

# GENERAL ASSEMBLY

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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 to 404) (continued)**

1. Mr. CASTAÑEDA (Mexico) said that his delegation had always believed in the possibility and desirability of defining aggression. Those who argued that a definition of aggression was unnecessary, because such a definition had never prevented aggression in the past, had a mistaken idea of the function of a legal definition. That function was not one of hindering or laying down a line of conduct, but of delimiting the allowable range of activities by the subjects of law, which in the case under discussion were States. Whether or not aggression arose depended on the effectiveness of the coercive machinery behind the legal definition, and not on the existence of the definition itself. A definition would undoubtedly serve as a guide to the political organs of the United Nations, but it would also be addressed to world public opinion, which was playing an increasingly decisive part in international affairs. To the extent that a definition could enlighten public opinion and help it to appraise the attitude of Governments, that definition would serve as an indirect but effective restraint on aggression. It would therefore contribute some degree of legal security and help eliminate discretionary action, since any activity of the Organization would be subject to the law. It might, of course, be advantageous for the competent organs of the United Nations, in particular cases, to take discretionary steps in order to maintain peace, but discretionary action could not be elevated into a permanent and universal system, since that would represent a complete absence of security and a radical divorcing of United Nations political activity from international law. That was the essence of the matter.

2. Several delegations had pointed out that the Charter was based on an exclusively political conception, and that the function of the Security Council was purely and simply that of policing. The Committee would recall how, at the Conference at San Francisco in 1945, the small countries had failed in their attempt, with a view to maintaining and restoring peace, to make the action of the United Nations subject to international law. An Egyptian proposal in that sense had not been

adopted, the votes being 21 to 21.<sup>1/</sup> That was the reason why, in Article 1 of the Charter, measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression, were outside the sphere of law; only the adjustment or settlement of international disputes was to be carried out in conformity with the principles of international law. It was difficult to conceive of a collective security system less juridical in character.

3. Such a situation was not favourable to a definition of aggression, and the Mexican delegation considered it an additional reason for demanding a definition. The small countries should strive on every possible occasion, and in a manner compatible with the spirit of the Charter, to extend the part played by law in the life of the United Nations, because the law was their best defence. To define aggression meant precisely to subject an important activity of the United Nations to the rule of law and remove it from all arbitrary action.

4. Some speakers had argued that achievement of that goal would require amendment of the Charter, but he considered that their opinion was the result of a confusion of ideas. The Charter would have to be amended if it were desired to replace Articles 39 and 51 by new rules, i.e., to take away the Security Council's freedom of determination and action and to require it to name as an aggressor a State which committed certain acts. For the time being at least there was no thought of a rule of that kind, which would impart an automatic character to the action of the Security Council. With or without a definition, the Security Council would still retain full freedom of determination in respect of the facts, and full freedom of decision in respect of suitable measures for maintaining peace; it was quite possible that such measures would not provide for denouncing the aggressor. Therefore, the problem was by no means one of replacing one rule by another, but only, by clarifying its meaning and scope, of placing juridical interpretation on a rule already included in the Charter.

5. With regard to the necessary characteristics of a definition of aggression, he said that it should apply only to armed aggression, and in that respect he was in agreement with the representative of the United Kingdom. An act of aggression within the meaning of Article 39 should not apply to what is known as economic aggression, to ideological aggression or to the threat of aggression. To expand the notion of aggression by introducing elements of that kind would result in a lessening of the value of the definition, and would deprive it of psychological effect and political importance. Moreover, such an extension would entail an even more serious drawback inasmuch as it would influence the interpretation and application of Article 51.

<sup>1/</sup> See minutes of the 1st meeting of Commission I in Documents of the United Nations Conference on International Organization, vol. VI, pp. 12 ff.

For that reason, the Mexican delegation believed that what it was agreed to call economic or ideological aggression, really constituted aggression only if it was accompanied by resort to force. Moreover, even if that were not the case, the Security Council could still adopt the necessary enforcement action, in conformity with Article 39, when those forms of aggression constituted a threat to the peace.

