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SPECIAL COMMITTEE ON THE QUESTION OF DEFINING AGGRESSION

Second Session

SUMMARY RECORDS OF THE TWENTY-FIFTH TO FIFTY-FIRST MEETINGS

Held at Headquarters, New York,
from 24 February to 3 April 1969

Chairman:	Mr. FAKHREDDINE	Sudan
Rapporteur:	Mr. CAWEN	Finland

The list of representatives attending the session is to be found in the report of the Special Committee to the General Assembly (see Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 20 (A/7620, annex II).

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OPENING OF THE SESSION

The ACTING CHAIRMAN, on behalf of the Secretary-General, welcomed the delegations taking part in the session.

ELECTION OF OFFICERS

Mr. EL-ERIAN (United Arab Republic), seconded by Mr. JAHODA (Czechoslovakia) and Mr. BERRO (Uruguay), nominated Mr. Fakhreddine (Sudan) for the office of Chairman.

Mr. Fakhreddine (Sudan) was elected Chairman by acclamation.

Mr. Fakhreddine (Sudan) took the Chair.

Mr. SUAREZ (Colombia), seconded by Mr. CAÑADAS (Spain), nominated Mr. Benites (Ecuador) for the office of Vice-Chairman.

Mr. ROSSIDES (Cyprus) nominated Mr. Abdulgani (Indonesia) for the office of Vice-Chairman.

Mr. DIACONESCU (Romania), seconded by Mr. CHKHIKVADZE (Union of Soviet Socialist Republics), nominated Mrs. Gavrilova (Bulgaria) for the office of Vice-Chairman.

Mr. Benites (Ecuador), Mr. Abdulgani (Indonesia) and Mrs. Gavrilova (Bulgaria) were elected Vice-Chairmen by acclamation.

Mr. MOTZFELDT (Norway), seconded by Mr. JAZIC (Yugoslavia), nominated Mr. Cawén (Finland) for the office of Rapporteur.

Mr. Cawén (Finland) was elected Rapporteur by acclamation.

ADOPTION OF THE AGENDA

The provisional agenda (A/AC.134/L.9) was adopted.

ORGANIZATION OF WORK

Mr. ROSSIDES (Cyprus) proposed that the Special Committee should continue its work from the point it had reached at the end of the 1968 session by resuming its discussion of the draft proposals which were before it at that time, with the understanding that representatives would be free to make more general observations on the question of defining aggression if they so wished.

It was so decided.

The meeting rose at 4.45 p.m.

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SUMMARY RECORD OF THE TWENTY-SIXTH MEETING

Held on Tuesday, 25 February 1969, at 11.10 a.m.

Chairman: Mr. FAKHREDDINE Sudan

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTIONS 2330 (XXII) AND 2420 (XXIII)) (A/7185/Rev.1; A/AC.134/3)

The CHAIRMAN said that four proposals had been submitted: Algeria, Cyprus, the Democratic Republic of the Congo, Ghana, Guyana, Indonesia, Madagascar, Sudan, Syria, Uganda, the United Arab Republic and Yugoslavia had submitted the draft resolution contained in document A/AC.134/L.3 and Add.1; Colombia, Ecuador, Mexico and Uruguay had submitted the draft resolution contained in document A/AC.134/L.4/Rev.1 and Add.1; Cyprus, Colombia, the Democratic Republic of the Congo, Ecuador, Ghana, Guyana, Indonesia, Iran, Mexico, Spain, Uganda, Uruguay and Yugoslavia had submitted the draft resolution contained in document A/AC.134/L.6 and Add.1 and 2; Sudan and the United Arab Republic had submitted the amendment contained in document A/AC.134/L.8.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) stated that his delegation would submit a draft definition prepared by his Government at the next meeting.

The meeting rose at 11.20 a.m.

SUMMARY RECORD OF THE TWENTY-SEVENTH MEETING

Held on Wednesday, 26 February 1969, at 11.35 a.m.

Chairman: Mr. FAKHREDDINE Sudan

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTIONS 2330 (XXII) AND 2420 (XXIII)) (A/7185/Rev.1; A/AC.134/3; A/AC.134/L.12) (continued)

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) said that, following the general line of the foreign policy of the Soviet State and Leninist ideas on the prohibition of aggressive wars, the Soviet Government was submitting to the Special Committee a new draft definition of aggression (A/AC.134/L.12). The Soviet Government considered, as it had in the past, that the absence of a clear-cut definition of aggression could only work in favour of aggressive forces which violated the principles of international law and the United Nations Charter in order to attain their expansionist aims. The issue at the present time was not whether or not there was a need for a definition of aggression; the task of the Special Committee, as it had itself stated in the resolution it had adopted at its first session, was to work out a definition of aggression as early as possible and to submit to the General Assembly a report containing a draft definition of armed aggression. If it succeeded, the effectiveness of the United Nations, and above all of the Security Council, would be enhanced.

At the Special Committee's first session, in 1968, an understanding had been reached on the following aspects of the definition of aggression: (1) armed aggression should be defined first as the most dangerous form of aggression; (2) the definition should be of a "mixed" nature, i.e. it should state the general concept of armed aggression and should then list specific acts which were most characteristic of it; (3) the definition should contain a criterion making it possible to distinguish clearly between the use of armed force for aggressive purposes and for self-defence; (4) the definition should stress the exclusive power of the Security Council to determine the existence of specific acts of armed aggression in accordance with Article 39 of the Charter; (5) lastly, the definition should describe armed aggression as the most grave international crime against peace, for which those who committed it were to be held responsible. Moreover, the overwhelming majority of the members of the Special Committee had agreed that the definition of aggression should not apply to the use of armed force by dependent peoples for the purpose of exercising their inherent right to self-determination under General Assembly resolution 1514 (XV). It had been rightly said that the list of acts constituting armed aggression could not be exhaustive but should include the more dangerous and typical acts.

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(Mr. Chkhikvadze, USSR)

The draft definition of aggression submitted by the Soviet Government took account of those considerations and of the discussions which had taken place in Geneva during the summer of 1968, and the Soviet delegation expressed the hope that the new proposal would be supported by the members of the Special Committee. It was based on the United Nations Charter, the Declaration on the Granting of Independence to Colonial Countries and Peoples and other international legal documents of the United Nations. The draft also took account, to the greatest extent possible, of the proposals which had been submitted by the African, Asian and Latin American countries at the Committee's first session.

The preamble of the draft reiterated that one of the fundamental purposes of the United Nations was to maintain international peace and security and that, according to the principles of international law confirmed by the resolutions adopted by the General Assembly on 11 December 1946 and 21 November 1947, the planning, preparation, unleashing or waging of an aggressive war was a most serious international crime. The preamble stressed that the use of force by a State was an encroachment upon the social and political achievements of the peoples of other States and was incompatible with the principle of peaceful co-existence of States with different social systems. The vigorous development of the national liberation movements of the peoples of colonial and dependent countries was a characteristic of the present age. In the circumstances, any encroachments on the social and economic achievements of the peoples who had won their national independence were completely inadmissible. The preamble of the draft ended by stating that, given the existence of nuclear weapons, armed aggression was fraught with the threat of a new world conflict with all its catastrophic consequences and that that form of aggression should be defined at the present stage. Naturally, that did not mean that efforts should not be made to define other forms of aggression in the future.

Operative paragraph 1 of the draft contained a general definition of armed aggression, direct or indirect. That paragraph was followed by a list of the most characteristic and dangerous types of aggression. The draft then defined indirect armed aggression in paragraph 2 (C). Moreover, operative paragraph 3 stated that other acts by States might be deemed to constitute an act of aggression if in a specific instance declared to be such by a decision of the Security Council.

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(Mr. Chkhikvadze, USSR)

The Soviet delegation attached major importance to the question of who was the first to use armed force. The draft stipulated that the State which first used armed force against another State was to be considered the aggressor whether or not that armed attack had been accompanied by a declaration of war. The concept of aggression implied in all cases a certain amount of initiative and measures taken by the attacked State in self-defence, even though they might involve the use of armed force, could not be regarded as an act of aggression. Similarly, collective measures taken in accordance with the United Nations Charter to maintain or restore international peace and security could not be regarded as an act of aggression.

He drew attention to the fact that the new Soviet draft included among the most dangerous acts of aggression those which were accompanied by the use of nuclear, bacteriological or chemical weapons, or any other weapons of mass destruction. The question of prohibiting the use of weapons of mass destruction was the subject of a number of international documents, including the 1925 Geneva Protocol and General Assembly resolution 1652 (XVI), and the Soviet delegation felt that the concept of armed aggression must now be defined so as to indicate clearly that the use of such weapons was inadmissible. The tragedies of Hiroshima and Nagasaki should be enough to convince anyone of that. At its sixteenth session, the General Assembly had adopted a declaration on the prohibition of the use of nuclear and thermo-nuclear weapons (resolution 1653 (XVI)); although that declaration did not have the validity of an international agreement, it unquestionably expressed a general attitude of condemnation. Since there was not at the present time a special convention prohibiting the use of nuclear weapons, it would be useful to indicate in the general definition of aggression that, from the legal point of view, the use of such weapons was inadmissible. That would help to prevent the outbreak of nuclear conflicts and would also pave the way for the subsequent conclusion of a special convention in that field. As far as biological and chemical weapons were concerned, the Soviet State had condemned the use of such weapons from its very foundation. The Soviet Union had not only been one of the first States to sign and ratify the Geneva Protocol of 17 June 1925 (for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare), but had also sought to persuade all other States to accede to and ratify that Protocol.

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(Mr. Chkhikvadze, USSR)

The Soviet Government believed that the definition of aggression should play an important role in protecting the lawful rights and interests of the peoples struggling against colonialism. The inadmissibility of the use of armed force against such countries and peoples followed from the fact that the United Nations Charter recognized self-determination as one of its basic principles. The same conclusion could also be drawn from the Declaration on the Granting of Independence to Colonial Countries and Peoples.

The Soviet draft took as its point of departure the prohibition of the use of force in the settlement of international disputes. It followed from that principle that, as was stated in paragraph 4 of the draft, no territorial gains or special advantages resulting from armed aggression would be recognized.

Lastly, the principle of international legal responsibility for aggression had become firmly established in international law. Accordingly, the Soviet draft stated, in paragraph 5, that armed aggression entailed the political and material responsibility of States and the criminal responsibility of the persons guilty of such aggression.

The prohibition of wars of aggression was one of the major principles of contemporary international law. That was why the formulation and adoption of a definition of aggression was so urgent an undertaking, the success of which would deprive aggressors of the possibility of justifying themselves, enhance the prestige of the United Nations and serve as an important contribution to the maintenance of international peace and security.

His delegation would provide whatever further explanations of its draft definition (A/AC.134/L.12) might be requested during the debate.

The meeting rose at 12.10 p.m.

SUMMARY RECORD OF THE TWENTY-EIGHTH MEETING

Held on Thursday, 27 February 1969, at 3.20 p.m.

Chairman: Mr. FAKHREDDINE Sudan

* Document A/AC.134/SR.28/Add.1 was issued for the purpose of adding the statement of Mr. Chkhikvadze (Union of Soviet Socialist Republics) to the text of the summary record.

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTIONS 2330 (XXII) AND 2420 (XXIII)) (A/7185/Rev.1; A/AC.134/3; A/AC.134/L.2, L.3 and Add.1, L.4/Rev.1 and Add.1, L.6 and Add.1 and 2, L.8 and L.12) (continued)

Mr. ROSSIDES (Cyprus) welcomed the submission of the Soviet draft proposal (A/AC.134/L.12), which had a great deal of merit and would make a useful contribution to the Committee's work. His delegation would study it very carefully.

He requested the Secretariat to announce that a meeting of the sponsors of the thirteen-Power draft (A/AC.134/L.6 and Add.1 and 2) and of the amendments thereto would be held after the close of the current meeting, in order to discuss the new proposal.

It had been agreed at Geneva that the Committee should try to draft a definition of armed aggression but it had not been decided whether the definition should cover direct aggression only or both direct and indirect aggression. The matter was extremely urgent and the time had come to proceed with the drafting of a definition.

It was to be hoped that the commendable spirit of co-operation and mutual understanding which had reigned at Geneva would continue to prevail during the current session.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) thanked the representative of Cyprus for the favourable opinion of the Soviet draft he had expressed in his short statement.

As to his proposal to establish a working group consisting of the sponsors of the drafts submitted to the Committee at the 1968 session at Geneva, it was, of course, unquestionably the right of those sponsors to do so.

His delegation would like members to analyse the Soviet proposal thoroughly at the present stage of the Committee's work and give their assessments of it.

Mrs. GAVRILOVA (Bulgaria) said she had thought that there would be a discussion of the substance of the Soviet draft, which contained important new provisions. Delegations should be given time to study the draft and comment on it. It would be premature to have a meeting of the sponsors of drafts submitted so far. Indeed, other delegations might wish to become sponsors of the Soviet draft. All the drafts submitted should be considered in the Committee. There had as yet been no discussion of the Soviet draft and many representatives were not yet ready to speak on the subject.

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Mr. ROSSIDES (Cyprus) said there appeared to have been a misunderstanding. He had simply wished the Secretariat to announce, as a matter of convenience, that a meeting of the sponsors of the thirteen-Power draft and of the amendments thereto would take place at the end of the current meeting.

Mr. BEESLEY (Canada) reminded the Committee that his delegation had doubts about the possibility of formulating an agreed definition of aggression and reservations as to its practical utility. Provided that certain criteria were met, however, it was not opposed to a draft definition which would ensure the maintenance of international peace and security, through the United Nations collective security system, and safeguard the territorial integrity and political independence of States.

The first criterion for a definition was that it should safeguard the discretionary authority of the Security Council, as the United Nations organ with the primary peace-keeping responsibility, and not restrict the Council's power to make a finding of aggression in any case of a threat to or breach of the peace. The Soviet draft went a long way towards meeting that requirement by specifying that the enumerations it contained were "without prejudice to the functions and powers of the Security Council", by using such phrases as "the purposes, principles and provisions of the Charter" and "in accordance with the Charter", by stating that in addition to the acts listed other acts by States might be deemed to constitute aggression if declared to be such by a decision of the Security Council and by recognizing that the question whether an act of aggression had been committed must be considered in the light of all the circumstances in each case.

A second and related criterion was that the definition should contain no element of automaticity but should leave the Security Council to decide whether or not to apply it. The Soviet draft seemed to imply that, whatever discretion the Security Council might have with respect to acts "in addition to the acts listed above", it had little or none with respect to the application of the definition to the specific acts listed. The draft might thus require the Security Council to act in a given way in certain circumstances, thereby lessening its discretionary authority.

(Mr. Beesley, Canada)

The definition should also be consistent with and based on the provisions of the Charter, particularly Articles 1 and 39. The Canadian delegation welcomed the reference in the fifth preambular paragraph of the Soviet draft to Article 39 of the Charter and the reference in operative paragraph 1 to the purposes of the Charter, which could be taken to subsume Article 1. However, certain elements in the draft, such as the concept of "first use", were not contained in the Charter and might not be consistent with it.

The Soviet draft did not meet the further essential criterion that the definition should be equally applicable to States and to entities not generally recognized as States. It was thus less flexible than the Charter, which did not rule out a finding of aggression by or against an entity not generally recognized as a State.

Another criterion was consistency with the Charter provisions safeguarding the inherent right to individual and collective self-defence and particularly with Articles 51 and 52. Operative paragraph 6 of the Soviet draft stated that nothing in the foregoing should "hinder the use of armed force in accordance with the Charter of the United Nations". However, the provisions in operative paragraphs 1 and 2 tying the concept of aggression to first use and the references to indirect use of force had implications regarding the right of self-defence and the draft did not provide sufficient safeguards for that right.

The definition should not be so general as to be merely a repetition of the Charter or so specific as to suggest that it was exhaustive, but should have both general and specific characteristics. The Soviet draft did meet that criterion.

The definition should not be based on the principle that the aggressor was automatically that party which first used force, irrespective of questions of self-defence, but should leave the Security Council to determine whether an act of aggression had been committed. The "first use" concept was unduly simplistic and potentially dangerous. It raised problems of interpretation and did not adequately cover the case of border or frontier incidents. The sixth preambular paragraph of the Soviet draft was useful but did not go far enough.

Another criterion was that the definition should mention unlawful intent as well as the commission of an illegal act, which together constituted aggression. The reference to intent in the fourth preambular paragraph of the Soviet draft might be interpreted as sanctioning the doctrine of limited sovereignty, which

(Mr. Beesley, Canada)

Canada could not accept, and would permit subjective judgements. It would be preferable to use the broader language of the Charter and refer, for example, to acts which might encroach upon the territorial integrity or political independence of States. The reference in operative paragraph 1 to the use of armed force "contrary to the purposes, principles and provisions of the Charter" was not sufficiently specific.

Any definition of aggression should be applicable to the indirect as well as the direct use of force. Operative paragraph 2 C did label the indirect use of force as aggression in certain circumstances but it was weaker and less comprehensive than paragraph 1 (f) of the draft resolution submitted by the Soviet Union in 1956 (A/AC.134/L.2, section III, paragraph 1), which had included among the acts of aggression by a State "Support of armed bands, organized in its own territory which invade the territory of another State, or refusal, on being requested by the invaded State, to take in its own territory any action within its power to deny such bands any aid or protection". The new draft mentioned some of those acts, but only as indirect aggression, and referred to the actual "sending" of armed bands rather than just support of such bands within a State's own territory. In addition, it did not mention the need to deny such bands any aid or protection. The reference in operative paragraph 2 C of the new draft to "other forms of subversive activity" was less specific and therefore less effective than the reference in operative paragraph 2 (a) of the 1956 draft to action which encouraged subversive activity against another State (acts of terrorism, diversion, etc.). Finally, the reference to intent in operative paragraph 2 C of the new draft was too restrictive to be consistent with the Charter. There were many other possible motives for the aggression described, such as threats to the territorial integrity or political independence of a State or attempts to destroy it completely. The inclusion in operative paragraph 1 of the words "direct or indirect" after the opening reference to armed aggression and of the phrase "contrary to the purposes, principles and provisions of the Charter of the United Nations" helped to make the definition a comprehensive one but, if interpretation difficulties were to be avoided, the language of operative paragraph 2 C should be broadened. The inadequate treatment of the question of indirect use of force in

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(Mr. Beesley, Canada)

the existing text would probably make it unacceptable to a number of Member States, including some of the permanent members of the Security Council.

The reference to the use of nuclear, bacteriological or chemical weapons or any other weapons of mass destruction was an interesting new element in the text under consideration. The language of the draft appeared to prohibit the first use of nuclear weapons of all sorts and in all circumstances, regardless of whether an act of aggression had been committed against the user. But it would hardly be possible to apply the same reasoning to first bombardment of or firing at the territory and population of another State or attack on its land, sea or air forces; it was generally agreed that, if one State invaded another, the invaded State might then legitimately defend itself by bombarding the invading State. The Canadian delegation could therefore not express a final view on the provision in question.

While the new USSR draft contained many constructive elements, it illustrated the problem created by the fact that the views of individual States on what constituted aggression might change. That problem could be largely resolved if the definition was sufficiently comprehensive; if it was not, it would be compounded.

The meeting rose at 4.5 p.m.

SUMMARY RECORD OF THE TWENTY-NINTH MEETING

Held on Monday, 3 March 1969, at 11 a.m.

Chairman: Mr. FAKHREDDINE Sudan

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTIONS 2330 (XXII) AND 2420 (XXIII)) (A/7185/Rev.1; A/AC.134/3; A/AC.134/L.12) (continued)

The CHAIRMAN said that, since informal consultations were in progress, no representative had expressed a wish to take the floor, and he therefore proposed that the meeting should be adjourned.

It was so decided.

The meeting rose at 11.5 a.m.

SUMMARY RECORD OF THE THIRTIETH MEETING

Held on Thursday, 6 March 1969, at 10.50 a.m.

Chairman: Mr. FAKHREDDINE Sudan

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTIONS 2330 (XXI) AND 2420 (XXIII)) (A/7185/Rev.1; A/AC.134/3; A/AC.134/L.12) (continued)

Mr. GONZALEZ GALVEZ (Mexico) recalled that, at the twenty-third session of the General Assembly, his delegation had explained in great detail the reasons why it co-operated in the effort to find a definition of aggression which would win the support of the great majority of Member States. That effort could be described as an important initiative designed to enhance the role of law in the constitutional life of the United Nations, to pass beyond the stage of irresolution and subjectivity and to recognize the fact that, while it might be advisable for the competent organs of the United Nations to exercise some power of discretion - often arbitrarily - for the sake of maintaining peace, to accept that situation as the norm would be to negate the value of security and to separate the political action of the United Nations from international law.

In briefly analysing the differences between the thirteen-Power draft declaration (A/AC.134/L.6) and the USSR draft proposal (A/AC.134/L.12), he hoped that the differences would be borne in mind in the preparation of a working paper summarizing the points of agreement and disagreement on various elements in the definition of aggression. It should also be noticed that there was a tendency to include in the definition concepts which, while highly important, were not directly relevant to the definition sought.

He regretted that the idea expressed in operative paragraph 10 of the thirteen-Power draft and operative paragraph 3 of the USSR text might be construed as empowering the Security Council to add, or to classify as aggression, acts other than those enumerated in the definition. Those paragraphs should therefore be reworded. If the present wording was retained, it would not only make any definition useless but also destroy its raison d'être, because to lay down a legal definition implied limiting a field of competence, of acts.

At the present stage of its work, the Special Committee should choose, once and for all, between two alternatives: either a definition had its own intrinsic value, in which case the Security Council should respect it, or, if the Security Council was to retain its freedom of action in the matter, the conclusion should be that a definition was of no value whatsoever, for it was illogical to accept a definition and then to authorize non-compliance.

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(Mr. González Gálvez, Mexico)

To judge from earlier discussions on the subject, it seemed unlikely to be the Soviet Union's intention that the Security Council should be empowered, on the basis of operative paragraph 3 of the USSR proposal, to classify a threat of the use of force as an act of aggression. Nor could it have been expected that Mexico, which had emphasized that the essence of the concept of aggression was the use of armed force, would accept the inclusion in the definition, by decision of the Security Council, of economic or ideological aggression.

The two paragraphs in question should therefore be amended and his delegation was prepared to submit a new text in due course, understanding that this will not prejudice the power of the competent organs to determine the existence of, or take a decision upon, an act of aggression.

At the Geneva session of the Special Committee and at the twenty-third session of the General Assembly the question had arisen as to whether the criterion of priority or "first use" should be included in the definition in order to determine who was responsible for aggression in an international conflict. As the Mexican delegation had observed at Geneva, "first use" should be the main, although not the sole, criterion.

He agreed with the view, expressed by the French delegation in the General Assembly, that the "first use" criterion was so inherent in the nature of things that it must form part of any definition or conception of aggression and self-defence. Even greater problems would be created by trying not to include it. Those who argued that the question was not who had crossed the frontier first or who had attacked first but who had prepared for war were overlooking the fact that in the present age of the armaments race, with that criterion it would be impossible to identify the aggressor unless a historical or strategical study was made of the reasons why each side had started to add to its arsenal.

