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*President:* Mr. Corneliu MANESCU (Romania).

**AGENDA ITEM 95**

Need to expedite the drafting of a definition of aggression in the light of the present international situation (continued)

1. Mr. EL KONY (United Arab Republic): The United Arab Republic delegation would like at the outset to pay tribute to the delegation of the Soviet Union for its commendable initiative in bringing to the General Assembly once more the question of defining aggression. At a time when the rule of law is being defied and challenged in various parts of the world, at a time when aggression is being flagrantly and frequently committed in our part of the world, it only natural that we should have a keen interest in this matter. In fact, all law-abiding States should harness their efforts in order to foil all attempts to perpetrate aggression. Well before the inception of the United Nations my country expressed the view that a definition of aggression was desirable and urgently needed.

2. As early as 5 May 1945, the delegation of Egypt presented an amendment to the Dumbarton Oaks proposals which suggested that "a general definition of 'aggression' should be given"<sup>1/</sup> in the Charter. The Egyptian delegation felt, and still does, that a definition of the term "aggression" would undoubtedly contribute greatly to the maintenance of international peace and security and to the progressive development of international law. Throughout the long history and arduous discussions in the General Assembly, my delegation has consistently advocated that view and has held to it firmly.

3. Since it has been decided to refer the item under discussion to the Sixth Committee, I shall refrain from expounding our views on all the relevant aspects and shall confine myself to making a few comments of a general nature. We are not discussing here the possibility or the desirability of defining aggression. That was settled in unequivocal terms over fifteen

<sup>1/</sup> Documents of the United Nations Conference on International Organization, 2G/7 (q) (1), chap. VIII, p. 7.

years ago. The General Assembly pronounced itself on this matter when it adopted resolution 599 (VI) which stated, *inter alia*:

"Considering that, although the existence of the crime of aggression may be inferred from the circumstances peculiar to each particular case, it is nevertheless possible and desirable, with a view to ensuring international peace and security and to developing international criminal law, to define aggression by reference to the elements which constitute it".

What is needed now is that we should concentrate on how best we can expedite the adoption by the General Assembly of effective criteria defining aggression.

4. The present international situation does not augur well for the future of mankind. The use of armed forces against the territorial integrity and the political independence of States is taking place with disturbing frequency. Only a few months ago, Israel, a Member of this Organization, once more discarded all Charter obligations, flouted all Charter purposes and principles and blatantly attack four Arab countries—Jordan, Iraq, Syria and the United Arab Republic. The United Nations, whose primary and transcending objective is to maintain international peace and security and oppose aggression, found itself in a situation where it was unable to discharge its responsibilities. My country is genuinely concerned about the reluctance and sometimes the impotence of the United Nations organ when confronted with an act of aggression. That was clearly manifested last June when the Security Council failed to complement the cease-fire order by the complete liquidation of all traces of Israeli aggression. That dangerous and ominous phenomenon should not be allowed to recur and might not recur if the Security Council, which is a political organ, has the benefit and guidance of the constituent components of a definition of aggression. A definition would facilitate the identity of an aggressor, thus contributing to the United Nations endeavours to maintain peace and prevent and deter aggression.

5. We the people of the United Nations, who over twenty years ago declared our determination to save the succeeding generations from the scourge of war, have a strict legal and moral obligation under the Charter to maintain international peace and security and suppress all acts of aggression. Certain States who favour delaying this important task have advanced arguments and expressed apprehension that the definition of aggression is not called for under the Charter, since it might deprive the Security Council of its discretionary power of determining the existence of an act of aggression.

6. My delegation, along with a large majority of States, does not subscribe to that theory. We believe that the discretionary power bestowed by the Charter could not be impinged upon by definition; rather, a definition would create a requisite set of guide lines and a tangible legal framework which would improve the efficiency of the collective security system prescribed by the Charter. It could not possibly fetter the Security Council from discharging its primary responsibilities. Article 39 empowers the Security Council to activate the collective security system contained in Chapter VII on the existence of a threat to the peace or a breach of the peace. Thus to define aggression the Security Council will always be in a flexible position and will never be trammelled by the dimensions of the adopted definition. The competent United Nations organ would have to apply, subject to its discretion, the constituent elements of the definition to each specific act under consideration. The same procedure occurs in municipal law; national penal codes formulate definitions for the different criminal offences, then their application is entrusted to the discretion of the courts.

7. A definition of an illegal act, whether national or international, always presents an element of security, removes ambiguities and creates an atmosphere of certainty. My delegation has always favoured a mixed type of definition that would clarify the general notion of aggression as contained in the Charter without exhausting the list of aggressive acts.

8. As long as certain States are still prone to the use of armed force as an instrument of national policy, the prime aim of the definition should be to stress and reaffirm the prohibition of the use of armed force as specifically laid down in the Charter. The right of self-defence should be confirmed and justified only, I repeat, only when an actual armed attack occurs. This point should be cleared and emphatically reaffirmed in the light of recent unfortunate events. A definition of the concept of armed attack as the term is used in the Charter will clarify the issue and refute the aggressor's usual pretext of distorting the facts by brandishing Article 51. No ingenuity could transform the nature of an aggressive act. Mere repetition or propaganda does not suffice to legitimize the use of armed force.

9. In conclusion, my delegation wishes to stress to all peace-loving States that our Charter enjoins all States to abstain from resorting to armed force. Wars of aggression are strictly prohibited and the wrongs of aggression should be fully redressed. Accelerating the adoption of a definition of aggression is a major stride in this path.

