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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. JOVANOVIĆ (Yugoslavia) traced the history of the attempts made by the various organs of the United Nations since 1950 to work out a generally acceptable definition of aggression. In his view, despite the opinion of certain others, that history showed that the study of the question had made steady progress. Of course, many difficulties had been encountered, and, owing to the diversity of the views expressed by Member States, the General Assembly had been forced on several occasions to start its work all over again; nevertheless, it had steadfastly maintained its position that it was possible and desirable, with a view to ensuring international peace and security, to define aggression by reference to the elements which constituted it. The successive resolutions of the General Assembly did not in any way signify a gradual abandonment of the project, but were rather a proof that the Assembly meant to deal with the problem realistically. There was no reason to depart from the line to which the General Assembly had been consistently faithful.

2. Some speakers seemed to believe that differences of opinion had been intensified. In reality, new differences of opinion were bound to appear when matters of detail were taken up if all controversy over the fundamental questions had not been eliminated first. It had been necessary to reveal the full complexity of the problem by analysis, but now it was time to go in the opposite direction, and agree on the elementary questions in order to arrive at a compromise on a common definition.

3. Moreover, the differences of opinion became less if, instead of discussing in the abstract, one considered certain specific types of definition. It would then be seen that a mixed definition concerned exclusively with armed attack had the support of a majority—and a growing majority—of the delegations. The drafts submitted to the 1956 Special Committee had all been of the mixed type of definition, or at least had tended to approximate to that type, including the

USSR proposal. What was more, a mixed definition dealing solely with armed attack was the only one offering common ground from which a final solution might be worked out. He would not discuss in detail what the contents of the definition should be, but he associated himself with the majority of representatives who, while expressing the views of their own Governments, had left the door open for subsequent rapprochement.

4. The question now was how the work which had been started should be carried on. Governments were clearly seriously divided on the subject of the definition of aggression, and none of the proposed texts had any chance of being adopted at the moment. Yet, that did not mean that all work on the definition of aggression should be suspended, as some representatives had suggested. Without cherishing any illusions about the value of a definition as a universal remedy, the Yugoslav delegation nevertheless believed that the definition of aggression would make a positive contribution to international peace and security and to the development of international law. It might constitute a stern warning to possible future aggressors, and, in the case of actual aggression, could serve as a guide to the competent organs of the United Nations. Accordingly, his delegation was willing to support any proposal for continuing the attempts to arrive at a compromise on that delicate problem.

5. The proposal put forward by the representative of Afghanistan (520th meeting, para. 16) that the study of the entire question should be referred to a special committee of the General Assembly seemed particularly attractive. However, if the new committee was not simply to recapitulate what had been done by the 1956 Special Committee, its terms of reference should be defined, at least in broad outline. The Sixth Committee might perhaps be able to reach a compromise agreement on the principles to be followed for the purpose of drafting a mixed definition of armed attack. Experience had shown that it was a delicate task and, inasmuch as opinion was still sharply divided, it would probably not be easy to secure a final compromise. That being so, the Committee should be realistic and should not limit the term of office of the new committee to a very short period, as had been done in the case of the other special committees. Such a limitation would inevitably force the committee to deal with the problem as a whole in haste, taking up new questions without having found a compromise solution to the previous questions. In such circumstances, the new committee would be unable to do better than the 1956 Special Committee, and the impression that it was impossible to reach any agreement would inevitably be deepened. The committee should, therefore, be given the necessary time for exploring all possibilities of compromise.

6. The Yugoslav delegation was ready to give careful

thought to any other proposal which would not hamper future work, and which would be consistent with the declared wish of the majority of States Members to reach a formula likely to be generally acceptable and answering the needs of the situation.

7. Mr. BASOV (Byelorussian Soviet Socialist Republic) said that the discussion had shown that most representatives attached vital importance to the definition of aggression, which would put the Organization in a better position to defend peace and security.

8. The arguments of the opponents of a definition were hardly convincing. Moreover, as the Chilean representative had pointed out (524th meeting) they had not varied for years.

9. The United Kingdom representative had said (523rd meeting) that the dangers of a bad definition would far outweigh the advantages of a good definition. The logical conclusion of that reasoning was that the organs of the United Nations should refrain from adopting any resolutions or recommendations because they might be harmful or inadequate. Such an attitude was tantamount to a rejection of all positive activity. Of course, what was needed was a good definition, but that was not the point. If the Committee intended to succeed, it should get to work instead of just predicting failure. The United Kingdom representative had also said that the time was not propitious for a definition of aggression. Yet, as a number of delegations had pointed out, it was precisely at that moment, when international tension ran high, that it was essential to take effective steps to strengthen peace and security, and one such step would be to define aggression in terms which would constitute a warning to a possible aggressor, and would facilitate the task of the Security Council by enabling it to take prompt action to halt aggression.