The "first use" criterion must be included also because Article 51 of the Charter endorsed it as a condition for exercising the right of self-defence: the words "if an armed attack occurs" clearly meant that the right of self-defence derived exclusively from an armed attack.

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(Mr. González Gálvez, Mexico)

Hence, even recognizing the incredible variety of strategical implications, the "first use" criterion must be included in the definition, as it was in the USSR draft, and the Special Committee should consider what emphasis was to be placed on it and how it was to be formulated.

At the Geneva session his delegation had stressed the importance it attached to the principle, originally included in the Latin American draft proposal (A/AC.134/L.4/Rev.1), that, in the performance of its functions to maintain international peace, the United Nations alone had competence to use force except when States exercise the right of self-defence. That extremely important principle was embodied in the thirteen-Power text, although in a slightly modified form, but was unfortunately missing from the USSR draft, although it might be implicit in the fifth preambular paragraph.

While the intention of operative paragraph 1 in both the thirteen-Power and the USSR texts might well be to close all loopholes to a potential aggressor, it would be wiser to use the language of the Charter which spoke of the "use of force against the territorial integrity and political independence" of States. Also the words "direct or indirect" should be deleted from the thirteen-Power text.

Operative paragraphs 3 and 4 of the thirteen-Power draft should be included in any definition of armed aggression; they were clearer than operative paragraph 6 of the USSR draft.

Both texts mentioned the declaration of war as an example of armed aggression, although contemporary history provided numerous instances of countries declaring war without initiating hostilities. He wondered whether that example should be retained, at least in the form in which it was expressed in the Soviet draft.

At the twenty-third session of the General Assembly, the Swedish representative had pointed out that the concept of aggression was narrower than that of the prohibition of the threat or use of force, referred to in Article 2 (4) of the Charter, and had therefore welcomed the fact that the thirteen-Power draft limited aggression to armed attack, adding that a definition of "armed attack" should be sought since, according to Article 51 of the Charter, that was the only justification for exercising the right of self-defence.

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(Mr. González Gálvez, Mexico)

That representative had also stated that a definition should mention types of action which a State should be prohibited from taking when confronted with unfriendly measures falling short of armed attack and of the countermeasures which were permissible; subversion and terrorism by another State undoubtedly threatened the territorial integrity and independence of the victim State. Acts of that type were prohibited by the Charter but, if they were equated with armed attack, that might jeopardize the restriction in Article 51 placed on the right of self-defence.

The Mexican delegation has stressed on many occasions that terrorism and subversion are illegal and when such acts were sponsored by one State against another, the former violated the Charter and was subject to whatever measures might be taken by decision of the competent international organ. But his delegation could not agree to any attempt, contrary to the spirit of the Charter, to extend the strict and unambiguous meaning of Article 51, because the aggressor in most international disputes sought to base his action on his alleged right of individual or collective self-defence.

He sympathized with those representatives in the General Assembly who had referred to the fact that operative paragraph 8 of the thirteen-Power draft was confusing, but its inclusion was based on the distinction between those measures which could be adopted, in exercising the right of sovereignty, against subversive and terrorist acts, on the one hand, and the exercise of the right of self-defence against armed attack, on the other. For the same reason, operative paragraph 2 (c) of the Soviet draft was unacceptable.

The amendment submitted by Sudan and the United Arab Republic (A/AC.134/L.8), affirming the right of peoples to self-determination, should also be included.

Lastly, in order to avoid the inclusion of concepts not directly relevant to the definition of aggression, he proposed the deletion of the second and fourth preambular paragraphs of the Soviet draft. In addition, operative paragraph 6 of the thirteen-Power text should either be deleted or transferred to the preamble.

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Mr. CHAUMONT (France) explained his delegation's position with regard to the main provisions of the draft definitions which the Committee was discussing. In his view, the United Nations Charter, a triumph of conciliation and harmonization, should be the basis for any action. Since there was no question of revising the Charter, any definition of aggression should be fully in accordance with its provisions, particularly those concerning the division of powers and functions between United Nations bodies.

In his delegation's view, a preamble was not absolutely necessary, since the purposes which would be served by formulating a definition of aggression had already been set forth on several occasions by the General Assembly. The sponsors of the four-Power draft proposal (A/AC.134/L.4) had not felt the need for a preamble. If, however, it was necessary to indicate a preference, the first three paragraphs of the twelve-Power draft (A/AC.134/L.3) or the first five paragraphs of the thirteen-Power draft (A/AC.134/L.6) would be acceptable to his delegation. That did not mean that his delegation was against recognizing the principle of the inviolability of the territorial integrity of a State. That principle was, however, merely one element of the prohibition of the use of force and not an element of the definition of aggression.

Turning to the general definition of aggression, he said that operative paragraph 1 of the Soviet draft would furnish a good working basis, provided that the following essential points were met. Firstly, the definition should apply to the use of armed force in international relations, or in other words, by one State against another. The word "State" should be defined in the broadest possible manner, to include States which were not recognized unanimously by the international community. Secondly, the "aggression" with which the Committee was concerned was "armed attack", the phrase used in the Charter, which alone would establish the connexion between aggression and self-defence. Thirdly, such armed attack should constitute a breach of the peace, or in other words, it should be of sufficient seriousness, the degree of which could be gauged by the Security Council. The connexion between the idea of aggression and a breach of the peace followed from Article 1, paragraph 1, of the Charter, which, by referring to "acts of aggression or other breaches of the peace", put aggression in the category of a breach of the peace. Fourthly,

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(Mr. Chaumont, France)

such a breach of the peace should be the result of action taken by the aggressor. He felt that the expression used in operative paragraph 1 of the Soviet draft, "contrary to the purposes, principles and provisions of the Charter", was too vague and should be replaced by a narrower and more precise wording. He therefore proposed that the last part of paragraph 1 of the Soviet draft should be replaced by the following: "in any manner other than in application of the relevant provisions of the Charter, as essentially contained in Chapter VII". Finally, his delegation could not accept any wording which did not lay sufficient emphasis on the exclusive power vested in the Security Council under Article 39 of the Charter, both to determine the existence of aggression, and to make recommendations or take measures accordingly. The Security Council's monopoly in that regard was beyond question.

Turning to the enumeration of specific cases of aggression, he recognized that the cases listed were only examples and that the Security Council retained its power of discretion. However, there was a fundamental ambiguity in all the drafts which had been submitted, because of the lack of any legal connexion between the various forms of aggression enumerated. The first sentence introducing the enumerations in all the drafts submitted to the Committee should therefore be re-worded as follows: "Any one of the following acts, committed by a State first, as a breach of the peace and without its adversary having committed such an act, shall be considered an act of armed aggression".

As for the contents of the enumeration, so-called indirect armed aggression obviously presented the greatest difficulty. Every Government naturally wished to arrive at a wording which would protect its own foreign policy interests, although such a wording could very quickly become a two-edged sword. As the representative of Mexico had said, the greatest drawback was the difficulty of proving that such aggression had taken place, which was, however, essential. His delegation therefore had some reservations with regard to indirect aggression, which, far from showing a lack of interest in the problem of defining it, showed that his country took the question very seriously and would not be content with any ambiguous phraseology.

The question of the use of force in violation of the right of peoples to self-determination appeared in all the drafts submitted to the Committee. By

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making provision for all peoples and not just dependent ones, the amendments submitted by the Sudan and the United Arab Republic (A/AC.134/L.8) represented a broader view, derived from Article 1, paragraph 2, of the United Nations Charter. However, a really complete analysis of the situation of dependent peoples would mean an investigation of international aims and methods which had nothing to do with the definition of aggression and which the Committee was not competent to carry out. The amendments submitted by the Sudan and the United Arab Republic, and operative paragraph 6 of the Soviet draft, should therefore be amended as follows: "Nothing in the foregoing may be interpreted as restricting the scope of the provisions of the Charter relating to the right of peoples to self-determination".

In conclusion, he said that his delegation was prepared to associate itself with every effort made by the Committee to reach a workable definition based on the Charter of the United Nations.

The meeting rose at 11.55 a.m.

SUMMARY RECORD OF THE THIRTY-FIRST MEETING

Held on Friday, 7 March 1969, at 11.5 a.m.

Chairman: Mr. FAKHREDDINE Sudan

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTIONS 2330 (XXII) AND 2420 (XXIII)) (A/7185/Rev.1; A/AC.134/3; A/AC.134/L.12) (continued)

Mr. HARGROVE (United States of America) said that his delegation had set forth at Geneva in the previous year and at the twenty-third session of the General Assembly criteria by which it had judged the proposed definitions of aggression. It had not thereby relinquished its scepticism about the wisdom or utility of the attempt at definition itself. Nevertheless, it remained willing to participate fully in the examination of the proposals before the Committee and would therefore proceed to make a thorough critical analysis of the Soviet proposal (A/AC.134/L.12) submitted at the present session.

First, the proposal appeared to extend the concept of aggression to acts not involving the use of force within the meaning of Article 2 (4) of the United Nations Charter. The operative provisions of the draft were limited to acts which were regarded as constituting "armed aggression". (It should be noted that the acts dealt with in paragraph 2 C, the sending of armed bands, and so on, were expressly characterized as "indirect aggression".) But the very use of the expression "armed aggression" clearly implied that there were other forms of aggression, within the meaning of the Charter, than "armed" aggression, which was confirmed by the last preambular paragraph. In his delegation's opinion, the concept of aggression applied only to the use of force in violation of Article 2 (4) of the Charter, i.e., the use of armed or physical force.

In proceeding to enumerate acts of aggression, the Soviet draft referred to acts which involved the use of force in all but three cases: declaration of war, annexation of territory and the blockade of coasts or ports. Any of those acts was an exceedingly serious matter, both politically and legally, and in most cases constituted a threat within the meaning of Article 2 (4) of the Charter. But none of them necessarily involved the actual use of force, and they might amount to nothing more than a claim to a certain right which, being in violation of international law and the Charter, was without international legal effect. They could not, therefore, be regarded as constituting aggression in every case. When those acts did result in the use of force in violation of the Charter, it was the use of force itself which a definition should regard as aggression.

(Mr. Hargrove, United States)

Secondly, by drawing a distinction between "direct aggression" and "indirect aggression", the Soviet draft was not true to the law of the Charter. If a State used force in violation of Article 2 (4) of the Charter, that act constituted aggression. The use of force could take a variety of forms, but for the purposes of the Charter the legal consequences were identical, regardless of the means employed by the aggressor. The Charter did not draw a distinction according to whether force was used openly or deviously, cleverly or clumsily. To speak of "direct" or "indirect" aggression in a definition was to introduce a distinction which was both alien to the Charter and superfluous.

Thirdly, the Soviet draft strayed from the Charter by introducing the criterion of "first use" in defining aggression, thus paving the way for anomalous and unacceptable consequences. The first of those consequences was that States' right of self-defence would be arbitrarily restricted to: (a) a response by the same methods as those used by the aggressor, or (b) the use of some means of defence not covered by any of the acts enumerated in operative paragraph 2 B (since the victim was prohibited from being the first to use any of the remaining methods enumerated).

Thus, the victim of a nuclear attack could defend himself with his own nuclear weapons, but could not attack by conventional weapons the air forces delivering the aggressor's nuclear weapons. That could hardly be the sponsor's intention.

Perhaps aggression should be taken to mean the commission by a State of any one of the acts enumerated, if none of the other acts listed had already been committed against it; in that case, a victim could defend himself by any one or several of the acts listed in paragraph 2 B, since in doing so it would not be considered to be the first to commit one of those acts. However, another and even more serious difficulty would then arise: if a State committed one relatively inconsequential act (say, an attack on a ship or a single shot across a border), the victim could respond with the whole of his military might, including nuclear weapons, without risk of being held an aggressor. Fortunately, such was not the rule of the Charter, under which defensive measures must be necessary to defend against the danger, and proportionate to it, and the use of force exceeding those requirements might constitute aggression. It might be suggested that the Soviet

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draft should not be interpreted as modifying or restricting the right of self-defence, which was the express intention of the general saving clause in operative paragraph 6. In that event, paragraphs 1 and 2 B should be regarded as ruling out first uses of force except in self-defence. But such an interpretation would imply that a State could use force first in self-defence, in anticipation of the use of force against it, thus sanctioning "preventive wars".

Whether or not it was meant to supersede the law of self-defence, the criterion of first use was thus a spurious solution. Paragraph 2 B raised a further difficulty: it was clearly not just the use of weapons of mass destruction, referred to in sub-paragraph (a), which constituted aggression, but their use by one State against another in violation of the Charter. But that was true of weapons of any kind, so it was inappropriate in a list of possible acts of aggression to include the use of certain kinds of weapons, since that was of no assistance in distinguishing acts which might constitute aggression from acts which might not. Whether an act of aggression had been committed was determined not by the kind of weapons used, but by the nature of the acts committed.

Fourthly, the Soviet draft did not in his opinion deal adequately with the varicus indirect forms of the illegal use of force which might constitute aggression. The thirteen-Power draft submitted at the previous session referred to the indirect use of force in its general definition of aggression in paragraph 1, but did not include any such act in its enumeration in paragraph 5. Moreover, it explicitly denied the right of self-defence against a wide range of indirect acts of force. In 1968, his delegation had made it clear that such an apprcach was, in some essential respects, inconsistent with the Charter and, in any event, mistaken. It remained his delegation's view that any definition should take full and equal account of indirect or covert uses of force. Though an obvious improvement on the thirteen-Power draft, the Soviet proposal still had serious shortcomings in that respect. Paragraph 2 C was narrowly restricted, for it applied only in cases which met three separate requirements: the sending of armed bands to the territory of another State, engagement in other forms of subversive activity, and the use of force with the aim of promoting an internal upheaval in another State; that provision seemed very narrow by comparison with the previous Soviet draft (A/AC.134/L.?), which condemned equally the support of armed bands, the encouragement of subversive activity against another State, the

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promotion of the outbreak of civil war within another State and the promotion of an upheaval or a reversal of policy in favour of the aggressor. That draft also condemned the refusal by a State to take all measures within its power on its own territory to deny armed bands aid or protection when requested to do so by the invaded State. He would like to know the reasons which had prompted the Soviet delegation to amend its draft in that way.

Not only was the Soviet definition of indirect or covert uses of force too narrow, but the new draft also placed that whole range of acts in a separate legal category called "indirect aggression". Whether it was direct or indirect, however, aggression had precisely the same legal consequences under the Charter and a definition of aggression should not suggest otherwise.

Referring to the fourth preambular paragraph of the Soviet draft, he was inclined to think that the term "peaceful coexistence" was at the present time a controversial one, in view of the strange interpretation placed upon it by some of its early promoters. Moreover, the paragraph spoke of peaceful coexistence between States having different social systems, and thus had invidious implications regarding the extent to which the use of force was permissible between States with similar social systems.

In that connexion, a further significant difference between the present Soviet draft and the previous one was noteworthy. The latter enumerated various illicit alleged justifications for attack, such as "the internal position of any State", including shortcomings in its administration, counter-revolutionary movements, or the establishment of a particular social system. The 1969 draft contained no such list, and it would certainly be helpful to the Committee to know the reasons for that change, and whether the sponsor regarded the requirements of the Charter as having changed.

The same paragraph 6 of the 1956 draft contained a provision whereby the affirmation that a political entity lacked the distinguishing marks of statehood did not justify aggression. That raised an important problem; any definition of aggression must cover the case of those political entities whose statehood might be disputed but which were nevertheless subject to the obligations of the Charter and international law concerning the use of force. It was regrettable that the new Soviet draft did not come to grips with that problem.

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Finally, operative paragraph 5 of the new draft appeared to be superfluous; it was the task of the Special Committee to define aggression, and not to spell out the various legal consequences of an act of aggression.

Such was the position of the United States delegation on the new Soviet draft. He hoped that the criticisms he had made, frankly and in a constructive spirit, would help in some measure to clarify the complex question of aggression within the context of the United Nations Charter.

The meeting rose at 11.35 a.m.

SUMMARY RECORD OF THE THIRTY-SECOND MEETING

Held on Monday, 10 March 1969, at 10.55 a.m.

Chairman: Mr. FAKHREDDINE Sudan

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CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTIONS 2330 (XXII) AND 2420 (XXIII)(A/7185/Rev.1; A/AC.134/3; A/AC.134/L.12) (continued)

Mr. DARWIN (United Kingdom) said that he was still doubtful about the wisdom of attempting to define aggression. However, his delegation would not oppose the adoption of a good definition if one could be found, although still uncertain of its value. One thing that was clear was that a bad definition - one which was inadequate or which ran counter to the Charter - would be worse than none at all; it would be a menace.

He wished to set out certain elements and points necessary to an accurate definition of aggression and to comment on the draft definitions before the Committee, principally the thirteen-Power draft and the Soviet draft. Firstly, the definition of aggression must have its beginning and end in the Charter of the United Nations - its beginning, because the Charter gave important indications of what it meant by "aggression", and its end, because to be valid any definition must be used within the context of the Charter and applied by the organs of the United Nations. Article 1 of the Charter set, as one of the first purposes of the United Nations, "the suppression of acts of aggression or other breaches of the peace". The Charter thus saw aggression as an act of violence constituting a breach of international peace. Therefore an actual use of force - of armed violence - was an essential element in the definition; a threat to use force was not enough. Moreover, aggression applied to the use of force by one State against another, although it might be necessary to take account of the position of inter-State violence by authorities which claimed to be States but were not generally recognized as such. There must also be an element of intent; accidental use of force could not be considered aggression.

The fourth preambular paragraph of the Soviet draft made an incorrect distinction. It spoke of "the use of force by a State to encroach upon the social and political achievements of the peoples of other States". Nowhere, however, did

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(Mr. Darwin, United Kingdom)

the Charter distinguish between uses of force which encroached upon the social and political achievements of peoples and other uses of force, which were equally inconsistent with the principle of peaceful coexistence of States, whether their social systems were different or the same.

The thirteen Powers and the Soviet Union had proposed a mixed definition, providing a list of instances after the general definition. The list was not exhaustive, as it was impossible to foresee all cases of aggression. It in no way narrowed the scope of the general wording but merely illustrated it with examples. It was not clear how the specific elements of the list in the Soviet draft were related to one another: it was certainly not the intention of the General Assembly - which had set up the Committee - to encourage adventures by those who maintained an enormous conventional army as compared with those who relied for ultimate defence on nuclear weapons.

The use of armed bands to attack another State was an important example of inter-State violence. The Soviet draft of 1953 had recognized that in stating that "that State shall be declared the attacker which first commits ... support of armed bands organized in its own territory which invade the territory of another State, or refusal, on being requested by the invaded State, to take in its own territory any action within its power to deny such bands any aid and protection". That was regarded as an essential element of a definition by a number of States. For example, the Mexican delegation had expressly accepted that sub-paragraph and had subsequently made proposals to the same effect. The present Soviet draft (A/AC.134/L.12) appeared to restrict the meaning of the provision, since the words "support of armed bands" had been replaced by "sending armed bands". The thirteen-Power draft (A/AC.134/L.6) placed subversive and terrorist acts by armed bands in a separate category. That example of the use of force should expressly be mentioned in the list of types of aggression. An attack by armed bands described as "volunteers" deserved to be called aggression just as much as an attack by a country's regular forces. A State attacked by armed bands was in the same position as a State attacked by regular forces. That was equally true of persons acting singly or working in clandestine organizations. It had been said that activities by armed bands were

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difficult to prove, but that was no reason to omit such activities from the list of types of aggression; the decision in such cases had ultimately to be taken by the Security Council.

Under Article 51 of the Charter of the United Nations, force could be lawfully used by a State in self-defence. Any definition of aggression must therefore expressly recognize that right as stated in the Charter.

Some elements, however, did not belong in a definition of aggression. Thus, the consequences of aggression were not within the Committee's terms of reference. Similarly, the non-recognition of the gains resulting from aggression did not come within the definition. Furthermore, colonial situations, which were not inter-State situations, fell within the competence of other United Nations bodies.

The Charter expressly entrusted to the Security Council the power to determine which acts constituted aggression. Contrary to the view expressed by the representative of Mexico, he felt that a definition which altered the powers of the Security Council was inadmissible. At most, a definition could serve as guidance for the Security Council.

In conclusion, he recapitulated the main points which a definition of aggression must satisfy: aggression must constitute a grave breach of the peace between States; the definition must fully recognize the right of self-defence; if instances were given, they must not be narrowed to exclude specific types of armed attack; and the definition must fully recognize the competence of the Security Council.

Mr. GONZALEZ GALVEZ (Mexico) noted that the United Kingdom representative had based his contention that the Mexican delegation recognized terrorism as one form of aggression in two working papers submitted by the Mexican delegation and contained in document A/AC.134/L.2 (pp. 9 and 16-18). The first of those working papers, however, was not concerned with the paragraph of the Soviet draft relating to armed bands and was, moreover, only a working paper, not an official proposal. Furthermore, paragraph 2 of that document stated that the Mexican delegation considered it "hazardous to extend the concept of aggression to

(Mr. González Gálvez, Mexico)

include separate elements of the use of force. Thus, acts constituting so-called indirect... aggression should be regarded as aggression only if they involve or are accompanied by the use of force". The second working paper was a compromise text submitted with a view to securing the widest possible measure of support. His delegation's position on the subject was very clear: it recognized the great seriousness of subversive acts and terrorism and felt that measures must be taken against States committing them, but to treat them as acts of armed aggression might be to justify the misuse of force and to distort the spirit of Article 51 of the Charter. If a number of delegations found the second working paper acceptable, his delegation might consider resubmitting it.

Turning to the question of the relationship between the United Nations and the development of international law, he said that while the recommendations of the General Assembly certainly had more than moral value, their legal value was not such that they were binding either on States or on the Security Council. Nevertheless, the laying down of a standard of international conduct affected the way in which international law was created. There was no uniformity with regard to the degree of validity that different sources of international law were recognized to have; for example, the International Court of Justice made no distinction between the validity of conventions, international custom, general principles, judicial decisions, and so on. The question was whether or not the definition of aggression constituted a general principle of law. If so, could the powers of the Security Council be limited by it? In general, did the Security Council have to respect the principles of international law? International law undoubtedly played a lesser part in the United Nations than it had in the League of Nations. It was the purpose of the United Nations not to re-establish a legal order that had been violated, but to maintain peace. Since the San Francisco Conference had decided that United Nations action would be political rather than legal in nature, an attempt must be made to bring political action closer to international law in practice. Thus,

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instead of clinging to the discretionary power given to it by the Charter, which authorized it even to go directly against a general principle of law, the Security Council must make every effort to conform to the principles of international law. A definition of aggression should therefore not take account of the Security Council's discretionary power.

Mr. ROSSIDES (Cyprus) felt that a definition of aggression was an essential element in international law and was necessary to ensure order within the international community. It was the role of the United Nations to ensure the maintenance of international peace and security. The drafting of a legal definition of aggression acceptable to all States would therefore facilitate its task. Before the adoption of the Covenant of the League of Nations and the United Nations Charter, war had been a generally accepted phenomenon, not subject to international sanctions. No State had wanted a defintion of aggression which might limit its national sovereignty. Now the situation was different. It was no longer a question of the desirability of drafting a definition of aggression but rather of deciding what type of definition it should be and of hastening its adoption. That was why he welcomed the constructive statements that had been made, particularly by the French representative, who had favoured a precise definition of aggression, and by the United Kingdom representative, who had said he could accept a defintion of aggression meeting certain criteria.

