United Nations

GENERAL ASSEMBLY

SEVENTH SESSION

Official Records

SIXTH COMMITTEE, 334th

MEETING

Tuesday, 25 November 1952, at 10.40 a.m.

Headquarters, New York

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. ROBERTS (Union of South Africa), speaking on a point of order, drew attention to a mistake in the provisional summary record of the 332nd meeting (A/C.6/SR.332), where it dealt with his remarks on the USSR draft resolution (A/C.6/L.264). He explained that, when stating that the draft seemed to exclude certain important acts of aggression and to mention other acts which did not constitute aggression, he had given as an example sub-paragraph (*d*) of paragraph 1 of the operative part, whereas the summary record mistakenly referred to sub-paragraph (*c*) of that paragraph.

2. Mr. BARTOS (Yugoslavia) emphasized the particular importance which his delegation attached to the question of defining aggression, by reason of its legal, and particularly its political, implications. The entry into force of the Charter had greatly altered the position, for war was thenceforth barred under public international law, whereas at the time of the League of Nations the restrictions on offensive wars had simply taken the form of contractual arrangements. That was why no decisive conclusions could be drawn from examples taken from that period. Nowadays all war and all aggression was forbidden, with the exception of hostilities arising out of the exercise of individual or collective self-defence or as a result of collective measures taken against existing aggression. It was therefore necessary to define aggression so that the United Nations could carry out its basic task, which was to strive for peace and against aggression. The Members of the United Nations did not all seem to hold the same views regarding the notion of aggression, but it was better to have even an incomplete definition rather than to run the risk of being faced with a case of aggression before any previous agreement had been reached on the notion of aggression.

3. Some States claimed that the references to aggression in the Charter were sufficient because aggression was a natural notion. He did not share that view, nor did he consider that the notion of aggression was an inherent one. The representatives of those same States maintained that a definition of aggression would be contrary to the Charter, and that it should be left to the organs responsible for the application of the Charter to decide in each case whether or not aggression had taken place. In his opinion, the use of those two arguments led to an absurd situation, because it means opposing the interpretation of the Charter while at the same time it was admitted that the Charter needed interpreting. Aggression was a legal concept because, without a law, there could be no violation of the legal order and no penalties for such violations. The States which objected to any definition of aggression were therefore acting from political motives, just as were those in favour of a definition. The opponents of a definition did not wish the competent organs of the United Nations to be bound to regard certain acts as constituting aggression, while the supporters of a definition did not wish to allow those organs to consider anything as constituting aggression except the acts enumerated in their definition. The one group wished to remain free to designate any aggressive act as aggression, without, however, committing themselves in advance, while the other, in contrast to its philosophy that the evolution of history depended upon material potentialities and was always taking on new forms, claimed that they had always striven against aggression and confined themselves to submitting an exhaustive list of all the possible cases of aggression. The latter group of States would rather run the risk of omitting certain cases than of not mentioning any at all.

4. That was to make a mockery of the principle *nullum crimen sine lege,* and it would only impede the struggle against aggression if the organs of the United Nations had to confine themselves to punishing certain specified forms of aggression. If the definition were construed as exhaustive, any acts not included would not be liable to the penalties applicable to aggression, and if a broad interpretation were adopted there was the risk of a

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

controversy which might lead to the use of the veto. Such a definition would rule out the formation of precedents, although case-law was a recognized part of modern law. An exhaustive list would be appropriate only if the aim were to restrict the intervention of the competent organs, whereas what was really wanted was a total campaign against aggression.

5. He pointed out that an important case of aggression was not included in the list contained in the draft resolution before the Committee (A/C.6/L.264). He was referring to the case of a treaty providing for the partition of the territory of a third Power as a reward for the neutrality of one of the parties to the treaty in the event of an attack on that third Power by the other party. That was an obvious case of participation in aggression, and Hitler had concluded several such treaties. Other cases had also been omitted; for example, the opening of sluice gates in order to flood a country and so weaken its military and economic potential; the supply of armaments and funds to a State to help it in committing aggression; the illegal occupation of a territory allegedly in order to protect a line of defence; the organization of elections or other measures in occupied territory; blocking the means of communication of a State which depended on exports for its livelihood; and the infiltration of agents into the organs of another State with the object of changing its political régime. Such cases could be more serious than armed attack and they constituted virtual aggression.

