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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)
(continued)**

1. Mr. AHMED (India), speaking on a point of order, said that the representative of Pakistan at the 522nd meeting, after making out a case that it was neither possible nor desirable to define aggression, had referred towards the end of his statement to the rights to rivers flowing through more than one country. Mr. Ahmed considered that such reference was irrelevant and inconsistent with the earlier part of the statement made by the representative of Pakistan. The Indian delegation reserved its right to make further comments, if necessary, with regard to the question posed by the Pakistan delegation.

2. Mr. VALLAT (United Kingdom) said that the position of the United Kingdom on the question of defining aggression, as set forth in the Sixth Committee in 1954 (406th meeting), had not changed. While sympathizing with the desire to define aggression, his delegation was opposed to the adoption of a bad definition, and did not believe that a good one could be found. His delegation agreed with the representative of Sweden who had stated (518th meeting, para. 1) that the practical importance of a definition was very limited, and considered that the dangers of a bad definition would far outweigh the benefits that might be derived from a good one.

3. It was significant that distinguished authorities on international law had made a relatively small contribution to the definition of aggression. One writer had suggested that the failure to establish a definition could be explained by three factors: first, the term "aggression" itself was ambiguous; secondly, the interpretation of history was in reality the interpretation of very controversial inter-State and inter-personal relations; and thirdly, even a successful definition would only invite future aggressors to devise new means of imposing their will on others by force or fraud.

4. History proved that the inclusion of a definition of aggression in a treaty was ineffective either to prevent aggression or to protect small Powers. No such definition had been included in the Covenant of the League of Nations, or in the Treaty of Mutual Guarantee

(Locarno, 1925), or in the Pact of Paris of 1928. In its comments on the latter, the Government of the United States had said that it was not in the interests of peace that a treaty should include a juristic conception of self-defence, since it was far too easy for the unscrupulous to mould events to accord with an agreed definition.

5. The Charter of the United Nations used the expression "act of aggression" in Articles 1 and 39, without defining "aggression", the decision as to what constituted such an act having deliberately been left to the Security Council. It was questionable whether it would be in conformity with the letter or spirit of the Charter to adopt a definition of aggression which would fetter the Council.

6. All attempts to define aggression during the past thirty years had failed, because Governments had recognized that it would be dangerous to adopt a definition that might prove to be either a guide to the guilty or a trap for the innocent. Some treaties, to which a limited number of countries had become parties, had contained definitions based on the Soviet draft of 1933, but their failure was amply evidenced by the fate of the conventions concluded between the Soviet Union and the States bordering on its territory. The International Law Commission had failed to draft a definition in 1951, and the Special Committees established by the General Assembly had failed in the attempt both in 1953 and in 1956. Even among those in favour of a definition there was the greatest diversity of views concerning its contents, and the current debate showed that the state of international relations was not yet ripe for a definition of aggression.

7. It was regrettable that debate on the item was exploited for propaganda purposes. The exchanges of charges and countercharges tended only to poison the international atmosphere. His delegation agreed with the statement of the United States representative (519th meeting, para. 18) that much might be gained by simply abandoning the attempt to formulate any definition at all. At the same time, however, it did not wish to imply that the work of the past seven years had been wasted; on the contrary, the debates had been valuable in that they had produced two conclusions: first, that no definition should be adopted unless it was generally acceptable; and, secondly, that the General Assembly was primarily concerned with the definition of "aggression" as the term was used in the Charter.

8. It was clear beyond doubt that the term "aggression" as used in the Charter contemplated the use, in one form or another, of armed force. Chapter VI of the Charter was primarily concerned with the pacific settlement of disputes, while Chapter VII granted to the Security Council power to take action, which might, under Article 42, include the use of air, sea or land forces, to deal with acts of aggression. Since it was inconceivable that the Council should use force other-

wise than to counter the use of force, his delegation could not accept the view that the term "act of aggression" in Article 39 included acts of so-called ideological or economic aggression. Such acts might involve breaches of international law, but to consider them as part of the concept of aggression under Article 39 of the Charter would be tantamount to amending the Charter, and for that reason alone their inclusion in a definition of aggression should be firmly resisted.