He wished to give some preliminary explanation of what the concept of aggression meant to him. Aggression was not only a physical manifestation, as the representative of Canada had said, but also had a psychological content. In other words, it was also the manifestation of a tendency to self-assertion. The various types of aggression included political aggression for expansionist purposes, military aggression in the sense of an unprovoked armed attack and finally aggression in the legal sense of the term, which was the type the Committee had to study in the context of the Charter. Article 2, paragraph 4, of the Charter applied to any use of force, and Article 1, paragraph 1, applied to situations, including aggression, which might lead to a breach of the peace. Lastly, Article 39 defined the role of the Security Council in the event of any threat to the peace, breach of the peace, or act of aggression. The Committee therefore only had to define

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that type of aggression which constituted the most serious form of a breach of the peace. It did not have to concern itself with threats to the peace or other types of breaches of the peace. The purpose of the definition of aggression was to help the Security Council to determine when a case of direct aggression existed. As far as indirect aggression was concerned, he agreed with the United States representative that there was no need to define it and that it was the responsibility of the Security Council to decide whether in any given case the indirect use of force could be considered aggression.

In the case of entities other than States, the use of force was a question which came under the Commission on Human Rights or was covered by Article 11 of the Charter and did not involve the definition of aggression. On the other hand, the fact that some States were not universally recognized did not mean that they did not exist as States, that they were not bound to observe the principles of the Charter or that, in consequence, the definition of aggression did not apply equally to them.

Lastly, he pointed out that, at the General Assembly's twenty-third session in 1968 the General Committee had decided that it was not desirable for the items "Draft Code of Offences against the Peace and Security of Mankind" and "International criminal jurisdication" to be included in the agenda until further progress had been made in arriving at a generally agreed definition of aggression. In doing so, the General Committee had recognized the need for a definition of aggression; otherwise, it would have recommended the immediate inclusion of the two items in the Assembly's agenda. He therefored hoped that, despite some disagreements, the Committee would arrive at a generally acceptable definition of aggression.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) said he understood that consultations were in progress among the sponsors of a proposal submitted in 1968 with a view to the drafting of a new joint text. He would like to hear the observations of those delegations on the Soviet draft so that he could take a position when the outcome of the consultations was made known.

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Mr. BERRO (Uruguay) felt the Committee would save time if statements could be grouped together to a greater extent, a step which would have the additional advantage of affording members of the Committee some days to reflect on them. As a lawyer, he hoped for a definition that would respect the principles of the Charter, be in conformity with international law and have the effect, by reason of its merit, of preventing any attempt at aggression in the world, something that the provisions of the Charter and the resolutions of the Security Council had not so far achieved.

Mr. GONZALEZ GALVEZ (Mexico) suggested that, to accelerate its work, the Committee might set up a working group which could hold an exchange of views and then study the constructive ideas made by some delegations which had not submitted any draft proposals.

Mr. ROSSIDES (Cyprus) supported the idea of setting up a working group but felt that it would be somewhat premature to take a decision to that effect at the present stage.

The meeting rose at 12.30 p.m.

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SUMMARY RECORD OF THE THIRTY-THIRD MEETING

Held on Wednesday, 12 March 1969, at 3.30 p.m.

Chairman: Mr. FAKHREDDINE Sudan

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTIONS 2330 (XXII) AND 2420 (XXIII)) (A/7185/Rev.1; A/AC.134/3; A/AC.134/L.12) (continued)

Mrs. GAVRILOVA (Bulgaria) noted a favourable atmosphere in the Committee, which was attributable to the substantial progress made at the previous session. She felt that if the Committee continued to work in the same constructive spirit it should be able to complete the task of drafting a definition of aggression at the present session. The draft definitions already submitted had enough features in common, and represented a sufficient convergence of views on the main principles and scope of a definition, to constitute a solid basis for the final conclusion of one of the most arduous and delicate tasks facing the United Nations.

Her delegation welcomed the USSR draft propoasl (A/AC.134/L.12), which was a "mixed" type of definition, corresponding to the wishes and views of the majority of Members of the United Nations as expressed in the Special Committee and the Sixth Committee of the General Assembly. It covered violations of the rules of international law in contemporary relations between States in their broader aspect and was in accord not only with the interests of States but also with contemporary international law. Like the other drafts submitted it was wholly based on the United Nations Charter, and more particularly on Chapters I and VII.

All members of the Committee seemed to be in agreement that the definition of aggression should in no way restrict the power of the Security Council to determine the nature of an armed conflict between two or more States; on the contrary, it should serve as a guide and a necessary supplement to the Charter, assisting the Security Council to make such a determination. The definition of aggression could thus not only fill a gap in the theory of international law but also provide a link between the general provisions of the Charter and their application to specific cases of aggression.

Both the thirteen-Power draft definition (A/7185/Rev.1, para. 9) and the USSR draft proposal treated aggression as a serious international crime having consequences not only for the States directly involved but also for all mankind and for peace throughout the world. In the present state of international affairs it was hardly necessary to prove that local conflicts had repercussions throughout

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the world, increased tension and threatened the peace and security of mankind. There was disagreement, however, as to whether the international crime of aggression meant only acts of armed aggression or also included preparations for aggression. Her delegation considered that the broader concept of aggression as a complex of interrelated acts, i.e. the planning, preparation and launching of an aggressive war, was more in accordance with modern legal ideas and international practice. The second preambular paragraph of the USSR draft was clearly based on such modern principles of international law.

For years lawyers both inside and outside the United Nations had hesitated to accept or had flatly rejected the idea of priority - i.e. that the party guilty of aggression was the one which first disturbed the peace between two States. However, in her view, the question was not which party fired the first shot but which first organized an act of aggression using armed force against another State; clearly what was meant was not an isolated accidental shot over an international frontier, or a frontier incident, but an organized attack employing armed force. Her delegation considered the criterion of priority a highly useful element in the definition of aggression since priority could be determined objectively.

At the same time, her delegation could not regard as justified the idea of so-called "preventive wars" or the theory that only an "unprovoked" armed attack constituted aggression. Acceptance of the idea of preventive war would make not only the definition of aggression but the whole activity of the United Nations under Chapters I and VII of the Charter completely pointless. If any movement of troops near the borders of a State could be equated with a threat to its security, entitling it to strike back with all the means at its disposal in a so-called "preventive war", that would mean that any aggressive war could be justified, since such pretexts could always be found. Unfortunately, the case was far from theoretical. A glance at the conflicts occurring in practice would confirm the absurdity of the idea of preventive war and of the attempt to exclude such action from the definition of aggression.

A closely related question was the problem of self-defence. Those opposed to a definition of aggression often referred to the difficulty of distinguishing between aggression and self-defence. But that only confirmed the need for a clear

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definition. The absence of clear and undisputed criteria for distinguishing aggression - i.e. armed aggression involving the illegal use of force - from the legitimate use of force authorized by and under the control of the Security Council, including the right to individual and collective self-defence - would not only make any definition of aggression meaningless but was also fraught with dangerous consequences. Both types of action involved the physical use of armed force but were fundamentally different in their legal, moral and political nature. Under Article 53 of the Charter and in accordance with generally accepted international rules, a sovereign State had the right to use armed force in its own defence only to repel an armed attack against it. It could not do so in order to take preventive measures or to respond to violations of its rights other than armed attack. The need for a clear distinction between the legal and illegal use of force had been taken into account in previous draft definitions and the USSR proposal.

The USSR definition also included the idea of indirect aggression, i.e. the use of armed force, through camouflaged and subversive activities, to bring about internal upheavals in other States or radical changes in their policies in the interests of the aggressor. That type of aggression, which was particularly charateristic of the present time and no less dangerous than direct aggression, especially for nations which had recently become independent, was often intended, as the fourth paragraph of the preamble of the USSR draft stated, to encroach upon the social and political achievements of the peoples in question. Paragraph 2 C of the USSR draft enumerated the most dangerous and flagrant types of indirect aggression and was illustrative rather than exhaustive. Her delegation considered that failure to include indirect aggression in the definition of aggression would be a serious omission.

The responsibility of the aggressor for his acts was another important element in the USSR draft. It had in fact been the efforts of the peoples who had suffered from fascism and nazism to establish the responsibility of their oppressors that had led to the long attempt to define aggression. The definition would have no practical meaning if it did not indicate to the organ which would apply it, i.e. the Security Council, what the responsibility of the aggressor

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(Mrs. Gavrilova, Bulgaria)

was and what political and moral sanctions should be applied against it under the Charter. Without such provisions, the definition would lose its preventive character and would fail to be the effective instrument in the hands of the United Nations that it should be.

She welcomed the degree of agreement that existed in the Committee on many points, and in particular she supported the Mexican delegation's suggestion for the establishment of a working group. In the interests of saving time, her delegation would propose that the Committee should hold informal meetings in the afternoons to study the drafts submitted.

Mr. EL-ERIAN (United Arab Republic) said that, whatever differences of approach might exist in the Committee, there was little difference about the urgent need for defining aggression and the importance of a definition to contemporary international problems and the international legal order.

His delegation had always been in favour of defining aggression. In 1945, it had suggested that the United Nations Charter should include a general definition of aggression, and in 1953-1954 had suggested a "mixed definition". In 1967 it had co-sponsored a twelve-Power draft declaration on aggression (A/7185/Rev.1, para. 7) and an amendment (ibid., para. 10) to the thirteen-Power draft declaration (ibid., para. 9). Its interest in the definition of aggression was far from merely academic: it also resulted from the bitter experience of the Arab countries, which had suffered aggression in all its forms, the latest being a war of aggression launched against them and the military occupation of parts of their territory in violation of the Charter and in defiance of the will and authority of the United Nations.

There were constitutional, legislative and political reasons for completing the task of defining aggression by an early date. From the constitutional standpoint, the General Assembly had already accomplished much substantive work in elaborating certain basic concepts of the Charter, such as human rights, self-determination and the sovereign equality of States. The elaboration of the concept of aggression was actually even more important since it related to the basic purpose of the United Nations as defined in Article 1, paragraph 1, of the Charter. Legislatively, the General Assembly had taken a number of important steps to

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develop international criminal law, but had deferred action on the draft code of offences against the peace and security of mankind and on international criminal jurisdiction since it considered those subjects related to the question of defining aggression. The political reasons for expediting the definition of aggression were cogently stated in the seventh preambular paragraph of the USSR draft proposal. The idea stated there of the definition acting as a restraining influence on a potential aggressor was also reflected in the fifth preambular paragraph of the twelve-Power draft declaration and the sixth preambular paragraph of the thirteen-Power draft declaration; but his delegation considered the idea to be more completely expressed in the USSR draft proposal.

One important criterion which must be taken into account in formulating the definition was that it must be fully consistent with and founded upon the provisions of the Charter. The task of the Special Committee was not to rewrite the Charter but to enunciate a basic concept it contained. The Committee should remember, however, that the Charter was to be interpreted in the light of the way it had been applied and of the developments that had taken place in the past twenty-three years. In resolution 2330 (XXII) the General Assembly had instructed the Special Committee to carry out its task having regard to the international legal instruments relating to the matter and the relevant precedents, methods, practices and criteria, which included the Charter.

The question of weapons of mass destruction, referred to in the Soviet draft was most important. The Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare was still valid, and in resolution 2162 B (XXI) the General Assembly had called for strict observance by all States of its principles and objectives and had invited all States to accede to it. At its sixteenth session the General Assembly had adopted a Declaration on the prohibition of the use of nuclear and thermo-nuclear weapons, which stated that the use of those weapons was contrary to the laws of humanity and a crime against mankind and civilization. At the twenty-second session, on the initiative of the Soviet Union, the General Assembly had expressed its conviction in resolution 2289 (XXII) that it was essential to continue urgently the examination of the question of the prohibition of the use of nuclear weapons and of the conclusion of an appropriate international convention. The

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draft definition to be produced by the Special Committee should reflect the aims of those basic resolutions of the General Assembly and thus be instrumental in preparing the ground for such a convention.

There was some disagreement about the scope of the draft definition. At the 31st meeting, the representative of the United States had given a rather strict interpretation of it, saying that the task of the Committee was to define aggression and not to spell out the various legal consequences of an act of aggression. The representative of the United Kingdom, at the 32nd meeting, had supported that interpretation and said that certain elements, such as the consequences of aggression and the non-recognition of the gains resulting from aggression did not belong in a definition of aggression. His delegation felt that the draft definition should not be a mere catalogue of acts of aggression; the illegal effects of aggression and the question of responsibility were essential parts of the definition. In 1963 the International Law Commission had been advised by its Sub-Committee on State Responsibility to give priority to the definition of the general rules governing the international responsibility of the State, taking into account new developments of international law in other fields, notably the maintenance of peace. Thus it had been decided to examine the question of State responsibility on a broader basis than hitherto. His delegation attached much importance to the question of the political and material responsibility of States and the criminal responsibility of individuals, and hoped that their inclusion in the draft definition would generate renewed interest in the development of international criminal law.

The international community had been struggling for many years to make illegal all gains resulting from the illegal use of force. Article 17 of the charter of the Organization of American States, for example, was concerned with the inviolability of the territory of a State; no territorial acquisitions or special advantages obtained either by force or by elements of coercion were to be recognized. As early as 1949 the International Law Commission had drafted a Declaration on the rights and duties of States which provided, amongst other things, that every State had the duty to refrain from recognizing any territorial acquisition by another State gained by the illegal threat or use of force. Article 49 of the draft articles on the Law of Treaties stated that a treaty was

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void if its conclusion had been procured by the threat or use of force in violation of the principles of the Charter of the United Nations, and article 70 dealt specifically with the treaty obligations of aggressor States. All those provisions had helped to control the effects of the illegal use of force.

The draft proposal submitted by the Soviet delegation represented a significant step forward; it was precise but comprehensive and took into account the work done previously in Geneva and the views expressed in the thirteen-Power and twelve-Power drafts. His delegation noted in particular that the last two preambular paragraphs and the last three operative paragraphs of the Soviet draft were more explicit than the other drafts.

With regard to the Committee's method of work, he felt that it would be right to take the question of direct armed aggression first. Other kinds of aggression, although illegal under the Charter, were much more problematical. The question of direct armed aggression lent itself more easily to agreement, and he hoped that by the time the United Nations reached its twenty-fifth anniversary the Special Committee would have brought its work on that subject to a successful conclusion. His delegation supported the suggestion of the representative of Mexico that a working group should be established to study the various drafts before the Committee and the ideas developed in the course of the discussion.

Sir John CARTER (Guyana) said that his delegation wished to comment first of all on some of the observations made by previous speakers. The representative of Canada had expressed the view that an adequate definition of aggression must be formulated in a manner acceptable to all the permanent members of the Security Council. His delegation reccgnized that the definition should be generally acceptable to all Member States, but saw no reason why the approval of the great Powers was particularly necessary. That idea was out of date at the present time, when all peoples claimed the right to a role in international affairs. His delegation considered that a definition of aggression supported by the great majority of Member States, even if opposed by the great Powers, would inform world public opinion about the legal restrictions on the use of violence in international relations; it would enable people to judge the foreign policy decisions of Governments and would encourage them to bring pressure to bear to change policies that represented a significant departure from acceptable international behaviour.

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That was one of the fundamental purposes and functions of a definition of aggression, and all Member States should recognize the fact. His delegation was convinced that a definition of aggression, even if adopted by a majority vote, would be conducive to a better legal order.

The representative of France had expressed the view that the Security Council had exclusive power to determine the existence of aggression and to make recommendations or take measures accordingly. Although Guyana was a co-sponsor of the twelve-Power and thirteen-Power drafts, it was prepared to accept that view subject to certain qualifications. Firstly, under the Charter the General Assembly was also legally competent to determine that an act of aggression had been committed. The difference was that under Article 25 Member States were obliged to accept and act upon such determination by the Security Council, whereas a similar determination by the General Assembly did not have the same legal force. There was nothing in the Charter, however, to prevent a Member State from voluntarily agreeing to act on such a determination by the General Assembly, within the limitations of the Charter's provisions. The second qualification related to the competence of the General Assembly to recommend action to Member States after making a determination of that kind. It was not quite clear from Article 11, paragraph 2, of the Charter whether to make recommendations requesting the termination of military hostilities would be tantamount to taking action, in which case the matter would first have to be referred to the Security Council. His delegation, however, subscribed to the interpretation given by the International Court of Justice in its Advisory Opinion on Certain Expenses of the United Nations, that "action" within the meaning of Article 11, paragraph 2, meant enforcement action. Consequently his delegation had no difficulty in accepting a draft definition of aggression emphasizing the exclusive competence of the Security Council to make a legally binding determination about the existence of an act of aggression. Strictly speaking, it might be correct to omit any reference to the General Assembly from the definition of aggression. If that was done, however, it could not in any way detract from the generally accepted competence of the General Assembly in questions relating to peace-keeping.

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The view had been expressed in the Committee that an adequate definition must take into account political entities whose claim to statehood was in some way disputed or qualified. That was confusing, because those who supported that view also insisted that an adequate definition of aggression must be in strict conformity with the Charter and should, moreover, be as free as possible from any ambiguities. If "political entity" was given its usual meaning, any opposition party in a democracy could be included in that category on equal terms with the colony of Southern Rhodesia. If on the other hand "geo-political entity" was meant, it might be better to say so. In any event, a definition of aggression in the strict Charter sense must necessarily exclude any geo-political entity not contemplated in the provisions of the Charter - in short, all non-state entities. The only exception to that was the United Nations itself.

Referring to the view that an adequate definition of aggression must take account of the psychological requirement, or animus aggressionis, he said that a definition of aggression could not take into account the element of intent if the criterion of strict interpretation of the Charter was to be maintained. The context in which the Charter had been drafted and the wording of Article 2 (4) argued against the view that intent was a necessary component of aggression. If that element were included in a definition of aggression, it might tempt an aggressor to rely on such spurious defences as anticipatory self-defence, duress per minas or mistake. No legitimate defence of mistake could be open to a State inadvertently unleashing a nuclear attack.

His delegation's initial reaction to the draft proposal submitted by the USSR (A/AC.134/L.12) had been that it represented a serious effort to formulate a definition which would command as wide an acceptance as possible. Some of its preambular paragraphs were an improvement on the corresponding paragraphs of proposals submitted at the first session and he hoped that they would be taken into account by the sponsors of those proposals. Other preambular paragraphs, however, introduced new elements which were not part of the generally accepted norms of international law.

In operative paragraph 1 of the USSR draft proposal, aggression was qualified by the use of the word "armed", which was not the case in the corresponding

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paragraph (operative paragraph 1) of the thirteen-Power draft proposal (A/AC.134/L.6). It was his understanding, however, that the sponsors of the latter, while believing that aggression also had its economic, ideological and cultural manifestations, agreed that the Committee should concentrate on the armed form, and he would therefore support any proposal for the inclusion of the word "armed" in the appropriate phrase. He associated himself with the comments of the representative of Cyprus concerning the inadmissibility of a distinction between direct and indirect armed aggression.

He did not agree with the emphasis on the principle of priority in operative paragraphs 1 and 2 B in the USSR draft proposal. Since the legitimate use of force, under Article 51 of the Charter, necessarily involved a response to an illegal military move, it was hard to conceive of a situation in which the aggressor would be any other than a State first resorting to force in contravention of the relevant Charter provisions. Moreover, operative paragraph 2 B did not appear to express the intention of its sponsor since a Member State could resort first to any of the acts enumerated pursuant to a determination of the Security Council, as operative paragraph 6 appeared to recognize.

His delegation was not happy about the wording of the second part of operative paragraph 1 of the USSR draft proposal. If it was accepted that the provisions of the Charter reflected its purposes and principles, then the use of the words "purposes and principles" appeared to be superfluous. If, however, the wording was intended to suggest that the provisions of the Charter were not necessarily based on its purposes and principles, then the use of the word "and" after principles was objectionable. A State, moreover, might then resort to the use of armed force, first, against another State and assert that such action, although it violated the provisions of the Charter, was consonant with its purposes and principles.

His delegation was concerned over the omission from the USSR draft proposal of certain important elements which were contained in the thirteen-Power draft proposal (A/AC.134/L.6), such as the principle of proportionality, and the provision contained in operative paragraph 4 of the thirteen-Power proposal, which was extremely important for small countries in a world of vast military blocs and which safeguarded the original competence of the Security Council with regard to

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enforcement action. Another omission from the USSR draft proposal was any provision concerning the limits to be observed by a State responding to acts of terrorism or subversion committed in its territory by irregular, volunteer or armed bands. Such a limitation, which was in accordance with the intention of Article 51, deserved a place in any definition of aggression. His delegation did not agree that such attacks on the political independence or territorial integrity of States amounted to armed aggression of an intensity justifying action under Article 51.

It would appear that the thirteen-Power and the USSR draft proposals together met the various criteria mentioned in the Committee as indispensable for an adequate definition of aggression. An illusion of conflict was created by the refusal to accept the conclusions which followed from premises on the part of those who argued for a strict Charter definition but insisted on criteria which would make that impossible to achieve.

Mr. STARACE (Italy) said that the draft proposal submitted by the USSR (A/AC.134/L.12) was an interesting contribution to the work of the Committee. Certain of its provisions, such as the fifth preambular paragraph, the first part of the sixth preambular paragraph from "although" to "particular case", and operative paragraph 3, should, in the view of his delegation, be included in any definition of aggression discussed in the United Nations. Some provisions, however, indicated a conception of aggression which was far removed from that held by his delegation and he could not, therefore, consider the draft proposal satisfactory.

The fourth preambular paragraph appeared to imply that the use of armed force could be admitted in relations between countries which did not have different social systems; that would place an unacceptable limitation on cases of aggression which was incompatible with the Charter, in particular Article 2 (1).

Although the USSR draft proposal only dealt with armed aggression (direct or indirect), it clearly implied that other forms of aggression existed. In the eighth preambular paragraph, for example, armed aggression was described as "the most serious and dangerous form of aggression" and "this form of aggression". That was not in conformity with the Charter, which did not indicate any forms of aggression other than armed aggression. The conception of aggression which emerged from the Charter (Article 1 (1), Article 2 (4), and Article 51) was based

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on two essential factors: the use of armed force and an attack on the territorial integrity or political independence of another State. If, therefore, the definition of aggression was to conform to the Charter, as his delegation believed, it should, it should contain no indication or qualification which might give the impression that other forms of aggression other than armed aggression remained to be defined.

With regard to operative paragraph 6, his delegation attached great importance to the democratic principle of the self-determination of dependent peoples, as stated in resolution 1514 (XV), but believed that that principle concerned the internal affairs of a State and had no place in a definition of aggression, which concerned relations between two or more States. Accordingly, his delegation considered that the last part of operative paragraph 6, starting with the words "including its use by dependent peoples" should not be included in the definition of aggression.