6. As to the type of definition, the Mexican delegation had already expressed its preference for a mixed definition. The representative of Bulgaria had criticized the general formulas in some of those definitions, including that of Mexico. In his opinion, such general formulas were scientific definitions and lacked the element of action which he believed should be present in a juridical definition. Such criticism would be justified only if the Committee had to formulate a true juridical rule, but that was not the case, since the rule was already present in the Charter. That rule, expressed in the simplest terms, was nothing but the prohibition of aggression. However, according to the manner in which the Russian author Korkunov had propounded the problem at the beginning of the century,<sup>2/</sup> a rule of law consisted of three things: a hypothesis, a provision and a sanction. The definition would constitute the hypothesis of the rule, but was only one of its elements. It was not, therefore, for the hypothesis to operate independently but in conjunction with the two other elements.

7. In order to make provision for cases not included in an enumeration, which would of necessity be incomplete, the only adequate procedure would be to draw up a general formula concerning aggression. The alternative system, which was adopted in paragraph 5 of the Soviet proposal, expressly authorized the organs responsible for applying the definition to consider as aggression any act that was not included in the enumeration. As the representative of the United Kingdom had pointed out (523rd meeting, para.12), such a system was implicitly contradictory. The purpose of a definition should be to reduce the element of indefiniteness and discretionary action as far as possible; much of the usefulness of the definition would be lost if that element were allowed to subsist.

8. The criterion of the "first act" was so much in keeping with the nature of things that it should be an indispensable component of any definition of aggression or of any notion of legitimate defence. Any act enumerated in a definition of aggression—bombardment, invasion, etc.—might constitute an act of aggression as much as an act of legitimate defence; the only means of reaching a decision in the matter was to apply the criterion of the "first act". The representative of Colombia had said that the question to be asked was not who had attacked first, but who had prepared the war (516th meeting, para.4). As the United Kingdom representative had also pointed out, such a criterion would be even more difficult to apply. Moreover, the principle of the "first act" had been embodied in Article 51, as was evident from the words "if an armed attack occurs against a Member". The same principle was rightly included in the draft definition proposed by the Belgian representative (514th meeting, para.29), which had the further merit of placing emphasis on armed attack. On the other hand, by referring to the

intention of States, that resolution ran the risk of unnecessarily introducing a subjective element into the definition. The Belgian proposal also had the disadvantage of including in the definition terms that were very closely related to the term which was to be defined.

9. The usefulness of a definition of aggression had been further enhanced by certain recent events. In the opinion of the Mexican delegation, the primary purpose of a definition of aggression should be to condemn any preventive war. Yet, at the present time, there was evidence of an increasingly pronounced tendency to distort the meaning of Article 51 of the Charter, which was, however, one of the mainstays of the Charter and, one might say, of peace and security. Schwarzenberger, dealing with the interpretation to be placed upon Article 51, <sup>3/</sup>went so far as to ask whether the exercise of the right of legitimate self-defence was contingent upon a prior armed attack. He also said that, since the matter was one of political law, the text of the Article—which had been poorly drafted—was not the most important aspect of the question. The danger to which such an attitude gave rise was evident. It was in reality to justify preventive war. A definition of aggression which would emphasize the notion of armed attack and which would condemn preventive war would contribute greatly to the removal of that danger.

10. Moreover, a definition of aggression would answer another necessity of the day, one that arose out of the relations between Great Powers and underdeveloped countries. There, also, it was necessary to oppose the line of opinion represented by Schwarzenberger. Discussing Article 2, paragraph 4, of the Charter, the writer had said that that provision prevented the Great Powers from resorting to force to defend their rights when those rights were violated by small countries, but that such a situation could not continue, since there were limits to the patience of the Great Powers. Thus there were those who thought that the use of force might be admissible in circumstances other than the case of legitimate defence against armed attack, or the case of enforcement action prescribed by the United Nations. Such an attitude amounted to authorizing aggression.

11. For his part, he did not believe that the situation was as described by Schwarzenberger, who, unfortunately, was not alone in putting forth that type of argument. But, even so, there would still be no justification whatever for using force. The author in question did not specify whether the cases of violation of the rights of the Great Powers which he had in mind were acts in contravention of international law or merely violations of interests not protected by international law. The question arose whether certain rules of international law which were in force, and which had been drawn up during the nineteenth century or earlier, without taking due account of the interests of small countries, responded to the needs of the contemporary international community. Doubt was permissible, particularly in view of the international responsibility of States. It was sufficient to recall the rule providing that foreigners in a country might enjoy more extensive rights than nationals of that country. However, even without taking the foregoing

<sup>2/</sup>Nikolai M. Korkunov, *General Theory of Law*, 2nd ed. (New York, Macmillan, 1922).