9. The whole question of the relation between a definition of aggression and the provisions of the Charter was of fundamental importance. As the representative of El Salvador had said (515th meeting), the United Nations was not a court for convicting States, but a political body responsible for maintaining international peace and security. He could not agree, however, with the representative of El Salvador that non-compliance with a decision of the Security Council, or a recommendation of the General Assembly acting under the "Uniting for peace" resolution (resolution 377 (V)), was decisive in determining the aggressor. Failure to comply might be strong evidence of aggressive intention, and compliance might be equally strong evidence of the absence of such intention, but it would not be in itself conclusive. In most cases, a finding of aggression was both unnecessary and undesirable; in those cases in which it was desirable, the competent organs of the United Nations could only form a conclusion in the light of all the circumstances.

10. He agreed with the statement of the representative of Colombia (516th meeting, para. 4) that the test of the first crossing of frontiers was not infallible; but the alternative test, that of "preparation for war", could also not be accepted as final, for it would be difficult to draw the line between preparation for self-defence and preparation for aggressive war.

11. With reference to the draft resolution submitted by Iran and Panama (A/C.6/L.401), he said that his Government had always been opposed to the adoption of a definition which would merely restate in different terms the provisions contained in the Charter. A definition which itself rested on the "inherent right of individual or collective self-defence" only begged the question. Furthermore, the examples given in that draft might or might not constitute aggression, according to circumstances. For example, no State could agree to class as aggression in all cases an armed attack against the land, sea or air forces of another State, because such an attack would be the most direct and obvious means of exercising its inherent right of self-defence.

12. With reference to the Soviet draft resolution (A/C.6/L.399), he said that paragraph 2, dealing with indirect aggression, had some merit, but would not be acceptable to his delegation in the form in which it stood. Paragraph 5 actually constituted an indictment of the Soviet definition. First, it amounted to an admission that the list contained in paragraph 1 was not exhaustive. Secondly, since it would leave the Council a free hand, it conflicted with the view that a definition was necessary for the guidance of the Security Council. Thirdly, it admitted no possibility of any part being played by the General Assembly. Fourthly, it went beyond Article 39 of the Charter by purporting to confer on the Security Council power to make declarations about so-called economic and ideological aggression.

13. With reference to the proposed definition of "armed attack" submitted by the Belgian delegation (514th meeting, para. 29), he pointed out that the expression "armed attack" in Article 51 of the Charter did not have exactly the same meaning as "aggression" in Article 39, and that an attempt to define the former would raise difficult questions about the relationship between the two articles.

14. In conclusion, he appealed to the Committee to abandon the attempt to define aggression. The States should place their trust in the Purposes and Principles of the Charter, and in the obligations and machinery created by the Charter.

15. Mr. FRONTAURA ARGANDOÑA (Bolivia) said that his country, as a traditional advocate of the rule of law in international relations, had at all times taken a keen interest in the question of defining aggression and had submitted draft definitions both to the San Francisco Conference and to the 1953 Special Committee.

16. The fact that the Charter of the United Nations made provision for prompt action to prevent the outbreak of conflicts, or to stop them if they had started, was not a reason for not attempting to define aggression. He pointed to the analogy with municipal law, in which the basic constitutional provisions concerning a country's political structure required to be supplemented by more detailed specific enactments.

17. It was the duty of the Members of the United Nations to strengthen in the eyes of public opinion the Organization to which they belonged. It was public opinion which sustained the United Nations, just as it was public opinion which had dealt the death-blow to the League of Nations when it had been found that the League was tolerating aggression and violence.

18. The draft definition which had been proposed by Bolivia to Committee 3 of the Third Commission of the San Francisco Conference (A/2211, para. 113) differed from other proposed definitions in that it considered as an act of aggression any "refusal to submit the matter which has caused a dispute to the peaceful means provided for its settlement" as well as any "refusal to comply with a judicial decision lawfully pronounced by an International Court". An observation which accompanied the Bolivian proposal furthermore made reference to "collective action" (*ibid.*, para. 114), thus emphasizing that it was the international community as a whole, and not only the State attacked, which was the victim in cases of aggression. That concept was contained in the Act of Chapultepec of 1945, but it had its roots in the Geneva Protocol of 1924.