The USSR draft proposal dealt with so-called indirect aggression, but it appeared to be somewhat restrictive. The questions of organizing, assisting and directing armed bands, irregular forces or volunteer units to infiltrate the territory of another State should be dealt with in greater detail. The USSR draft proposal did not expressly mention self-defence, either individual or collective, but only referred to it indirectly in operative paragraphs 1 and 6; in his delegation's view, explicit mention should be made of the provisions of the Charter to which reference was made in operative paragraph 6. His delegation believed that the criterion of priority in the use of armed force was not always applicable to specific cases and was not always adequate to determine the true aggressor; it should therefore be left to the Security Council to establish which State had really committed an act of aggression, taking into account all the circumstances of the case. Operative paragraph 5 raised the problem of the responsibility of individuals in international law, which was a very complex problem not within the Committee's competence. He suggested that a different wording might be found for operative paragraph 2 B (c), since the military occupation or annexation of a territory could not occur without invasion. Lastly, although operative paragraph 4 contained a principle which was in itself just, he wondered to what extent the problem was within the Committee's competence.

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In his delegation's view, it was essential that the definition of aggression should respect the letter and spirit of the United Nations Charter and that every effort should be made to achieve general agreement, or in any event the agreement of the permanent members of the Security Council, since otherwise the definition would serve no purpose. The problem of aggression could not be dissociated from the need to respect the independence and sovereignty of States, to avoid interference in their internal affairs, and to settle differences in a peaceful manner. The Committee should, therefore, take into account the work of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States.

The meeting rose at 6 p.m.

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SUMMARY RECORD OF THE THIRTY-FOURTH MEETING

Held on Thursday, 13 March 1969, at 10.55 a.m.

Chairman: Mr. FAKHREDDINE Sudan

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTIONS 2330 (XXII) AND 2420 (XXIII) (A/7185/Rev.1; A/AC.134/3; A/AC.134/L.12) (continued)

Mr. OWADA (Japan) recalled that there had been a wide difference of views on the advisability of establishing and continuing the present Special Committee on the Question of Defining Aggression. His delegation had in the past expressed some scepticism about the feasibility of arriving at a satisfactory definition of aggression. It was clear that many delegations wanted to establish a workable and effective definition of aggression because they were genuinely anxious to protect mankind from any possibility of aggression. However, it would be wrong to proceed with the work of drafting such a definition without having a clear idea of the practical results likely to be achieved. It was essential to be sure that in the final analysis the merits of the definition would outweigh its demerits. At the previous session of the Special Committee and in the Sixth Committee at the General Assembly's twenty-third session, his delegation had already explained its position, to which it still adhered. It was therefore superfluous at the present stage to discuss that position any further in general terms. Instead, his delegation proposed to set forth, as a point of departure, a few specific ideas which reflected its basic position and should, in its view, be given full consideration in any attempt to define aggression.

First, his delegation had always stressed that the essential prerequisite for maintaining and strengthening international peace and security was strict and faithful observance of the Charter of the United Nations by all States without exception. It might be said, in fact, that what mattered was not so much the wording of a definition of aggression, however detailed it might be, but rather the will and the determination of all Member States to comply strictly and in good faith with the obligations which were expressed perfectly clearly in the principles of the Charter. It should be constantly borne in mind that it had not been the absence of a definition of aggression which had, in the past, hampered United Nations efforts to maintain peace and security.

Secondly, while Japan was prepared to join in a common effort to find a generally acceptable definition of aggression, the definition should not, in its view, prejudice the functions of the United Nations in maintaining international peace and security, nor should it be misused for the purposes of political propaganda. A good definition of aggression, if it were possible to produce one,

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should contribute to the establishment and consolidation of lasting peace and security in the international community. The definition of aggression should not be regarded as an end in itself, but merely as one means of eliminating aggression in all its forms from the community of nations. The definition must therefore be generally acceptable to the members of the international community. In particular, it was essential that the definition, if it was to be workable in practice, should be acceptable to all the permanent members of the Security Council which, under the Charter, were primarily responsible for the maintenance of international peace and security. In that connexion, the Special Committee might be well advised to review all the cases in which a declaration or allegation of the existence of the act of aggression had been made in the Security Council, and to explore the possibility of extracting such elements as might be incorporated into a truly workable definition, able to stand the test of all those past cases.

Thirdly, it was essential that any definition should preserve, and not restrict, the discretionary power of the Security Council to decide whether a specific situation involved an act of aggression under Article 39 of the Charter. His delegation noted with satisfaction that the thirteen-Power draft (A/AC.134/L.6 and Add.1-2), as well as the new Soviet draft (A/AC.134/L.12), expressly referred to that aspect of the question; but it did not think that a mere general reference was enough. It would like the whole structure of the definition of aggression to be based on that principle. Accordingly, while it would be useful for the definition to contain an explicit provision stating that it could not be construed as in any way affecting the Security Council's discretionary power, the definition should also be free from any element which would in effect run counter to that principle and destroy the freedom of the Security Council. In that connexion, the apparently automatic implications of the "first strike" principle put forward in the Soviet draft seemed to raise considerable difficulties.

Fourthly, his delegation adhered to the view that the Special Committee should confine itself to defining "an act of aggression" within the meaning of Article 39 of the Charter of the United Nations and should not deal with such wider notions as "threat to the peace" or "breach of the peace" which were mentioned in the same Article. On the other hand, there seemed to be no reason whatsoever why the

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definition of aggression should be limited to the direct use of armed force and should not cover certain acts commonly referred to as "indirect use of armed force". The concept of indirect aggression was still very confused and, until there was agreement on its exact content, it would be of little use to discuss the question in the abstract. In the circumstances, certain acts which were normally referred to as "indirect aggression" should not be excluded from the definition, inasmuch as those acts presented the same characteristics as the naked use of armed force. The term "indirect use of force" covered the organization, support or direction of armed bands, or irregular or volunteer forces infiltrating into another State, the organization, support or direction of violent disorders or acts of terrorism in another State, and the organization, support or direction of subversive activities aimed at the violent overthrow of the Government of another State. If such indirect use of force was - as it should be - included in the definition of aggression within the meaning of Article 39 of the Charter, it would give rise to the right of individual or collective self-defence under Article 51 of the Charter. In that respect, therefore, there might be some doubt concerning the theoretical correctness and practical soundness of operative paragraph 8 of the thirteen-Power proposal, which seemed to imply that a State which was a victim of subversive and/or terrorist acts by irregular, volunteer or armed bands organized, supported or directed by another State, could not have recourse to the right of self-defence under Article 51 of the Charter. The Soviet proposal did not seem, at least at first sight, to share such a restrictive view. Operative paragraph 2 c seemed even by implication to reject that view. Nevertheless, its definition of the concept of indirect aggression was extremely narrow, in so far as it referred only to the sending of armed bands to the territory of another State, and not to the act of supporting or directing them.

Fifthly, the determination of the existence of an act of aggression should take into account the two component elements of the act: the animus and the corpus. That was important, because in certain circumstances an act which at first sight seemed to involve the use of force might in fact be an act of

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self-defence and not an act of aggression. The definition should therefore make it clear that, in order for aggression to exist, there must be not only an unlawful act but also unlawful intent on the part of the entity committing that act.

Lastly, with regard to the question of aggression ratione personae, his delegation was convinced that any act which would constitute aggression if committed by or against a State should also constitute aggression when committed by or against a political entity delimited by international boundaries or internationally-agreed lines of demarcation, irrespective of the degree of recognition accorded to that political entity. That was not only logical, since all the elements of aggression were present; it was also practical, in view of the purpose for which a definition was being formulated.

Those were the salient points which his delegation wished to raise at the present stage of the discussion. It would probably have occasion to refer to other points when the Special Committee examined the question in greater detail. In conclusion, it wished to stress the need to seek a definition of aggression that would command general support. It also wished to draw attention to the danger of ignoring the legitimate views of an important part of the international community. The definition to be drafted would be valueless unless it embodied the common will.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) thanked all members of the Committee who had commented on the new Soviet draft definition of aggression, and those who had taken a favourable attitude towards it. His delegation would study all the views put forward very carefully. He wished to comment on some important questions mentioned during the discussion, leaving aside those dealing with the self-determination of peoples, State sovereignty and the struggle of peoples for their freedom and independence, which he intended to go into later.

In his view, the members of the Committee were agreed that the definition should be scientific. It could not be satisfactory unless it ignored secondary or fortuitous phenomena and concentrated on essentials, i.e. the specific characteristics of the concept to be defined. It was important for each member of the Committee to refrain from basing its attitude to the definition on events in a single country or region. Members had to work out a definition which would be a general description of the acts of aggression committed in the past in all

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parts of the world. But at the same time it must take into account the present international situation and the aggressive wars now being waged. It must look forwards and not backwards, although it must be based on past experience. It must anticipate and provide for the future course of the struggle against aggression.

He felt that, at the present stage of its work, the Committee was in a position to reach agreement at least on some important elements of the definition. He therefore agreed with the view expressed by the representative of the United Arab Republic at the previous meeting that a most important contribution would be made to the cause of international peace and security if the United Nations were to be provided with a generally accepted definition in time for the celebration of its twenty-fifth anniversary.

With regard to the criticisms which had been levelled at the Soviet draft definition, he wished to draw a distinction between those which were dictated by goodwill and were accompanied by constructive proposals, and those which were wholly negative. He would point out once again that the attitude adopted by each State towards the question of the definition of aggression reflected the principles on which its foreign policy was based. The question was therefore one of those on which a country could not indefinitely conceal the fact that it was adopting a negative attitude; sooner or later its true position would be revealed. The adoption of a definition could be delayed, but not prevented. His delegation was convinced that the attempts to prevent the adoption of a definition would fail in the end. The Soviet Union, for its part, had submitted its draft definition and had thereby made its contribution to the task of defining aggression.

Turning to the preamble of the Soviet draft proposal (A/AC.134/L.12), he said that it was very important because it established the need for a definition of aggression. It dealt with matters of principle, and his delegation must therefore insist on keeping it in the draft resolution. If members of the Committee had better wording to propose for the preamble, his delegation would consider their proposals very carefully. The Soviet preamble conformed to the spirit of the Charter and was in keeping with the resolutions of the General Assembly and the principles of international law. In particular, it confirmed the unassailable rights of the Security Council and stressed the importance of the inherent right

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of peoples to self-determination and the importance of ensuring the peaceful coexistence of States with different social systems. Lastly, it laid special stress on the dangers of armed aggression. He therefore wished to retain the substantive ideas set out in the preamble of the Soviet draft.

With regard to the operative part of the Soviet draft proposal, he was glad that some paragraphs had been favourably received, in particular by the representative of France, who had said that the operative part furnished a good working basis.

As for the criticisms which had been expressed, he wished to reply first of all to those which had been levelled at the criterion of priority. Operative paragraph 1 related to armed aggression by a State, i.e., an international conflict. The paragraph was thus consistent with the provisions of Article 2 (4) of the Charter, which concerned international and not internal conflicts. Internal conflicts and civil wars came exclusively within the national competence of the States concerned. The question of intervention by a third State in an internal conflict required separate treatment. The criterion of priority was not a new concept. It was referred to in the report which the Mixed Commission had submitted to the Third Committee of the League of Nations in September 1923 in connexion with a mutual assistance treaty - a report which stated that, whenever invasion of a territory constituted an act of aggression, it was essential to determine which State had violated the frontier, i.e., which State had attacked first. The criterion of priority was also affirmed in the 1925 Treaty of Locarno, the 1926 Franco-Romanian Treaty of Friendship and the 1927 Franco-Yugoslav Treaty of Friendly Understanding. The importance of the criterion of first use of armed force was also recognized by many experts. For example Kelsen, a renowned bourgeois expert on international law, had written that only an aggressive war waged by a State which had been the first to commit an armed attack against another State was illegal.

Also worthy of note was a paper by the Royal Institute of International Affairs in the United Kingdom, according to which it could be confidently stated that in most cases the side which began hostilities was the aggressor. Thus, the aggressor was the side which began hostilities, i.e., which first committed the act of armed

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aggression. Later in the same paper there was a statement to the effect that in most cases, as had been shown, the State which first resorted to armed force was the aggressor.

When the problem of defining aggression had been discussed in the International Law Commission, the Special Committee on the Question of Defining Aggression and other United Nations organs, representatives of many States had also pointed out that the criterion of the first use of armed force made it possible to establish quickly in any particular case who was the aggressor and who was the victim of aggression. It had rightly been pointed out that that criterion followed directly from the Charter, and in particular from Article 51.

To refuse to accept the principle of priority was to justify preventive wars, which his delegation condemned. Accordingly, his delegation could not accept the idea that the reference to the principle of priority should be excluded from the definition of aggression. A reference to that principle was essential, to enable States to exercise their right of self-defence, as provided for in Article 51 of the Charter. The Soviet draft proposal was designed to prevent States from resorting to the use of force except in the cases provided for in the Charter. In order to determine priority, it would be necessary to make investigations and establish the facts. The Security Council, which was responsible for that task, had many means of establishing who was the aggressor.

Some representatives had argued that it was inappropriate and impossible to refer, in the definition of aggression, to the prohibition of the use of weapons of mass destruction, particularly nuclear weapons. That was another point on which his delegation's views were equally firm. As the critics of paragraph 2 B (a) of the Soviet draft proposal had not been able to object to the substance of the paragraph, they had raised objections of a procedural nature. They had said that the question of the prohibition of the use of nuclear weapons was a political problem which came within the purview of the First Committee and that nuclear weapons should not therefore be mentioned in the definition of aggression. They had also said that aggression could be committed by weapons of any kind and that there was therefore no reason to pick out nuclear weapons. The Soviet draft proposal stressed the prohibition of the use of nuclear weapons, which were, beyond

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any possible doubt, by far the most horrible weapons at present in existence. Moreover, a reference to nuclear weapons did not exclude the possibility of also condemning acts of aggression committed with conventional weapons.

While insisting on the need to refer in the definition of aggression to the prohibition and condemnation of the first use of nuclear weapons, the Soviet delegation did not exclude the possibility of improving the drafting of the relevant part of its proposal. As far as the substance of the matter was concerned, the Soviet proposal should not meet with any objections from members of the Committee.

He wished to deal next with the comments made on operative paragraph 2 C of the Soviet draft proposal, which described as an act of indirect armed aggression the use by a State of armed force by sending armed bands, mercenaries, terrorists or saboteurs to the territory of another State and engagement in other forms of subversive activity involving the use of armed force with the aim of promoting an internal upheaval in another State or a reversal of policy in favour of the aggressor.

His delegation considered that such acts were a violation of the principles of the United Nations Charter, particularly the provisions of Article 2 (4), and infringed upon the independence of States. There were many examples in history of indirect aggression designed to overthrow a political régime, crush a national liberation movement or enslave a people. For instance, Hitler's action in sending armed bands to Austria had led to the Anschluss and the use of mercenaries in Africa had served the interests of the colonial Powers. It was therefore essential to ensure that armed bands, mercenaries, terrorists and saboteurs could not be sent to the territory of another State. Such acts had, moreover, been condemned in General Assembly resolution 380 (V) which dealt with both direct and indirect aggression, and the International Law Commission had also studied the matter. The Soviet delegation, in preparing its own draft, had taken into account the facts he had mentioned above, together with the ideas contained in the thirteen-Power draft proposal (A/AC.134/L.6 and Add.1 and 2) and the four-Power draft proposal (A/AC.134/L.4/Rev.1 and Add.1).

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(Mr. Chkhikvadze, USSR)

Some objections had been raised to operative paragraph 5 of the Soviet draft definition, which dealt with the question of the responsibility incurred by the aggressor. It had been said, for instance, that the problem of the legal consequences of aggression was unrelated to the need to define aggression and should be dealt with in other instruments, such as the draft Code of Offences against the Peace and Security of Mankind. However, that objection was groundless, since it was impossible, after defining a crime, to say nothing at all about its consequences. In that connexion, he referred to the Roman law maxim nullum crimen nulla poena sine lege, which was applied by all States in their domestic law. That principle meant that there were no crimes or punishments other than those provided for by the law; and, since the law could not define a crime without prescribing the punishment for it, there could not be any crime without a punishment or, vice versa, any punishment without a crime. That meant that there was no international crime without responsibility; and that was the principle applied in the Soviet draft definition. The Soviet proposal was based on the assumption that all points relating to aggression, which was held by the peoples of the world to be a crime against peace and mankind, should be formulated and set down in one place. It would be wrong to decide that certain elements should be set aside for incorporation in other instruments.

Some members of the Committee had asked why the Soviet Union had submitted a new draft definition, different from the earlier ones. To them, he replied that there was no contradiction in principle between the various texts. His country's position on the subject was unalterable.

At the same time, however, the new draft took into account the discussion there had been on earlier Soviet proposals. The fact that the USSR was now submitting a new proposal was, on the one hand, further confirmation and development of the Soviet Government's unswerving opposition to aggressive wars and, on the other, the result of examining many proposals made at earlier stages in the consideration of the question of defining aggression and the specific proposals put forward in 1968.

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(Mr. Chkhikvadze, USSR)

In conclusion, he said that the Committee had a possibility of completing its work successfully. It had at its disposal a mass of historical material from the discussion of the question in the United Nations and a number of new draft definitions, which together constituted a basis for future progress and should make it possible to escape from stagnation and arrive at a definition of aggression. His delegation intended to take an active part in the work of the Committee and the drafting group and would pay regard to all constructive suggestions which might be submitted; and it appealed to all members of the Committee to make every effort to reach agreement at least on certain elements of the definition, with a view to the early completion of a task which would serve the cause of international peace and security.

ORGANIZATION OF WORK

The CHAIRMAN said that, in pursuance of suggestions made at the 32nd meeting regarding the establishment of a working group, the Mexican delegation had drafted a proposal which could be submitted to the Committee at its next meeting.

Mr. GONZALEZ GALVEZ (Mexico) said that the final version of his proposal was not yet ready. He still had to have certain consultations with a view to producing a text which would be certain to command the support of all delegations. He did not want to introduce his proposal until he was sure that no delegation would vote against it.

The meeting rose at 12.5 p.m.

SUMMARY RECORD OF THE THIRTY-FIFTH MEETING

Held on Friday, 14 March 1969, at 11.5 a.m.

Chairman: Mr. FAKHREDDINE Sudan

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CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTIONS 2330 (XXII) AND 2420 (XXIII) (A/7185/Rev.1; A/AC.134/3; A/AC.134/L.12) (continued)

Mr. ALCIVAR (Ecuador) said that since his delegation had stated its position on the thirteen-Power draft declaration (A/7185/Rev.1, para. 9) at the Committee's previous session, he would confine his comments at the present meeting to the USSR draft proposal (A/AC.134/L.12).

Operative paragraph 6 of that draft referred to the use of force in accordance with the Charter of the United Nations as an exception to the principle of the prohibition of the threat or use of force. In his delegation's view, that significantly affected the legal content of the principle of the prohibition of war as an instrument for the settlement of international disputes, which had been a general rule of international law since the adoption of the Covenant of the League of Nations. The prohibition had been laid down as a rule of jus cogens in the Briand-Kellog Pact of 27 August 1928, under which the Contracting Parties had renounced war as an instrument of national policy, and had been confirmed in the London Agreement of 8 August 1945 and General Assembly resolution 95 (I).

The preamble of the Briand-Kellog Pact had recognized the right of self-defence and Kelsen in his Principles of International Law had considered that only two types of war were not expressly prohibited under the Pace - a war which was not an instrument of national policy and a war against a State which had gone to war in violation of its obligations under the Pact (i.e., in exercise of the right of self-defence). The use of force, whether domestically or internationally, was justified only as a coercive measure against an illegal act which disturbed the order of society. Domestically, the authority for such a use of force was vested exclusively in the legislative organs of the society. Internationally, war was an institution whose lawfulness was subject to conventional rules of law. Although the resort to war by States was prohibited under the Covenant of the League of Nations, the decentralized system of international security set up under the League had permitted its Members, under Articles 12 and 16 of the Covenant, to take

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(Mr. Alcivar, Ecuador)

collective measures against an aggressor whether or not that State was a Member of the League; the Council of the League could only recommend to States what contingents they should commit to the collective action. Under the Briand-Kellog Pact the right of an individual State to take action had disappeared, since war was renounced as an instrument of national policy. That could not mean, however, that illegal acts were to go unpunished. The only possible conclusion was that thenceforth a monopoly of the use of force was vested in the international community.

The Pact had not established any specific machinery through which the international community was to act. While some thought that the appropriate machinery was the League of Nations, others rejected that view on the grounds that not all States parties to the Pact were Members of the League. His delegation supported the first position because it felt that the Pact was a logical corollary of the system of collective security set up by the Covenant of the League. Moreover, the rules of positive law which regulated the system of international security under the League had now acquired universal scope and become binding, either through customary or through treaty law, even on States which were not Members of it. Obviously, then, the centralization of the right to use force in the international community was, under the Pact, a rule of general international law whose legal effect was not diminished by the lack of procedural rules.

The Briand-Kellog Pact had been incorporated in the United Nations Charter, which expressly vested the monopoly of the use of force in the United Nations. Only the competent organs of the Organization had the right to use force in order to maintain international peace and security. Accordingly, the use of force by any State constituted the crime of aggression and entailed the liability deriving from the rules of law in force, just like a crime under a national system of law.

His delegation considered that the definition of aggression should begin by referring to the monopoly of force vested in the legally organized international community, the United Nations, which was the point of departure taken in the thirteen-Power draft declaration. In that respect, therefore, it had some difficulty with the USSR proposal.

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(Mr. Alcivar, Ecuador)

Furthermore, his delegation did not believe that the inherent right of self-defence was an exception to the principle laid down in Article 2, paragraph 4, of the Charter, just as it was not an exception to the criminal code of any country with respect to the crime of homicide. Under national criminal codes, if an individual was a victim of aggression and killed his adversary in defending his life, the law merely exempted him from the responsibility he would have borne had there been no extenuating circumstances. Similarly, under the United Nations Charter, no State was empowered to use force; Article 51 recognized the inherent right of self-defence only to the extent that it exempted the State using force to repel an armed attack from liability until the Security Council had determined what means were to be employed to maintain international peace and security. That was the only possible legal interpretation of the right of self-defence under the constitutional system of the United Nations. The thirteen-Power draft declaration carefully placed the only two cases in which the Charter recognized the use of force as legitimate in the legal context of the system of international security set up by the United Nations. The principle prohibiting the threat or use of force was a rule of jus cogens and would be dangerously watered down if exceptions of any kind were admitted.

Paragraph 2 C of the USSR draft proposal also caused his delegation some difficulty, not so much because it referred to the concept of "indirect armed aggression" as because it was not clear what its implications were with regard to the right of self-defence.

His delegation held that economic and political pressure should be considered as part of the concept of force. It knew very well what such pressure could mean to a small country in the present state of international affairs. Economic pressure could mean starvation, and starvation killed as surely as the atomic bomb. There could be no doubt that such pressure constituted an unlawful act which violated the United Nations Charter. The only difference of opinion that existed on that point was that some felt that such a violation involved the principle of the prohibition of the threat or use of force, while others felt that it involved the principle of non-interference in the domestic affairs of other States. It was true that the San Francisco Conference had rejected a proposal to expand the concept of force to include more than armed force and had disclaimed competence

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(Mr. Alcivar, Ecuador)

to adopt a definition of aggression. What had prevented it from doing so, however, was not any valid legal reason, but the political determination of the great Powers to reserve to the Security Council the power to determine whether any particular act constituted an act of aggression. The bitter consequences of that decision were known to all.