6. The two extreme and conflicting points of view expressed in the Committee would both tend to hamper the action of the organs of the United Nations and to prevent the formulation of a general and complete definition of aggression. But a definition of aggression was necessary, for public opinion should be enlisted in the cause of peace, even against governments. It was the Committee's duty to take such a decision, even if the decision did not alter the course of history.

7. Some delegations argued that a definition of aggression would be dangerous for the countries which were usually the victims of aggression, because it would have the effect of disarming them morally. On the contrary, such a definition would strengthen the resistance against injustice and would create an obligation to undertake collective action against it. The definition would not be simply of academic and propaganda value. Although of course it could only take the form of a recommendation which would not be binding upon States, the Security Council and the General Assembly would certainly attach very great importance to it and it would have an influence on the jurisprudence of the United Nations. The idea of a definition should not be rejected simply because it would require the concurrence of the Security Council. The initiative should come from the General Assembly; otherwise the Security Council might never be persuaded to accept the definition. The efforts to draft a definition should not be stopped because of the failure of similar attempts at San Francisco, for many new plans did not succeed at the first attempt.

8. For all those reasons the Yugoslav delegation still considered that a definition of aggression was necessary; its attitude as reflected in paragraph 481 of the Secretary-General's report (A/2211) had not changed since the sixth session. The definition should be made up of three parts: the first, synthetic part would define aggression on the basis of the Charter, along the lines of the definition proposed by Professor Yepes to the International Law Commission;[1] the second part would, by way of illustration, enumerate acts of aggression, and the third part would state that the examples contained in the second part were not intended to be exhaustive and that the competent organs of the United Nations were authorized to consider other cases coming within the general notion of aggression. The combination of those three parts would make it possible to prepare a complete definition which would be sufficiently flexible and satisfactory in every case. It would satisfy public opinion and would serve as a promise to threatened States.

9. Some delegations argued that a definition of aggression should be accompanied by definitions of a breach of the peace and a threat to the peace, but he saw no reason to define those two concepts. It was better to define only aggression than to have no definition at all. With regard to the objection that, as aggression was an offence against peace and mankind, it could only be defined within the framework of a code covering such offences, he pointed out that the Convention on Genocide had been adopted independently of such a code, so that aggression could equally well be defined independently. In reply to the objection that a definition of aggression should be preceded by the establishment of an international criminal court, he remarked that the struggle against aggression should prevail over every other consideration. Accordingly he was prepared to support the suggestion made by the representative of Iran that a committee should be set up to prepare a draft definition of aggression for submission to the General Assembly at its eighth session.

10. Mr. FERRER VIEYRA (Argentina), after thanking the Secretariat for providing the Committee with very valuable documentary material on the question under discussion, stated his delegation's position.

11. In past discussions on that item, the Sixth Committee had dealt almost exclusively with armed aggression. While, of course, that classic form of aggression was of fundamental importance for the collective security of Member States and while its study would contribute to the development of international law, it should not be forgotten that aggression was a still-evolving legal concept, that it was constantly assuming new forms—which was especially true of the past twenty years or so—and that it was even more important, for the maintenance of international peace and security, to study more particularly unarmed aggression and indirect aggression. States had to be prevented from using forces just as powerful as armed forces to influence the political or economic policies of other States in their favour. The Argentine delegation, for its part, would oppose the adoption of any definition which reduced the concept of aggression to its traditional connotation of armed aggression.

12. It was an elementary principle of legal practice not to define concepts which were still evolving, since any definition of such concepts might soon reveal gaps.

[1] See *Official Records of the General Assembly, Sixth Session, Supplement No. 9*, para. 42.

