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CONTENTS

Chairman : Mr. Manfred LACHS (Poland).

Report of the International Law Commission covering the work of its third session (A/1858), including : (*a*) Question of defining aggression (chapter III) (*continued*)

[Item 49 (*b*)]*

1. Mr. MAKTOS (United States of America) said he would like to express his regret at having omitted, in speaking at the previous day's meeting, to pay a tribute to the representative of Greece for his noteworthy speech at that same meeting.

2. Mr. CHAUMONT (France) thought that the problem of defining aggression, at present before the Sixth Committee, was of very particular importance. Attempts to describe aggression were traditional in international law. Many French statesmen and jurists had undertaken to demonstrate the legal value of such a definition. There were three possible methods of arriving at it. The method indicated in Article 16 of the League of Nations Covenant left it to each State to say whether or not aggression had taken place. Article 39 of the Charter of the United Nations left that responsibility to the Security Council. Lastly, a third method, which was not incompatible with the two preceding methods, was to ascertain the essential elements in a description of aggression. According to that method, a number of criteria would be established in time of peace, and States or an international organ would be responsible for saying whether or not aggression had taken place. That method had been adopted for the London Conventions of 1933, [1] which were based on the definition advocated by Mr. Litvinov at the disarmament conference held that year. [2] The USSR delegation had reintroduced that definition at the fifth session of the General Assembly in its draft resolution of 4 November 1950, [3] and at the present session in the draft resolution it had submitted to the Sixth Committee (A/C.6/L.208). It was this third way of defining aggression which the Committee had on its agenda.

3. Doubt as to the true nature of the task which the International Law Commission had had assigned to it had been expressed by a number of speakers, including the representative of the United States in the First Committee at the fifth session of the General Assembly [4] and by Mr. Spiropoulos, either as a member of the International Law Commission (A/1858, para. 39) [5] or as representative of Greece at the preceding meeting of the Sixth Committee. Mr. Chaumont considered that the matter should be studied from the legal point of view, without, however, ignoring its political aspect.

4. With regard to the instructions which the International Law Commission had received from the General Assembly, he considered, like most members of the International Law Commission as indicated in paragraph 38 of its report, that it was the Commission's task to undertake a definition of aggression. That was proved by the history of the matter. A Yugoslav proposal on the duties of States in case of the commencement of hostilities (A/C.1/604), the purpose of which had been to arrive at an automatic definition of aggression, had been followed by the USSR proposal of 4 November 1950, providing a definition by a detailed enumeration of cases of aggression based on the criteria of the London Conventions of 1933. The modified Yugoslav proposal (A/C.1/604/Rev.2) had been adopted in General Assembly resolution 378 A (V). So far as the USSR proposal was concerned, a Syrian draft resolution of 7 November 1950 (A/C.1/610), modified by a Bolivian amendment (A/C.1/612/Rev.1), had proposed that the definition of aggression should be included among the subjects to be studied by the International Law Commission with a view to the preparation of a draft code of offences against the peace and security of mankind. That last proposal as thus modified had been adopted on 17 No-

* Indicates the item number on the General Assembly agenda.

[1] See *League of Nations, Treaty Series*, vol. CXLVII, No. 3391 and vol. CXLVIII, Nos. 3405 and 3414.

[2] See *League of Nations, Conference for the Reduction and Limitation of Armaments*, Minutes of the General Commission, Series B, vol. II, pages 237.

[3] See *Official Records of the General Assembly, Fifth Session, Annexes*, agenda item 72, document A/C.1/608.

[4] *Ibid., First Committee*, vol. I, 388th meeting.

[5] *Ibid., Sixth Session, Supplement No. 9.*

vember 1950 (resolution 378 B (V) of the General Assembly). It was therefore impossible to deny that the International Law Commission had been instructed to define aggression. That the General Assembly was competent to request such a definition was apparent from Article 10 and more particularly Article 11, paragraph 1, of the Charter. All that the Security Council was called upon to do under Article 39 of the Charter was to note the existence of an act of aggression. The presumption was, therefore, that the aggression had already been determined.

5. With regard to the theoretical problem of the possibility of defining aggression, it was legally possible to do so. The theoretical difficulties were not important. Definition was always a difficult and dangerous undertaking, but what was wanted was not necessarily a definition that would be valid for all time. The problem was that of the definition of an international crime for inclusion in the draft Code of Offences against the Peace and Security of Mankind. The machinery of penal justice included three stages: the drafting of the penal law, the work of the judiciary organs and the intervention of the secular arm. If there were no description of aggression, the legislative power would necessarily have to be vested in the judge or the executive authority. The same difficulties would then be encountered as had arisen at the time of the Judgment of Nürnberg, when improvisation had been rendered necessary by the inadequacy of international penal law. It was merely a matter of determining aggression, and not of defining it in all cases. If there was no description of aggression, there was no description of self-defence either. The result was that serious difficulties were encountered in applying Article 51 of the Charter.

