United Nations

GENERAL ASSEMBLY

FIFTH SESSION

Official Records

FIRST COMMITTEE 385th

MEETING

Monday, 6 November 1950, at 10.45 a.m.

Lake Success, New York

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Chairman: Mr. Roberto URDANETA ARBELÁEZ (Colombia).

Duties of States in the event of the outbreak of hostilities (*continued*)

[Item 72]*

GENERAL DISCUSSION (*continued*)

1. Mr. LACOSTE (France) stated that his delegation had studied the Yugoslav draft resolution A/C.1/604) and had listened with the most sympathetic interest to Mr. Kardelj's explanations (384th meeting). The measures provided in that draft resolution would fill a gap in the system of defence created by the United Nations for isolating aggression, and would be an effective and practical remedy against a serious and ever-present danger.

2. Since the outbreak of hostilities in Korea, the United Nations had realized more clearly the perils which menaced it, and the General Assembly had adopted a resolution entitled "United action for peace" (A/1456, resolution A) with the object of increasing its vigilance and the effectiveness of its intervention. The Yugoslav delegation now invited the nations still further to increase the promptness and efficacy of their response.

3. When war broke out, it was difficult to determine with certainty who was the aggressor and who the victim. Avowed aggressors no longer existed; aggressors always invoked their legitimate right of self-defence to justify the action which they would not have admitted to having done at first. Statesmen who resorted to such methods pleaded reasons of state until, if events had developed favourably for them, they were prepared to allow their bad faith to be revealed.

4. To remedy that state of affairs, the Yugoslav delegation had proposed an automatic method of detecting the aggressor. It would no longer be up to the victim to prove his innocence. The two combatants would be placed on an equal footing and similar obligations—action, for the one party, non-action for the other—within the same time-limit would be imposed on them. The machinery for issuing a cease-fire order and for withdrawing all armed forces by a certain time-limit would either bring the hostilities to an end or expose the aggressor, whose guilt would be clearly shown by his very actions.

5. That method was certainly a very attractive one. Nevertheless, in such a serious matter the greatest prudence should be exercised. In the organic world, subject to change, any automatic system of determination might involve uncertainty and possible errors, especially since, with some of the modern forms of warfare, confusion was more likely to occur, than in the past, particularly through the use of parachute troops.

6. In the case of hostilities breaking out between two genuinely peace-loving States, the device proposed by the Yugoslav delegation might be of great service. Nevertheless, a State which was determined to commit an act of aggression might easily appear to be technically in the right. It could easily give a cease-fire order in order to state immediately afterwards that the enemy had continued his hostile operations and that military security required the immediate resumption of operations. That being so, the greatest care should be exercised since one risked restricting the initiative of the victim of the aggression.

7. The international community could not rely exclusively on automatic criteria in making its decisions. The use of the impartial observers provided for in Section B of the resolution on united action for peace might play a most important role in that connexion. Mr. Kardelj had himself recognized the necessity of reserving the free judgment of the organs of the United Nations, and had also said that he was ready to re-examine certain aspects of his proposal in a more realistic spirit. It would therefore be desirable if the Yugoslav delegation could present a less rigid text to the Committee.

* Indicates the item number on the General Assembly agenda.

8. The delegation of France would be happy to take part in any joint action to reword the draft, which had aroused its interest.

9. Mr. URRUTIA (Colombia) stated that, in view of the importance and complexity of the problem, it would be as well to glance in retrospect at the efforts made in the past to define aggression and to determine the aggressor. Since 1919, the idea that nations had the right to make war had been replaced by that of the prohibition of aggressive warfare. The Treaty of Versailles had represented a compromise between the Anglo-Saxon tendency towards simple denunciation of the aggressor and the Latin tendency towards collective defence against the aggressor.

10. The Covenant of the League of Nations had not been ratified by the United States of America, despite the protection afforded to Members by the unanimity rule, which was tantamount to a right of veto. The Member States had apparently not been prepared, notwithstanding that guarantee, to allow themselves to be drawn into wars in other continents than their own or in which they were not directly concerned. Thus, the Draft Treaty of Mutual Assistance of 1923[1] had been a step forward, for it established the moral obligation of States to combat aggression. The Geneva Protocol of 1924[2] and the Briand-Kellogg Pact of 1928, however, provided only for a simple condemnation of aggression. The Latin-American countries, the Scandinavian countries, the Soviet Union, the Balkan countries and some Arab States had opposed the Anglo-Saxon tendency and had attempted to find a formula for the automatic determination of the aggressor.