19. The Bolivian view was that any refusal to comply with recommendations or decisions emanating from competent organs of the international community should be deemed to constitute aggression, and that any act of aggression against one or more States should be deemed to constitute an aggression against the whole international community.

20. The definition proposed by Bolivia to the 1953 Special Committee (A/2638, annex, section V) considered as aggression any "unilateral action whereby a State is deprived of economic resources derived from the proper conduct of international trade or its basic economy is endangered so that its security is affected". Such methods of economic aggression could

reduce a country to the condition of a nation defeated in a war.

21. He supported the suggestion made at the 520th meeting by the representative of Afghanistan, to the effect that if a reference to economic blockade were included in the definition of aggression, it should cover also the act of closing the historical trade route of a land-locked country or creating difficulty in the way of free and normal trade and commerce.

22. With reference to the "more subtle forms of aggression" mentioned in paragraph 129 of the report of the 1956 Special Committee (A/3574), he stressed the seriousness of those methods of silent economic or diplomatic pressure coming under the general description of threats. That was a particularly dangerous form of aggression because it was generally directed against the less developed countries. The threat of force or of aggression was provided for in the definitions proposed by Mr. Alfaro (*ibid.*, annex I, section 9) and Mr. Córdova (*ibid.*, section 13) to the International Law Commission.

23. The representative of India had stated at a previous meeting (520th meeting, para. 49) that any definition of the concept of aggression was bound to be inadequate if it did not take into account the new situations created by nuclear weapons and by the possible use of outer space for war purposes. There was no doubt that a convention was necessary to deal with the use of outer space and with the consequences of the use of modern scientific discoveries; it might even be necessary to arrange an international conference of jurists to draft such a convention. At the same time, however, the efforts to work out a definition of aggression should continue.

24. The Bolivian delegation would support all proposals which were in line with the position it had adopted since the San Francisco Conference; it would be unable to support any draft definitions which it considered insufficient in that they did not cover the various situations to which he had referred.

25. Mr. EGHBAL (Iran) recalled that the Iranian Government, having always been deeply interested in the question of defining aggression, had been one of the signatories to the Convention for the Definition of Aggression signed at London on 3 July 1933. More recently, its views had been fully explained at several sessions of the General Assembly and in the 1953 Special Committee.

26. The report of the 1956 Special Committee and the statements of representatives in the debate, many of them speaking on behalf of the new Members whose views had not previously been heard, showed that there remained wide differences of opinion regarding the desirability and possibility of a definition. Some delegations were firmly opposed to the very idea of a definition. They contended that a generally acceptable formula was probably impossible to devise. In their view, any text might easily lead to the wrongful condemnation of a State which had resorted to force lawfully, and there was the further risk that a definition might be applied purely automatically, without a proper appraisal of the surrounding circumstances. The opponents of a definition also argued that the absence of a definition had in no way hampered United Nations action in the past.

27. The Iranian delegation frankly conceded that the arguments advanced against a definition had some merit. Nevertheless, the contrary arguments were infinitely more weighty. A definition would serve as a guide to the competent organs in determining the aggressor in any given conflict and so would facilitate the task of the United Nations in maintaining international peace and security. Moreover, it would strengthen the United Nations security system, and, what was most important, would represent a vital contribution to international criminal law. In addition to those arguments in favour of a definition, the various resolutions on the subject adopted by the General Assembly clearly showed that the majority of Member States desired such a text.

