

GENERAL
ASSEMBLY

TWELFTH SESSION

Official Records

SIXTH COMMITTEE 530th
MEETINGWednesday, 6 November 1957,
at 10.50 a.m.

NEW YORK

CONTENTS

	Page
Agenda item 54:	
Question of defining aggression: report of the Special Committee (continued)	93

Chairman: Mr. Santiago PEREZ PEREZ (Venezuela).

AGENDA ITEM 54

Question of defining aggression: report of the Special Committee (A/3574; A/C.6/L.399, A/C.6/L.401 to 403) (continued)

1. Mr. TREJOS (Costa Rica) said that, after seven years of endeavour, the General Assembly was still as far as ever from a definition of aggression. Its failure was not due to any inability to agree on the type of definition which should be adopted; there were deeper and more serious reasons. Actually, the impasse was due to disagreement on the object of the discussion. While some wanted to define aggression *per se*, others strenuously argued that aggression covered all possible forms of intervention. Some delegations held, rightly he thought, that aggression was essentially an armed attack, or the use of armed force by one State against another for some other purpose than the exercise of the natural right of individual or collective self-defence. Other delegations, however, claimed that any interference by one State in the internal or external affairs of another State constituted aggression, and they spoke of indirect aggression, economic aggression, and ideological aggression, which were not really acts of aggression but acts of interference in the affairs of another State, which was not the same thing. Both in the Sixth Committee and in the Special Committee, ideas concerning the notion to be defined had been confused. That was the main reason for the failure of the General Assembly's work. Every act of aggression was an act of intervention, but not every act of intervention was aggression. To confuse the two was to confuse the genus and the species. The problem, therefore, had been badly presented, and until that mistake had been acknowledged it would be idle to allow for more time, to try to prepare fresh proposals or even to appoint more special committees. Certainly there was no lack of preparatory work. The real reason for the impasse was that some delegations wanted the definition to include two notions which, although related, were nonetheless separate and distinct. Even if another special committee should succeed in reaching agreement on a single text, the General Assembly would be unable to accept it.

2. The Costa Rica delegation had come to the conclusion that it was absolutely impossible to reach any general agreement. It was not sufficient to muster a majority; what was needed was a formula which would

win the support of opposing groups. A definition of aggression would only be useful and in conformity with General Assembly resolution 688 (VII) in so far as it received the support of countries or groups of countries which regarded each other as potential enemies. At the moment, however, such a meeting of minds seemed unattainable. The fault certainly did not lie with the Sixth Committee, which had spared no efforts to find a solution. A generally acceptable definition could not materialize, because the question, which had been studied from a purely legal point of view, had political overtones. The same difficulty would crop up in any attempt to define other notions. For example, it would be impossible in the United Nations to arrive at a satisfactory definition of democracy, for the interpretation of the word as accepted in countries like Costa Rica was irreconcilable with the interpretation given by the Governments of the so-called peoples' democracies. Nevertheless, his delegation was still in favour of a definition of aggression, although it was convinced that it was impossible to agree on a definition within the framework of the United Nations. The Organization's prestige would not suffer if the impossibility were frankly recognized, but it would suffer if discussion were prolonged indefinitely on a question which was incapable of solution. It would be better to concentrate either on a general definition of the various forms of intervention or on a declaration of the rights and duties of States.

3. Mr. LOPEZ HERRERA (Venezuela) said that the Venezuelan delegation remained faithful to the point of view which it had expressed in the Sixth Committee (413th meeting) at the ninth session: at the stage of development reached in international law and international relations, it would be premature to adopt any definitions. The position of the Venezuelan delegation was based on several considerations.

4. Firstly, the Sixth Committee had attempted to construct a foolproof definition of aggression, forgetting that aggression was a juridical notion. But institutions predated the efforts of jurists; the function of jurists was not to create institutions but rather to explain the essence of each institution. Aggression had existed before the first non-aggression pact had been drawn up; it had been realized that that attitude was open to criticism from a higher point of view, and for that reason the attempt had been made to disguise aggression as self-defence. A definition in legal terms could not be evolved overnight. Even after centuries of effort some fundamental notions of law still defied definition.