10. Mr. BENITES (Ecuador) (translated from Spanish): When the problem that we are discussing today was raised in the General Committee, my delegation had doubts about the utility of linking this item with consideration of the present-day international situation. It also had serious doubts about the advisability of holding this debate in the plenary Assembly, because we wondered whether it would be useful to allow a matter as important as the need to define aggression to be diffused in the acrimonious atmosphere of political polemics.

11. Perhaps it may be appropriate to note that the definition of aggression was first discussed at the fifth

session of the General Assembly at Lake Success seventeen years ago, as part of item 72 of the Assembly's agenda which bore the title "Duties of States in the event of the outbreak of hostilities", when the Soviet delegation introduced a draft resolution on defining aggression<sup>2/</sup> which contained a formula differing little from the one that Maxim Litvinov had submitted to the Disarmament Conference held in Geneva in 1932-1933.

12. The question of defining aggression is therefore older than this building which shelters us, and there is no reason whatever for linking it to the present or indeed to any specific international situation. Whatever one's attitude to Viet-Nam or to any other present-day situation may be, it does not seem opportune to enter into a heated side-line debate or a violent exchange of invective which would divert attention from such a long-standing and important question as the definition of aggression. That is why we should have preferred a serious and thorough discussion of the item in the specialized forum of the Sixth Committee, with its more tranquil atmosphere.

13. I should like to make it clear that this does not mean that we support an indefinite postponement, and still less that we agree that aggression cannot be defined. My delegation will oppose any attempt to postpone consideration of the item, and our view is based on the firm belief that aggression can be defined.

14. Starting from this premise, there is one question which must be answered: why has it not been possible in seventeen years of debate, to define aggression? To answer it, we need to look back.

15. Consideration of the definition of aggression really falls into two stages: a first stage between 1950 and 1957 in which serious and tenacious efforts were made to reach a definition; and a second between 1957 and 1967 during which equally tenacious efforts were made not to reach a definition.

16. The first stage was played out in three acts like a classical drama: the studies of the International Law Commission in 1951, the Special Committee of 1953 and the Special Committee of 1956.

17. Resolution 378 B (V) of 17 November 1950 started in the Syrian draft [A/C.1/610] amended by Bolivia. It provided that the item concerning the definition of aggression should be examined by the International Law Commission. That Commission, with Mr. James Leslie Brierly of the United Kingdom in the chair, discussed the item at its third session, which was held between 16 May and 27 July 1951.

18. The International Law Commission never felt it impossible to define aggression. Various definitions were put forward, among which I must mention that of my illustrious friend Professor Gilberto Amado of Brazil, which was limited to the war of aggression [A/CN.4/L.6 and Corr.1]; that of Mr. Roberto Cordova of Mexico [A/CN.4/L.10]; that of Professor Jesus M. Yepes of Colombia [A/CN.4/L.7]; and that of Dr. Ricardo Alfaro of Panama. Among the definitions put forward by other international jurists I should mention that of Dr. Shuhsi Hsu of China [A/CN.4/L.11], and the

<sup>2/</sup> Official Records of the General Assembly, Fifth Session Annexes, agenda item 72, document A/C.1/608.

noteworthy definition provided by Professor Georges Scelle of France [A/CN.4/L.19 and Corr.1].<sup>3/</sup>

19. Considering that it took the International Law Commission many years to finish its study of items such as the Law of Treaties, the Law of the Sea and the Right of Asylum, it is clearly unfair to assert that the Commission failed to define aggression because it did not reach any conclusion after the ten meetings in its third session which it devoted to this item.

20. The debate on the report of the International Law Commission was held by the Sixth Committee between 1951 and 1952, and the Assembly adopted resolution 599 (VI) of 31 January 1952 requesting the Secretary-General to submit a report and deciding to resume consideration of this question at its seventh session.

21. In fact the question of defining aggression appeared as item 54 on the agenda of the seventh session; discussion of that item began on 19 November 1952 at the 392nd meeting of the Sixth Committee. After a long debate the General Assembly on 20 December 1952 adopted resolution 688 (VII), which established the first Special Committee for the definition of aggression.

22. That Special Committee met at Headquarters between 24 August and 21 September 1953. I venture to point out that, although it did not reach any conclusions, a majority of its members declared in Chapter II of its report [A/2638]<sup>4/</sup> that it was in favour of defining aggression. With that report the question of defining aggression returned to the ninth session of the General Assembly as agenda item 51, and debate on it began at the 403rd meeting of the Sixth Committee, held on 14 October 1954. After a lengthy debate the General Assembly adopted resolution 895 (IX) of 4 December 1954, which established a broader Committee and decided to place the matter on the agenda of its eleventh session.

23. Thus we come to the third act, the meeting of the Special Committee in 1956. As my only comment I shall confine myself to citing paragraph 95 in Chapter III of its report:

"The overwhelming majority of the Committee considered it possible to define aggression. This was the position, in particular of China, Czechoslovakia, the Dominican Republic, France, Iraq, Mexico, the Netherlands, Paraguay, the Philippines, Poland, Syria, the Union of Soviet Socialist Republics and Yugoslavia, which held that a definition of aggression was possible and desirable in the interests of maintaining international peace and security."<sup>5/</sup>

24. The argument that what has not been can never be is purely academic; it does not seem to us good logic to conclude that, since to define aggression has not been possible hitherto, aggression should be regarded as impossible to define. This view, moreover, does not accord with the facts. The committees that I have mentioned never concluded that aggression is indefinable or should not be defined. The time they devoted to the definition of aggression was very short.