11. At one time it had been agreed that the State which first declared war should be considered to be the aggressor. Then, the possibility of an outbreak of hostilities without a declaration of war had been examined. Later, great importance had been attached to the violation of frontiers and to assistance given to revolutionaries to overthrow the government of another State. The experience gained in each war had brought about a change in international public opinion on the subject of how aggression should be denounced. It was undoubtedly extremely difficult to define foreign assistance to revolutionaries.

12. In 1924 a study had been made not only of rules to define the aggressor but also of rules to decide what organs should be competent to denounce the aggressor and impose sanctions. The definition of the aggressor which had been given in the London treaties of 1933[3] between the USSR, the Baltic States, the Balkan States and several States of the Middle East was perhaps the best. That definition laid down that any State which gave assistance to armed bands formed on its territory which invaded another State, and which refused to adopt the necessary measures to deprive those armed bands of protection and assistance, should be declared an aggressor.

13. While it had not been possible to agree upon a universally accepted definition of "aggressor", the principle that an international organization should determine the existence of acts of aggression had slowly been admitted. That principle was laid down in article 9 of the Inter-American Treaty of Mutual Assistance signed at Rio de Janeiro in 1947. It was also embodied in the Charter of the United Nations, since it was the Security Council which established and determined the existence of any act of aggression. The absence of a rigid rule for determining an aggressor was a step forward and would help to do away with the difficulties encountered by the League of Nations. Since the United Nations had the responsibility for taking measures to put an end to aggression, the responsibility for determining the aggressor should also be left to the Organization. In addition, the United Nations should have full power to denounce a State as an aggressor if it accepted the suspension of hostilities as proposed by the Yugoslav draft resolution (A/C.1/604) but gave assistance to revolutionaries in the State attacked. An automatic method of suspending hostilities might have its merits in situations involving minor incidents between two States neither of which had any aggressive intentions; but a cease-fire order, if disregarded by the aggressor and accepted by the victim, would be to the advantage of the aggressor. Public opinion in the State attacked would certainly not relinquish the elementary right of self-defence.

14. The Yugoslav draft resolution was based on the two fundamental ideas that the position of a State engaged in hostilities should be determined in so far as the United Nations was concerned, and that a cease-fire order by the Security Council or the General Assembly should not lose its efficacy through delay occasioned by discussions conducted in those organs. Those two ideas could be reconciled by the implementation of the General Assembly resolution entitled "United action for peace" (A/1456, resolution A). Under that resolution, States were obliged, in the event of hostilities, to invite the Peace Observation Commission to conduct an investigation. In the event of invasion, the General Assembly could be convened within twenty-four hours. It could then, in a very short time, make a recommendation which would have a much greater moral force than an automatic determination of the aggressor.

15. Although he did not wish to submit formal amendments, the representative of Colombia suggested that the Yugoslav delegation might amend the fourth and sixth paragraphs of its draft resolution (A/C.1/604), bearing in mind the General Assembly resolution on united action for peace. The States engaged in hostilities should make a public statement proclaiming a cease-fire order, not automatically on the expiry of a twenty-four hour time-limit after hostilities had broken out, but as soon as they were called upon to do so by the Security Council or the General Assembly. Those States should also undertake to invite the Peace Observation Commission within twenty-four hours to proceed to the spot concerned in order to report on the situation. If those two rules were accepted, the sixth paragraph should be amended to the effect that it would be the Assembly which would determine the State which (*a*) had engaged in hostilities, (*b*) had

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[1] See *League of Nations, Report of the Temporary Mixed Commission for the Reduction of Armaments*, document A.35 1923.IX.Part I., p.3.

[2] See *League of Nations, Protocol for the Pacific Settlement of International Disputes*, document C.606.M.211.1924.IX.

[3] See *League of Nations Treaty Series, Vol. 147*, No. 3391.

failed to make a public statement proclaiming a cease-fire order, (*c*) had not invited the Peace Observation Commission to go to the spot concerned, or (*d*) had not observed the recommendation of the Security Council or the General Assembly and would hence be regarded by the international community as responsible for the breach of the peace. It was preferable to speak of a breach of the peace rather than aggression, since the latter term gave rise to an extremely delicate question of definition.

16. Mr. ESPINOSA (Cuba) considered the Yugoslav draft resolution to be extremely valuable. Nevertheless, it had certain weaknesses which might result in obstructing the defence of the victim and might even lead to that victim being regarded as the aggressor. The procedure proposed by the Yugoslav delegation would be more effective if the Peace Observation Commission provided for the in General Assembly resolution entitled "Uniting for peace" could take action whenever a conflict broke out.