That danger was particularly serious in the case of aggression, since a definition would permit States to commit acts which though not prohibited under that definition nevertheless constituted aggression. The danger was unavoidable whatever the type of definition adopted, since it was impossible to foresee all the forms which aggression might take. Even in the case of armed aggression, which was clearly the most easily definable form of aggression, it was virtually impossible to reach agreement, because the same terms were not always used with the same meaning.

13. The Secretary-General's report stated that aggression had been defined in the inter-American legal system, a statement which a number of delegations had repeated in the course of the discussion. He wished to make it clear that, in the Argentine delegation's view, no inter-American instrument had defined what the American States understood by aggression and, in that connexion, he reviewed the work accomplished by the various Pan-American conferences which had been held in the past twenty years. The Inter-American Conference for the Maintenance of Peace, held at Buenos Aires in 1936, had failed to define the concept of aggression and had appointed a Committee of Experts to study the question; at Lima two years later, the Eighth International Conference of American States, realizing that agreement was impossible, referred the various drafts before it to the International Conference of Jurists at Rio de Janeiro for study along with other related drafts as part of a general continental programme of legal studies. The question was again considered at Mexico in 1945 by the Inter-American Conference on Problems of War and Peace, and at Rio de Janeiro in 1947, when the Inter-American Treaty of Reciprocal Assistance was approved.

14. Contrary to those who believed that article 9 of that Treaty contained a definition of aggression, the Argentine delegation considered that that article merely cited two examples of aggression. Moreover, no one at Rio de Janeiro had claimed that those two examples constituted a definition of aggression. In support of that statement, he read out a passage from the report of the Rapporteur of the committee which had studied the question at that Conference, and a statement by the Secretary-General of the Conference, clearly establishing that it had not been possible to arrive at a satisfactory definition of aggression and that the Conference had had to confine itself to including in article 9 of the Treaty a description of certain acts of aggression which could be regarded as typical.

15. The Argentine delegation attached particular importance to economic aggression and political aggression. It agreed with the Cuban delegation that any definition which did not embrace economic aggression would have no value. It was with that idea in mind that at the fourth session of the General Assembly, when the draft Declaration on the Rights and Duties of States was under consideration, the Argentine delegation had proposed a draft article which made it the duty of every State to refrain from applying coercive economic or political measures designed to force the sovereign will of another State and to obtain from that State advantages of any kind. His delegation considered that it would be interesting to link the question of defining aggression with that of the Declaration on the Rights and Duties of States, which embraced the questions of individual and collective self-defence against armed aggression, of the use of force against the territorial integrity or political independence of States, and of intervention in case of civil war.

16. Furthermore, any study should relate in particular to two points: first, the relationship between the concept of aggression and the principle of non-intervention in the domestic affairs of States, and secondly, the subjective elements of aggression. In many cases intervention constituted an act of aggression and it was the sovereign right of the State victim of an act of aggression, whether armed, unarmed or indirect, to qualify that act as aggressive.

17. Finally, the Argentine delegation, while recognizing the General Assembly's competence in the matter, would oppose the adoption at the current session of any resolution which sought to define aggression. It would do so because of the difficulties of the task, the purely relative legal value of a definition, the dangers to which it might give rise and, more particularly, the fact that only one aspect of the question had so far been considered.

18. Mr. ROLING (Netherlands) regretted that the calm atmosphere in which the Sixth Committee liked to consider the legal problems referred to it had been disturbed by Mr. Vyshinsky's violent statement at the 331st meeting. That statement, however, had had the advantage of playing into the hands of its opponents, since the Committee had been able to realize the dangers of adopting the USSR delegation's arguments.

19. In his efforts to bring out the historical significance of the Litvinov formula of 1933, Mr. Vyshinsky had stated that that formula had been incorporated in a large number of treaties which formed the basis for friendly relations between the USSR and other States. Reviewing the eleven treaties in question, he (Mr. Röling) noted that three Baltic States no longer existed as independent nations, and that Finland and Poland had been attacked by USSR armed forces and, like Romania, had had to cede part of their territory to the USSR. Leaving aside Yugoslavia, which had succeeded in freeing itself from the grip of the USSR, it was to be noted that Poland, Czechoslovakia and Romania belonged to the USSR bloc and could therefore not be regarded as free nations. There was certainly no reason to boast of the results obtained in seven of the eleven cases mentioned.