6. The representative of Greece had spoken of a natural concept of aggression. Each State would itself decide what it regarded as constituting aggression. Mr. Chaumont noted, however, that the United Nations had succeeded in defining human rights by establishing a number of criteria concerning the various rights that had to be protected. Articles 10, 17 and 21 of the draft international covenant on human rights [6] contained lists provided for purposes of guidance and not advanced as exhaustive. It could not therefore be asserted *a priori* that a definition of aggression could not be arrived at by the same method. The purpose of such a definition would be to provide guidance so as to avoid arbitrary decisions in international relations. There were undoubted cases of aggression. To define aggression was to limit the scope of possible aggressors.

7. Such a description of aggression was certainly attended by great practical difficulties, even if the factor of political expediency, which it was not for the Sixth Committee to consider, were eliminated. When aggression occured, the essential problem was to bring "police action" to bear on the situation. The intervention of the judiciary for the purpose of determining who was the aggressor came only later. If efforts were directed at the start towards ascertaining who was the aggressor, the result would be to allow the aggressor to establish himself in a situation for which no remedy could be found. That fundamental idea was at the basis of Chapter VII of the Charter. Article 39 and the following Articles vested in the Security Council the power to take provisional or final action. The Security Council was essentially a police organ. Its responsibility was not to determine who was the aggressor, but to put an end to the aggression. If the Security Council were to define aggression, it would involve itself in a protracted process.

8. That did not mean that there was no point in determining who was the aggressor. The General Assembly could not ignore the legal problem of aggression. It was not without importance to know in advance the circumstances in which particular States might render themselves guilty of aggression. Moral factors still had a part to play in the modern world. Lastly, and above all, the problem of the description of aggression was a matter of international jurisdiction. The United Nations was attempting to institute a new international order in penal matters, which was to be reflected in the drafting of an international criminal code and the establishment of an international criminal jurisdiction. It was the application of the revolution which the Judgment of the Nürnberg Tribunal had brought about in international law. Although Chapter VII of the Charter did not deal with the problem of jurisdiction, it was important to establish international responsibilities. Once the aggression had been repelled, justice must be done. By describing the aggressor, the General Assembly would not be encroaching on the prerogatives of the Security Council; it would only be ensuring that international justice was done.

9. The International Law Commission had encountered great difficulty in the choice of a method of describing aggression. Some preferred an analytic method consisting in the enumeration of acts of aggression, as in the London Conventions of 1933 or the USSR drafts, while others preferred a synthetic method. The latter had been the method followed by the International Law Commission in its attempt to provide a general definition which would cover all possible cases of international aggression. The members of the International Law Commission had proposed various wordings and, in the event, the Commission had not adopted a definition of aggression, as could be seen from paragraph 53 of its report. The analytic and synthetic methods could, perhaps, be combined, and he reserved the right to indicate, if necessary, which his delegation preferred. The important point was that the International Law Commission had been instructed by the General Assembly to define aggression and that the Sixth Committee had found that the Commission had not done so.

10. The question of defining aggression must therefore be incorporated in the much wider problem of international criminal justice, a task which should be undertaken by the International Law Commission. He drew attention to Article 16, paragraph (*h*), of the Statute of the International Law Commission, which provided that when the Commission considered a draft it had prepared to be satisfactory, it should invite governments to submit their comments. That procedure, however, had not been followed. The time had therefore come to learn the views of governments, which would be able to express their anxieties or misgivings on the question. Some governments preferred not to define aggression. That was a counsel of despair; the Sixth Committee could not do less than the First Committee, which had referred the question to the International Law Commission.

11. His Government was among the most ardent supporters of international criminal justice. Interna-

[6] See *Official Records of the Economic and Social Council, Thirteenth Session, Supplement No. 9*, annex 1.

tional police action was undoubtedly essential, but the rules of international justice must be drawn up before war broke out and not while it was proceeding. Those rules were bound up with the development of international law, and no lasting separation could be made between peace and justice.

Mr. Perez Perozo (Venezuela), Vice-President, took the chair.