Even if it was accepted that the concept of force as used in the Charter was restricted to armed force, that did not necessarily lead to the conclusion that armed aggression was the only form of aggression. Aggression implied an attack, which could take many forms. By limiting the exercise of the right of self-defence solely to the cases of armed attack under Article 51, the Charter had recognized that there were other types of aggression. Intervention, for example, was a form of aggression which was carried on in the most varied forms. The sending by a State of armed bands, terrorists or saboteurs to the territory of another State was clearly an act of aggression, but it was not on the same plane as the recognized forms of armed aggression. It was true that the USSR draft described such acts as acts of "indirect armed aggression". But it might be concluded, on the basis of operative paragraph 1, that they constituted a basis for the exercise of the right of self-defence, a position with which his delegation could not agree. The thirteen-Power draft declaration, on the other hand, simply defined direct armed aggression. Without entering into a consideration of the forms of indirect armed aggression, it took care not to extend the right of self-defence to cases beyond the limits set by Article 51 of the Charter. To do so would be extremely dangerous for the small countries.

Mr. MUTUALE (Democratic Republic of the Congo) observed that as long as arrogance, intolerance and the will for conquest existed among men, Governments would be resourceful in finding ways and means of committing aggression. While his country felt that aggression should be precisely defined, it also felt that what should be defined was aggression itself, and not particular methods of aggression, which were constantly changing and developing. By defining one form of aggression, both the thirteen-Power draft declaration and the USSR draft proposal approached the question from the wrong end. Both proposals rested on the false assumption that everyone knew what aggression was, i.e., what the substance of an act of

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(Mr. Mutuale, Democratic Republic of the Congo)

aggression under the Charter. Without having agreed on that first, the Committee was trying to decide on the meaning of "armed" aggression. The inevitable result was that the enumerative definitions contained in both drafts lacked the necessary legal link between the specific acts listed. Nevertheless, his delegation believed that if some degree of agreement could be reached, even if only on one form of aggression, it would be better than nothing. It was with that in mind that it had co-sponsored both the twelve-Power and thirteen-Power draft declarations (A/7185/Rev.1, paras. 7 and 9).

As far as the USSR draft proposal (A/AC.134/L.12) was concerned, he felt that the fourth paragraph of the preamble was not particularly well drafted. Any use of force in international relations was incompatible with the principle of the peaceful coexistence of States; all States, irrespective of their social or political systems, had the right to a peaceful existence. That was a principle of jus cogens, because it was directly related to the maintenance of international public order, and hence affected all States. He therefore felt that that paragraph could be improved by the deletion of the words "with different social systems".

The last paragraph of the preamble would be improved if the phrase "in the conditions created by the existence of nuclear weapons" were placed at the beginning, before the words "armed aggression". The criminality of acts of aggression lay not in the arms used but in the effects of their use on the fundamental rights of States, and in the first place, their territorial integrity and political independence. It was not the means but the results that mattered. It should be therefore made unambiguously clear in the preamble that the Committee was giving priority to defining armed aggression because of the results it might have in the present circumstances, and above all the arms race. With that in mind, he proposed that the words "and other weapons of mass destruction" should be inserted after the words "nuclear weapons".

The general definition in the USSR draft proposal contained three main ideas: that armed aggression was a crime under international public law; that the State which attacked first was the "aggressor"; and that an attack using armed force was incompatible with the Charter. The first idea, which was clearly in conformity with the Charter, implied that aggression could be committed only by the subjects of international law, namely, States or groups of States, and that an individual, as

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(Mr. Mutuale, Democratic Republic of the Congo)

such, could not commit an act of aggression; if he acted on behalf of a State, the aggression was committed by that State. Thus, in law, a State or group of States could commit armed aggression by means of its regular armed forces, or by armed bands for which it was responsible, or by the organization, recruitment or sending to a foreign territory of hostile elements or by the granting of assistance for the purposes of armed subversion. The USSR draft referred expressly only to the "sending" of such persons and failed to mention the other forms of subversion. The fact that those other forms constituted armed aggression had been confirmed by the Security Council in its resolutions 239 (1967) and 241 (1967), condemning the external support given to foreign mercenaries acting on the territory of his country. The Italian and French delegations appeared to hold the view that not all armed attacks constituted aggression and that aggression must involve a breach of the peace. Armed subversion such as he had described did in fact constitute a breach of the peace and was therefore armed aggression. It constituted a breach of the peace of the State which was a victim of such subvervion, and since international security was indivisible from the security of each State, it constituted a breach of international peace and security.

In operative paragraph 5, the USSR draft proposal referred to the criminal responsibility of the persons guilty of armed aggression, but international law concerning that point was still in the form of a draft code (the Draft Code of Offences against the Peace and Security of Mankind). Individuals did not have the legal capacity to initiate proceedings before the Security Council or the International Court of Justice and it therefore seemed hard to accept a reference to the criminal responsibility of individuals in the draft definition. On the other hand, it was clear that a State which was the victim of aggression was entitled to set in motion the procedures of international law against the State which organized, supported or encouraged invididuals who were guilty of the aggression or to arrest them if they were disowned by those States which had encouraged or organized them.

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(Mr. Mutuale, Democratic Republic of the Congo)

The criterion that the State which used armed force first was the aggressor appeared valid if considered in the abstract, since the idea of armed aggression was inseparable from that of initiative in the use of armed force. As formulated in the USSR draft proposal, however, that criterion appeared to involve dangers for international order and security. The fundamental danger was that it might be taken to imply that if a State was attacked by the armed forces of another State it was entitled to counter-attack in self-defence. Although an aggressor must be censured and its victim protected, both nevertheless remained members of the same community and subject to the provisions of the Charter, in particular with regard to the peaceful settlement of disputes. Self-defence should only be considered to cover acts necessary to halt aggression; beyond that point it became unlawful and itself constituted aggression. Because it did not take into account the requirements regarding self-defence and proportionality, the principle of priority as formulated in the USSR draft proposal represented a departure from the Charter.

Any formulation concerning the use of force in order to exercise the right of self-determination, a principle which was perfectly in accordance with the Charter, should make it clear that the United Nations did not encourage or incite revolts, secessions, civil wars or the breach of frontiers and that only dependent peoples were involved.

In conclusion he suggested that any points on which agreement was reached should be included in a resolution to be submitted to the General Assembly.

Mr. JAHODA (Czechoslovakia) said that his delegation had already been in favour of expediting the formulation of a definition of aggression at the Geneva session in 1968, based on the following major principles: first, it should be derived from and consistent with the Charter; secondly, aggression should be treated as the most dangerous breach of international peace and the gravest crime under international law; thirdly, the definition should decide the question of responsibility for aggression; fourthly, it should be based on objective criteria and not allow of ambiguous interpretation; fifthly, it should respect the power of the Security Council under the Charter to determine the existence of aggression; sixthly, it should proceed from the premise that the use of force

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(Mr. Jahoda, Czechoslovakia)

against nations exercising their right of self-determination constituted a violation of the Charter and entitled them to resort to self-defence. Since armed aggression was the most dangerous form of aggression, it was advisable to start by defining that form. The progress achieved in the codification of the principles of international law concerning friendly relations and co-operation among States, especially as reflected in the latest report of the Special Committee dealing with that subject (A/7326) would be of great value in defining aggression. The question of the prohibition of the threat or use of force had been discussed in some detail by that Committee and the area of consensus had been broadened.

The draft proposal submitted by the USSR delegation (A/AC.134/L.12) was a significant contribution to the present work of the Committee. It defined only armed aggression giving a mixed type of definition; his delegation supported it for both those reasons. The general definition of armed aggression in operative paragraph 1 of the draft proposal, by referring to the purposes, principles and provisions of the Charter, ensured consistency with the Charter. There was no possibility of misapplication, since Article 2 (4) prohibited the use of force in international relations and allowed of no arbitrary interpretation. In the fifth preambular paragraph and operative paragraphs 2 and 3, the USSR draft proposal rightly stressed the competence of the Security Council. Since, however, the seventh preambular paragraph did not specify the organ which would be called upon to determine whether an act of aggression had been committed, it did not seem to exclude the possibility that once a definition of aggression had been adopted, other organs might be guided by it. Moreover, the fact that Article 24 of the Charter recognized the primary responsibility of the Security Council for the maintenance of international peace and security appeared to imply that other organs also had responsibility in certain respects.

His delegation considered that the State which first resorted to armed force should be declared the aggressor. That was the only objective criterion which made it possible to distinguish acts of aggression from acts of self-defence. His delegation therefore welcomed its inclusion in the USSR draft proposal.

The enumeration of specific types of armed aggression, both direct and indirect, in operative paragraph 2, took due account of the present state of affairs in the world and rightly indicated the danger inherent in the use of nuclear, bacteriological, chemical and other weapons of mass destruction.

(Mr. Jahoda, Czechoslovakia)

The reference to material and criminal responsibility for acts of aggression was in full accord with article 6 (a) of the Charter of the Nuremberg Military Tribunal and articles 5 and 6 of the International Military Tribunal for the Far East. The ideas contained in those articles had been generally accepted in international law and confirmed by the General Assembly in resolution 95 (I).

The inclusion of a provision concerning the non-recognition of territorial gains resulting from armed aggression was a step forward in the development of international rules concerning the prohibition of the use of force.

Experience showed that it was difficult to specify exceptions to the prohibition of the use of force because of the divergent views on the question, and his delegation therefore believed that the relevant provision should make a general reference to the United Nations Charter, as had been done in operative paragraph 6 of the USSR draft proposal. That was the solution tentatively agreed to in the Committee on Principles of International Law concerning Friendly Relations and Co-operation among States.

Mr. AKYAMAC (Turkey) said that Turkey had been involved in efforts to find a definition of aggression long before the subject had been taken up at the United Nations and his delegation would do its best to contribute to the work of the Committee. He welcomed the fact that the permanent members of the Security Council had made their views known early in the Committee's proceedings, because if a definition was to be adequate and have any practical value, it must be accepted by them. For that reason, any working group or drafting committee set up by the Committee should either include all the permanent members of the Security Council or have available to it their views on any point which might arise. Any such working group or drafting committee should, moreover, be small.

Any definition of aggression should closely follow the Charter of the United Nations and should not go beyond it. It should recognize the commitments, rights and responsibilities of States and the authority and responsibility of the appropriate organs of the United Nations under the Charter. It should strictly safeguard the right of individual and collective self-defence as envisaged in the Charter. It should not prejudice the discretionary power of the Security Council to determine the existence of aggression in each case and it should be able to command the acceptance of a large majority of Member States.

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(Mr. Akyamac, Turkey)

His delegation agreed with the USSR approach of having a mixed definition and limiting it to actions resulting from the use of force. The fourth preambular paragraph of the USSR proposal, however, appeared to restrict the application of the principle of coexistence to relations between States with different social systems, which was not consistent with the Charter. If the paragraph was retained, he would suggest either that the words "with different social systems" should be deleted or that the phrase should be amended to read "including States with different social systems". His delegation welcomed the inclusion of the fifth preambular paragraph. The sixth and seventh preambular paragraphs appeared to be based on the belief that a definition of aggression would help the Security Council to discharge its responsibilities under the Charter. But if that was the aim, it was inappropriate to apply strictly the principle of priority, automatically branding certain acts as aggression without requiring the existence of intent; a definition of aggression should not limit the discretionary authority of the Security Council. The Committee's purpose should rather be to assist the Council, by giving an opinion that certain acts might, after verification in each case, constitute aggression.

His delegation felt that it was unnecessary to list certain types of weapons, as had been done in operative paragraph 2 B (a), since a massive use of conventional weapons could also cause mass destruction. The question of the prohibition of the use of nuclear weapons might best be dealt with in the context of the negotiations which the nuclear Powers had undertaken to pursue under the treaty on non-proliferation, or, as the USSR representative had said at the previous meeting, through a convention.

The approach to the question of the indirect use of force in the USSR proposal, unlike the thirteen-Power text, was fundamentally correct. His delegation noted that the provisions of earlier Soviet drafts on that issue had been revised in paragraph 2 C. That was not helpful. The issue was a controversial one and the Committee must try to reach a consensus on it. In fact, a consensus on the full text of the definition was desirable if it was to have any practical value.

His delegation considered that the language of operative paragraph 6 of the USSR draft proposal was rather vague and that the importance of the right of individual and collective self-defence warranted independent treatment in a separate paragraph.

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ORGANIZATION OF WORK (A/AC.134/L.14 and Corr.1 and Add.1)

Mr. GONZALEZ GALVEZ (Mexico), introducing the five-Power proposal (A/AC.134/L.14 and Corr.1 and Add.1), said that the sponsors had been prompted by a desire to reduce confusion and to clear the way for the concrete decisions which he believed it was the duty of the Committee to take. Ideally, a working group should be limited in size, though it would naturally take into account all proposals and suggestions. However, the sponsors had an open mind on the matter and did not wish to exert pressure of any kind. The points set out in paragraph B, sub-paragraphs 1-5, had been formulated in that way in order to give members an opportunity to speak on them. For example, the question at issue in sub-paragraph 5 had not been clearly reflected in any draft hitherto submitted and might be felt to deserve comment. The sponsors felt that it was important to work out a formula acceptable to a majority, but did not think it essential to achieve unanimity.

Mr. POLLARD (Guyana) said that his delegation held firmly to the belief that there were other types of aggression than "armed" aggression. He could not agree with the formulation of the proposal, therefore, unless the word "aggression" in the second paragraph, at the end of paragraph B 3 and in paragraph B 5 was qualified by the word "armed". The words "of aggression" should also be deleted in paragraph B 1 and at the beginning of paragraph B 3. He could not support the proposal, however, if it meant that there would be no summary records of meetings of the working group. He would prefer the whole Committee to act as a drafting group and proceed in the normal manner.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) requested clarification of the phrase "most common types" in paragraph B 3.

Mr. AKYAMAC (Turkey) expressed his delegation's misgivings concerning the formal nature of the proposed working group and asked if an earlier attempt to set up an informal working group had failed.

Mr. HARGROVE (United States of America) said that his delegation was surprised by the proposal. He had thought that a decision to establish a working group was simply a decision to adopt a less formal approach to the substantive

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(Mr. Hargrove, United States)

issues before the Committee. However, if the group was to have summary records and all the trappings of normal meetings, it was difficult to see exactly what sort of changes in approach were envisaged. Moreover, the decision to establish a working group could not properly itself involve any decision on the substantive issues, nor limit the mandate of the parent body. Yet the present proposal tended to prejudge substantive and procedural issues on which there was still a great deal of disagreement. By its express reference to the General Assembly rules of procedure, the proposal tended to prejudge the issue whether a definition of aggression could be adopted by a majority of Members of the General Assembly. Paragraph B 4 tended to decide the issue of responsibility for determining the aggressor, while paragraph B 5 virtually proposed for adoption language on which there were wide differences of opinion. He quoted General Assembly resolution 2330 (XXII), operative paragraph 3 of which clearly set forth the mandate given to the Committee by the General Assembly. Setting up a working group would simply be a procedural decision by the Committee to adopt a less formal method of discharging its instructions from the Assembly.

Mr. GONZALEZ GALVEZ (Mexico) said that the sponsors' intention had been to stimulate a discussion of procedure. It was essential to delineate the areas of disagreement at the present stage.

In reply to the representative of the Soviet Union, he said that the sponsors had had in mind simply a non-exhaustive enumeration of types of aggression.

In reply to the representative of Turkey, he said that unofficial negotiations were in progress, but were hardly the most appropriate method of achieving agreement, since other delegations had also made specific suggestions.

He would reply later to the points raised by the representative of Guyana. It was for the Committee to decide whether or not a working group should have summary records.

The comment by the United States representative on paragraph B 4 was a pertinent one since some countries held the view that only the Security Council had the right to determine the aggressor. The sponsors would agree to the deletion of paragraph B 5 if there was wide disagreement with it. He did not feel that by creating a working group the Committee would be infringing its mandate.

What was important was that members should make specific positive suggestions concerning the procedure to be followed.

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Mrs. GAVRILOVA (Bulgaria) supported the five-Power proposal, because it would give all members an opportunity to take part in the work of drafting a definition, thus saving time and taking into account all suggestions and amendments.

Mr. ROSSIDES (Cyprus) considered that the proposal was a premature one, since it would not be appropriate for those delegations which had not yet commented on the Soviet draft (A/AC.134/L.12) to have to do so in a working group. Discussion of the definition could only take place when all drafts and amendments had been introduced.

The meeting rose at 1.30 p.m.

SUMMARY RECORD OF THE THIRTY-SIXTH MEETING

Held on Monday, 17 March 1969, at 11.10 a.m.

Chairman: Mr. FAKHREDDINE Sudan

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CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTIONS 2230 (XXII) AND 2420 (XXIII) (A/7185/Rev.1; A/AC.134/3; A/AC.134/L.12)) (continued)

Mr. DUPLESSY (Haiti) said that although there seemed to be more or less general agreement on the desirability of defining aggression, it was proving difficult to do so in practice. Delegations laid down certain requirements which the definition had to satisfy. To determine whether or not those requirements were justified, the Committee needed only to examine them in the light, firstly, of the United Nations Charter, and secondly, of General Assembly resolution 2330 (XXII), which defined the Committee's mandate.

First of all, there was the requirement that the definition must explicitly recognize the competence of the Security Council. The powers of the Security Council, however, like those of other United Nations organs, had their source in the Charter, and the provisions of the Charter could in no circumstances be altered except as laid down in Article 108. No definition the Committee might devise, therefore, could affect the powers of the Security Council under the Charter. Nor could it confirm them. A reference to the powers of the Security Council was in fact, although not positively harmful, neither necessary nor useful.

The mandate given to the Committee in General Assembly resolution 2330 (XXII) was simply to prepare an adequate definition of aggression. The Committee was not asked to legislate on the question. If it were, it would have to establish machinery to prevent aggression, which would mean encroaching on the functions of the Security Council to some extent. If it adhered to its mandate, however, it was difficult to see how the definition it produced could have that effect. The fear had often been expressed that a definition of aggression might limit the discretionary powers of the Security Council, but in his delegation's view that fear was unjustified. The Security Council carried out its task in two distinct phases, as could be seen from Article 39 of the Charter: firstly, it determined the existence of any threat to the peace, breach of the peace or act of aggression, and secondly, it made recommendations or decided what measures should be taken in accordance with Articles 41 and 42 to maintain or restore international peace and security. For the first phase it had full and exclusive power to judge the

(Mr. Duplessy, Haiti)

situation, and for the second phase it had the legal right to take whatever measures it thought best. It was obvious that when the Security Council was using its discretionary powers in an effort to restore international peace, having already judged the situation, a definition of aggression no longer had any part to play and consequently could not affect those powers.

A definition of aggression would, however, influence the first phase of the Security Council's work. Although from Article 39 and other provisions of the Charter it was clear that the Council's decisions were not open to question, it must, in order to make a judgement, have some criteria to apply, which in the past it had sometimes lacked. A judgement based on criteria which were not universally acknowledged could never command respect. In principle, therefore, the preparation of a definition of aggression, far from curtailing the Security Council's powers of judgement, would enable it to carry out its task more effectively.

There was no reason to think, however, that the definition of aggression would be used exclusively by the Security Council. To assume that would be to prejudge a question which was for the General Assembly to decide. The Committee had no mandate to decide the uses to which the definition should be put. When the Assembly said in resolution 2330 (XXII) that there was a widespread conviction that a definition of aggression would have considerable importance for the maintenance of international peace, it was not necessarily referring to the Security Council. Although it was the primary role of the Security Council to restore international peace when it was disturbed, the principal architects of international peace were States. It was they which could take the initiative to disturb international peace by committing, for example, an act of aggression against another State. The maintenance of international peace was therefore first and foremost their responsibility. It was possible that the General Assembly was planning to use the definition as a means of preventing aggression before it occurred. But that possibility was no concern of the Special Committee.

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(Mr. Duplessy, Haiti)

Since it could not be established that the definition of aggression was for the use of the Security Council, or for its exclusive use, it was astonishing to hear the claim that it would have to be approved by all the permanent members of the Security Council. The Committee had not been asked to obtain the approval of the permanent members of the Security Council before referring the results of its work to the General Assembly. Only the General Assembly was qualified to determine whether the mandate had been well or badly executed. Similarly only the General Assembly could say whether a definition of aggression adopted by a majority of the Committee was acceptable. In any case, one of the permanent members was not a member of the Committee.

Some not very clear comments had been made about the validity of the definition. Although to be valid the definition should be applicable within the terms of the Charter, its validity did not necessarily depend on application by United Nations organs. A definition was valid if it adequately described the essential characteristics of what it was supposed to define. Any definition of aggression whose intrinsic value was beyond question could easily be inserted into the Charter, and the aim should therefore be to produce a text of that kind.

From Article 39, paragraph 1, and Article 51 of the Charter it was apparent that at least two forms of aggression existed, one described simply as aggression and the other as armed attack. The Committee's mandate required it to define aggression, which meant aggression in general, in all its forms. His country had often been a victim of acts of aggression. In 1968, for example, it had been subjected to raids by armed bands, threats of intervention by naval forces cruising off its shores and radio broadcasts inciting the people to revolt. It was on account of those disturbances that Haiti had been unable to participate in the work of the Committee in Geneva in 1968. His country therefore hoped that the definition would embrace all such forms of aggression. With a view to reaching at least a compromise definition, but one which would still be useful, it had decided to take part in the work of the thirteen Powers.

(Mr. Duplessy, Haiti)

The Soviet draft definition was based on principles essential to any valid definition of aggression. However, as he had observed earlier, the General Assembly's mandate did not allow the Committee to legislate, and both in form and in substance the Soviet draft contained legislation on aggression. Moreover, it was pointless to state in article 6 of the draft that nothing in the foregoing should hinder the use of armed force in accordance with the Charter of the United Nations. To say that was to imply, quite wrongly, that it might have been possible for the definition to annul or alter the relevant provision of the Charter.

Mr. BERRO (Uruguay) said that his country being neither powerful nor wealthy, was compelled to work for the rule of law and the control of violence in international relations. The fate of all small countries depended upon the United Nations becoming more and more a juridical community and less and less a body impelled by political forces. It was therefore in their interests that the codification and development of international law should continue. His country was naturally very sympathetic towards any effort to clarify a fundamental concept such as aggression. Uruguay held firmly to the conviction that the law must be supreme, free from political contamination, so that the international community could be governed by a moral and juridical order based on collective peace and security, in which coercive measures, including the use of force, could be applied only as a last resort and as authorized by international organizations and under their direct control. It followed naturally that within that scheme of things any kind of violence would be prohibited, beginning with aggression, to which his country had always been utterly opposed.