<sup>3/</sup> See *Yearbook of the International Law Commission*, 1951, vol. II (published by the United Nations, Sales No.: 1957. V.6, vol. II).

<sup>4/</sup> Official Records of the General Assembly, Ninth Session, Supplement No. 11 [A/2638].

<sup>5/</sup> Ibid., Twelfth Session, Supplement No. 16 [A/3574].

The International Law Commission devoted ten meetings to the question; the Special Committee of 1953 devoted the meetings which it held between 24 August and 21 September to the question, and in 1956 it discussed the question in nineteen meetings between 8 October and 9 November. Taking into account the discontinuity of the work, with intervals of two and of three years between the sessions, the topic cannot be declared exhausted or even studied to excess.

25. I think that an examination of the first stage (1950-1957) enables us to draw the following conclusions:

(a) The General Assembly has always shown a profound interest in the question of defining aggression;

(b) None of the Committees that have discussed this very difficult and complex question has had time to examine it thoroughly;

(c) Neither those Committees nor the General Assembly ever concluded that aggression could not or should not be defined — quite the contrary.

26. I shall now examine the second lengthy and dilatory ten-year stage which began in 1957. The report of the Special Committee for 1956 [A/C.574] was item 54 of the agenda of the General Assembly's twelfth session. The Assembly referred the item to the Sixth Committee, which began to consider it at its 514th meeting on 7 October 1957.

27. It is appropriate to point out that between 1954, when the General Assembly had last studied the item, and 1957, when it considered it again, membership of the United Nations had increased by 22 States which had not hitherto had an opportunity to consider it. Accordingly on 28 November a number of Latin-American delegations—Chile, Colombia, Cuba, Ecuador, El Salvador and Venezuela, joined later by the Philippines, submitted draft resolution A/C.6/I.403,<sup>6/</sup> which asked the Secretary-General to request the new Members and the other States which had not yet done so to express their opinions in order that the problem could be studied again during the 1959 session.

28. The delegations of Afghanistan, Bolivia, Guatemala, Haiti, Mexico and Peru submitted an amendment<sup>7/</sup> which further proposed that the Special Committee should be re-established on a broader scale and requested to report in 1959. I would venture to point out that the two draft resolutions requested that the item should be examined again in 1959.

29. At that time the United States proposed another amendment<sup>8/</sup> to the text of draft resolution A/C.6/L.403. Those amendments were incorporated in the text and approved, and became operative paragraphs 2, 3 and 4 of General Assembly resolution 1181 (XII) of 29 November 1957. I do not question the good faith or the good intentions of the United States delegation in proposing its amendments, nor those of the original sponsors—my own country included—in accepting them in a spirit of compromise.

30. Two facts should be taken into account to understand the genesis of resolution 1181 (XII). The first,

<sup>6/</sup> Ibid., Annexes, agenda item 54, document A/C.6/L.403.

<sup>7/</sup> Ibid., document A/3756, paragraph 8.

<sup>8/</sup> Ibid., document A/3756, paragraph 10.

to which we have already referred, was the admission between 1954 and 1967 of 22 new Members, which had to be given time to study the problem. The second is that in 1957 feelings were still running high as a result of the Hungary and Suez crises. Both events could have justified the cautious desire, prevailing at the time, to postpone consideration of the item until a more suitable occasion. However, in company with a great majority of the Latin-American States we did not feel inclined to resume the debate in 1959 and accepted General Assembly resolution 1181 (XII) as a compromise. That resolution introduced new matter that had not appeared in the resolutions previously adopted.

31. The first of those resolutions, [378 B (V) of 17 November 1950] referred the question to the International Law Commission. The second, resolution 599 (VI) of 31 January 1952, considered it in the light of the Commission's report, which linked aggression to the Code of Offences against the Peace and Security of Mankind. The third resolution, 688 (VII) of 20 December 1952 gave the Special Committee a specific and independent mandate and laid stress in its second preambular paragraph on substantive matters. For the first time it approached in earnest the problem of defining aggression in all its complexity; but perhaps to allow it such a short time for such a far-reaching mandate was not very realistic. The fourth resolution, [895 (IX) of 4 December 1954], was confined to a request that the new Special Committee should submit to the General Assembly at its eleventh session a report accompanied by a draft definition of aggression.

32. The foregoing review shows that the first four resolutions, adopted between 1950 and 1954, laid down mandates and appointed special committees for the purpose of defining aggression, for instance General Assembly resolutions 688 (VII) and 895 (IX), or else entrusted the study to a specialized body such as the International Law Commission, as did resolution 378 B (V). But resolution 1181 (XII) of 29 November 1957, on the contrary, entrusted the task to a committee composed of Member States which had served on the past General Assembly's General Committee, which for that purpose was turned into an ad hoc Committee.

33. Resolution 1181 (XII) established as the Committee's mandate, not to define aggression, but to determine "when it shall be appropriate for the General Assembly to consider again the question of defining aggression" (operative paragraph 3).

34. Let us see how that Committee carried out its mandate. In April 1959 it held its first meeting and decided "to adjourn until April 1962 further consideration of the question". In April 1962 it decided "to adjourn until April 1965 further consideration of the question". And in 1965 it decided "to reconvene in April 1967". Four Aprils have witnessed the work of the Committee established by resolution 1181 (XII). Although April is a month for the flowering of spring and of new hopes, it must be agreed that the flowers did not turn into fruit, nor the hopes into realities.