20. His reason for dwelling on Mr. Vyshinsky's statement was that the Latin-American States, which had themselves adopted formulae somewhat similar to the Litvinov formula, might have been tempted to believe that a definition which was useful and inoffensive in their inter-American relations would be just as useful and inoffensive in international relations. Now that those States had realized how the truth could be distorted and had heard from Mr. Vyshinsky's own lips a studiedly false account of past events, the Netherlands delegation hoped that they would appreciate the danger of defining aggression by an enumeration which might be misconstrued in the future. To those delegations which, like the Chilean, Colombian and Dominican delegations, said they were prepared to abide in the international sphere by the position they had adopted

in regional matters, he would point out that what was an excellent rule in regional relations based on mutual confidence might have disastrous results in the present state of international relations.

21. The Netherlands delegation considered that a distinction should be made between the two objects the General Assembly had had in mind in calling, under resolution 599 (VI), for a definition of aggression. The Assembly's object had been, first, to contribute to the maintenance of international peace and security by formulating a definition for the guidance of the competent organs of the United Nations and secondly, to promote the development of international law by providing directives for the judges called upon to try persons guilty of international crimes. Quite clearly, a guide intended for politicians differed fundamentally from one intended for jurists: the first would contain a legal definition which, without being automatically applicable, would nevertheless provide guidance as to the decision to be taken; in the second, political concepts would inevitably have to be taken into consideration. It was therefore necessary to decide whether what was wanted was a legal definition for politicians or a political definition for jurists.

22. Considering the question from the point of view of the development of international criminal law, the Netherlands Government had proposed a formula (A/2162, section 10, observations on article 2, paragraph 1) according to which the use of force in pursuance of a decision or recommendation by a competent organ of the United Nations should not be held to constitute aggression. Needless to say, such a definition, which had been intended for inclusion in an international penal code for use by judges, would be of no value to the competent organs of the United Nations. As the drafting of a code of offences against the peace and security of mankind was no longer on the Committee's agenda, it was pointless to continue the study of the formula suggested by the Netherlands.

23. The principal purpose of a definition was, of course, that it should serve as a guide for the competent organs of the United Nations, but beyond all doubt a General Assembly resolution containing such a definition would not be binding on those organs. Hence it might be asked what would be the usefulness of a definition of that kind. It would admittedly contribute to the development of international law, but it would not create new rules of law which could be cited against the Security Council or the General Assembly.

24. Those wishing to define aggression with the object of guiding the Security Council and the General Assembly meant to eliminate any arbitrary element from the decisions of those organs. Apart from the fact that the Nürnberg Judgment had held that, according to the Charter, only wars of aggression and not acts of aggression constituted crimes, it should be noted that even if agreement were reached on a definition covering acts of aggression, the Security Council would, under Article 39 of the Charter, remain entirely free to take decisions and make recommendations relating to threats to the peace and breaches of the peace. A similar distinction between threats to the peace, breaches of the peace and acts of aggression was made in resolution 377 (V) of the General Assembly, entitled "Uniting for peace", so that the General Assembly could still, even if it had a definition of aggression, recommend collective measures in the event of threats to the peace or breaches of the peace.

25. Those considerations made it clear that, instead of helping to achieve the desired purpose, a definition of aggression might prove extremely dangerous because it would be a valuable weapon in the hands of future aggressors in the execution of their sinister designs. For that reason, although convinced of the importance of the development of international law as a means of preserving peace, the Netherlands Government was, for the time being, opposed to any definition of aggression. It had no objection, however, to the appointment of a committee to work between sessions of the Assembly, provided that its terms of reference were limited to a study of the legal consequences of a definition and the relationship between the concept of aggression and other concepts such as threat to the peace, breach of the peace and others, which were referred to in the Charter and other instruments of the United Nations.