The world was in fear and turmoil, and its tensions and dangers were growing instead of diminishing. Yet the efforts of the international community in the fifty years since the Versailles Conference had still not produced any definition of aggression. Was the task really so difficult? If political and economic factors had not interfered with the purely legal work, a satisfactory definition of such a vital aspect of international law would surely have been reached by now. It was not the nature of the subject that hindered its clarification. It was the antagonism between different ideologies and schools of social thought that obstructed the normal passage from reasoning to its goal. His delegation,

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(Mr. Berro, Uruguay)

explaining its vote on General Assembly resolution 2330 (XXII), had stressed that its position was not dictated by abstract or speculative considerations but was based on the knowledge that aggression was a political fact. That did not mean, however, that political reasoning should shape its definition. To define aggression was a legal task involving the objective and scientific use of the appropriate legal instruments, while bearing in mind the political and other aspects of the question.

The process of defining aggression should not be swayed by political instructions, social ideologies, economic schools of thought or the interests of certain States. It should be approached in a genuinely international frame of mind, with no prejudices or preconceptions and using objective criteria. Even if aggression was defined in that way, however, it would still be necessary to seek ways of reducing the spirit of aggression in the world. At a time when both nuclear and conventional arsenals were expanding, it was obvious that a definition alone, whether good or bad, would not prevent the crime of aggression.

It should therefore not be thought that the definition of aggression would mean the achievement of world peace. However, it would constitute an important step forward in law, and would facilitate the performance of the Security Council's task. His delegation was a co-sponsor of the thirteen-Power draft declaration (A/7185/Rev.1, para.9) and would continue its efforts to arrive at a text which would express the unanimous, or almost unanimous, consensus of opinion within the Committee. As had been decided at Geneva, the Committee was concerned solely with the act of aggression, i.e. the direct use of force or armed attack. There was therefore no need to include any reference to the hypothetical concept of indirect aggression, and the words "direct or indirect" could be deleted from operative paragraph 1 of the thirteen-Power draft. Other forms of aggression, such as economic, ideological or cultural aggression, could be dealt with later, in view of their complexity and the lack of a common criterion to cover them.

His delegation agreed with the view expressed by the representative of Mexico at the Committee's 30th meeting on the limits of the Security Council's authority. He considered that operative paragraph 10 of the thirteen-Power draft and operative paragraph 3 of the USSR draft should be amended, in order to avoid their being

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(Mr. Berro, Uruguay)

interpreted as empowering the Security Council to classify as aggression acts other than those enumerated in the definition. The fact that under the Charter the Council had certain discretionary powers did not mean that it was empowered to act outside the limits of the Charter. Article 39 stated that "the Security Council shall determine the existence of any threat to the peace, breach of the peace or act of aggression". But that authority was not purely arbitrary, since it was limited by the provisions of Articles 1 (1), 2 (4), 10, 39 and 40-51 of the Charter, and the discretionary powers granted must not be abused. The Security Council should therefore not add new forms of aggression of its own. A definition had already been provided by the General Assembly under Article 10 of the Charter, and the Council should be guided by it. His delegation therefore shared the view expressed by the representative of France at the 30th meeting that "since there was no question of revising the Charter, any definition of aggression should be fully in accordance with its provisions, particularly those concerning the division of powers and functions between United Nations bodies".

While recognizing the complexity of the problem relating to the criterion of priority or "first use" in determining the responsibility of the aggressor, his delegation had almost been convinced by the representative of Mexico, speaking at the Committee's 30th meeting, that it should be included in the definition, although there might be separate treatment of frontier incidents, which were not, properly speaking, acts of aggression. However, he had been much impressed by the objections of the representative of the United States at the Committee's 31st meeting, in particular those relating to arbitrary restriction of States' right of self-defence, to the possible use of the whole of its military might, including nuclear weapons, without the risk of being held an aggressor, by a State which had been subject to a relatively inconsequential act such as an attack on a ship or a single shot across a border, and to the possible interpretation of paragraphs 1 and 2 B as encouraging the use of force in self-defence, thus sanctioning preventive wars.

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(Mr. Berro, Uruguay)

His delegation shared the views of the representatives of France, Mexico and the United States with regard to the examples of aggression included in the Soviet text and the thirteen-Power draft, such as the declaration of war not involving the use of armed force. Unless it involved such use, a declaration of war did not constitute the "armed attack" which entailed the inherent right of self-defence mentioned in Article 51 of the Charter.

It might also be desirable to amend the definition of aggression as the use of force by one State against another; however, it might be sufficient to interpret the word "State" in the widest possible manner, as suggested by the representative of France.

The USSR draft, in spite of the objections which had been made to it, some of which were shared by his delegation, constituted a valuable contribution to the Committee's task. However, the seventh preambular paragraph was open to different interpretations, and might be construed as infringing the sovereignty of States, although that had not been the intention of the authors. The concept of the "potential aggressor" which it raised could not be reconciled with that of the effective use of force or armed attack which was the essential aspect of aggression. Who was to decide whether there was a potential danger of aggression? If it was the State giving assistance, it was to be feared that actual aggression might take place in support of alleged "victims", who would become such only when their so-called protectors arrived. His delegation was concerned that that formula might be in line with the doctrine outlined by the Soviet representative to the General Assembly on 3 October 1968, which referred to the socialist commonwealth as possessing its own vital interests, including that of safeguarding mutual security, and declared the firm intent of the socialist States not to allow a situation where the vital interests of socialism were infringed upon and encroachments were made on the inviolability of the boundaries of the socialist commonwealth. The statement dealt with ideological frontiers and political systems, concepts which were not mentioned in the United Nations Charter, but it did not refer to the geographical boundaries of States, which defined national sovereignty. According to the doctrine it set out, the sovereign powers of States were absorbed within the ideological unity of certain countries and could be infringed upon when it was

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felt useful for maintaining the solidarity of the political or social principles of the system. The seventh preambular paragraph of the draft should be taken in conjunction with the fourth preambular paragraph, which referred to the encroachment by the use of force upon the social and political achievements of the peoples of other States as being incompatible with the principle of the peaceful coexistence of States with different social systems. Again, questions of social principle and political ideology were being introduced into the definition of aggression. His delegation, therefore, could not support the fourth and seventh preambular paragraphs of the USSR draft.

Operative paragraph 8 of the thirteen-Power draft, referring to subversive and/or terrorist acts, solved the problem of such violations of the Charter by indicating that steps could be taken against them without having recourse to the right of individual or collective self-defence. His delegation had already accepted the two amendments proposed in Geneva by the delegations of Sudan and the United Arab Republic, but with regard to the paragraph referring to the use of force tending to deprive any people of its inherent right of self-determination, would prefer the text which had been suggested by the French delegation at the Committee's 30th meeting.

Whenever the United Nations was confronted with a legal problem such as the definition of aggression, the interference of political and economic interests made the situation difficult and complex. In many cases there was even conflict with the United Nations Charter itself; it should not be forgotten that at San Francisco the practical problem of security had taken precedence over the legal problem, and an attempt had been made to establish security by means of organized force. It was for that reason that during the discussions in San Francisco, the Uruguayan representative had asked whether the problem of security was really a problem of power. True security was the security of the law rather than the security of force. The San Francisco Conference had not defined aggression, and more than twenty years later it still remained undefined. Questions of national sovereignty continued to plague the international community, and traditional state systems, concentrating on their individual political purposes, were reluctant to merge in systems of broader social solidarity. It was for such reasons that attempts at legal definition were postponed and often frustrated.

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Mr. HARGROVE (United States of America) said that while awaiting a revised version of the thirteen-Power draft, his delegation wished to summarize the preliminary views on that draft which it had already stated before the Committee in Geneva and in some cases reiterated at the twenty-third session of the General Assembly.

The draft was an improvement over the preceding twelve-Power draft in that it made clear the fact that aggression covered the indirect as well as the direct uses of force. However, the prohibition of aggression by indirect or covert methods was inadequate, since the draft failed to include any such act of force in its specific enumeration. It was seriously at variance with the Charter in arbitrarily denying the right of self-defence against aggression if the form of aggression used was "subversive and/or terrorist acts" committed on the territory of a State "by irregular, volunteer or armed bands organized by another State". Operative paragraph 1 unwisely extended the concept of aggression to include every use of force in international relations, expressly going beyond Article 2 (4) of the Charter. There was not even the limiting requirement that the act should be purposeful or intentional, and the draft thus covered even trivial or minimal instances of force which his delegation did not believe the Charter intended should bring into play the powers of the Security Council under Chapter VII. The collective effect of those features was a definition which made every international use of force an act of aggression, but expressly denied the right of self-defence as provided for in the Charter against a large and dangerous class of such acts.

Operative paragraph 4 was at variance with the Charter. For example, it referred to the concept of "any use of armed force", whereas Article 53 of the Charter spoke only of "enforcement action". One of the consequences of that variation was to deny the possibility of collective self-defence, as recognized in Article 51 of the Charter, through regional agencies. Operative paragraph 1 also excluded the General Assembly from United Nations organs which might authorize the use of force in accordance with the Charter, by including the words "other than when undertaken by or under the authority of the Security Council...".

There were other points of difficulty, but there were also a number of important features of the draft with which his delegation was in general agreement.

The meeting rose at 12.30 p.m.

SUMMARY RECORD OF THE THIRTY-SEVENTH MEETING

Held on Tuesday, 18 March 1969, at 11 a.m.

Chairman: Mr. FAKHREDDINE Sudan

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTIONS 2330 (XXII) AND 2420 (XXIII)) (A/7185/Rev.1; A/AC.134/3; A/AC.134/L.12) (continued)

Mr. AKWEI (Ghana) said that the Committee's mandate from the General Assembly for its present session required it to expedite the definition of aggression. Accordingly, there was no need for a general debate, particularly after the wealth of material produced and the progress made at the previous session. His delegation considered the USSR draft proposal (A/AC.134/L.12) a constructive one. The comments made on it and on the other proposals before the Committee had done much to clear the way for the Committee to decide on a final draft. Although that would not be easy, he believed it could be done by the end of the session.

The Committee should bear in mind that a legal text did not have to be perfect. Its purpose was to provide a standard by which acts could be judged. The definition of aggression which the Committee was to produce should help to delimit certain areas of State behaviour and facilitate the assessment of their actions; it did not have to be a perfect definition valid for all time. Even the United Nations Charter would have been different if written in 1969 instead of 1945. The definition should be such, however, as to transcend personal and political considerations and should not be limited by its acceptability to any particular group.

In his view, the main issue before the Committee was becoming confused. In accordance with General Assembly resolution 2330 (XXII), the Committee was to draft a definition of aggression, meaning, in the language of the Charter, "armed attack". It was therefore not called upon to define "direct" or "indirect" aggression, for whether an armed attack was direct or indirect was not significant. At the present stage, such adjectives only created unnecessary

(Mr. Akwei, Ghana)

difficulties. The prime question was to determine whether an armed attack had occurred; how it had occurred was a secondary question. His delegation therefore suggested that the Committee should direct its efforts to defining aggression in the sense of the use of armed force in international relations. After completing that task, it could, if necessary, propose to the Assembly that it should take up the question of the indirect use of armed force in international relations on the basis of its definition of armed attack.

In his delegation's view, any acceptable definition of aggression must satisfy the following criteria.

First, the definition should be based on the United Nations Charter, which should not be interpreted restrictively. To be useful as a guide, a definition must not merely repeat the provisions of the Charter but amplify and elaborate on them.

Secondly, the definition must be based on the principle that the monopoly of the use of armed force resided in the Security Council, the only exception being self-defence in accordance with Article 51.

Thirdly, while the definition should recognize the discretionary power of the Security Council, its power was not exclusive. Thus, a paralysis of the Security Council should not prevent other appropriate organs of the United Nations, particularly the General Assembly, from making a determination of aggression. Under Article 24 of the Charter, the Security Council had primary, not exclusive, responsibility for the maintenance of international peace and security. Practical experience had borne that out.

Fourthly, the test of the validity of the definition was that it should be acceptable to the largest possible majority of the Members of the United Nations. To require that it should be acceptable to all the permanent members of the Security Council would not only be to depart from the goal of universalizing

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international law but also to place the small States at the mercy of the big Powers. Moreover, there was nothing in the Charter to justify such a condition.

Fifthly, although the criterion of "first use" was admittedly very difficult to apply, it must be appropriately reflected in the definition. The actual determination in each particular case would be left to the Security Council in the light of the circumstances. Since there could be no aggression without someone to initiate it, there should be no serious objection to the relevant provisions of the USSR draft proposal.

Sixthly, aggression could in principle occur only between States. The difficulty which had been raised concerning other "political entities" was not a valid ground for abandoning the attempt to define aggression; clearly, the Committee could not define everything at once and some discretion should be left to the Security Council to determine whether a particular entity was a State. The idea that the recognition or non-recognition of a State by certain particular States should be the basis for determining whether or not that State existed was not acceptable to his delegation.

Seventhly, the definition should ensure that an exception was made for the use of armed force in exercise of the right of all peoples, especially dependent peoples, to self-determination.

Eighthly, the definition should cover the sending of armed bands or volunteers by one State into another State, or their support, for the purpose of armed attack. While such activities might be considered an indirect form of armed attack, in some cases the scale on which those attacks were carried out and the connexion between the bands and the sending State might well make them a much more serious matter. The victim must be entitled to make a response proportional to the attack.

Ninthly, the element of intent should not be considered a necessary ingredient of the definition. Intent might be almost impossible to establish in respect of States and any provision concerning it might be invoked to justify preventive attacks.

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Tenthly, the definition must make appropriate provision for the criminal responsibility of the aggressor and the inadmissibility of any gains from the aggression. A provision to that effect, though not strictly germane to the definition itself, was valid since part of the purpose of the definition was to deter a likely aggressor.

Finally, consideration of ideological, economic or cultural aggression should be deferred to another session, because of the complexity of those ideas.

The USSR draft proposal (A/AC.134/L.12) provided a broad basis for negotiation and covered many of the principles he had mentioned. Indeed, it quite adequately covered some of the points raised in both the twelve- and the thirteen-Power draft declarations (A/7185/Rev.1, paras. 7 and 9), of which his delegation was a sponsor. In operative paragraph 1, his delegation felt that the term "armed attack", employed in Article 51 of the Charter should be used, instead of "armed aggression", because it conveyed the exact content of the word "aggression" more precisely than "use of force", which might not necessarily lead to aggression.

The fourth preambular paragraph seemed unnecessary in a definition of aggression and could be used as an excuse for one State to mount an armed attack upon another in illegal exercise of the right of self-defence. The seventh preambular paragraph was an improvement on the sixth preambular paragraph of the thirteen-Power draft, but the words "and the implementation of measures to stop them and would also facilitate the provision of assistance to the victim of aggression and the protection of his lawful rights and interests" should be deleted.

His delegation also supported operative paragraph 6 of the Soviet draft proposal, which would enable millions of people in the world to adopt appropriate measures to gain their independence and ensure their sovereignty and territorial integrity. Unfortunately, the USSR draft was not sufficiently specific on the question of self-defence; operative paragraph 3 of the thirteen-Power draft was much to be preferred. The sense of operative paragraph 5 of the USSR draft was adequately and appropriately reflected in the first and second preambular

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paragraphs of the thirteen-Power text, the preamble being a more appropriate place. While his delegation deplored the use of atomic, bacterial or chemical weapons of warfare or any other weapons of mass destruction, and considered that their use must be prohibited, it did not see any justification for including a provision such as operative paragraph 2 B (a) of the USSR draft in the definition of aggression. Operative paragraph 4 of the draft might not be really necessary in definition, but it would serve to restrain possible aggressors. The definition would necessarily have political as well as legal effects. While it would be unrealistic to think that it could deter all future aggressors, a set of principles to which States would be compelled to conform by the force of world public opinion could hardly fail to mean an advance upon the present state of international relations.

His delegation felt that the time had come for the Committee to appoint a formal working group to consider all the draft proposals submitted and to produce by a definite date either a consolidated draft of wide acceptance, or, if that was not possible, amendments or new texts for consideration by the Committee.

ORGANIZATION OF WORK (A/AC.134/L.14 and Corr.1 and 2 and Add.1) (continued)

Mr. EL-ERIAN (United Arab Republic) suggested that the Committee should decide forthwith to set up a working group to consider the proposals and suggestions that had been put forward and the results, submitted in writing, of the consultations now in progress among the various sponsors. The terms of reference of such a group would be: (a) to prepare a definition of aggression; (b) to prepare, if for lack of time it could not arrive at a definition of aggression, a report on the points of agreement and the points on which agreement had not yet been reached. Meanwhile, the general debate could continue in the plenary meetings. It seemed to be agreed that priority should be given to the definition of armed aggression; that it should be a mixed definition; that it should not be exhaustive; and that it should in no way prejudice the powers and functions of the Security Council.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) strongly supported the suggestion just made by the representative of the United Arab Republic.

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Mr. ROSSIDES (Cyprus) said that he understood the representative of the United Arab Republic to mean that the working group was to consider four drafts: the twelve-Power, the thirteen-Power, the Latin American and the Soviet. The first three of those were about to be amalgamated and it might therefore be better to wait until the new version was ready. He did not believe that a report on points of agreement and disagreement would be of much help.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) said that for the purposes of identifying points of agreement and disagreement the Committee could only use the documents submitted to it the previous year and at the present session, and nothing else. The paper to be submitted by a group of delegations might not, through lack of time, even attain official status, and if it did, there would be no time to discuss it after members had consulted their Governments. Any delay in establishing the Working Group would be undesirable.

After some further discussion, in which Mr. AKWEI (Ghana), Mr. DARWIN (United Kingdom), Mr. ROSSIDES (Cyprus) and Mr. EL-ERIAN (United Arab Republic) took part, the CHAIRMAN suggested that the meeting should be suspended for a while to allow members to discuss the question informally.

The meeting was suspended at 12.25 p.m. and resumed at 1 p.m.

Mr. ROSSIDES (Cyprus) said that he was willing to agree to the establishment of a working group, on the following conditions: firstly, that the working group should be instructed to pursue the task of the Committee in accordance with the terms laid down by the General Assembly; secondly, that it should exist in parallel with the Special Committee, which would continue its work as before; thirdly, that it should report back to the Special Committee at least three days before the end of the session so that the Special Committee could consider the whole subject in the light of its report and take action accordingly.

Mr. EL-ERIAN (United Arab Republic) said that there seemed to be general agreement that a committee of the whole should be established to serve as a working group and that its mandate should be formulated as he had expressed it earlier. He agreed to the conditions laid down by the representative of Cyprus.

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The CHAIRMAN therefore proposed that the Special Committee should establish, in order to expand the useful consultations now going on among members of the Committee, a working group of the whole, and should require the working group of the whole to pursue more closely the task of the Special Committee with respect to the proposals, suggestions and views presented to the Special Committee.

It was so decided.

Mr. HARGROVE (United States of America) proposed that the Chairman of the Special Committee should also act as the Chairman of the Working Group.

It was so decided.

Mr. STAVROPOULOS (Legal Counsel) pointed out that the only procedural difference between the plenary Committee and the Working Group would be that the latter would have no summary records.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) asked if the Secretariat could prepare a comparative table of the texts of the various draft proposals before the Committee. Such a table would show where the points of agreement or disagreement were and would greatly facilitate the Working Group's work.

Mr. BEESLEY (Canada) thought that the preparation of such a document might give rise to difficulties of a political nature.

Mr. HARGROVE (United States of America) suggested that the document should also cover the specific suggestions which had been made in the Committee and the views expressed on the draft proposals or on the elements necessary for an adequate definition of aggression.

Mr. GONZALEZ-GALVEZ (Mexico) said that the document should deal only with the texts which had been submitted. At the previous session his delegation had proposed that the Secretariat should be asked to prepare a working paper containing the views expressed on the content of the definition, but the preparation of such a document had turned out to have serious political implications and his delegation had withdrawn its proposal.

Mr. HARGROVE (United States of America) pointed out that his proposal was more limited in scope than that made at the previous session by Mexico. The preparation of a comparative table was a mechanical job, and the additional material giving the views of delegations was not to be exhaustive or analytical, but only a very brief summary.

Mr. STAVROPOULOS (Legal Counsel) said that the Secretariat would have no difficulty in preparing immediately a comparative table of the texts of the draft proposals which had been submitted. It would try to produce the additional material requested, giving comments on and objections to specific provisions, but that would take longer. If any difficulties arose, the Secretariat would report to the Committee.

The CHAIRMAN said that he would take it that the Committee wished the Secretariat to proceed along those lines.

It was so decided.

The meeting rose at 2 p.m.

SUMMARY RECORD OF THE THIRTY-EIGHTH MEETING

Held on Wednesday, 19 March 1969, at 11.10 a.m.

Chairman: Mr. FAKHREDDINE Sudan

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTIONS 2330 (XXII) AND 2420 (XXIII)) (A/7185/Rev.1; A/AC.134/3; A/AC.134/L.12) (continued)

Sir Kenneth BAILEY (Australia) observed that the difficulties which the Special Committee was encountering in defining aggression were inherent in its task and sprang, on the one hand, from the problems arising in interpreting the relevant provisions of the Charter - or even in deciding which provisions were relevant - and on the other hand from the complexity of the subject itself.

With regard to the first set of difficulties, his delegation believed that it was the Committee's mandate to consider all aspects of "aggression" as that word was used in the United Nations Charter, since the consideration of other meanings and other contexts would be extraneous and academic. It further believed that the Committee was to consider the question by interpreting the language used in the Charter, not by re-writing or amending it.

The Charter used the word "aggression" not abstractly but concretely and spoke on two occasions - in Article 1 (1) and Article 39 - of acts of aggression. In that context, it was surely plain that "acts of aggression" were only those acts which involved a real or threatened breach of international peace. That was the inference to be drawn from the fact that the Security Council was responsible under Article 39 for deciding what measures were necessary to "maintain or restore international peace and security". Whatever wider senses the word "aggression" might have, the Charter itself left no room for such concepts as "economic" or "psychological" or "ideological" aggression. The definition of such concepts was therefore wholly outside the Committee's mandate.

Some of the texts under consideration seemed to be based on the unacceptable premise that Article 51 in law seriously restricted the inherent right of individual or collective self-defence in the event of an armed attack, a right which the Article itself declared "nothing in the present Charter shall impair". It was necessary, therefore, to find the point at which the legitimate use of force in self-defence ended and aggression began. Similar questions of interpretation arose with regard to Article 53. Two of the texts under

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consideration rested on the view that "enforcement action" as used in Article 53 included any and every use of force by a regional agency. But in his delegation's view that would be tantamount to rewriting the Charter.

As to the meaning of the term "aggression" itself, dictionaries described an "act of aggression" merely as an "unprovoked attack". The idea of "provocation" had found expression in a large number of treaties on regional and individual security, particularly during the period of the League of Nations. The question whether, and how far, provocation exonerated an attacking State from the charge of aggression had been much discussed by various bodies in the time of the League and since that time by the International Law Commission and the Sixth Committee. In his delegation's view, the Committee could not succeed in defining "aggression" until it had dealt with the question of "provocation".