35. I do not think it appropriate to consider the work done by the ad hoc Committee in April 1967. The important thing is that it had not concluded its work when the current session began; and this raises a

particular legal problem which may be expressed as follows:

(a) When a new General Committee is appointed, should the previous ad hoc committee be deemed defunct?

(b) Should the mandate laid down by resolution 1181 (XII) be deemed to have ended when the Assembly placed on its agenda the item which we are now considering?

36. On the first question my delegation has no doubts. Operative paragraph 3 of resolution 1181 (XII) provides that the committee shall be "composed of the Member States whose representatives have served on the General Committee at the most recent regular session of the General Assembly". The most recent regular session is the current one, therefore the previous committee has ceased its functions.

37. Nor has my delegation any doubts on the second question. The mandate established by resolution 1181 (XII) is that the Committee

"shall study the replies (of governments) for the purpose of determining when it shall be appropriate for the General Assembly to consider again the question of defining aggression".

38. The situation seems clear. The General Committee of the current session of the Assembly recommended the inclusion on the agenda of an item entitled "Need to expedite the drafting of a definition of aggression in the light of the present international situation". The General Assembly adopted this recommendation of the General Committee (1572nd meeting). We are considering this need to expedite the drafting of a definition of aggression. The decisive condition in paragraph 3 of resolution 1181 (XII) has been fulfilled, since consideration of item 95 has begun, and that resolution has by implication been set aside. Could the last General Committee meet as an ad hoc committee, for example, and decide that the General Assembly still ought not to examine the question of defining aggression that is at present before us? That would really be inconceivably illogical.

39. Since resolution 1181 (XII) is no longer in force, it seems indispensable to establish a new instrument to achieve a definition of aggression, and that instrument should be a special committee.

40. My delegation believes that the new committee should be given a specific but broad mandate, such as that laid down in resolution 688 (VII) which in its operative paragraph 2 (b) assumes that a definition of aggression will be adopted by a resolution of the General Assembly.

41. The mandate should therefore include the study of:

(a) The various forms of aggression,

(b) The connexion between a definition of aggression and the maintenance of international peace and security,

(c) The problems raised by the inclusion of a definition of aggression in the Code of Offences against the Peace and Security of Mankind and

by its application to international criminal jurisdiction,

(d) The effects of a definition of aggression on the exercise by the various United Nations organs of their jurisdiction,

(e) Any other problem which might be raised by a definition of aggression.

42. With regard to the duration of the mandate, we must not repeat the error of establishing a short fixed period. For example, the new committee might like to study direct aggression first, leaving indirect aggression for another session of the Assembly.

43. In all humility, I should like to appeal to common sense and to suggest that we separate the wheat from the chaff. To mix up an intrinsically legal matter such as the definition of aggression with tortuous political polemics does not seem a good idea. If we really wish to achieve a definition of aggression, let us try to place the question in its true setting.

44. To conclude, I should like to recall that, in accordance with resolutions 1186 (XII) and 1187 (XII), work on the Code of Offences against the Peace and Security of Mankind and on international criminal jurisdiction has been deferred until a definition of aggression has been worked out, and that such a definition would be a very useful guide for the decisions of United Nations bodies.

45. We do not believe that words can hush cannon, but we do believe that principles, like the patient drops of water which wear away the stone, can with love and perseverance mitigate the hardness of man's life. We believe in the slow but sure strength of ideas. That is why we feel that a definition of aggression will be a necessary means of moral coercion against actual or potential aggressors until the rule has acquired the indisputable force of law.

46. Mr. VENDROUX (France) (translated from French): Our Organization was born at the end of the Second World War out of the reaction of peoples determined, as the preamble to the Charter states, "to save succeeding generations from the scourge of war, which, twice in our lifetime has brought untold sorrow to mankind". That same Charter set for the Organization as the first of its purposes the following objective:

"To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace".

47. "Suppression of acts of aggression"—the words appear in paragraph 1 of Article 1. That means that the study of the legal principles underlying the definition of that concept is our concern. For that matter, who would not want to establish the legal bases that might be instrumental in discouraging a potential aggressor, in making public opinion of the responsibilities involved and in reducing international tensions

by applying the procedures laid down for such cases in the Charter?

48. The question is indeed not a new one. At my country's initiative it was even raised in the League of Nations. It hardly seems necessary to recount here the many attempts made to define aggression over the last thirty or more years. Touching only upon those attempts made in the United Nations, I would recall that France had the opportunity to take an active part in the work of the fifth session of the General Assembly, of the International Law Commission, of the Sixth Committee and of the various special committees that were entrusted with drafting a definition of aggression or with expressing an opinion on the advisability of such a definition.

49. My country, having over the past seventeen years joined its efforts with those of other delegations in examining that problem, is fully aware of its complexity and of the difficulties it presents.

50. First of all, it is clear that ideas differ widely on the various kinds of aggression and on the construction to be put on certain acts regarded as acts of aggression in view of the circumstances and the various elements involved in those acts of aggression. I should add that it is not easy to distinguish between the component elements of such acts, that is, between their legal, material and moral aspects.

51. Furthermore, the difficulty of drafting a definition of aggression which would include standard formulas, that is to say, a comprehensive listing of all acts of aggression, cannot be underestimated, for the very terms of the definition might one day be invoked by a State seeking to justify an act not expressly provided for in the definition.