<sup>3/</sup>Georg Schwarzenberger, "The Fundamental Principles of International Law" in *Académie de droit international, Recueil des cours*, 1955, I, pp. 327 ff.

into account, the fundamental consideration was as follows: no violation of rules of that kind, no violation of rights of any kind, and no unlawful act except armed attack could give rise to the right to resort to force. That was the system on which the Charter was based, and scrupulous compliance with the provisions of that system was the only guarantee of peace. A definition of aggression would clarify and strengthen that principle, and would contribute substantially to the cause of peace.

12. Mr. TABIBI (Afghanistan) pointed out that the current discussion differed little from those of earlier sessions, except that it had shown clearly that the majority of States was in favour of defining aggression. Some were in favour of deferring the matter *sine die*, while others wanted an immediate decision. As had been the case previously, the majority favoured a moderate solution.

13. The joint draft resolution (A/C.6/L.403) showed that tendency. He felt, however, that operative paragraphs 2 and 3 of that draft lacked practical sense, and for that reason the delegation of Afghanistan, in conjunction with other delegations, had submitted amendments (A/C.6/L.404), providing for the re-establishment of the Special Committee and for increasing its membership so as to give it a further opportunity to continue its work and seek a compromise solution. Those who wanted to defer the question might be justified, but essentially it was a matter of respecting the will of the majority. The joint draft resolution as amended seemed to correspond to the spirit of moderation on which the work of the Legal Committee of the General Assembly should be based.

14. Mr. GLASER (Romania) noted with satisfaction that the majority of delegations favoured the adoption of a definition. There naturally existed important differences between the points of view of the supporters of the various definitions which had been proposed, but a progressive narrowing down of the area of disagreement was still possible. It was not the number of draft definitions which prevented the Committee from carrying out the task entrusted to it by the General Assembly, but the fact that certain delegations maintained, in spite of all the evidence to the contrary, that it was not possible to define aggression, and that, even if it were possible, a definition would be undesirable and even dangerous.

15. The definition proposed by the delegation of El Salvador (515th meeting) was based on the idea that aggression was multiple in character, not because there were several kinds of aggression—armed, economic, ideological and indirect—but because it was necessary to draw a distinction between four different aspects of armed attack: (a) acts which justified resort to armed force by the victim, in exercise of the right of self-defence under Article 51 of the Charter; (b) acts forbidden in relations between States; (c) crimes, sanctioned by the punishment of the offender; (d) breaches of the peace, which called for action by the Security Council. In the view of the delegation of El Salvador, it was only that last aspect which concerned the United Nations and aggression had to be defined from that angle.

16. The Romanian delegation could not subscribe to that thesis. In the first place, it was obvious that a definition of aggression could not contradict either the

letter or the spirit of the Charter. Nothing in the preparatory work of the Charter suggested that its authors had intended to describe several different notions by one and the same juridical term, namely, "aggression". In fact, it was not four different notions which were involved, but rather four aspects of the same notion. For example, if the head of Government of a State were found guilty of aggression and executed by virtue of a just decision of an international court, it was inconceivable that the Security Council should decide that that State was not the aggressor but the victim of the aggression.

17. In accordance with the general tenor of the Charter, aggression covered all the four types of action considered by the delegation of El Salvador, but the act to be defined was still one and the same act, namely, armed attack. Hence the definition had to be drafted so as to cover the four points brought out by the representative of El Salvador.

18. The Romanian delegation could not subscribe either to the view put forward by the Netherlands representative (527th meeting) that there was a difference, and even opposition, between an act of aggression within the meaning of Article 39 of the Charter and armed attack within the meaning of Article 51. No doubt the act of aggression mentioned in Article 39 was a broader notion than the armed attack mentioned in Article 51; that was because the act of aggression included not only armed attack, but also ideological, economic and indirect aggression. But the armed attack included in the general term "act of aggression" appearing in Article 39 was in no way different from the armed attack specified in Article 51. That single notion could not be divided into two parts.