It was perhaps unnecessary to make any distinction between so-called direct and indirect aggression. At all events, the distinction currently being made appeared to be thoroughly confused. The use by a State of armed force by sending armed bands, mercenaries, terrorists or saboteurs into another State for hostile purposes, which according to the USSR draft proposal (A/AC.134/L.12) should be considered an act of indirect aggression, was surely just as direct as an attack by the regular forces of the attacking State, although the same might not apply to the case where a State supported, connived at or acquiesced in the use of its territory by armed bands raised by another State.

Although a substantial majority of the members of the Special Committee clearly wished to submit to the General Assembly a generally accepted draft definition of aggression, his delegation wondered whether, in view of the real differences of principle disclosed by the texts that had been submitted, it was necessary to adopt a definition at the present time. The fact that the Security Council's power to act under Articles 41 and 42 of the Charter in no way depended upon a determination that an act of aggression had been committed had been one of the major reasons why the San Francisco Conference in 1945 had rejected proposals to include any definition of aggression in the Charter. The Security Council had the same powers in the case of a threat to the peace or a breach of the peace. In practice, the Security Council had only once

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exercised its power to determine that an act of aggression had been committed - in 1950, in the case of North Korea - despite the fact that it had considered such incidents as the Soviet-led invasion and occupation of Czechoslovakia in 1968. His delegation did not agree, moreover, that the adoption of a definition of aggression would discourage potential aggressors. It might, indeed, have the opposite effect. In attempting to determine who was the aggressor, the Security Council might be distracted from its basic task of dealing with a threat to the peace or breach of the peace.

The Working Group would presumably attempt to ascertain how far a consensus could be found in support of any of the provisions contained in the texts which had been submitted. As far as his delegation was concerned, he wished to make its position clear on four matters of principle.

First, his delegation would oppose any draft definition that did not include an effective provision on armed bands, armed infiltrators, guerrillas, saboteurs and terrorists sent into a State either directly by another State or with the support, assistance, connivance or acquiescence of another State. It should be made clear that such acts were indeed acts of aggression.

Secondly, his delegation was opposed to the inclusion of any provision which would have the effect of denying a State the right to defend itself except when it had been the victim of a direct armed attack by regular forces. Such a view would make the Charter an instrument to aid an aggressor, which had obviously not been the intention of those who had drafted it. Admittedly, under the general law of nations, the right to use force in self-defence was dependent on the existence of imminent danger and there were limits on the degree of force regarded as justifiable. There was a distinction between the resort to war and the resort to measures of self-help which fell short of war. It would, however, be a mistake to interpret the Charter as permitting a State to defend itself by the use of force only on condition that it did not win.

Thirdly, it was unrealistic to characterize automatically as an aggressor the State which first committed any one of a series of listed acts, since it was sometimes difficult, if not impossible, to establish the chronological order of military actions. The obscurities and contradictions in operative paragraph 2

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(Sir Kenneth Bailey, Australia)

of the USSR draft proposal had been ably demonstrated by the representatives of the United States and the United Kingdom, among others. That text took no account of the vital element of provocation in the definition of aggression and, as had been said in the Sixth Committee at the seventh session, if the principle of priority was applied strictly in all cases an intending aggressor could easily make it impossible for the intended victim to protect itself adequately without committing or appearing to commit one or more of the acts listed or could seriously prejudice its means of defence.

Fourthly, his delegation would find unacceptable any text that purported to confer or recognize a legal right on the part of dependent peoples to use force by way of rebellion. The right to use force in order to achieve self-determination formed no part of international law or of the system established by the Charter for the administration of dependent peoples and it should find no place in a definition of aggression.

It was of paramount importance to maintain unimpaired and unrestricted the power and discretion of the Security Council to consider all the circumstances of each particular case in order to determine whether there existed a threat to the peace, a breach of the peace or an act of aggression. It had been precisely because of the fear that a definition of aggression might fetter the Security Council that the San Francisco Conference had decided not to include such a definition in the Charter but to leave the matter to the Council's discretion.

Mr. MORALES SUAREZ (Colombia) said that his delegation wished to indicate certain points which it considered essential to any definition of aggression and on which areas of agreement might be established as a basis for the Committee's work. His statement should not, however, be interpreted as reflecting any inconsistency in his delegation's position as stated on previous occasions or as a departure from the general principles followed by the sponsors of the thirteen-Power draft proposal (A/AC.134/L.6) in revising their text. He attached due importance to the USSR draft proposal (A/AC.134/L.12), which was a constructive contribution to the question.

First, the definition should deal with direct armed aggression, without excluding the possibility of formulating at a later stage definitions of other types of aggression. Armed aggression should be understood to mean the use of

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(Mr. Morales Suarez, Colombia)

force, without the authorization of the United Nations, by one State against another, and should not include acts by individuals.

Secondly, although there were undeniable advantages in including in the definition the principle of priority in the use of force, there would then be no need to include a reference to self-defence, which was the use of force in response to the first use of force by another State.

Thirdly, having accepted the idea of a mixed definition, his delegation suggested that the three cases mentioned in operative paragraph 5 (ii) of the thirteen-Power draft proposal (A/AC.134/L.6) should be included in the draft definition, with the exception of the last phrase in sub-paragraph (b), namely, "or the use of weapons of mass destruction by a State against the territory of another State", which was not relevant. The definition should exclude the declaration of war since, as the representative of Uruguay had said, a declaration of war did not constitute an armed attack.

Fourthly, the definition should not infringe upon the Security Council's prerogatives under Article 39 of the Charter. The Council must enjoy complete autonomy.

If agreement could be reached on those points, it would be possible for the Committee to proceed with its task and possibly add other elements.

Mr. EL-FATTAL (Syria) said that, in adopting resolution 2330 (XXII), the General Assembly had emphasized the urgency of drafting a definition of aggression. It had related that sense of urgency to "the present international situation" and had based its decision to expedite the drafting of a definition on its long-held conviction that such a definition would have considerable importance for the maintenance of international peace and security. The Committee should thus draw its sense of purpose from the realities of the world situation as much as from legal considerations. Resolution 2330 (XXII) was an indication of the Assembly's deep concern over the situation in many parts of the world, including South-East Asia, the Middle East and the southern part of Africa. It could scarcely be denied, for example, that Israel's war of aggression in June 1967 had revived interest in determining what constituted aggression. An acceptable definition of aggression could not disregard past experience, the present situation or the

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(Mr. El-Fattal, Syria)

possible dangers of the future. In the context of recent hostilities and the gross violation of scores of United Nations resolutions, failure to draw up a definition might be interpreted as a recognition of the gains derived from past aggression and an invitation to further aggression. The Committee must therefore complete its task now. It must draw a line between aggression and self-defence in accordance with the Charter. As long as wars of aggression were waged under the deceptive labels of "pacification" or "preventive war" or "wars of self-defence", no small State could be sure of its sovereignty and territorial integrity. In the Middle East the word "self-defence" had come to mean a surprise attack that could enlarge the aggressor's territory by as much as three times; frontiers were called "security borders" instead of "political borders" and the annexation of whole cities by force had come to be called "reunification".

He expressed his delegation's appreciation of the USSR's continuing efforts to promote the adoption of a definition of aggression, which had begun with the Conference for the Reduction and Limitation of Armaments in 1932-34, and of the French delegation's contributions to the question. He was confident that, with the active participation of two of the permanent members of the Security Council, the Committee would be able to discharge its duties successfully.

His delegation's basic ideas regarding the formulation of a definition of aggression were reflected in the twelve-Power draft declaration (A/7185/Rev.1, para. 7). The differences between that proposal and the other proposals made were concerned not so much with fundamentals as with emphasis, priorities and technicalities. His delegation's position could be summed up as follows: (1) the concept of direct armed aggression should be defined first; (2) the definition should be of a mixed nature; (3) it should lay down a criterion by which self-defence could be clearly distinguished from the unlawful use of force; (4) it should recognize the discretionary authority of the Security Council under Article 39 of the Charter and its responsibilities under Article 1 (1) and Chapter VII, and should serve as a guide to the competent organs of the United Nations in determining whether or not an act of aggression had occurred; (5) the territory of a State was inviolable and might not be the object, even temporarily, of military occupation and territorial acquisitions obtained by force should not

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(Mr. El-Fattal, Syria)

be recognized, with the corrollary that repelling an invader and resisting occupation should not be considered acts of aggression; (6) the definition should in no way prevent peoples subjugated to foreign domination from exercising their inherent right of self-determination.

Those ideas were also reflected in the thirteen-Power draft declaration (A/7185/Rev.1, para. 9) and the USSR draft proposal (A/AC.134/L.12), but those two drafts had one definite advantage over the twelve-Power draft in that they stated the principle of the political and moral responsibility of States and the criminal responsibility of persons guilty of aggression. Moreover, the USSR text was an improvement over the other drafts in that its operative paragraph 4 unequivocally stated the principle of non-recognition of territorial gains or of any other advantages resulting from armed aggression. His delegation believed that formula to be essential inasmuch as potential aggressors would be deterred if they knew they would be deprived of the fruits of their aggression. The views expressed by some Western delegations, to the effect that the principle of the non-recognition of gains resulting from aggression, though interesting, was not necessary to the definition, was truly alarming.

The criterion of the "first use of force" contained in the USSR draft proposal was not only sound in itself but was also fully in accord with the advances made in fact-finding techniques, which made it possible to reconstruct objectively the sequence of events that had preceded the commencement of hostilities. The acceptance of that concept would to a large extent deprive a potential aggressor of any possibility of justifying a preventive war and would, in addition, enhance the role of the Security Council in ensuring collective security. His delegation therefore supported that principle of the USSR text.

Although both the USSR text and the thirteen-Power draft contained provisions concerning the inadmissibility of the use of weapons of mass destruction, the USSR formulation, which was based on the criterion of the first use of such weapons would probably muster the support of a larger number of developing nations.

With regard to the notion of "indirect aggression", his delegation could not agree with those who felt there was no distinction between the various forms of

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aggression. The definition of aggression should be concerned with both direct and indirect aggression. But in view of the complexity of defining indirect aggression, the Committee should give priority at the present stage to direct armed aggression, which was the most serious and dangerous form of the use of force. Only after defining direct armed aggression should it seek to define indirect aggression and other illicit uses of force, such as political, economic and ideological aggression, and go into the question of instigation to, and complicity in, aggression.

In conclusion, he said that although his delegation was a sponsor of the twelve-Power draft, it was prepared to co-operate with other delegations in order to establish a single text.

Mr. JAHODA (Czechoslovakia) said that references such as that made by the Australian representative to the events which had taken place in Czechoslovakia in August 1968 could only complicate the Committee's task. His Government's position concerning the events in Czechoslovakia had been stated by the head of the Czechoslovak delegation to the General Assembly at the 1682nd plenary meeting. He therefore hoped that his Government's position would be fully respected in the Committee and that the Committee would consider the question on its agenda in a constructive manner, thus creating the necessary conditions for mutual co-operation in defining aggression.

The meeting rose at 12.15 p.m.

SUMMARY RECORD OF THE THIRTY-NINTH MEETING

Held on Friday, 21 March 1969, at 11.5 a.m.

Chairman: Mr. FAKHREDDINE Sudan

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTIONS 2330 (XXII) AND 2420 (XXIII) (A/7185/Rev.1; A/AC.134/3; A/AC.134/L.12) (continued)

Mr. CASTREN (Finland) said that his delegation was still convinced that the defining of aggression was a worth-while task and hoped that compromises could be made to remove the remaining difficulties. A satisfactory definition of aggression must be acceptable not only to a very substantial majority of Member States but also to all the permanent members of the Security Council. From the beginning the Special Committee had made steady progress in its work. It had been noted in the Sixth Committee at the twenty-third session of the General Assembly that, of the three draft proposals presented at Geneva, the thirteen-Power proposal (A/7185/Rev.1, para. 9) in particular would serve as a good basis for further negotiations. The Soviet Union delegation had recently submitted a new and more concise proposal (A/AC.134/L.12) which took into account the views and wishes of other States. In the course of the debate statements had been made containing new and interesting ideas and constructive suggestions for amendments to existing drafts.

General agreement had been reached on certain important points. His delegation shared the view that the definition should not depart in any way from the provisions of the Charter and should keep as closely as possible to its wording. The powers of the Security Council in the maintenance of peace and international security should be respected without the imposition of hard and fast rules which would limit its freedom of action; that was important because even the most comprehensive definition could not cover all cases and take into account the good or bad intentions of States. Moreover, the choice of counter-measures or measures of self-defence would also have to be governed by the Security Council to avoid abuses and excessive recourse to the use of force. Only a mixed definition laying down certain general characteristics and, by way of example, the most important and well-known acts of aggression, would be sufficiently flexible to guide the Security Council in its work and acceptable to his delegation. The task of defining aggression would be much easier if the Committee were to limit itself at the present stage to defining the most serious and dangerous kind of aggression - armed aggression - since it was clearly very difficult to reach agreement on the other forms. Furthermore,

(Mr. Castren, Finland)

the definition must draw a clear distinction between legal and illegal uses of armed force, both of which were mentioned in the Charter.

There had been some differences of opinion as to whether the definition should also deal with indirect aggression, which was evidently understood to mean harmful activity taking place in or affecting the territory of one State and carried out not by another State itself but by individuals actively or passively supported by another State. Such activity, particularly in its more dangerous forms, was comparable to activity undertaken by the other State itself. He agreed with the representative of France that, to settle differences of opinion relating to aggression committed by communities whose statehood was open to question, the Special Committee should confine itself to considering relations between States with the understanding that a "State" did not necessarily have to be recognized unanimously by the international community, or - it might be added - by the victim of aggression.

Not all the existing drafts contained a preamble and it had been mentioned that none was absolutely necessary. His delegation shared the view that the preamble could be brief and concerned purely with the central problem. A comparison of the preambles of the thirteen-Power draft and the Soviet draft revealed several features common to both. The seventh preambular paragraph of the thirteen-Power draft seemed superfluous and was in any case incomplete because it mentioned only one of the important rights of States, namely, the inviolability of territorial integrity, and omitted political independence. The preamble of the Soviet draft could well be condensed; the fourth paragraph in particular was ambiguous. His delegation felt that there it would be best to adhere to the relevant provision of the Charter, namely Article 2 (1). The first preambular paragraph of the Soviet text would be improved by an explicit reference to Article 1 (1) of the Charter.

It would likewise be appropriate to refer, in operative paragraph 1 of the Soviet draft, to the relevant provisions of the Charter, particularly those in Chapter VII, and Article 39 could be mentioned at the beginning of paragraph 2. The question as to who had been the first to commit an act of aggression was of prime importance in identifying the aggressor, but that was not always the only

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deciding factor. As was stated in the sixth preambular paragraph of the Soviet proposal, the question whether an act of aggression had been committed must be considered in the light of all the circumstances in each case; the use of force could sometimes be the result of a pardonable error caused by the behaviour of the other State.

Both drafts included in their list of acts of aggression the use of weapons of mass destruction. His delegation shared the view that there was no reason to treat the use of those weapons as a separate act of aggression when it was only an aggravating factor. It would be sufficient to mention them in the preamble; as it was, the last preambular paragraph of the Soviet draft mentioned nuclear weapons. The list of acts of armed aggression given in the thirteen-Power draft included the carrying out of a deliberate attack on the ships or aircraft of another State, an action often mentioned in earlier draft proposals and in certain international agreements, whereas the Soviet proposal referred only to an attack on the land, sea or air forces of another State. Both alternatives could be supported on different grounds. The Soviet draft referred also to the bombardment of or firing at the territory and population of another State, a formulation which seemed broad enough to cover also individuals who were outside their own country in private vessels or aircraft.

Certain dangerous forms of indirect aggression against one State, such as the activities of armed bands, terrorists and saboteurs, supported in various ways by another State, should be taken into account in the definition of aggression. Neither of the two texts covered that point satisfactorily. The Soviet draft dealt only with the sending of armed bands and certain kinds of individuals to the territory of another State, whereas the thirteen-Power draft categorically prohibited recourse to the right of self-defence against the State responsible for the activities of such armed bands. The important matter of indirect aggression would have to be examined more carefully with a view to finding a generally acceptable formulation.

His delegation understood the first three operative paragraphs of the Soviet draft to mean that, after a State had committed any act mentioned in paragraph 2 or any other act designated by the Security Council as an act of aggression, the

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victim State would be entitled to defend itself by all legal means and even to declare war on the aggressor without the risk of being called an aggressor itself. If the text was not clear enough, it could be improved in the way already suggested by certain delegations. Operative paragraph 6 of the thirteen-Power draft, which had no equivalent in the Soviet draft, did not belong in a definition of aggression, because every case should be examined in the light of all relevant circumstances. The right of self-defence against armed aggression was referred to several times in the thirteen-Power draft, whereas the Soviet draft contained only an indirect reference to it. His delegation felt that that important right, and its limitations should be dealt with more fully.

Individual and State responsibility, the principle of non-recognition and the qualification of aggression as an international crime were all important questions, but to deal with them in the context of defining aggression might only complicate the main issue, and they should therefore be excluded. For the same reason his delegation felt that it was inappropriate to take up the matter of the right of peoples to self-determination in that context.

Mr. YASSEEN (Iraq) said that his delegation was in favour of a mixed definition and believed it was best to begin with direct armed aggression, which would facilitate the work of defining other forms of aggression later. The Special Committee should therefore leave indirect aggression aside for the time being. His delegation felt, however, that in the present age of emancipation it was necessary to include a provision condemning the use of force by colonial Powers against oppressed peoples, or at least a reservation to the effect that the right of those peoples to rise up against their oppressors would remain unaffected.

He agreed with the views of the representative of France on the amendment submitted by the Sudan and the United Arab Republic (A/AC.134/L.8). The definition should also contain a reference to the responsibility incurred by the aggressor and, as in the Soviet text, to the principle of non-recognition of any territorial gains or special advantages resulting from armed aggression.

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(Mr. Yasseen, Iraq)

The Security Council had a primary role in the maintenance of international security; its functions were laid down in the Charter and could not be challenged, and it was impossible to claim that they would be limited by the definition of aggression. The definition was intended to guide the Security Council by protecting its members from their own weaknesses in specific cases which arose in the course of their duties. The Security Council could determine the existence of an act of aggression, as laid down in Article 39, only on the basis of a well-defined concept of an act of aggression. The definition, however, must be formulated with reference to objective realities; it could not be dictated by the political self-interest or favouritism of the members of the Security Council. The discretionary powers of the Security Council concerned not the definition but rather the recommendations to be made and the decisions to be taken with a view to restoring international peace and security. A good definition would serve to guide all United Nations organs. It should reflect the pertinent Charter provisions. A definition adopted by a majority of Member States would enlighten world public opinion and would have moral authority; it could even have legal authority, in so far as it gave force to the provisions of positive international law.

Certain delegations had questioned the validity of the criterion of priority. To deny that criterion would be to reintroduce the concept of preventive attack and contradict the clearest provisions of the Charter. In contemporary international law, recourse to force was forbidden except for the purposes of self-defence and when the United Nations decided that it was warranted. Article 51 of the Charter established the limits of the right of self-defence; it was recognized only in the case of armed attack and not in the case of threats, provocation or preparations for an attack on the part of another State.

The question of intention had been brought up; it had been asked how a country could be described as an aggressor when it attacked or occupied the territory of another State in the belief that it was acting in self-defence. That was an unrealistic hypothesis which could not be taken into consideration. The intentions a State claimed to have could not alter the nature of the acts, particularly since those who committed aggression often claimed to be acting on a legitimate basis.

(Mr. Yasseen, Iraq)

In conclusion, he was of the opinion that the Special Committee should make serious efforts to reach unanimous agreement on a definition of aggression but, failing that, should be prepared to take a decision by majority vote. There was no legal or political basis for saying that the definition would not be acceptable unless it was approved by all the permanent members of the Security Council. The sovereign equality of all States was a general principle which could only be waived in accordance with the provisions of the Charter; the approval of one group of States could therefore not be more important in law than the approval of the rest.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) said that he wished to comment on some of the points which had arisen during the discussion of his delegation's draft proposal (A/AC.134/L.12) and which he had not dealt with in his previous statement.

Much had been said about the right of a State to defend itself. Under Article 2 (4) of the Charter, all Member States must refrain in their international relations from the use of force, especially armed force. Under Article 51, however, a State had the right to defend itself if an armed attack had already occurred against it. The mere threat of an armed attack did not create entitlement to the use of force for individual or collective self-defence. The draft proposal submitted by his delegation was in strict accordance with Article 51 of the Charter, especially in view of operative paragraph 6.

Article 51 of the Charter provided the main legal basis for the use of armed force by dependent peoples in exercising their inalienable right to self-determination, and an indication to that effect should clearly be included in the definition of aggression. The supporters of colonialism tried to deny dependent peoples the right to use armed force in those circumstances, claiming that self-determination should be exercised under constitutional procedures, in other words, the laws of the administering Power, and that the rights of other States and peoples, in other words, those of the colonial States, should be taken into account. They declared that wars of national liberation were acts of

(Mr. Chkhikvadze, USSR)

internal aggression which gave the administering Power the right to use armed force to quell them. Such views were a flagrant contradiction of the principle of self-determination set forth in the Charter. Wars of national liberation could never be described as acts of internal aggression. The wars of oppressed peoples to liberate themselves in the past had been acknowledged as just, for example, the war of independence in North America in 1775-1783, the war of independence of the Spanish possessions in South America in 1810-1826, and the war of the Slav peoples to overthrow the Turkish yoke. Such wars were particularly just at the present time when the elimination of colonialism and full self-determination had been sanctioned by international law, and in particular by the Charter; they were a means of defence for dependent peoples against the illegal activities of the colonial Powers. Colonialism was rightly described as continuing aggression against the colonial peoples and countries. The legitimacy of the fight for national liberation was indirectly recognized in the third preambular paragraph of the Universal Declaration of Human Rights. The fact that wars of national liberation were legitimate in the fight against colonialism had been acknowledged by the participants in the Geneva Conference of 1954 concerning Indochina, the Final Act of which had recognized the independence, sovereignty and territorial integrity which the people of Indochina had won in the course of their war of national liberation, and also the international character of such wars and the legitimacy of their aims. The legitimacy of the armed struggle of dependent peoples had also been recognized by the Tricontinental Conference of Havana in 1966, which had acknowledged their right to achieve political, economic and social liberation by any means they deemed necessary, including armed struggle, and by the Cairo Conference of Heads of State or Government of Non-Aligned Countries. The General Assembly too had recognized the legitimacy of the struggle being waged by the peoples under colonial domination and had appealed to all States, in a number of resolutions, to render material and moral support to the struggle for national liberation. Those resolutions were based on the Charter, in particular Articles 2 (2) and 51. The right of peoples to use armed force to defend their freedom and independence was in complete accordance with the fundamental

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principles of international law and the Charter and, in his delegation's opinion, it should be included in a definition of aggression.