12. Mr. MAKTOS (United States of America) wished to reply to the French representative, whose views he did not altogether share. Before doing so, he would emphasize that the French delegation was not alone in desiring the development of international criminal law. As Chairman of the Committee on Genocide, he had himself had occasion to emphasize the need to establish an international criminal tribunal, and a number of representatives in the Sixth Committee would doubtless be able to testify that the United States representative in that Committee had never taken the conservative view, to repeat a phrase used by the Chinese representative at an earlier (278th) meeting.

13. He did not agree with the French representative's argument that, by noting the impossibility of defining aggression, the Sixth Committee would contribute less to the solution of that important question than the First Committee had done. That was not a basis on which to pass a valid judgment on the work of the Sixth Committee.

14. Moreover, the First Committee had merely referred the question to the body competent to deal with it—the International Law Commission. After examining the question thoroughly, the Commission had failed to provide a definition of aggression, thus proving, even if there were no specific statement to that effect in its report, that it had in fact reached the conclusion that it was impossible or at least undesirable to define aggression. In the circumstances, if the Sixth Committee decided to abide by the International Law Commission's conclusions and was itself convinced that it was inopportune to define aggression, it could not be claimed that it had not made its contribution towards the solution of the problem. In any case, it could not be stated *a priori* that the Committee must at all costs take a positive decision in the matter.

15. By drawing a parallel between aggression and human rights, the French representative had tried to show that to argue that aggression was a natural concept, a principle *per se*, was not sufficient to prove that that concept could not be defined. The French representative had claimed that each individual had a natural conception of human rights; nevertheless, the General Assembly had prepared a draft international covenant on human rights in which those rights were defined. It was only necessary to read the draft covenant to see that it contained many vague expressions, the sum of which could not be regarded as constituting a precise definition of human rights. Even granting that human rights had been exactly defined in the draft covenant, it was nevertheless true that law was not merely a collection of precisely defined concepts; it also embodied a number of more elastic principles, such as the concepts of negligence, fraud and attack and, to revert to the question under discussion, the concept of aggression. Law must develop in accordance with individual cases and not on the basis of *a priori* juridical definitions.

16. He also disagreed with the French representative's contention that, when considering the question of defining aggression, the Sixth Committee should not take its political aspects into consideration. The United States Government could not agree that political considerations should be wholly disregarded, and his delegation would therefore be unable to take the attitude recommended by the French representative. It would, moreover, be recalled that when the International Law Commission was set up, it had been made quite clear that the Commission was a strictly juridical body, whereas there had never been any question that the Sixth Committee was not a purely juridical body, but a Committee of the General Assembly : in other words a primarily political body, which could not be asked to confine itself to the purely juridical aspects of a question.

17. Furthermore, juridical considerations could not be divorced from political, economic and social factors. Law was not, as some had maintained, the sum of the rules which could be applied by force; according to the juridico-sociological theory, law was the harmonization of conflicting interests, which meant that it took all aspects of life into account and that none of its component elements could be removed without destroying it.

18. Lastly, the French representative had professed to regard the Security Council as a police body and had pointed out that Chapter VII of the Charter did not deal with international justice. For his own part, he did not believe that the Charter could be divided into watertight compartments in that way; the whole Charter rested upon the principle of international justice. Moreover, just as the role of the police on the national plane was to ensure respect for law and justice, so the functions of the Security Council, on the international plane, could not be divorced from international justice.

19. The French representative had argued that in the exercise of its functions the Security Council would in any case not have to abide by whatever definition of aggression was decided upon. The dangers inherent in such a state of affairs were obvious : an aggressor would always be able to cite a definition which the Security Council had not taken into account and would try to prove that the Security Council's action was directed against an act not covered by that definition. Clearly, if a definition of aggression were established, the Security Council would not be able to ignore it.

20. In conclusion, he made it clear that no preconceived ideas should be brought to the study of the problem. It could not be asserted either that Chapter VII of the Charter did not deal with international justice or that the Sixth Committee should not take political considerations into account; it would appear, in that connexion, that to be respected by the other Committees of the General Assembly, the Sixth Committee should examine every aspect of the questions submitted to it. He would emphasize, moreover, that the Committee must not undertake to define aggression if such definition was useless or even dangerous in the existing circumstances.

21. Mr. AMMOUN (Lebanon) wished for certain explanations from the representative of France. He asked who would define the aggressor. In that connexion he had difficulty in appreciating how it could happen that the Security Council, which was entrusted with taking police measures in case of aggression, would not be called upon to designate the aggressor. In fact sanctions might extend even to waging war, and if the Security Council were not called upon to designate the aggressor, it might also strike the victim at the same time as the aggressor.