10. The United Kingdom representative had cited the authority of the International Law Commission, which had taken the view that aggression was undefinable. In point of fact, the Commission had devoted no more than a few meetings to the question, and had decided to discontinue its efforts by a bare majority of two votes. The decision was therefore due solely to the refusal of the representatives of the United Kingdom and the United States of America.

11. In saying that the proceedings of the Special Committees of 1953 and 1956 testified to a growing difference of opinion on the subject of the definition of aggression, the United Kingdom representative had been indulging in wishful thinking; the facts were quite otherwise. The majority of the members had considered that aggression had to be defined, and they had begun to agree on an important point in recognizing that priority should be given to the question of armed attack. In other respects, too, agreement had been foreshadowed. Hence, the failure of the International Law Commission in no way proved that it was impossible to arrive at a definition. The United Kingdom representative had come to the paradoxical conclusion that it was not the adoption of a definition which would help to secure the maintenance of peace, but the abandonment of all attempts to frame such a definition. That argument was contrary to the interests of peace. A single fact was enough to show what the United Kingdom representative's arguments were worth. At the meetings of the Special Committee, the United Kingdom representative had tried to

convince the other members that a definition of aggression would be harmful to peace. At that very moment, in the Security Council, another representative of the United Kingdom had been arguing that the British action in Egypt had not been an act of aggression, and had used the absence of any definition of aggression as an argument in support of his case.

12. The reason behind the manoeuvre to link a definition of aggression to a revision of the Charter would not deceive anyone. Those delegations to which the proposal might commend itself should be cautious, for it would mean the end of the efforts to work out a definition. He stressed that there was certainly no intention of drafting a definition conflicting with the Charter, but rather of drafting a definition fully in keeping with the spirit and letter of the Charter. The Byelorussian delegation supported the draft resolution submitted by the USSR (A/C.6/L.399), and noted at the same time that the majority of the delegations agreed that priority should be given to the definition of armed attack, the most dangerous form of aggression.

13. Referring to the statement by the Netherlands representative (527th meeting), he said that that representative had long been known as an apologist for preventive war. Such a view was contrary to the Charter and was used to justify aggression on the plea of self-defence. The Netherlands representative had brought up fresh arguments, condemning Schwarzenberger, attempting to reconcile the irreconcilable, and exaggerating the difficulties. He had started from the erroneous premise that a ban on the use of military force was out of date, and had concluded that the States Members of the United Nations should resort to military force in the case of a threat to the peace, breach of the peace, or aggression, a thesis which tended to destroy every Charter provision relating to the maintenance of international peace and security. In the circumstances, the Netherlands representative's request for an amendment of the Charter was not surprising.

14. The Netherlands representative had purported to draw a distinction between the terms "act of aggression" in Article 39 of the Charter and "armed attack" in Article 51. Actually, however, the two terms were identical, and there was no authority in any of the provisions of the Charter for differentiating between them. Articles 2, 39 and 51 provided ample material for an unequivocal definition of armed attack, and every dictionary defined aggression as an attack.

15. The principle of the "first act", laid down in paragraph 1 of the Soviet draft resolution, was vital. The principle was recognized in Article 51 of the Charter, inasmuch as the armed attack referred to in that Article was the attack committed by the State which acted first. The Netherlands representative had contended that the principle was obsolete, particularly since the advent of the atomic weapon. That was not so, for, whatever the nature of the aggression, the State attacked was not helpless, since it could avail itself of the Charter under which it could adopt a number of measures, including enforcement action. The Byelorussian delegation objected strongly to the Netherlands representative's attempt to justify preventive war.

16. It felt, on the other hand, that the debate in the Sixth Committee at the current session had been

most useful, since it had enabled each delegation to gain greater insight into the views of other delegations and so enabled the Sixth Committee to add to the efforts made by the Special Committees of 1953 and 1956 and by the General Assembly at earlier sessions. It was gratifying to note that an increasing number of States, including some of those recently admitted to the United Nations, favoured a definition of aggression. He hoped that the General Assembly would continue its efforts until success was achieved.

