the Definition of Aggression which the USSR had concluded in London in 1933 with the Baltic Republics and other States,[3] the incident that had occurred on the Russian-Finnish frontier in 1939 had led to an outbreak of hostilities between those two countries. The Finnish Government's proposal that the procedure prescribed in the Treaty should be applied in order to determine whether the Treaty had been violated had been refused by the USSR Government, which had denounced the Treaty, although it was to have been in force until 1945. It was clear that in that case the machinery provided by the rules for the definition and determination of aggression had been unable to function.

13. Another example was the war in Korea. The Security Council had asked the two parties to withdraw their forces behind the frontier, but North Korea had not replied and had continued hostilities. The absence of any reply was illuminating, and suggested that the idea of drawing conclusions from such a negative attitude had its uses; nevertheless the war had continued.

14. Those examples were sufficient to show how little could be expected from any definition of aggression at the moment. Such a definition could be included in a Code of Offences against the Peace and Security of Mankind, but since the study of that code had been postponed, the Swedish delegation shared the views of the delegations which felt that consideration of the question of defining aggression should be postponed.

15. Mr. AMADO (Brazil) said it was impossible to add anything new to the discussion of the question of defining aggression, particularly in view of the state-

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

[2] See *League of Nations, Treaty Series,* vol. CLVII, No. 3613, Finland and Union of Soviet Socialist Republics, Treaty of Non-Aggression and Pacific Settlement of Disputes, signed at Helsinki, January 21st, 1932.

[3] See *League of Nations, Treaty Series,* vol. CXLVII, No. 3391; vol. CXLVIII, Nos. 3405 and 3414.

ments of the representatives of Sweden and Venezuela, who had explained the situation admirably. Ever since the question of defining aggression had first been broached at the fifth session of the General Assembly, there had been little more than constant repetition of an essentially sterile and unproductive discussion. Despite eloquent attempts to prove the desirability and possibility of a definition of aggression, the proponents of such a definition were not really convincing in their arguments.

16. Commenting on the Secretary-General's report (A/2211), he said that during the third session of the International Law Commission, he had submitted a memorandum (A/CN.4/L.6 and Corr. 1) to the effect that he had led the opposition against the abandonment of any attempt to define aggression, as suggested (A/CN.4/44) by the Special Rapporteur, on the draft Code of Offences against the Peace and Security of Mankind, who had accepted the view expressed at the London Conference by the Soviet Union representative, General Nikitchenko. In the memorandum he had recalled his position that the concept of aggressive war was an incomprehensible enigma. He had concluded that either an attempt must be made to define aggressive war or the expression should be deleted from the draft Code of Offences against the Peace and Security of Mankind. A suggestion he had made for a possible definition of an aggressive war had been favourably received in the International Law Commission and had been embodied in a preliminary text of the draft Code.[4]

17. He wished to make it clear that his memorandum had been submitted solely in the interests of facilitating the work of the International Law Commission, but from the very beginning he had expressed doubts regarding the possibility of formulating an exhaustive definition of aggression and had expressed no enthusiasm for the project. Moreover it had been his opinion that a definition on the basis of enumeration might produce unfortunate and dangerous results and would in essence constitute a limitation of the powers of the Security Council which, under Article 39 of the Charter, was empowered to determine the existence of any act of aggression. He continued to hold that earlier position, particularly in the light of the discussion at the current session.

18. Referring to paragraph 472 of the Secretary-General's report (A/2211) he wished to make it clear that the text he had suggested had actually been submitted two months before the definitions of Mr. Cordova and Mr. Alfaro, and that therefore the order of presentation in the Secretariat text was misleading.

19. Referring to the Brazilian delegation's statement of position at the sixth session of the General Assembly,[5] he stressed his delegation's opposition to the system of enumerating acts of aggression because the failure to include subtle, unusual or indirect acts constituting aggression might have disastrous consequences. Furthermore, the USSR definition based on the determination of aggression by the violation of the national territory of a State represented a rather doubtful criterion. It was also significant that the advocates of a definition by enumeration were not always in agreement on the acts which should be included in their list.

20. Besides the disadvantages to which attention had already been drawn, a definition of aggression by enumeration would present the further difficulty of requiring additional definitions of such terms as self-defence, violation of territory, frontier incidents and others. The objection would be even more relevant in the event of an abstract definition.

21. Not only could the champions of an enumerative definition not agree what acts should constitute aggression, but in many cases a given country changed its views repeatedly in the light of events. Moreover new forms of aggression such as indirect aggression or economic aggression were subjects of increasing concern to many States, which rightly considered that the problem of aggression was complex and constantly changing. It was therefore felt that efforts should be directed at finding a system of preventing aggression rather than classifying its elusive forms.

22. It was significant that most international agreements providing protection against aggression or accepting the principle of non-aggression avoided definitions of an act of aggression or made no reference to such acts. The Inter-American Treaty of Reciprocal Assistance of 1947 had arrived at a definition of aggression because that treaty applied to a homogeneous group of States.

23. It was useless to attempt to find a purely abstract definition of aggression in general terms. Such a project would merely serve to reproduce what was already contained in the United Nations Charter.