17. The Yugoslav draft resolution reaffirmed the principle of collective security contemplated in the above-mentioned General Assembly resolution. It also provided for the denunciation of the aggressor in the event of a breach of the peace. The aggressor State, however, was the one which violated the frontier, air space or territorial waters of another State. For those reasons, the Cuban delegation wished to submit some amendments (A/C.1/609) to the Yugoslav draft resolution (A/C.1/604) in order that the victim State might retain its inalienable right of self-defence and that the Peace Observation Commission should be used to facilitate the identification of the aggressor.

18. Mr. ZARUBIN (Union of Soviet Socialist Republics) recalled that the Yugoslav draft resolution stated that it was desirable "to create a further obstacle to the outbreak of war, even after hostilities have started, and facilitate the cessation of the hostilities by the action of the parties themselves, and thus contribute to the peaceful settlement of disputes". The explanatory memorandum of the Yugoslav delegation (A/1399) stated that Chapters V, VI and VII of the Charter had "entrusted the Security Council with the task of eliminating an imminent menace against international peace and security when it has already appeared". The Yugoslav delegation therefore seemed to assume that the Security Council could not take action until a breach of the peace had occurred. That argument was erroneous, however, since it was clear from Chapter VI, Article 33, of the Charter that the Security Council should, when it deemed necessary, take steps to settle any dispute or situation which was likely to endanger the maintenance of international peace and security. Thus, under Article 33, the Security Council need not wait until a threat to peace had already occurred before it took action; whenever it was possible or probable that such a threat would result from the continuance of a dispute, the Security Council could invite the parties concerned to settle their dispute by the means provided for in Article 33, paragraph 1.

19. Article 34 had also been misunderstood by the Yugoslav delegation. Under Article 34, the Security Council "may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute", and the purpose of such investigation was "to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security". There again, the Security Council was called upon to take action not in the event of aggression or of an actual threat to peace, but in the event of difficulties which were likely to lead to a situation or to give rise to a dispute which, in turn, might constitute a threat to peace and security. Similarly, under Article 35, any State might bring any dispute or any situation of the nature referred to in Article 34 to the attention of the Security Council or of the General Assembly. Articles 36, 37 and 38 were also based on the principle that the Security Council was bound to take action not only, as the Yugoslav delegation seemed to understand, in the event of a direct threat to peace, but in the event of difficulties which might result in a dispute or a situation which, in turn, might give rise to a threat to international peace and security.

20. The Yugoslav delegation, on the contrary, seemed to imply that the functions and prerogatives of the Security Council were limited to eliminating direct threats to the peace which had already become apparent, in order to justify the proposals that it had submitted. From the practical point of view, those proposals were unacceptable because they would help the aggressor rather than facilitate the struggle against aggression.

21. The first Yugoslav proposal (A/C.1/604), concerning a public statement to be made by any State which had become engaged in hostilities, the withdrawal of the armed forces of both States beyond the frontier within forty-eight hours, and sundry other military measures, would in actual fact result in giving the aggressor one or two days in which he could act with impunity.

22. According to the Yugoslav draft resolution, such a statement in itself, together with the action taken in accordance with the provisions of the text, would determine the party to be regarded as the aggressor. The Security Council would thus be condemned to inaction and to awaiting the pleasure of the aggressor during the forty-eight hours following the beginning of the attack. That would be a windfall for the aggressor State, which would thus have every opportunity to carry out its plans, while the Security Council and the General Assembly would have to play the part of impotent onlookers. Under the guise of creating a further obstacle to the outbreak of war, the Yugoslav delegation was giving an aggressor every opportunity, during a period of several days, to take action against its victim. In fact, if the attack took place shortly after midnight, the attacker could make full use of the twenty-four hours available before making the public statement which would enable that State to avoid being regarded as the aggressor.

23. The aggressor State, moreover, would have a further twenty-four hours in which to continue hostilities, since it would not have to cease hostilities until twenty-four hours after the publication of the cease-fire order. During that additional time, it would not be denounced as an aggressor, and no countermeasures could be taken. Thus, the aggressor could

remain in its victim's territory with impunity for approximately four days.

24. In modern times, however, an aggressor made its preparations in advance and possessed technical resources which enabled it to conduct operations so rapidly that the period of grace granted by Yugoslavia to the attacking party might enable that party to carry out its plans.

25. Thus, not only would the time-limit proposed for the identification of the aggressor fail to prevent war, but, on the contrary, it would enable adventurers who hoped to destroy a neighbouring State within a short time, to carry out their evil designs, as a result of the obstacles placed in the path of rapid and effective action by the Security Council against the aggressor.

26. In order to enable the Security Council to take action, it was essential, in the first place, that the aggressor should be identified immediately. Only the extremely credulous would expect an aggressor State which had had all the time needed for preparations to cease hostilities within twenty-four hours and to withdraw its armed forces behind its own frontier.