28. The difficulty of finding a generally acceptable formula was nevertheless very apparent. Even the supporters of a definition held different views on several important points. Some believed that the definition should be of a general nature, couched in terms which would leave the competent international bodies with the widest discretionary powers. The Iranian delegation, however, considered that such a definition could only be a repetition of truisms, and that the general terms employed would themselves require defining. Other delegations believed that the definition should be, at least to some extent, enumerative. The classical example of that type of definition was the text submitted by the Soviet Union, which endeavoured to enumerate all the known forms of military, indirect, economic and ideological aggression, with the proviso that the Security Council would be competent to declare a State an aggressor even in cases not expressly mentioned in the text. That type of definition had its advantages, but it was necessarily incomplete and might even lead to certain non-aggressive acts being denounced as aggression. It was obviously not possible to foresee and enumerate every possible form of aggression, and the constant development of the international situation would soon render any such text obsolete.

29. For those reasons, the Iranian delegation believed that the best definition would be of the mixed type, containing a general flexible formula and a non-exhaustive list of acts cited merely as illustrations. Such a definition would combine all the advantages and would not suffer from any of the defects of the other two types of definition.

30. The Iranian delegation was convinced that the basic premise of any satisfactory definition would have to be that any State which first used force against another State, for some purpose other than self-defence, should be considered an aggressor. The forcible act, however, would obviously have to be serious, and trivial frontier incidents should be expressly excluded. Such a definition of armed attack would help to affirm the rule of law in the international community. Other forms of aggression, such as indirect and economic aggression, could admittedly be equally dangerous, but most delegations seemed opposed to the inclusion of those concepts. They might more appropriately be covered in the draft code of offences against the peace and security of mankind.

31. Despite the developments of the international situation in the past two years, the Iranian delegation believed that the draft resolution which it had submitted, jointly with the Panamanian delegation, at the

General Assembly's ninth session, and which was reproduced in document A/C.6/L.401, still satisfied all the requirements. It was perhaps not a perfect document, but at least it afforded the basis for a solution of a problem which had clouded the international scene for many years.

32. Mr. GUYER (Argentina) said that the delegation of Argentina was fully aware that the question of defining aggression was intimately related to the maintenance of international peace and security. It was important to note, however, that the juridical notions surrounding the concept of aggression were evolving continuously, and that aggression itself could daily assume new forms. That was especially true of what was generally termed "unarmed aggression". The international community was now called upon to forestall not only armed attack but also the improper use of other, equally powerful, means of influencing the political, economic and ideological activities of States.

33. It was a fundamental legal truth that an institution which was in the process of rapid development should not be defined with excessive haste. Any definition adopted prematurely might become defective almost overnight, and a defective definition would clearly create the most serious dangers. Furthermore, certain fundamental aspects, such as the elements which constituted aggression, the significance of the terms used and the relationship between those terms, required further thorough consideration. Another important point was that the views of the Governments which had not previously participated in the debates on the subject still had to be weighed. The delegation of Argentina therefore felt that the whole question should be approached with the greatest caution. A definition in legal terms might very easily act as a doctrine camouflaging specific policies. That was particularly

significant in the matter of aggression by reason of its connexion with the security of States.

34. The report of the 1956 Special Committee suggested (A/3574, annex I, sections 3 and 4) that aggression had already been defined within the inter-American legal system. The delegation of Argentina, however, was firmly convinced that no inter-American instrument in fact contained such a definition. The Inter-American Treaty of Reciprocal Assistance, signed at Rio de Janeiro in 1947, which was the instrument most frequently cited, stated in article 9 that, in addition to other acts which the Organ of Consultation might characterize as aggression, unprovoked armed attack and invasion of the territory of a State would always be considered aggression. Those, however, were merely two examples of acts of aggression, and not a definition in the strict sense. Not only had none of the signatories to the Treaty of Rio de Janeiro ever regarded that article as a definition but both in that Treaty and in the Act of Chapultepec the intention had been to avoid the legal problem of the definition of aggression by giving, instead of such a definition, two examples of acts of aggression which could be regarded as typical. The experience of the American States thus showed that, even with a relatively small group of homogeneous countries, the problem of a definition remained extremely complex.

35. In conclusion, he said that the delegation of Argentina, mindful of the absence of general agreement, the technical difficulty of drafting a comprehensive, generally acceptable definition, the need for further study and the serious dangers of an incomplete definition, considered itself unable to support any of the drafts submitted at the current session.

The meeting rose at 12.25 p.m.