17. Mr. MAURTUA (Peru) observed that the attempt to define aggression was beset with complex problems. However, in view of the frequency of war, principles should be laid down for the guidance of States, for such principles were necessary in law and should reflect a sense of legal or moral international responsibility. The debate should be free of political observations which, in the circumstances, could not be helpful. The question of defining aggression had been deferred, not because persons versed in international law had not given it any thought but because those concerned with the making of international law had not given it the attention it deserved. Yet, in his view there was no need to be pessimistic in face of the difficulties. Every trend and conflicting element should be considered with a view to extracting anything which might prove useful. Culture rested on living ideas which reflected prevailing needs and sentiments. The representative of Pakistan, (522nd meeting, para. 24), in echoing Kelsen's ideas, had painted a pessimistic picture of international organization. The fact that international law had been called imperfect law was no reason for denying every institution, the existence of which constituted evidence of progress. In that connexion, he said that irrefutable proof was provided by the United Nations. The process of evolution was inevitable. For the United Nations, it meant the compiling of customs, the elaboration of jurisprudence, the application of principles and the collecting of regulations capable of codification. International law was amenable to progress, and every effort should be made to stimulate its progress. The Peruvian delegation considered that difficulties never ruled out the possibility of a solution or agreement. The entire development of international legislation was replete with apparent or real contradictions, but that was not a reason for arresting the legislative process. Compromise was relatively easy in bilateral negotiations; multilateral negotiations, on the other hand, required a degree of caution which depended both on the acceptability and on the applicability of the proposed legislation. That was why one spoke of the gradual, progressive development of the codification of international law. While the sacred principle of sovereignty was sometimes pleaded as a bar to certain rules, other difficulties arose from the way in which established institutions were interpreted. The task of the patient jurist was precisely to overcome the difficulties step by step.

18. In the case of the definition of aggression, there were many such difficulties; but, after all, similar difficulties had been encountered and overcome at the time of the Pact of Paris, 1928, for the renunciation of war. While the difficulties had not perhaps been overcome as yet, that did not mean that the trend of opinion in favour of a definition had weakened. For their part, the American States were proud of their success in embodying in a regional collective agree-

ment certain concepts which could be adopted as criteria in the matter of aggression.

19. Disagreeing with the statement of the representative of Argentina (523rd meeting, para. 34), he said that the Treaty of Rio de Janeiro of 1947 contained a definition of aggression, and the elements of a mixed definition of armed aggression. That Treaty reflected aspirations which had existed since Simon Bolivar had attempted to organize American juridical life on the basis of the rule of peace and justice, reciprocal assistance and co-operation.

20. The Peruvian delegation realized that the moment was not perhaps auspicious for the adoption of a final text, but it agreed with the Belgian delegation that some progress had been made, and it feared that the abandonment of the attempt might harm the prestige of the United Nations.

21. When the question had been considered by the Special Committee in 1956, many draft definitions had been submitted, and, in view of the atmosphere of conciliation then prevailing, the Peruvian delegation hoped that agreement on one of them might materialize. While admitting the usefulness of the Netherlands representative's draft (A/3574, para. 208), it had supported the text submitted by Iran and Panama (*ibid.*, annex II, section 3); but the Soviet draft (*ibid.*, section 1) had proved to be an insuperable obstacle, as it was based on the principle of the "first act", which was intended to stop preventive war but which, in the opinion of the Peruvian delegation, conflicted with the concept of the threat of the use of force, mentioned in the Charter, and failed to recognize the competence of the international bodies to which Member States had given responsibility for determining the attack. Secondly, the Soviet draft had ignored the "Uniting for peace" resolution (General Assembly resolution 377 (V)), since in its paragraph 5 it had not mentioned the General Assembly as one of the organs competent to declare certain acts to be aggression. Finally, the Soviet draft had referred to forms of indirect, economic and ideological aggression, which were much more controversial than armed attack.

22. Other drafts had been submitted during the current debate, including the Belgian delegation's proposal (514th meeting, para. 29) which was a valuable contribution to the interpretation of the Charter. The Peruvian delegation considered that the Committee should persist in its efforts to reach a generally acceptable solution. In the Special Committee, the Dominican, Mexican, Paraguayan and Peruvian delegations had submitted a draft (A/3574, annex II, section 6), in effect a compromise between the draft resolution of Iran and Panama (*ibid.*, section 3) and that of the USSR (*ibid.*, section 1).

23. Perhaps, given sufficient legislative guarantees, the USSR delegation might be inclined to drop the principle of the "first act" and so facilitate agreement. He proposed the following draft:

"That State shall be declared the attacker which refuses to use peaceful means to settle a dispute, or which fails to respect the obligations imposed by those means or the recommendations or decisions of the competent international bodies, or which, instead of using those means in case of threat, resorts to the use of force against the territorial

integrity or political independence of another State, or against a territory under the effective jurisdiction of another State, or for any purpose other than the exercise of the right of individual or collective self-defence or the execution of a decision or recommendation of a competent organ of the United Nations."