5. Secondly, the question with which the Sixth Committee was concerned was complicated by the political factor. It had been said that, in order to reach agreement on the definition of aggression, the members of the Sixth Committee would have to regard the problem from an exclusively legal point of view and forget

politics, but such an attitude was neither possible nor desirable. He personally had never believed in jurists who worked in a vacuum for a utopian world. A jurist should keep both feet on the ground, know what he wanted, and not forget the interests for which he was responsible. Incidentally, that was why some delegations wished to include what they called economic aggression and political aggression in the definition, while others considered it absolutely necessary that a definition of aggression should deal with the case of a State which diverted the natural course of a river bordering on or passing through several countries. All those positions were obviously dictated by political considerations. That being so, it was hardly possible to devise a formula which would satisfy even the majority of those States represented in the Sixth Committee.

6. Lastly, work on an objective and satisfactory definition had to proceed in an atmosphere of calm, a condition which was not fulfilled in a divided world, characterized by mutual distrust.

7. The Venezuelan delegation thought that, whatever their particular positions might be, all delegations agreed that it was not possible, at the current session of the General Assembly, to accomplish what the Special Committee, despite its excellent work, had been unable to accomplish.

8. At the same time, however, he took the view that there was no reason why the study of the question should not continue. Accordingly, the Venezuelan delegation had associated itself with several Latin American delegations and the delegation of the Philippines in submitting a draft resolution (A/C.6/L.403), which proposed that the item should be held over until the fourteenth session of the General Assembly.

9. Mr. QUENTIN-BAXTER (New Zealand) said that, while the Committee had not approached its declared objective of defining aggression, the discussion had been valuable. The Sixth Committee had taken note that the provisions of the Charter were essentially sound, but that the goals of the Organization would always be in jeopardy until the system of collective security envisaged by the founders of the Charter had been established. There was general recognition that no definition could be of service unless it commanded the support of the vast majority of Member States, and virtual unanimity among the Great Powers. The excellent report of the Special Committee (A/3574), and the discussion in the Sixth Committee, had shown that there was no such consensus of opinion.

10. The articles of the Charter enshrined every advance mankind had made towards the outlawry of war. The law was clear, but it could be applied only with co-operation among the Great Powers. The logic of history, the language of the Charter, the necessities of an international community threatened by man's destructive power, all demanded that the Security Council should be able to fulfil its role; but that pre-supposed active good faith and goodwill, factors which eluded any definition.

11. The functions assumed by the General Assembly under the "Uniting for peace" resolution (resolution 377 (V)) were a response to that situation, and many delegations believed that a definition of aggression might also play a constructive role. Yet the Soviet definition (A/C.6/L.399) placed full reliance on the

Security Council, and took no account of the Assembly's role. A definition of aggression could not cure the defect in the Security Council's power to act, and must tend to obscure the existence of the defect. Thus, in the absence of an effective system of collective security, a definition of aggression could only create a dangerous illusion. As other representatives had said, the emphasis should be on mediation and conciliation, not on condemnation and punishment.

12. It would also be dangerous to deprive the term "aggression" of its grave and recognizable character, by including nebulous notions of economic and ideological wrongdoing. Under such a system, any international economic or ideological dispute which was at all serious would automatically give rise to charges of aggression. Equally, the meaning of the term should not be circumscribed or over-simplified; and that would be the consequence of adopting the Soviet test of the "first act" in the context of the Soviet definition. It was, of course, essential to determine which party had provoked the conflict, inasmuch as the right of self-defence hinged on the provocation. Yet in most cases it was not easy to establish the facts, and it would be extremely arbitrary to apply the criterion of the "first act" to events which seemed to fall most clearly within one of the categories specifically enumerated in the Soviet definition. Besides, the rigidity inherent in any enumeration was per se open to serious objections.

13. In effect, the Soviet draft gave a partial definition of one element in Article 39 of the Charter; but the operation of the Article did not depend on the isolation of that element. At the same time the Soviet definition, which in some respects exceeded the scope of Article 39, tended to impose on the Security Council a particular method of diagnosing the existence of aggression. If the Security Council were to accept such a limitation of its discretion, it would be the less able to arrive at a just evaluation of the complex factors distinguishing the innocent from the guilty party, especially in cases of military conflict.

14. He had spoken principally about the Soviet draft because it focused attention on the main problems. However, the New Zealand delegation did not share the confidence of some delegations in the value of a mixed definition.

15. In the opinion of his delegation, discussion of the question should not be resumed unless and until a substantial number of Member States modified their attitude.

16. Mr. PATHAK (India) said that in any discussion concerning the definition of aggression every aspect of the problem should be considered. His delegation would have refrained from making any comment on the hypothetical case, referred to by the Pakistan representative (522nd meeting, para.34) of an act interfering with the flow of irrigation water in his country, if that representative had not added that Pakistan's neighbours would appreciate the reasons for his country's legitimate apprehensions. If that was an allusion to India, then India firmly rejected the insinuation. It was common knowledge that India had accepted the proposals submitted to the two countries by the International Bank for Reconstruction and Development, and Pakistan knew very well that its apprehensions were groundless.