26. Mr. FITZMAURICE (United Kingdom) said that the USSR representative had accused him of exaggeration and distortion in his description of the Soviet Union's position prior to the Second World War. Mr. Fitzmaurice read an extract from a statement made by Mr. Molotov on 31 October 1939, after the declaration of war and after the USSR and Germany had partitioned Poland. Having referred with relish to the speedy collapse of Poland after the attack, first of the German army and then of the Red army, Mr. Molotov had gone on to say that in the previous few months the meaning of the concepts of aggression and aggressor had changed. Whereas at the end of October 1939, Germany was striving for an early conclusion of the war (Mr. Molotov had continued), Great Britain and France did not want to restore peace, sought excuses for continuing the war and had declared something in the nature of an ideological crusade against Germany on the basis of a senseless and criminal pretext. The roles had thus been reversed. Mr. Fitzmaurice considered that that quotation cleared him of the charges levelled against him by the USSR representative.

27. Mr. CORTINA (Cuba) congratulated the Secretariat on its methodical and comprehensive report on the question of defining aggression (A/2211).

28. It was natural that the United Nations should attempt to define aggression, the most serious crime against that international peace and security which it was the primary responsibility of the United Nations to maintain. According to resolution 599 (VI) a definition of aggression was possible and desirable. It therefore only remained for the Committee to decide whether that definition was advisable and, if so, to specify how it should be worked out.

29. The delegations, anxious to discuss the problem from the legal and technical points of view, and to eschew the political polemics which had been the theme of several recent interventions, might wonder whether a definition was not actually more essential because the possibilities of aggression were more real, just as in domestic criminal law, legal provisions could often be traced to the existence or the fear of certain offences. He considered that a definition of aggression

was advisable. At the very least, it would serve to awaken the conscience of the world.

30. Nevertheless, hasty action should be avoided. Three courses were open to the Committee: first, the direct method, to submit to the General Assembly a draft resolution containing a definition of aggression. If it decided to adopt that method, the Committee would not lack material: the work of the League of Nations, the Soviet Union draft of 1933, amended by the Committee headed by Mr. Politis, the United States draft of 1945, the work of the International Law Commission, the drafts submitted by Colombia and Bolivia, the Charter of the Organization of American States, supplemented by the Treaty of Rio de Janeiro of 1947, and the report of the Secretary-General (A/2211). Owing to the complexity of the problem and the lack of time, the direct method was not practical. A second possibility would be to adopt a slower method and refer the question to an *ad hoc* committee or to the International Law Commission. The Sixth Committee might, however, reach an impasse in defining the terms of reference of the body to which the question would be referred. There then remained the method of submitting to the General Assembly a draft resolution containing specific directives regarding the form and content of a definition of aggression. In that way the Committee would not be evading its responsibilities; instead it would be doing its duty.

31. The Cuban delegation considered that a definition of aggression should be drafted in the light of the international agencies which would have to apply it, so that it could be integrated into the international machinery as a whole. Generally, aggression was preceded by preparatory acts. If those acts were reported at the proper time, it would be possible to halt the aggression itself. Some speakers had referred to preventive war based on self-defence and held that a chronological system of determining the aggressor might be unjust and dangerous. They forgot that acts preparatory to aggression could always be reported and also that there was nothing to prevent the production of evidence to rebut a presumption of agression.

32. He considered that the definition of aggression should include the following elements: (*a*) a comprehensive general definition of the type proposed by Mr. Alfaro; (*b*) an enumeration of obvious acts of aggression, not to be exhaustive; (*c*) an express reference to indirect aggression, including economic aggression; (*d*) it would in general have to be flexible enough to enable the competent organs to take account of situations of fact, and yet precise enough to exclude any possibility of arbitrary decision; (*e*) it should allow for self-defence, within its proper sphere, in keeping with the experience in municipal law; (*f*) it should proclaim the legitimacy of collective action taken under the provisions of the Charter.

33. It was not, in his view, impossible, by a combination of existing drafts, to arrive at a definition which would unite all those elements. Such a formula would not always constitute a "red light" for deterring aggression but it would none the less be an "amber light", serving as a warning to the potential aggressor.