22. As regards the competence of the Sixth Committee to consider the political aspects of the problems referred to it, he thought that the Sixth Committee could consider at one and the same time the legal and political aspects of the problems involved. In any event, it would not be wise constantly to raise the question of whether the Committee should dissociate legal from political considerations.

23. Mr. CHAUMONT (France), replying to Mr. Maktos, pointed out that he had not said that the Committee should not take into account the political aspects of the question at present under discussion. He had said, on the contrary, that he did not disregard those aspects, but that he wished during his statement to keep to the strictly legal aspects. He had made a plain distinction between the legal problem of whether it was legally possible to define aggression and the practical problem of the expediency of such a definition. He had dealt only with the first of those problems, the legal problem, which had to be treated as such. Even if it were considered that it was not desirable for the present to supply a definition of aggression—and he had let it be understood that such was his view—that did not prevent the legal problem from being considered, in spite of the interdependence of legal and political factors, which nobody would deny.

24. As regards the role of the Security Council, he thought he could reply to the representatives of the United States and of Lebanon simultaneously. He had never claimed to divide the Charter into sections or to maintain that the Security Council could in no event designate the aggressor. In speaking of the Security Council as a police body, it had been his intention to say that the task of the Security Council was to deal with the three situations mentioned in Article 39 of the Charter : a threat to the peace, a breach of the peace or an act of aggression. In the first two cases the question of the designation of the aggressor did not arise because, in the first case, there was not yet an aggressor and in the second case, it was not yet possible to determine whether there was aggression or not. If it established the existence of aggression, the Security Council should naturally adopt against the aggressor such measures as were warranted. The Security Council was therefore a political body which *established* the existence of aggression and its purpose was to put an end to that aggression. Nobody could maintain that the Council was an international tribunal competent to deal with the legal problem, and that was what he had wished to emphasize.

25. Mr. MAKTOS (United States of America) felt it necessary to elucidate certain points in his statement which had not been sufficiently clear. He wished first to emphasize that he did not deny that the legal elements of a question could be separated from the political elements. He also thought that it was possible to define the idea of aggression, but he maintained that in studying the question of the definition of aggression the economic, sociological and political as well as the legal aspects of the question should be taken into account. In fact, when it was simply a matter of codification, which consisted in declaring what existing law applied to a given question, it was possible to keep to the strictly legal aspects. If, however, as was the case in the present instance, a question was involved which affected the development of international law and which therefore implied the establishment of a new law, all the elements involved had to be taken into account. There was no doubt, moreover, that the question of the definition of aggression implied the establishment of a new law, because no complete definition of aggression existed in current legislation. The question of development of international law and not of codification was involved, and therefore he would again affirm that in such circumstances the Committee should take into account all the elements to which consideration would be given by a conscientious legislator.

26. As regards the Security Council, he had not said that that body would not, in the absence of any definition, have the right to take the measures specified in the Charter. He had simply pointed out that, if there were a definition of aggression, nobody could prevent a member of the Council from deciding, in accordance with his own particular interests, that the situation in question did or did not come within the framework of the definition. Adoption of a definition would therefore result in retarding action on the part of the Security Council.

27. Mr. HSU (China) wished to ask the representative of the United States which political considerations in his view obstructed a definition of aggression. Although the members of the Committee were lawyers, they would no doubt be in a position to appreciate the considerations in question and to support the opinion of the United States delegation.

28. Mr. MENDEZ (Philippines), referring to the example quoted by the representative of France, who had mentioned in connexion with the enumerative method the guarantees contained in Article 10 of the draft International Covenant on Human Rights, wondered whether the act of disregarding certain individual guarantees was not less serious than that of failing to specify certain acts of aggression. Recalling the axiom *nullum crimen sine lege*, he stressed the danger that might result from an omission in enumerating acts of aggression, and he would welcome the views of the French representative on the subject.

29. Mr. MAKTOS (United States of America) stated that he would give the explanations the Chinese representative had requested in a statement at a forthcoming meeting. He also paid a tribute to the Philippine representative, who had drawn attention to one of the basic dangers which would result from the adoption of a definition of aggression.