17. As the Indian delegation had said (520th meeting,

para.48) the time was not ripe for working out a definition of aggression. However, he would like to offer one comment on the draft resolutions before the Committee. Apparently it was being proposed that acts should be deemed to constitute aggression if declared to be aggressive by an international organ. In the view of the Indian delegation, that was tantamount to vesting those organs with legislative authority. Actually, however, under Article 1, paragraph 1, of the Charter, the adjustment or settlement of international disputes or situations which might lead to a breach of the peace should be brought about "in conformity with the principles of justice and international law". The competent organs of the United Nations should therefore apply the law as it stood and not create it. Their functions were defined in the Charter; those functions could not be broadened, nor could the organs in question be authorized to refrain from performing them.

18. The representative of El Salvador had said (515th meeting, para.13) that the victim of an aggression was the whole international community, which had joined together to maintain international peace and security. That was presumably why, under the provisions of the Charter, the Security Council could not disregard cases of aggression. Clearly, the Security Council could not renounce the functions vested in it.

19. Mr. BHUTTO (Pakistan), replying to the representative of India, observed that there was no contradiction between the contention that for the time being it was neither possible nor desirable to define aggression and the view that, if the majority of the delegations favoured a definition of aggression, the violation of the rights of riparian States should be referred to in that definition as a form of economic aggression.

20. Inasmuch as the question of the rights of India and Pakistan over waterways flowing through both countries was the subject of negotiations, he would not dwell on the point. At the same time, however, he wished to stress that the question was not hypothetical but real, and one with which his Government was genuinely concerned.

21. Mr. LIMA (El Salvador) said that, in order to dispel the doubts expressed by some delegations, he wished to state his Government's position in greater detail.

22. His delegation had proposed a definition of aggression (515th meeting) which satisfied the needs of the United Nations as an entity distinct from the States which composed its membership. Its intention had been to give tangible expression to the idea contained in General Assembly resolution 599 (VI), and to formulate a definition for the guidance of the competent United Nations organs in order to enable them to perform more efficiently their functions under the Charter. From the comments on his delegation's proposal, he gathered that the delegations were not in agreement as to the objective sought, in other words on the function of a definition of aggression.

23. In that connexion, he said that the delegations which had taken part in the debate could be divided into four groups.

24. The first group consisted of the delegations which wanted aggression to be defined in terms which would regulate the exercise of the right of self-defence under Article 51 of the Charter. In the view of those delegations, directives should be formulated not for the

benefit of the competent organs of the United Nations but for the States exercising their right of self-defence before the Security Council intervened. Apart from being fraught with danger, such a definition would not be in keeping with the General Assembly's wish that the definition should facilitate the task of the United Nations organs, not offer potential aggressors a pretext for their actions.

25. The second group consisted of the delegations which accepted the Soviet draft resolution (A/C.6/L.399) or similar proposals, the purpose of which was to regulate relations between States. Those delegations started from the premise that aggression was prohibited, and proceeded to enumerate the acts which should be deemed to constitute aggression. If, however, a State should commit one of the acts enumerated, it would not be the function of the United Nations to declare it aggressive, for it was not empowered to do so under the Charter, and, as pointed out by the representatives of Uruguay, Norway and the Netherlands among others, the Security Council would intervene under Article 39, even if the act did not constitute aggression, since a breach of the peace or a threat to the peace would have occurred. An enumeration such as that contained in the Soviet draft would not give guidance to the competent organs of the United Nations, but would, in the hands of the States parties to a dispute, be an instrument permitting them to aggravate international tension. If that group of delegations believed that the purpose of the definition was to regulate relations between States, it was unnecessary, for the same objective could be achieved, without any of the risks inherent in defining particular acts as aggression *a priori*, by convening a conference of plenipotentiaries which would declare such acts unlawful.

26. The third group included the delegations which wanted aggression to be defined so that the guilty parties might be punished. Theirs was the idea furthest removed from the Assembly's intentions. Aggression was, of course, an international crime, but in the formulation of directives for the guidance of the competent organs of the United Nations, the criminal law aspect had to be disregarded, because the United Nations was not a court qualified to impose penalties. Different considerations entered into the drafting of a code of offences against the peace and security of mankind: it was in the latter case that the criminal law aspect of aggression should be taken into consideration.