52. Finally, a legal definition of aggression in all its forms would appear to be even more complex, since under Article 39 of the Charter the Security Council remains the supreme authority in determining the facts constituting such an act. A legal formulation of aggression, therefore, could not set limits to the action of the Security Council, whose task it is to note and determine in each case, taking the circumstances into account, whether an act of aggression has occurred or not.

53. The preceding considerations show why various United Nations bodies, for all their efforts, have never been able to come to agreement on the wording of a definition. Such a definition can be established only on the basis of a formula acceptable to the overwhelming majority of Member States and to the Powers bearing the main responsibility for the maintenance of peace under the duties assigned to the Security Council in the Charter.

54. To be sure, the French delegation has given close attention to the item submitted to the General Assembly on the initiative of the Soviet Union [A/6833] concerning the need to expedite the drafting of a definition of aggression. While realizing that the chances for success in this area are limited, the French delegation recognizes the usefulness of holding large-scale discussions.

55. We cannot but deplore, more than twenty years after the Second World War, the existence of hotbeds

of conflict constituting a threat to the security of peoples. We cannot but reject and condemn recourse to the use of force against a State's territorial integrity and political independence.

56. For that reason, the French delegation will make every effort to ensure the fruitful outcome of the work of the General Assembly and of the Sixth Committee.

57. Mr. FAULKNER (Canada): I do not wish to speak at any length on this item at the present time. My delegation intends to present Canada's views in greater detail when this subject again receives consideration in the Sixth Committee, the forum which in our view is the more appropriate one for discussing it. Nevertheless, there are certain remarks of a preliminary nature which we would like to place on record at this stage.

58. The search for a generally acceptable definition of aggression has been going on now for a considerable time. It can be traced back at least to the earliest days of the League of Nations, and thus for forty years it has proved impossible to achieve any broad measure of agreement on a definition of aggression. This surely indicates the extreme complexity of the problem. It is no wonder that it has been the clearly expressed view of certain delegations in the past that such a definition simply is not possible. A definition would have meaning only if agreed upon by the Security Council, including all its permanent members, and by at least a two-thirds majority of the General Assembly. The past history of this question gives little reason to hope that this will prove possible.

59. On previous occasions, notably during the seventh and twelfth sessions of the General Assembly, Canada expressed certain reservations about the possibility of obtaining general agreement on a single definition of aggression and in fact questioned the desirability and utility, in light of the international situation, of continuing the search for such a definition. Nothing has happened during the intervening years to cause us to change this opinion, though, as in the past, Canada would not wish to oppose any decision in favour of making a renewed effort to draft a useful definition. We remain unconvinced, however, on the basis of past experience, that it will prove possible to reach consensus on a definition.

60. My delegation appreciates fully that the lengthy consideration already given by the international community to this question does not necessarily indicate that it will never be possible to define aggression adequately. Studies of the past, as reflected in the related international legal literature, have contributed significantly to a greater understanding of the difficulties involved. An illustration of the practical problems in defining aggression is that most of the proposed definitions submitted on the subject have contained terms that themselves require definition. A further continuing and thus far insurmountable problem has been that an enumerative definition does not prove sufficiently comprehensive, while a general definition is of little utility and does nothing more than duplicate the provisions of the Charter. There is therefore no compelling functional reason for a definition. Indeed, a danger arising out of both approaches is that an aggressor might be able to justify his aggressive acts

by arguing that they did not fall within the definition of aggression.

61. The framers of the Charter were very careful to leave it to the competent organs of the United Nations to decide what constituted a threat to peace, a breach of peace or an act of aggression. It still seems to my delegation that it would be unhelpful if the unfettered discretion now exercised by these organs in determining the existence of aggression should be limited or unduly complicated by a definition which of necessity would call for assessing the blame at the same time as deciding upon effective action required to preserve peace. Moreover, there would be a danger that differing interpretations regarding the definition might delay action which might be vital for maintenance of international peace. It remains our view that a definition would be more likely to interfere with than to assist the competent organs of the United Nations to take quick and effective action to ensure the maintenance of peace. A definition could have the unintended effect of limiting the Security Council's discretion in determining the existence of aggression in light of the special circumstances surrounding each particular case. At the San Francisco Conference in 1945, the majority view had been to leave it to the Security Council to decide what constituted a breach of the peace or an act of aggression. Events have supported the wisdom of this decision.

62. The ability of the United Nations to deter aggression or, where aggression has taken place, to assist in peaceful settlement and to bring to an end aggression itself, is of much greater import to the survival of this Organization than is a definition. It is our considered view, therefore, that the importance of "expediting" the drafting of a definition of aggression is perhaps being somewhat overstated. After all, Member States of the United Nations have been asked on several occasions in the past to submit to the Secretary-General whatever comments they might wish to make on the question of defining aggression. Few—indeed I believe only some twenty-five in all—have actually done so.

63. Canada was not persuaded by the arguments advanced in the General Committee that this item should be discussed entirely either in the First Committee or in plenary. It is our firm opinion that this is not the sort of subject which can be furthered by being debated in a predominantly political context. Those who have read the reports of the fourth session of the Committee established under United Nations General Assembly resolution 1181 (XII) will certainly have to agree with the representative of Ecuador on that Committee, who during the twenty-fifth meeting on 11 April of this year pointed out that this whole subject has been "made an arena for cold-war polemics". I very much regret that the same thing has occurred during the course of this present debate. My delegation is of the opinion that if any success in reaching general agreement on a definition is to be achieved, this will probably not be possible except as a result of the most careful non-political deliberations of an essentially legal nature.