34. He wanted to stress, in conclusion, that indirect aggression in its economic form was perhaps more dangerous—because more insidious—than armed aggression. Indirect aggression consisted of the use of pressure in some form or other with the object of obtaining illegitimate concessions from a people by seriously impairing its national integrity. Economic aggression of that nature ranked on a par with the act of fostering subversive activities. It would not be right to claim that because the idea was novel it could hardly be included in the general terms of a definition. Through the evolution of economic machinery States were becoming constantly more interdependent. The growing part played by the system of the controlled economy greatly facilitated economic aggression. Lastly, the special characteristics of economic aggression would allow it to be included in a definition without the danger of interference with legitimate national interests. Article 16 of the Charter of the Organization of American States showed that such a definition was possible. If international law regarded the blockade as an act of aggression, economic aggression, which constituted a virtual blockade, should certainly be treated likewise.

35. To sum up, the Cuban delegation, whose attitude had remained unchanged since the fifth session, considered that the definition of aggression would be valuable, possible, necessary and timely, and it expressed the hope that the Committee would compromise and succeed in devising a satisfactory formula.

36. Mr. SPIROPOULOS (Greece) wished to clear up a point arising out of an exchange of views that had taken place at the 332nd meeting between the Brazilian and the USSR representatives regarding a passage in his report to the International Law Commission at its second session (A/CN.4/25). He quoted an extract from the report (pages 25-27) in order to re-establish the facts; it was stated that the United States had proposed a definition of aggression at the London Conference of 1945 for insertion into the Nürnberg Charter and that the USSR representative, General Nikitchenko, had opposed it. He, as Rapporteur, had had before him a proposal to insert a definition of aggression into the draft Code of Offences against the Peace and Security of Mankind. He had found himself in a similar position to that of General Nikitchenko in London, and for the same reasons had come to the same conclusion. He added that he would not stress retrospective considerations since only the present views of delegations were important.

37. Mr. LACHS (Poland) said that the United Kingdom and the Netherlands, which had twisted the facts in referring to the history of Poland and the situation now existing there, were disqualified by their record as colonial Powers to set themselves up as judges of the degree of freedom enjoyed by another country. Surely no one would continue to deny that the Second World War had been the result of the Munich policy, the policy of appeasement and collaboration with the aggressor. On the eve of hostilities the United Kingdom had been ready to agree to new concessions at the expense of Poland. German aggression against Poland had been the outcome of the policy of the western nations. It would be a travesty of the truth to deny that fact. Furthermore, Poland was no longer a poor and weak country standing alone. It was now a happy, free and strong nation

38. Mr. PETRZELKA (Czechoslovakia) noted that the opponents of the USSR draft resolution (A/C.6/L.264) had to resort to political attacks because one by one their technical and legal arguments had been completely demolished. The whole Czechoslovak people would always stand side by side with its liberator, the Soviet Union. He thanked the USSR delegation for having put forward a draft resolution containing an appropriate and effective definition of aggression.

39. The CHAIRMAN announced his intention of closing the list of speakers for the general discussion.

40. Mr. MOROZOV (Union of Soviet Socialist Republics) objected to the closure of the list. The Committee had made enough progress to make it unnecessary to deprive delegations of the chance of considering at leisure whether they should take the floor on some future occasion.

41. The CHAIRMAN said he was thinking only of closing the list of speakers in the general debate; apart from that delegations would still be free to speak later. It seemed to him that a full exchange of views had taken place and that the list might be closed.

42. Mr. QUENTIN-BAXTER (New Zealand) proposed that a final date should be set for the submission of draft resolutions.

43. After an exchange of views in which Mr. GREEN (United States of America), Mr. CASTANEDA (Mexico), Mr. EL-TANAMLI (Egypt), Mr. MOLINO (Panama) and Mr. ROBERTS (Union of South Africa) took part, Mr. TARAZI (Syria), seconded by Mr. ABDOH (Iran), moved the adjournment of the meeting.

44. The CHAIRMAN said that a decision would be taken on the closing of the list at the beginning of the afternoon meeting.

The meeting rose at 1.20 p.m.

Printed in U.S.A.

M—87092—January 1953—2,125