That paragraph would be followed by the second part of the draft resolution submitted to the Special Committee by the four American States.

24. He pointed out that operative paragraph 1 (f) of the Soviet draft, which was partially restated in operative paragraph 2 (e) of the four-Power draft resolution, contained some subjective elements which were out of place in the definition. For example, the Soviet draft said that a State in whose territory armed bands were organized should take "any action within its power" to deny such bands any aid or protection. That provision was open to several interpretations. Conceivably, a State might be prevented, by its constitutional provisions, from taking measures if the armed bands took no action. Such a State should not be blamed for an offence of omission. The Peruvian delegation therefore proposed that the passage in question should be redrafted to read:

"Organizing in its territory or directly contributing to the organization within its territory of armed bands which invade the territory of another State or which carry out raids by crossing the frontiers or another State."

25. Mr. COOPER (Liberia) said that as yet no Member State had suffered from the absence of a definition of aggression. The Charter stated in unequivocal terms, not only the purposes and principles of the Organization and the obligations of its Members in that connexion (Article I, paragraph 1, and Article 2, paragraphs 3 and 4), but also provided for action with respect to threats to the peace, breaches of the peace and acts of aggression (Chapter VII). In view of the existence of those provisions, he did not quite understand why the Soviet Union had proposed a definition of aggression; he asked for some explanations in that connexion.

26. The Liberian delegation nevertheless shared the view of the delegations which maintained that a definition of aggression was necessary, if only to ensure the political, economic and social protection of small nations from unjust aggression. Aggression should be defined by an amendment of the Charter or by an amplification of its provisions. It also shared the hope that Member States would endeavour to fulfil in good faith the obligations they had solemnly assumed under the Charter, and that they would persist in their efforts to achieve a definition of aggression which would be generally acceptable and would be in every way adequate to ensure the protection of all countries against all possible forms of aggression, whether direct or indirect.

27. It considered, however, that in the existing international situation it was impossible to prepare a definition on which all States, particularly the great Powers, could agree. So long as international relations remained tense, the existing provisions of the Charter relating to aggression would have to suffice.

28. Mr. GUYER (Argentina), replying to the Peruvian representative's remarks, said that, although the Treaty of Rio de Janeiro and the Act of Chapultepec contained a very useful enumeration of acts of aggression, which met the needs of the American States, they did not provide a definition of aggression proper from a juridical point of view. The then Director-General of the Pan-American Union and the Rapporteur of the committee which had dealt with the question at the Inter-American Conference for the Maintenance of Continental Peace and Security held at Rio de Janeiro had recognized in their reports that the Treaty avoided defining aggression.

AGENDA ITEM 53

Report of the International Law Commission on the work of its ninth session (A/3623; A/C.6/L.400) (continued)*

STATEMENT BY THE RAPPORTEUR

29. Mr. TABIBI (Afghanistan), Rapporteur, reminded the Committee that the consideration of the first item on its agenda the report of the International Law Commission on the work of its ninth session (A/3623), had been held over pending the Fifth Committee's decision on the question of the remuneration of the members of the International Law Commission. The Fifth Committee had just taken a decision which conformed with the general sentiment expressed in the Sixth Committee. As the Sixth Committee had before it a draft resolution (A/C.6/L.400) to which some delegations had proposed oral amendments, he thought that perhaps the sponsors of the draft and of the amendments should confer with a view to working out a joint draft acceptable to the Committee.

30. Sub-Committee 9 of the Fifth Committee would shortly meet to consider the pattern of conferences, in particular the report of the Advisory Committee on Administrative and Budgetary Questions (A/3624), which stated in paragraph 58 that "the duration of the 1958 session of the International Law Commission may be shortened by reason of the fact that it will be linked to a major conference on the law of the sea". But the International Law Commission's report said (A/3623, para. 34) that a session shorter than ten weeks would not be satisfactory, and the Sixth Committee had recognized, besides, that the Commission's work was not proceeding rapidly enough. In those circumstances, the Sixth Committee should settle the point before the Fifth Committee took action on the Advisory Committee's report.

31. Lastly, since other committees had already submitted their reports to the General Assembly, the Sixth Committee should likewise begin to think of writing its report.

32. The CHAIRMAN stated that he had no speakers on the list for the meeting to be held on the next day. He proposed that that meeting should be devoted to the discussion of the points raised by the Rapporteur.

It was so decided.

The meeting rose at 12.40 p.m.

*Resumed from the 513th meeting