64. Before I conclude, I should like to refer to the specific proposal of 22 September made by the Soviet

Union [A/6833 and Corr.1] for the establishment of yet another special committee—a special committee whose task it would be to draw up a draft definition of aggression to be submitted to the twenty-third session of the United Nations General Assembly. Our views on this aspect of the matter are rather like those expressed by, I believe, the permanent representative of Bulgaria, when he spoke in the First Committee on the Maltese item on 15 November, and there argued against "the hasty and unjustified proliferation of committees" [1529th meeting, para. 84]. Canada believes that to establish at this juncture another committee charged specifically with defining aggression is not desirable. It is our view—a view expressed by the Canadian representative on 7 April 1965, during the third session [15th meeting] of the Committee established under United Nations General Assembly resolution 1181 (XII)—that there exists a very close relationship between the search for an agreed legal definition of aggression and the work of the Special Committee on Principles of International Law concerning Friendly Relations and Cooperation among States, particularly as that work relates to a continuing consideration by the Special Committee of two Charter principles of the threat or use of force and non-intervention. It is our opinion that there are certain fundamental legal considerations common to all three concepts: those of aggression; threat or use of force; and non-intervention. We therefore consider that no separate attempt to define aggression, as it were, in vacuo ought to be made. We believe instead that if a further attempt is to be made to reach agreement on a definition of aggression, that definition ought preferably to come subsequent to conclusion of the deliberations of the Special Committee. This Committee, which met first in 1964, has the necessary legal expertise and experience to keep in mind both the interrelationship between these three concepts, their all-important relation to the Charter as a whole and their progressive codification as expressions of international law.

65. Mr. PACHACHI (Iraq): The Charter of the United Nations was born out of the bitter experiences of the Second World War and the decade that preceded it, which saw the systematic corrosion and final collapse of the international order based upon the League of Nations. During those fateful years aggression became a recurrent feature of the relations among States. It took many forms: the unilateral denunciation of treaties and international commitments; interference in the internal affairs of States; the use of threats against weaker neighbours; the imposition of unequal relationships; outright armed attack against the territories of other States, and their dismemberment; a persistent disregard of the decisions of international organs charged with the preservation of international peace; the subjugation of colonial peoples and the denial of the right of self-determination and fundamental human rights.

66. The lawlessness which characterized international life in the Thirties led inevitably to the Second World War, a conflict whose main distinguishing feature was the indiscriminate slaughter of civilians on a scale unparalleled in human experience. It was natural, therefore, as the war was entering its final phase and a new attempt was being made to

establish a new international order, that the problem of aggression was uppermost in the minds of those who were charged with the historic task of drawing up the Charter of our Organization. Although no one disputed the desirability—and necessity of defining aggression, no such definition could be agreed upon. In spite of that, the Charter abounds in references to aggression. Article 1 of the Charter lists the suppression of acts of aggression as one of the main purposes of the United Nations, while the injunction that all Members shall refrain from the threat or use of force against territorial integrity or political independence was enshrined as one of the basic principles of the Charter. Indeed, the most important and far-reaching Articles of the Charter deal with the action to be taken by the Security Council in respect of acts of aggression. The realization of the fact that the Council would be greatly aided in the discharge of its functions if there were a clear definition of aggression lead to the continuous efforts during the past two decades to find such a generally acceptable definition. The fact that that goal has so far eluded us does not mean that we should give up and does not detract from its necessity or urgency.

67. The present international situation ominously resembles in many ways the disastrous decade of the Thirties. For that reason it is necessary to take a hard look at the present situation and to find ways of preventing the erosion and collapse of the present international order which was built after so much hardship and sacrifice, for this time such a collapse would perhaps mean the loss or the last chance for human survival on this planet. As in the pre-war period, world peace today is imperilled because a great Power engages directly in large-scale military operations for purposes and ends which, to say the least, are doubtful and morally indefensible. In Viet-Nam the spectacle of large-scale bombing of a small country by a big Power is an appalling one. The declared objectives of that indiscriminate destruction cannot justify the suffering and misery inflicted upon millions of human beings, including women and children. As far as the Viet-Nameese on both sides are concerned, the conflict remains a civil war. While it has not been uncommon for outside Powers to help one side or another in a civil conflict for ideological or other reasons, never has this involvement been so open and on such a massive scale. The fact that a major nuclear Power is so deeply involved adds considerably to the perils of the situation.

68. In the Middle East aggression has been going on for nearly half a century, first against the Arab people of Palestine and then against the neighbouring Arab States. Aggression did not begin on 5 June and the issues go far beyond questions of navigation, boundaries and security. The central issue is the national identity of a people, its homeland, its rights, indeed its very survival. Fifty years ago, contrary to its promises and solemn undertakings to the Arabs who were fighting on the side of the allies in the First World War, the British Government decided that a Jewish national home should be established in Palestine, which at the time had an Arab majority of 93 per cent: a foreign Power promising a land which it did not possess to another people without the slightest concern for its indigenous inhabitants.

That was the first act of aggression against the Arab people of Palestine.

69. The second act of aggression was perpetrated a few years later when Palestine was placed under British mandate on terms which were contrary to the Covenant of the League of Nations, upon which the whole mandate system was based. The two basic principles of the mandate system—namely, the paramountcy of the welfare of the inhabitants and respect for their rights and wishes—were grossly and systematically violated during the thirty years of British rule in Palestine.