27. If the Yugoslav proposal was adopted, the attacking party would only have to issue the public statements required of it within the prescribed time-limits to avoid identification as the aggressor. Thus, no aggressor State need ever be identified, despite the aggressive nature of its actions. Those "duties of States" would only serve the purposes of the attacking State, which for a considerable period of time would avoid the risk of being identified as the aggressor and which, in addition, could use the time thus granted to it to continue hostilities, to re-enforce its position in the territory of its victim and, probably, to achieve its aims.

28. According to the Yugoslav draft resolution, refusal by a State to withdraw its armed forces behind its frontier would be one of the criteria for identifying the aggressor. A State which was the victim of armed aggression might, however, in defending its territorial integrity, cross the frontier of the attacking State at some point in order to carry out a flanking movement, and might not be in a position to withdraw its forces in time, owing to the fact that the enemy troops were on its territory and that the flanking movement had been intended solely to safeguard the victim of aggression.

29. The USSR delegation therefore considered the Yugoslav draft resolution (A/C.1/604) to be unacceptable. The main purpose of the United Nations was to set an insurmountable obstacle in the path of aggression and to call the aggressor to account. The Soviet Union, which had striven unremittingly for the establishment of a lasting peace, still considered that immediate and effective measures should be taken in the event of aggression. Since even a threat of aggression involved taking certain measures, it was all the more true that the victim of aggression should, in the event of an actual breach of the peace, be taken under the protection of all peace-loving States, while the aggressor was opposed by the combined forces of Member States.

30. The question then arose of determining which was the attacker State, the aggressor, which was the guilty party and which the victim. The reply to that question depended upon the attitude to the conflict of the peace-loving Member States, which were bound to help the one and take measures against the other, under Chapter VII of the Charter. According to Articles 39 and 42 of the Charter, an act of aggression constituted a breach of international peace and security. What was involved therefore was a conflict between two States, in which one of them, the aggressor, jeopardized the territorial integrity and political independence of the other, thus violating international law.

31. Although there were various definitions of aggression in international law, an attack by one State against another was a criminal act, which constituted a mark of aggression under all those definitions.

32. When efforts had been made under the auspices of the League of Nations to strengthen peace by means of disarmament, the importance of a definition of aggression had been made manifest. During the second session of the Disarmament Conference, in 1933[4] the USSR had submitted a proposal which, in spite of the objections made by those whom a definition of aggression could only embarrass, was adopted in its broad outlines by the Committee on Security Questions.

33. Notwithstanding the advantages which the aggressors who were in power at the time could have derived from such an important omission in international law, the Soviet definition of aggression had been adopted in connexion with a number of international conventions concluded in London in July 1933;[5] and, on that basis, the USSR had signed agreements with eleven States.

34. In view of the sanction conferred by international law upon the USSR definition of aggression, the USSR delegation now proposed to define its concept of aggression as clearly as possible, in order to prevent any attempt to justify aggression in the future. It was obvious that such an action would be of vast importance if any armed conflict were to break out.

35. The preamble to the USSR draft resolution (A/C.1/608) referred to the advantage of reducing armaments to a minimum, to the equal rights of all States, to the right of nations to develop freely and to defend themselves against aggression or invasion within the limits of their own frontiers. Paragraph 1 of the operative part listed certain acts, the perpetrator of which would be regarded as an aggressor in an international conflict; and paragraph 2 stated certain considerations, such as arguments of a political, strategic or economic nature, which could not serve as justification for attack. Finally, paragraph 3 safeguarded the right of the victim State to ensure its security by the methods provided for the peaceful settlement of disputes and by military measures which did not include the crossing of frontiers.

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[4] See *League of Nations, Conference for the Reduction and Limitation of Armaments, Report of the Committee on Security Questions*, Conf. D/C.G. 108, published in *Conference Documents, Vol. II*, p. 679 (Series League of Nations 1935.IX.4)

[5] See *League of Nations Treaty Series*, Vol. 147, No. 3391.

36. The question of a definition of aggression was dealt with in certain international agreements, such as the Treaty of Mutual Assistance concluded at Rio de Janeiro in September 1947. Nevertheless, no existing texts defined aggression as completely and as satisfactorily as did the USSR proposal of 1933. In the light of experience, therefore, it seemed that the adoption of the USSR draft resolution would constitute a decisive stage in the struggle against aggression.

37. The CHAIRMAN stated that no speakers had put their names down for the afternoon meeting, which therefore would not take place. The delegations which would take part in the general discussion at the meeting to be held on the following morning would be the Byelorussian SSR, Czechoslovakia, the United States of America, Yugoslavia, the Ukrainian SSR, Poland and the United Kingdom.

The meeting rose at 12.30 p.m.

Printed in U.S.A. B—39100—November 1950—3,400