27. The fourth and last group consisted of the delegations which considered that the definition of aggression should serve as guidance for the competent United Nations organs. His own delegation, like the delegations of the United Kingdom and the United States, belonged to that group, even though the latter two delegations differed from his own in thinking that a definition was unnecessary.

28. His delegation believed that the notion of aggression from the point of view of the United Nations was different from the notion of aggression considered from the standpoint of the opposing States. For example, an unprovoked armed attack by one State against another State unquestionably constituted an act of aggression as between the two States; but vis-à-vis the United Nations, taken as an entity distinct from the States concerned, it constituted not an act of aggression but a dispute capable of endangering international peace and security, and therefore one in which action by the

Security Council was justified. Such an armed attack was of concern to the United Nations in so far only as the Organization had to fulfil its assigned function of ensuring the maintenance of peace. The objection raised by the United Kingdom delegation (523rd meeting, para.9) did not upset the argument of El Salvador, because if the peace endangered by an armed attack was later restored, in consequence of compliance with the decisions of the Security Council on the part of the parties to the conflict, the mission of the United Nations would have been completed, even if such other questions as the determination of responsibility and the punishment of the guilty parties still remained to be settled by bodies other than the political organs of the United Nations.

29. No one denied that the United Nations, during the twelve years of its existence, had carried out its mission without having any definition of aggression at its disposal. But the fact that it had not needed such a definition did not necessarily mean, as the United Kingdom and United States delegations maintained, that a definition was unnecessary. From the point of view of logic and law, the need for a definition had been amply demonstrated.

30. The delegation of El Salvador reserved the right to clarify its position later with respect to the various draft resolutions that had been submitted.

31. Mr. MALOLES (Philippines) said that from the inability of the United Nations, over a period of seven years, to define aggression, it might be inferred that aggression was undefinable, particularly since it was not the first time that the attempt had been made. It might be an attractive solution to leave it to the Security Council to work out its own definition of aggression, since, under the terms of the Charter, the Council had exclusive responsibility for determining the existence of cases of aggression. It was true that the exercise of the veto by one of its permanent members might prevent the Security Council from reaching a decision, but it was no less true that the General Assembly would be competent at any time to take action under the "Uniting for peace" resolution (resolution 377 (V)).

32. The conventions concluded between the Soviet Union and certain other States in 1933 had been cited as evidence of the possibility of defining aggression. His own view was that the conventions in question proved nothing more than that a definition included in an international convention was of no value or practical use if the provisions of that convention were more easily violated than respected.

33. Undeniably, however, a new trend towards codification was developing. As the representative of Poland had said (527th meeting, para.2), the principles of international law were undergoing a slow but steady

evolution. It was only recently that an effort had been made to translate those principles into a system of universally recognized rules. Hence, one should not be discouraged by the slowness of progress. The Members of the United Nations could not discuss aggression from a strictly legal point of view: they had to take political factors into account, which considerably hampered their freedom of action.

34. His delegation continued to be optimistic. It believed that a definition of aggression was both possible and desirable, but feared that at the moment it was impossible to reach agreement on a particular formula. In his delegation's opinion, the proper course would be to invite comments from the Member States and to refer the question to the fourteenth session, when the General Assembly should decide whether or not it was possible to work out a definition acceptable to a large majority of States.

35. Mr. MAURTUA (Peru) said that the implication of the argument of El Salvador was that the notion of aggression would be subdivided in a way which was unacceptable. Aggression could be visualized equally well from the point of view of the States not Members of the United Nations or from that of a minority of Member States which had not accepted whatever definition the General Assembly might have adopted. For its part, the delegation of Peru could not agree to a partial definition of aggression.

36. He asked the representative of El Salvador what the situation would be in the hypothetical case where a Member State might complain about an act of aggression committed against it by another State. Would that Member State be able to put forward before the competent organs of the United Nations the criteria which in its own opinion were the constituent elements of an act of aggression? Would those organs be able to take account of such elements, or would they, on the contrary, in order to name the aggressor, have to apply only the terms of the definition given for United Nations requirements?

37. Mr. LIMA (El Salvador) replied that the United Nations had no responsibility whatever to name the aggressor but only, for the purpose of maintaining international peace and security, to bring about a peaceful settlement of disputes which might arise between Member States. That was the sole function of the United Nations, and it was from that point of view that the Salvadorian delegation had approached the problem. In his opinion, the problem was to formulate guiding principles, not for the purpose of regulating the relations between the aggressor and the victim but for the purpose of aiding the organs of the United Nations in the discharge of their responsibilities.

The meeting rose at 12.30 p.m.