70. The third act of aggression against the people of Palestine was when their country was partitioned against their will—a decision which, in the words of a distinguished statesman from Asia, violated the primordial right of a people to determine its political future and preserve the territorial integrity of its native land.

71. The fourth act of aggression against the people of Palestine was committed by the Zionist forces in the spring of 1948 when the people of Palestine were forcibly evicted from their homes and made into a nation of refugees living on international charity.

72. The fifth act of aggression was that for eighteen years, despite repeated calls by the General Assembly, Israel refused to respect the General Assembly resolution guaranteeing the right of choice for the refugees.

73. The latest act of aggression, of course, is the occupation by Israel's forces of the rest of Palestine. Israel today states openly that it wants to annex the whole of the West Bank and Gaza in order to realize the dream of "Greater Israel". Of course, that is not the limit of Israel's expansionist aims for a yet greater "Greater Israel". But I believe that this session of the General Assembly will be remembered as the time when Israel's expansionist policies were finally revealed and exposed. Their frantic efforts to prevent any decision requiring their forces to withdraw from the occupied territories in spite of all the concessions made show conclusively how little they are interested in peace and how much they are concerned with territorial aggrandisement, especially if such territory belongs to other people.

74. The acts of aggression which I have mentioned are only the major acts in a long catalogue of aggression, involving the killing of civilians, the blowing up of houses, the bulldozing of villages and the eviction of innocent people from their land. That leads me to ask the following questions. Is it permissible under the Charter for a State to launch an armed attack against its neighbours, not in self-defence but as part of a meticulously planned and carefully executed act of aggression? Should such acts be allowed to escape condemnation? Is it permissible under the Charter for a State to declare openly its intention to annex territories of other States? Is it permissible under the Charter for a State to use military occupation as a means of dictating terms for a political settlement of problems?

75. So long as those questions remain unanswered, all our professions of peace and world order will sound like nothing more than hollow and pious words. For that reason we are grateful to the Soviet Union for taking the initiative in reminding us of this major problem facing the Organization, especially in the light of recent developments in the international field. It is therefore our hope that the Assembly will endorse the draft resolution submitted by the Soviet Union [A/6833 and Corr.1] to set in motion the process which may one day lead to an acceptable and precise definition of acts of aggression.

76. Mr. ANTOINE (Haiti) (translated from French): The draft resolution of the Union of Soviet Socialist Republics [A/6833] on the need to expedite the drafting of a definition of aggression in the light of the present international situation is highly complex and demands serious attention by reason of the various problems that it sets before the international conscience embodied by the United Nations.

77. The difficulty of establishing objective criteria to be used as a legal basis for a definition of aggression has been studied many times from the theoretical point of view. One of the major drawbacks to a fixed definition is the risk of formulating a concept whose application, in unforeseeable circumstances, might lead to designating as an aggressor the State which was not in fact responsible for the hostilities. The history of conflicts between peoples offers many examples of armed attack by a country that was not an aggressor, but was acting rather in its legitimate defence.

78. A critical analysis would tend to show that prior to 1919 aggression under positive law was generally considered to include the following acts:

1. Aggression based on certain presumptive evidence, such as the refusal of a State to conform to the provisions governing a peaceful settlement of international disputes, as in the case of the Arab-Israeli dispute now before the Security Council;

2. Violation of measures designed to prevent war, of demilitarized zones, of a truce provided for under certain treaties and international agreements with a view to working out ways of preventing war and, lastly, the commission of certain definite acts set forth in specific treaties, such as declarations of war, invasions, armed attacks, naval blockades, support lent to armed gangs of terrorists (as in the case of Haiti, which has repulsed nine invasions from neighbouring Caribbean countries over the past ten years), invasions planned by national and international mercenaries to overthrow a constitutionally established government. The General Assembly has already been seized of various cases of aggression of that sort.

79. It is not for the delegation of Haiti to list every specific case of aggression. The jurists among the representatives of this important international Organization are aware of all of those cases, from the end of the First World War up to the present. From all that has been said, it is clear that the practical definition of aggression has become one of the prevailing concerns of the General Assembly. Aggression takes several forms not as yet described in present-day international public law, such as political aggres-

sion, economic aggression and cultural aggression which offends a country's national feelings. An example, which concerned Haiti, was the film entitled The Comedians, shot in an African State and shown by a private North American company, in which the action was set in the stark and rugged scenery of that African State, instead of the gay and serene scenery of the Caribbean region in which Haiti occupies a central position. This must surely be the first time that such a cultural aggression has been brought to the attention of the United Nations; because it affects the tourist industry, one of the main resources of Haiti, it is an attack on the national economy of that country, which was the world's first Black republic.

80. That is an example of aggression which the delegation of Haiti deeply regrets to have to report to this Assembly, and which should be examined in the light of international public law. The delegation of Haiti believes that the showing of so disparaging a film in a friendly State with which Haiti was allied in the War of Independence at Savannah, as President Duvalier so rightly pointed out in an interview he granted a New York radio station, takes on a special significance.