24. Obviously, what the international community needed most urgently was an effective system of collective security to counter aggression if it should occur. Lack of a definition could not be regarded as the basis for weaknesses in the system of collective security. The United Nations Charter contained sufficiently clear statements of purposes and principles and adequate provisions in Chapters VI and VII. From the legal point of view, the Charter was weak not because it lacked an explicit definition of aggression but because of Article 27, paragraph 3, which could operate in favour of the aggressor within the framework of Chapter VII. That legal weakness had been an essential concession to secure the ratification of the Charter and could not be remedied by the adoption of a definition of aggression.

25. While the General Assembly and the Security Council could not disregard international law in their decisions and should seek to adhere to its principles, they were not tribunals but were primarily concerned with eliminating threats to the peace and averting breaches of the peace. In that capacity, they had considerable discretion and were not required in all cases of breach of the peace to determine the aggressor. Article 39 did not automatically apply in all conflicts. The primary goal was to avoid armed conflict or to bring hostilities to a speedy end. It would therefore be unwise to tie the hands of the General Assembly and the Security Council by a rigid definition of aggression which would not meet all situations.

26. He wished to reserve his delegation's position on the definition of aggression in the context of the draft

[4] See *Official Records of the General Assembly, Sixth Session, Supplement No. 9*, paras. 40 and 52.

[5] *Ibid., Sixth Session, Sixth Committee*, 284th meeting.

Code of Offences against the Peace and Security of Mankind, which was to be discussed at a subsequent session of the General Assembly. He wished, however, to express general agreement with a statement in the report of the International Law Commission on its third session (A/1858) to the effect that it was considered inadvisable to attempt to produce an exhaustive list of acts constituting aggression.

27. The Charter of the United Nations was sufficiently comprehensive and complete, and no improvement was possible at the moment. If the system of collective security contemplated in the Charter was to operate normally, a definition of aggression should not be adopted by the General Assembly, for it would bind the Security Council and the General Assembly to a rigid definition which would inevitably be imperfect, vague and incomplete.

28. Accordingly, in the light of the letter and the spirit of the Charter, international political conditions and the difficulties involved in defining aggression, the Brazilian delegation would support any proposal providing that the General Assembly should for the time being refrain from adopting a definition of aggression.

29. Mr. ROBERTS (Union of South Africa) said that the discussion, learned and illuminating as it had been, had shown the difficulty, if not impossibility of defining aggression. Aggression was hateful; but definitions of aggression, particularly long ones, were dangerous.

30. The leader of the USSR delegation, in his forceful speech in favour of definition, had himself recognized the impossibility of arriving at an infallible, scientific definition of the concept. The USSR proposal was a case in point; it seemed to exclude a number of important political and economic acts which might be aggressive in nature, while listing some acts such as the landing or leading of its land, sea or air forces inside the boundaries of another State, without permission, which might in certain circumstances not constitute aggression.

31. There were many concepts in law which, though not scientifically definable, were nevertheless readily understood, which were commonly applied by the courts and on which there was general agreement as regards the fundamental principles. While in exceptional circumstances arbitrary decisions were inevitable, the courts could be relied upon to determine the issue by the application of these principles in each case. Aggression was one of those concepts. Criminal injury had been variously described in Roman-Dutch law, but the descriptions were clear and well understood, even though they were general and contained a number of expressions which in themselves were difficult to define. Such a description could well be applied *mutatis mutandis* to aggression. One might say that aggression was a wrongful act designedly done by one State in contempt of another, which infringed the latter's right of safety and security, and that the court would treat as aggression any such infringement which was of a reprehensible character and which, in the interests of peace, should be punished; or that every State was entitled, by the mere fact of its being a State, to immunity from wrongs to its safety and freedom, and from damage to its property or rights of ownership by other States and that the violation without legal justification, e.g., self-defence, of any such right was punishable.

32. On the whole, his delegation felt that it was premature to attempt any definition until a code of offences against the peace and security of mankind, and a court to enforce it, were in existence. If a definition was, however, found desirable, it should be as brief and general as possible. He suggested that the Committee might take an early vote on whether any definition at all was to be adopted.

33. Mr. MOROZOV (Union of Soviet Socialist Republics) said that preceding speakers had resorted to distortion of historical fact in an attempt to oppose the definition of aggression. That was undoubtedly the reason for the slanderous allegations concerning the conflict between Finland and the USSR in 1939 and concerning the present conflict in Korea, and for the misinterpretation of the statement made by the USSR representative at the London Conference in 1945. That statement had already been misquoted at the sixth session of the General Assembly, and the USSR delegation had shown at the time[6] that the USSR representative to the London Conference had not opposed definition of aggression as such, but had felt that such a definition had no place in the chamber of a tribunal whose sole duty it was to punish war criminals in pursuance of existing definitions.

34. Mr. PETREN (Sweden), replying briefly, said that he had not commented on USSR policy but, in weighing the arguments for and against definition, had simply recalled a dispute in which one party had wished to resort to machinery in force at the time for the peaceful settlement of disputes, while the other party had refused.

The meeting rose at 12.5 p.m.

[6] *Ibid., Sixth Session, Sixth Committee,* 288th meeting.

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