30. Mr. KERNO (Assistant Secretary-General in charge of the Legal Department) wished to draw the Committee's attention to the question raised by the French representative, who had asked for the application of Article 16 (*h*) of the statute of the International Law Commission. Under the terms of the sub-paragraph in question, the International Law Commission was to invite governments to submit their views on drafts relative to the progressive development of international law prepared by the Commission within a reasonable time. The International Law Commission had considered adopting that procedure, but had thought it better to submit its conclusions direct to the General Assembly. It had considered in fact that the draft code of offences against the peace and security of mankind, in which it had decided to include all acts of aggression and threats of aggression, was a special task entrusted to it by the General Assembly. Under the terms of resolution 177 (II), the International Law Commission was entrusted with formulation of the Nürnberg Principles and with the preparation of a draft code of offences against the peace and security of mankind. As it had submitted its formulation of the Nürnberg Principles directly to the General Assembly, it had taken the view that it should adopt the

same procedure with regard to the draft code. In practice, the result would be the same as if it had considered Article 16 (*h*) of its statute as applicable in the matter; the General Committee of the Assembly had, in fact, decided not to include the draft code in the agenda of the sixth session, but to transmit that draft to the various governments. The draft had already been submitted by the Secretary-General and the governments had been asked to submit their views.

31. Mr. SPIROPOULOS (Greece) wished to make certain observations in reply to the representative of France.

32. As regards the terms of reference of the International Law Commission under resolution 378 B (V), he recalled that the First Committee had first considered a draft resolution of Syria to the effect that the International Law Commission should define aggression. After discussing the matter, however, the First Committee had changed the draft and the General Assembly had referred the USSR proposal and all the First Committee documents relating to the matter back to the International Law Commission so that the Commission could take cognizance of them and present its conclusions. The resolution in question did not request the International Law Commission to define the idea of aggression. Mr. Spiropoulos pointed out to the representative of France that the General Assembly had asked the International Law Commission to consider the question raised by the USSR proposal, which meant, if the differences of opinion which had occurred in the First Committee were taken into account, considering the question of whether it was possible to define aggression and whether it was expedient to do so. He though that if it were considered that a negative reply should be given to the two preliminary questions raised, there was no necessity to study the question in substance.

33. The representative of France had cited the example of human rights as enumerated in the draft international covenant on human rights. Mr. Spiropoulos did not consider it possible to compare the idea of human rights with that of aggression, for in fact, contrary to the case of aggression, the idea of human rights was not inherent in human nature, since slavery had originally been admitted and certain rights had only been recognized and guaranteed gradually and, moreover, at a recent date.

34. As regards the question of whether aggression could be defined, it might well be asked whether a legal definition of aggression was not a dangerous thing. Such a definition would present two dangers: that of being incomplete in some cases, and that of being too wide in others. There was reason to fear, moreover, that an enumerative definition would result in the omission of certain cases; incitement to civil war, which was considered to be a form of aggression since the adoption of resolution 380 (V) by the General Assembly in 1950, could not appear, for example, in the " Politis " definition of aggression formulated in 1933. Furthermore, an abstract definition might be too wide and might describe as aggression an act which everybody's conscience and common sense would tell him was not an act of aggression. It was also to be noted, in considering the penal codes of various countries, that they did not contain any definition of what constituted the equivalent of aggression in domestic law. The French penal code mentioned attack against persons without defining the word " attack ". To sum up, therefore, he considered that it was theoretically impossible to define aggression. He admitted that certain cases of aggression could be enumerated, but he had come to the conclusion that that method would present serious risks.

35. As regards the question of whether the Security Council could and should define aggression, Article 39 of the Charter was perfectly plain and stipulated that the Security Council should determine the existence of any threat to the peace, breach of the peace or act of aggression. To determine aggression, therefore, the Security Council would have to know what constituted aggression; hence the definition of aggression, if it were possible, would prove of value to the Security Council. That was, moreover, the reason why the USSR had insisted that the General Assembly should define aggression, because that definition would be primarily applied by the Security Council; it had not wanted that definition to be applied by an international penal court, the establishment of which was not favoured by the delegation of the Soviet Union.

36. The representative of France had suggested that the International Law Commission should undertake the study of the question simultaneously with that of the draft Code of Offences against the Peace and Security of Mankind. Unfortunately, the preparation of the draft code was now at an end and the International Law Commission, which had submitted it to the General Assembly, could not therefore return to the question of aggression.

37. In conclusion, he stressed that the International Law Commission had simply mentioned aggression as one of a number of offences against the peace and security of mankind. No definition was involved, and in that respect the draft code resembled the penal codes of the various countries.

38. Mr. P. D. MOROZOV (Union of Soviet Socialist Republics) asked the members of the Commission as a whole, without specific reference to the representative of any one country, the question : how was it possible both from the legal point of view and from the point of view of ordinary common sense to subordinate the definition of a crime to the question of what judicial body would be called upon to take cognizance of that offence ? He would welcome from those members of the Committee establishing any such connexion between two entirely distinct questions a reply based on the fundamental principles of law.

The meeting rose at 6.10 p.m.

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