81. In the national history of Haiti, from its birth in 1804 at a time when colonialism was at a most flourishing stage, the effort made by Haiti to preserve its independence has been heroic and astonishing. The struggle of the Republic of Haiti for survival has been deeply marked by serious attempts against its autonomy as a sovereign State. For that reason, the delegation of Haiti attaches exceptional importance to the definition of aggression. Haiti has stood completely alone in its own defence and has been forced to yield to the pressure brought by the European imperialist Powers and by some American countries in order to preserve its territorial integrity. The list of aggressions committed against Haiti is eloquent and shocking. Nevertheless, beginning in 1925, an American doctrine emerged that is known under the name of the great President of the United States, James Monroe. That doctrine was aimed at protecting young American nations against the unjust claims of a large colonial power of the period that had designs on the former Spanish-speaking colonies. The Monroe Doctrine proved in some cases to be ineffective. At that time, there was no international organization like the Organization of American States and the United Nations to protect and defend small States against all aggressive acts. It was not until the Drago Doctrine (1902) that an end was put to armed intervention for the recovery of debts incurred under such oppressive terms that the States concerned were unable to pay them off despite their willingness to do so.

82. All those actions go against the principle of self-determination and non-interference in the domestic affairs of States as laid down in the United Nations Charter.

83. An effective and precise definition of aggression is needed to ensure world peace and security. That is the purpose of this statement by Haiti, which has been the victim of all kinds of aggression for centuries.

84. The PRESIDENT (translated from French): We have just heard the last speaker on the list of par-

ticipants in this afternoon's discussion of this item. In accordance with the General Assembly's decision [1612th meeting], the list of speakers wishing to take part in the discussion of agenda item 95 was closed at 3 p.m. today. I would ask representatives appearing on the list to be good enough to be prepared to speak in the order in which they appear, so that the Assembly can conclude this discussion at the plenary meeting on Monday, 4 December. The Sixth Committee will then be able to begin consideration of the item.

## AGENDA ITEM 85

Report of the International Law Commission on the work of its nineteenth session

REPORT OF THE SIXTH COMMITTEE [A/6898]

*Mr. GONZALEZ GALVEZ (Mexico), Rapporteur of the Sixth Committee, presented its report [A/6898].*

85. Mr. GONZALEZ GALVEZ (Mexico), Rapporteur of the Sixth Committee (translated from Spanish): Consideration of the annual reports of the International Law Commission, far from being a mere formality in the Sixth Committee, constitutes one of its most important tasks: the ample discussion of this report ensures that the Commission's work will continue to be directed, as it has been hitherto, towards the development of the interests of the international community.

86. The principal item in the Commission's report last year<sup>2/</sup> was the draft articles on the law of treaties, which will be considered by an international conference of plenipotentiaries whose work will begin early next year in Vienna.

87. This year the International Law Commission has submitted to us a draft of fifty articles on special missions, concerning which it decided, according to draft resolution II in paragraph 99 of its report [A/6898], that the General Assembly at its twenty-third session should be the organ to consider and adopt a convention on the matter but should first hear the various opinions on whether this work should be done in the Sixth Committee.

88. Some delegates were in favour of convening a plenipotentiary conference for that purpose. Others thought a working party should be set up before the next session to begin to study the draft, and pointed out how few conventions approved by committees of the General Assembly had been ratified, particularly in recent years, partly because of the methods by which they were adopted.

89. The Sixth Committee also submits in its report for the consideration of the General Assembly a draft resolution to take note of the results of the work of the International Law Commission and of the items which it will take up in the future, in particular the succession of States and Governments, relations between States and intergovernmental organizations, the most-favoured-nation clauses in the law of treaties, and State liability.

90. That draft resolution also expresses the wish that, in conjunction with sessions of the International Law Commission, other seminars may be organized on

<sup>2/</sup> Official Records of the General Assembly, Twenty-first Session, Supplement No. 9 (A/6309/Rev.1).

questions of international law, as has been done for some years now through the collaboration of members of the Commission and the scholarships made available by various Member States.

91. It only remains for me now, in my capacity as Rapporteur, to thank the staff of the Codification Division of the Secretariat, and in particular Mr. Teslenki, without whose assistance this report could not have been prepared.

*Pursuant to rule 68 of the rules of procedure, it was decided not to discuss the report of the Sixth Committee.*

92. The PRESIDENT (translated from French): The Assembly will now vote on the two draft resolutions submitted by the Sixth Committee on agenda item 85; these draft resolutions are to be found in that Committee's report [A/6898, para. 99]. The Fifth Committee has submitted a report on the financial implications of draft resolution II [A/6929].

93. I shall now ask the Assembly to vote on draft resolution I. Since this draft resolution was unanimously adopted by the Sixth Committee, may I take it that the Assembly also adopts it unanimously?

*Draft resolution I was adopted unanimously [resolution 2272 (XXII)].*

94. The PRESIDENT (translated from French): I shall now put to the vote draft resolution II.

*Draft resolution II was adopted by 91 votes to none, with no abstentions [resolution 2273 (XXII)].*

95. The PRESIDENT (translated from French): I call upon the representative of Australia, who wishes to explain his vote.

96. Mr. EWART SMITH (Australia): Australia has voted in favour of draft resolution II, and I should like very briefly to mention the view that Australia has consistently held and still holds on this question.

97. Consideration of the debate in the Sixth Committee shows, in the opinion of my delegation, such differences of view as to the contents of the proposed convention that it seems to us that the Sixth Committee would not be the most appropriate forum for settling the terms of the convention. What is to be preferred, in the Australian view, is the settling of the convention by a special conference convened for the purpose, even if this meant, because of the crowded programme of international conferences in the coming year, some delay in achieving the ultimate goal. Australia believed and still believes that such a delay would pay rich dividends in the final result.

*The meeting rose at 5 p.m.*