19. Certain delegations, including the Netherlands delegation, had maintained that the Security Council was completely free to decide, in each particular case, whether aggression existed and what measures had to be taken. The Romanian delegation did not wish to minimize in any way the powers of the Security Council, but considered that, while it was incumbent upon the Council to take the necessary measures to maintain or restore international peace and security, that did not mean the Council could ignore the rules of international law. It was, on the contrary, the Council's duty to be guided by those rules. Under Article 24, paragraph 1, of the Charter, the Member States conferred on the Security Council primary responsibility for the maintenance of international peace and security, and agreed that, in carrying out its duties under that responsibility, the Security Council acted on their behalf. But that applied only in so far as the Security Council carried out those duties. Consequently, if the Security Council were to take decisions contravening the rules of international law, it would not be carrying out the duties imposed upon it, and would hence not be acting on behalf of the Member States of the United Nations.

20. The diversity of views expressed during the discussions was one more proof of the need to define aggression. The terms of the Charter had given rise to such divergent interpretations that, according to some, including the Romanian delegation, all preventive war was prohibited and constituted an armed attack, whereas others, and in particular the Netherlands delegation, considered preventive war as lawful. It was therefore important to define those terms. That did not mean

revising or amending the Charter. Consequently, the question of defining aggression could not be linked with that of the revision of the Charter, a course which would result in postponing the discussion on the definition of aggression indefinitely.

21. Some delegations which did not consider the question of the definition of aggression to be linked with that of the revision of the Charter had maintained that such a definition was useless, since it would add nothing to the provisions of the Charter. It was a characteristic of all definitions to add nothing to the notion which it defined. The purpose of a definition was to explain, to clarify, to dispel doubts and to prevent errors. That would be the role of a definition of aggression. It was obvious that a definition of aggression would not, of itself, prevent acts of aggression. In no State in the world had the definition of a crime prevented the commission of that crime. There was, nevertheless, general agreement that crimes should be defined.

22. It had also been maintained that, even if aggression were defined, it was still incumbent upon the Security Council to determine in each particular case whether the factors constituting aggression were present. No one denied the competence of the Security Council in that respect, but a definition of aggression could serve as a guide to the Council, by indicating to it the elements which it was called upon to detect.

23. In conclusion, the Romanian delegation considered that the general debate had been very useful, not only because of the considerable number of interesting views expressed but also because it had demonstrated the urgent necessity of defining aggression.

24. The CHAIRMAN declared the general debate closed. He declared open the discussion on the various draft resolutions before the Committee.

#### CONSIDERATION OF DRAFT RESOLUTIONS AND PROPOSALS BEFORE THE COMMITTEE

25. Mr. ILLUECA (Panama) said that the Committee had before it two draft definitions of aggression sponsored by the Soviet Union (A/C.6/L.399) and by Iran and Panama (A/C.6/L.401), both of which required immediate action. The Committee had also before it two draft resolutions of a procedural character: that of the United States (A/C.6/L.402), which proposed

that the question be postponed indefinitely, and a joint draft resolution (A/C.6/L.403) to which six Powers had jointly submitted amendments (A/C.6/L.404) embodying a compromise formula.

26. If the joint draft resolution as thus amended obtained the support of the majority, the Panamanian delegation was prepared to support it also. It had to be remembered that the General Assembly had called for the drafting of a definition which was generally acceptable. The draft resolution appeared to facilitate that task. However, it did not reaffirm the need, proclaimed by the General Assembly in resolution 688 (VII), for "continued and joint efforts" to "be made to formulate a generally acceptable definition of aggression, with a view to promoting international peace and security and to developing international law". He hoped that that need would be mentioned in the preamble to the draft resolution which the Committee would adopt.

27. Mr. PERERA (Ceylon) proposed, in his name and that of the representative of Egypt, a sub-amendment to operative paragraph 3 of the joint draft resolution (A/C.6/L.403) as amended by the second six-Power amendment. The sub-amendment would be to add the phrase "to give priority in its work to the elaboration of the notion of armed aggression" after the words "in 1959".

28. Mr. CASTAÑEDA (Mexico) said it was necessary for the six sponsors of the amendments to the joint draft resolution to consult before taking a decision concerning the sub-amendment proposed by Ceylon and Egypt.

29. Mr. MAURTUA (Peru) thought the sponsors of the joint draft resolution and those of the amendments and sub-amendment could meet and endeavour to prepare a joint text.

30. Mr. CAVALIERATO (Greece) asked the representative of Panama whether his delegation and that of Iran had withdrawn their draft resolution (A/C.6/L.401).

31. Mr. ILLUECA (Panama) replied that that was not the case. He still preferred that a decision be taken on the substance of the matter, but thought it desirable to facilitate attempts to reach a compromise.

The meeting rose at 12.35 p.m.