Questions had been raised concerning the fourth preambular paragraph of the USSR draft proposal to which his delegation attached considerable practical significance. In the modern world, there were States with different political and social systems. In order to protect the world from military conflict and open the way for fruitful co-operation between all countries and peoples regardless of their social systems, relations between States must be built on the principle of peaceful coexistence, in other words on the principle of good-neighbourliness which was stated in the Charter. To object to the principle of peaceful coexistence would be to object to a requirement of the Charter. By emphasizing the principle of peaceful coexistence in its draft proposal, his delegation wished to draw attention to the importance of preventing attempts to change the social or political systems of countries by outside intervention on the part of States with different systems. That was a very topical aspect of the problem, especially for those countries which had recently gained their independence. The use of outside force to encroach upon the social and political achievements of peoples was contrary to international law, whether the States concerned had different or similar social systems. He wished to dispel any doubts on that score, especially the doubts expressed by the representative of France.

The fourth preambular paragraph of his delegation's draft proposal expressed the Soviet Union's fundamental position concerning the protection of the sovereignty and independence of all countries, including States which had not yet fully emerged as such, adding that in operative paragraph 1, too, the word "State" should be taken to include also those which were still in the process of being established. That concept was clearly expressed in relations between countries of the socialist community which consistently observed the principle of sovereignty and other principles of international law.

A declaration, adopted at Budapest on 17 March 1969 by the Warsaw Pact countries, expressed the aspirations of all their peoples to live in peace and

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good-neighbourliness with all other European peoples and their firm determination to establish an atmosphere of peace and security in the European continent, and appealed to all European States to intensify their efforts to strengthen peace and security in Europe. Lasting peace could be ensured only if States directed their efforts towards easing tension and working out a system of co-operation on the basis of goodwill and mutual understanding. Europe consisted of more than thirty States with different social systems and different interests, but they had to live side by side as good neighbours. The same applied to countries in other parts of the world too. There were forces in the world which tried to preserve the division of States into different camps by promoting tension and refusing to encourage peaceful co-operation for the settlement of international issues. The participants at the Budapest conference had therefore appealed to all States to discuss all controversial issues, had declared that the development of European co-operation was the only realistic alternative to the danger of a military conflict, and had called for the strengthening of political, economic and cultural links between States on a basis of equality and respect for the sovereignty and independence of States.

The members of the socialist community were prepared to take practical steps for the joint defence of the sovereignty of each individual member, and any attempt at intervention from outside would inevitably meet with the joint resistance from all of them. That was one of the most effective methods of defending the sovereignty and independence of all the socialist countries, together and individually, and it was based on the voluntary consent of all the participants, expressed in international agreements, in order to preserve the political and social achievements of their peoples. Since there were countries with different social systems in the world, the only sensible principle on which to base relations between them was the principle of peaceful coexistence. That principle clearly derived from the Charter and a reference to it had therefore been included in the preamble to the USSR draft proposal.

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With regard to the reference to nuclear weapons in the draft proposal, his delegation was not trying to settle the question in the draft definition. The Soviet Union was in favour of banning nuclear weapons in general and had submitted a proposal to that effect to the Eighteen-Nation Committee on Disarmament. On 18 March 1969, it had also submitted to the same Committee a draft treaty for banning the use of nuclear weapons for military purposes on the sea-bed and ocean floor. If it was agreed to consider the first use of nuclear weapons as an act of aggression in the draft definition of aggression, that would be a step towards banning nuclear weapons in general. The reference to nuclear weapons in the USSR draft proposal was fully in accordance with existing norms of international law. The Declaration on the prohibition and the use of nuclear and thermo-nuclear weapons (General Assembly resolution 1653 (XVI)), which had been endorsed by the overwhelming majority of Member States, showed that his delegation's assessment of nuclear weapons was shared almost universally. According to that Declaration, the use of such weapons was a direct violation of the Charter, contrary to the rules of international law and the laws of humanity, and a war against mankind in general, and any State using them should be considered as violating the Charter and acting contrary to the laws of humanity. The claim that the use of nuclear weapons itself did not constitute an act of aggression was incompatible with that Declaration. His delegation therefore insisted on including a provision concerning the use of nuclear weapons in the draft definition.

The statement made by the Australian representative at the Committee's previous meeting consisted of two parts: a repetition of Australia's familiar negative position on the matter, and slander and provocation directed against the USSR which his delegation categorically repudiated. The Australian representative had tried to poison the atmosphere of co-operation that had prevailed in the Committee in order to make its work more difficult. Such conduct was hardly becoming a scholar like Sir Kenneth Bailey.

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Mr. ROSSIDES (Cyprus) said that his delegation favoured the formulation of a definition of aggression because it believed that a definition was a long-needed and long-overdue step towards the adoption by the United Nations of measures which would contribute to the development of law and order in international society under the Charter. It maintained an open mind, however, with regard to the form of the definition, provided that it was fully in accord with the relevant Articles of the Charter. Since the Committee had decided at its previous session that the definition should be concerned with military or armed aggression within the meaning of the Charter - a decision fully in accordance with the Committee's mandate and the logical conclusion to be drawn from Article 51 - the only difference of view revolved around the question whether the definition should be confined to direct armed aggression or should also include indirect armed aggression. The Charter was silent on the latter point and, in Article 39, drew a careful distinction between an act of aggression and other breaches of the peace. In fact, when the words "other breaches of the peace" in Article 1 (1) had been adopted at the San Francisco Conference, the contention that the words were superfluous had been rejected, the Conference having held that there might be breaches of the peace other than aggression and that the words should therefore be left as an all-inclusive term.

The Committee was therefore to define what constituted an "armed attack" within the meaning of Article 51, which recognized the right of self-defence as the sole exception to the blanket prohibition on the threat or use of force against the territorial integrity or political independence of any State contained in Article 2 (4). Whether or not the occurrence of an armed attack justified the exercise of the right of self-defence was always, in the final analysis, a matter for the Security Council to determine. Hence, if a State invoked the right of self-defence on insufficient grounds, it might find itself accused of aggression. It was therefore all the more necessary that the State under attack should have some guidance as to what exactly constituted those cases of "armed attack" in which the Charter authorized the use of force in self-defence. The Charter made that exception in order to enable the aggrieved State to take the law in its own hands only in cases of emergency in which the gravity and imminence of the threat of armed attack was so great that it did not have sufficient time to appeal to the

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Security Council. A definition would therefore help such a State to determine whether the exercise of its right of self-defence was justified, thus preventing it from resorting to war out of convenience or fear and averting the danger that a war might be started through hasty action by a State which had misunderstood Article 51. When an armed attack had occurred, the existence of a definition would also facilitate the task of the Security Council by enabling it to reach objective conclusions uninfluenced by subjective or temporary considerations with respect to the parties involved.

Accordingly the Committee should take care not to draft a definition of aggression which, by extending the meaning of armed attack, would give grounds for the exercise of the right of self-defence which were not justified by Article 51 and might thus unwittingly lead to war. While an armed attack involving military action was clearly a situation of such emergency that the State under attack must take immediate military counter-action to repel the attack before it could appeal to the Security Council, the same could not be said of the operations of armed bands, which presented no such grave or imminent threat and which involved no emergency so acute that there was no time to resort to the Security Council. Moreover, however much the operations of armed bands might be fomented and assisted by outside forces, they were an internal matter which could be dealt with by internal military action of the State concerned without recourse to the Security Council. Although subversive operations by armed bands operating in the territory of a State constituted violations of the Charter and breaches of the peace, they could not be equated with an armed attack under Article 51. Their seriousness depended not on the existence of such bands but on the numerical strength of the bands and the force of the weapons used. It was therefore a question of degree rather than one of kind. While he agreed that the sinister and subversive activities of armed bands should not be omitted from the definition, they could hardly be put on the same plane as armed aggression by States. That was the crucial point of difference which, if solved, would clear the way for the achievement of a generally acceptable definition of aggression. In his view, the difficulty was not insurmountable.

In adopting a definition, the Committee should also keep in mind the requirements of other legal texts such as the draft Code of Offences against the

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Peace and Security of Mankind and the question of an international criminal jurisdiction, which had been twice postponed pending the adoption of a definition of aggression. What was needed to complete the Code was to define the words "act of aggression" used in article 2, paragraph 1; the Committee should not therefore go any further into the matter of other breaches of the peace. The same considerations applied to international criminal jurisdiction.

Moreover, with regard to the non-proliferation of nuclear weapons, the criticism had been voiced that non-nuclear-weapon States could hardly rely on a Security Council resolution guaranteeing their protection against an armed attack by nuclear weapons in the absence of a definition of aggression. There again, "aggression" clearly meant direct armed attack.

Mr. EVANS (Australia), speaking in exercise of his right of reply, said that the Australian statement to which the USSR representative had referred had concerned the difficulties of achieving a generally acceptable and adequate definition of aggression. The Australian statement made at Geneva in 1968 had also affirmed those difficulties. He noted that the USSR representative had spoken of listening to, heeding, but not necessarily agreeing with the views of others. The Australian delegation always listened to, heeded, but did not necessarily agree with the views of the Soviet Union. Equally it hoped when it spoke that its own views would be listened to and heeded but did not demand that they be accepted by others. Concerning the Australian reference to "recent events" the Australian delegation had no doubt that its own interpretation of those events was the one more generally accepted. The USSR representative had spoken of first use by Australia in poisoning the atmosphere of the Committee. Members of the Committee would be able to judge for themselves who did what first.

The USSR representative had said that Sir Kenneth Bailey claimed to be a scholar. He would be the last person to make such a claim for himself. Other representatives would be able to judge for themselves whether such a description was well founded. In any event, the mark of a scholar was that when he spoke he confined himself to matters of substance and did not resort to personal abuse.

Mr. HARGROVE (United States of America) expressed the revulsion of his delegation that, instead of commenting on the substance of the statement made by Sir Kenneth Bailey, the USSR representative had seen fit to make a personal attack on him.

Mr. AKYAMAC (Turkey), speaking in exercise of hss right of reply, said that the USSR representative had referred, among other examples he had given in connexion with paragraph 6 of his draft, to the struggle of Slav peoples against their Turkish rulers. That example was ill conceived, because the Ottoman Empire had not been a colonial system but a commonwealth of nations with a multiracial administration, much like the Soviet Union of today. He also wished to make it quite clear that his country would have no difficulty in supporting the inclusion in the definition of a provision that the right to self-determination of dependent peoples was applicable everywhere and without reservation, and he expressed the hope that the USSR had a parallel position in that respect.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) said that the United States representative's statement was out of order because no right of reply had been involved. His remarks concerning Turkey had been a reference to ancient history, not to the present.

The meeting rose at 1.30 p.m.

SUMMARY RECORD OF THE FORTIETH MEETING

Held on Friday, 21 March 1969, at 3.30 p.m.

Chairman: Mr. FAKHREDDINE Sudan

ORGANIZATION OF WORK

Mr. STAVROPOULOS (Legal Counsel) informed the delegations which had requested the Secretariat to amplify document A/AC.134/L.15 by adding a further column reflecting the views expressed on the draft proposals that to do so would give rise to problems. The task was a most delicate one, which could not be completed in the available time. He would ask the delegations which had made the request to withdraw it and assured them that the Committee's report would fully reflect all views expressed.

Mr. HARGROVE (United States of America) said that his delegation, which had first made the request, was ready to withdraw it. He understood that, while it was possible to prepare the additional column, shortage of time made it inadvisable to proceed. He agreed that the Legal Counsel's suggestion should be adopted, if the other Committee members so wished.

It was so decided.

The meeting rose at 3.50 p.m.

SUMMARY RECORD OF THE FORTY-FIRST MEETING

Held on Monday, 24 March 1969, at 11.5 a.m.

Chairman: Mr. FAKHREDDINE Sudan

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTIONS 2330 (XXII) and 2420 (XXIII)) (A/7185/Rev.1; A/AC.134/3; A/AC.134/L.12 and L.15) (continued)

Mr. BAVAND (Iran) said that any definition of aggression should meet the following criteria: (1) the definition should be of a mixed nature, comprising a general description of armed aggression followed by an illustrative list of the most typical acts of armed aggression; (2) it should be consistent with the United Nations Charter; (3) it should safeguard the discretionary authority of the Security Council; (4) it should be concerned with the use of force in relations between States, although it might, conceivably, take account of political entities which were de facto possessed of the characteristics of States and which had received a certain amount of de jure recognition by other States; (5) it should cover both direct and indirect aggression and draw a distinction between those concepts and other breaches of the peace; and (6) it should receive the support of the majority of United Nations Members, including the permanent members of the Security Council, which had an essential part to play in the maintenance of international peace and security.

Although the concept of aggression had been left ambiguous in the Charter, an ambiguity which had been increased by its classification with other breaches of the peace in Article 1 (1), it could be deduced from Article 2 (4) that aggression was the use of force by one State against the territorial integrity or political independence of another State. Moreover, the drafters of the Charter had undoubtedly had in mind the traditional interpretation that in international law "force" meant physical force. That was confirmed by the use of the term "armed attack" in Article 51. Since any dynamic legal institution must evolve in accordance with the changing conditions of international life, his delegation believed that the principles of international conduct laid down in the Charter must be interpreted in the light of present circumstances. Thus, the use of force against the territorial integrity or political independence of another State should now include political, economic and ideological force as well as physical force. At the same time, armed attack, as envisaged in Article 51, was the most dangerous kind of force, the distinctive and dangerous nature of which had been recognized in both the thirteen-Power draft declaration (A/7185/Rev.1, para. 9) and the USSR draft proposal (A/AC.134/L.12).

(Mr. Bavand, Iran)

In general, the preambles of both drafts had the support of his delegation. It had strong reservations, however, about the second part of the fourth paragraph of the USSR proposal, which it felt to be incompatible with the Charter.

Operative paragraph 1 of the USSR draft proposal was consistent with Article 2 (4), (5) and (6) and Article 50 of the Charter. Moreover, the distinction made in that paragraph between direct and indirect armed attack, together with the reference to the purposes and principles of the Charter, opened the way to a comprehensive definition of aggression. However, that wording would enable an aggressor to claim that his action, though not justified under Chapter VII, was justified under the purposes and principles of the Charter in general.

The principle contained in both the USSR and the thirteen-Power draft, that the aggressor was that party which first used force, gave rise to certain difficulties. First, the facts would be difficult to prove, and the Security Council would always have to make a subjective judgement of the evidence. Secondly, the direct application of that criterion would mean that the State shown to have used armed force first against another State would have to be condemned whatever the other circumstances might have been. Nevertheless, any definition of aggression would be useless without that criterion. The Charter conceived of armed aggression, in terms of behaviour rather than motive or intention. In other words, it provided that self-defence could be exercised only in the event of an armed attack; it did not consider planning, preparation or other kinds of provocation as sufficient grounds for resort to self-defence.

It followed that, unless a declaration of war coincided with the use of armed force, it could not in itself be regarded as an act of aggression, even though it might very well cause a breach of the peace by prompting the other side to take defensive measures. However, since such cases were very rare, his delegation would have no objection to listing declaration of war as an act of aggression, while feeling that its logical place was somewhere near the end of the list.

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(Mr. Bayand, Iran)

In both proposals a legal link between the various forms of aggression listed was lacking; that might be corrected by redrafting the introductory phrase. With regard to the content of the list, the USSR draft made an important difference between the concepts of direct and indirect aggression. Under operative paragraph 1, the use of armed force constituted an act of aggression irrespective of the intentions of the aggressor. Under paragraph 2C, on the other hand, the use of armed force by sending armed bands, mercenaries, terrorists or saboteurs to another country was not an act of aggression unless it was intended to promote an internal upheaval or to reverse the policy of the victimized State. In other words, in the later case the victim's exercise of the right of self-defence was conditional upon its ability to prove the purpose and intention of the aggressor. That paragraph was also inconsistent to some extent with Article 51 of the Charter, which made the victim the judge of the situation and gave him the automatic right to defend himself either individually or collectively; the facts of the situation were determined only at the second stage, when the issue came before the Security Council, which had to determine in the light of all the circumstances whether or not an act of aggression had been committed. A further shortcoming was the difficulty of proving that an act of aggression had taken place, particularly since the boundary between a violation of the principle of non-intervention and indirect aggression had not yet been established. An ambiguous definition would not only complicate the task of the Security Council but could encourage violence between States. They could accuse each other of indirect armed aggression, for example, merely upon discovering cases of ammunition or armed irregulars on their soil. Ambitious and frustrated States could easily use such a contingency as a pretext for the exercise of their right of self-defence.

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(Mr. Bavand, Iran)

Neither of the present drafts defined the scope and limitations of the right of self-defence and its relationship to the act of aggression. Yet it was necessary to define aggression in such a way that a possible aggressor could not justify his actions by claiming the right of self-defence. Some felt that self-defence could be invoked only to cover those acts necessary to repel an aggressor, a point beyond which further acts became unlawful and constituted aggression in their turn. However, in his delegation's view the concept of self-defence should be kept flexible, because its scope depended upon the intensity of the aggression and the nature of the weapons used. While it was easy to distinguish between defensive and aggressive actions in the case of armed bands, for example, it was very difficult to draw such a line in the case of nuclear armed attack. His delegation therefore believed that the question of nuclear armed aggression, which had been included in the lists in both proposals, should be dealt with separately. Its inclusion in the definition of aggression would be a distortion of the Charter, which had been drafted prior to the emergence of such weapons.

Mr. DIACONESCU (Romania) said that any definition of aggression must be consistent with the principles laid down in the Charter. The purposes for which the United Nations had been established - to do away with aggression and policies based on force - could not be achieved without strict compliance with the fundamental principles of the Charter by all States in all circumstances, whatever the nature of their relations might be. The existence of friendly relations between States depended on the recognition of the equal rights and sovereign equality of States, their fulfilment in good faith of the obligations they had assumed under international law, particularly the obligation to settle their international disputes by peaceful means, their compliance with the prohibition of the use of force against other States and of interference in the domestic affairs of other States, and the recognition of the right of peoples to self-determination.

The principles governing his country's foreign policy were laid down in its Constitution. Romania advocated peaceful coexistence among all States, irrespective of their social and political systems, as the only alternative to a

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(Mr. Diaconescu, Romania)

disastrous nuclear confrontation. Progress and prosperity, moreover, could not be achieved without security and the security of one State could not be dissociated from the security of all. His Government's international conduct was thus guided by the principles governing friendly relations between States. It was opposed to any use or show of force, including the arms race, troop concentrations and military manoeuvres on the borders of other States.

His delegation agreed with the majority of delegations which felt that armed aggression should be defined first. It favoured the "mixed" type of definition, in which a generic description of armed aggression was supplemented by an indicative list of typical acts of armed aggression. The definition should make armed aggression a legal and political crime, the greatest crime that could be committed against peace and one which, under international law, engaged international responsibility. The enumeration should take account of the international experience so far gained, the conventional practice of States and world public opinion. It should be so formulated as to facilitate the determination of the facts in any particular case but should not imply that acts not listed did not constitute armed aggression.

The definition should specifically provide that the functions and powers of the United Nations organs concerned with the maintenance of international peace and security - particularly the Security Council's power of determining whether or not an act of aggression had been committed - should remain unimpaired. The definition should also precisely delimit those exceptional cases and conditions in which the use of armed force was permitted.

The lists of typical acts of aggression given in the two proposals could be combined. In his delegation's view, the list should include the following acts: a declaration of war and belligerent acts committed without a declaration of war; the use of nuclear, bacterial or chemical weapons or any other weapons of mass destruction; the bombardment of the territory of a State; a premeditated attack against the armed forces of the victim; the invasion of or attack against the territory of another State; military occupation or the annexation of the territory or part of the territory of another State; blockade of the coasts or ports of another State; the use of armed bands on the territory of another State. If a

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State permitted another State to use its territory in order to attack a third State, that constituted an act of indirect aggression which should be condemned as one element of the crime of aggression.

The cases and conditions in which force could be used must be defined in accordance with international law and the Charter. In his delegation's view, force could not be used in individual or collective self-defence except where the State concerned was the victim of an armed attack in the circumstances prescribed in Article 51. At the same time, the definition should recognize the legitimacy of the struggle of peoples against colonial domination as a corollary of the right of each people to self-determination.

The definition must state specifically that the use of force by regional bodies was permissible only in the cases and circumstances specified in the Charter - i.e. to maintain international peace and security - and the unlawful use of force by regional bodies must be regarded as aggression. It must also establish that no domestic or foreign policy consideration - whether political, military, economic or other - could be invoked to justify the use of force against another State.

The main elements of the definition he had just indicated could be found in the Convention for the Definition of Aggression, signed in London on 4 July 1933, which was still in force and to which his country was a party. If those elements were included in the definition, it would become a major international instrument embodying that element of certainty so necessary to ensure the observance of international law.

Mr. JAZIC (Yugoslavia) said that at the previous session of the Special Committee his delegation had sponsored the twelve-Power and thirteen-Power drafts and that at the present session it had taken part in the preparation of the new text which was shortly to be introduced. He hoped that the Soviet draft, which was a significant contribution to the work of the Special Committee, and the other valuable texts that had been submitted would help the Committee to work out a generally acceptable draft. His delegation firmly believed that it was both legally possible and politically opportune to produce a definition

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(Mr. Jazic, Yugoslavia)

of aggression that would guide the United Nations in its work of maintaining international peace and security. It was true that a definition of aggression would not eliminate aggression from international life, but its adoption would have important political and moral effects both on the United Nations and on the international community at large. First of all, a potential aggressor would be aware of the existence of the definition, which would make it more difficult for him to justify his acts of aggression and escape the attendant responsibility. It would also make it easier for the competent organs of the United Nations to identify acts of aggression and deal with the consequences. An adequate definition could thus become an important instrument for protecting the political independence, territorial integrity and sovereignty of States.

A number of delegations had put forward important criteria for the formulation of a generally acceptable definition, and there seemed to be a certain amount of common ground in the views expressed, although serious differences still existed. In his delegation's view, the definition must be based upon the provisions of the Charter and must not deprive the organs of the United Nations of their competence under the Charter. The Committee's task was neither to rewrite the Charter, nor simply to repeat the relevant provisions; it was to produce a definition elaborating on those provisions. Two factors must be taken into account: first, that the Charter did not contain a definition of aggression, and secondly, that the relevant provisions appeared to imply that the concept of aggression was closely linked with the use of armed force (meaning an armed attack) in international relations and that individual or collective self-defence was allowed only within the limits of Article 51. Aggression could, however, take many forms which it was not possible to anticipate or to define once and for all, and consequently the definition could not be expected to cover all possible forms of aggression. Some delegations had said that the Charter did not recognize any form of aggression other than armed aggression, but the fact that other forms were not mentioned did not mean that they did not exist. His delegation agreed, however, that the Committee should

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concentrate first of all on working out a definition covering the most obvious forms of armed aggression, after which the General Assembly could decide whether an attempt should be made to define other forms of aggression.

Attempts to differentiate between direct and indirect armed aggression could easily lead to confusion. Both the thirteen-Power draft and the Soviet Union draft used those terms, but not in the same context. His delegation felt that at the present stage it was not essential to try to draw that distinction, particularly since the Charter did not do so. The first aim should be to define those uses of force which could be generally accepted as constituting acts of armed aggression.

On the question whether such acts as the use of armed bands by one State against another should be included in the definition and categorized as acts of aggression, his delegation considered that they were a flagrant violation of the basic principles of the Charter and could be as dangerous to the sovereignty, independence and integrity of a State as any form of armed aggression. A definition of aggression should therefore cover them if possible. His delegation did not agree, however, that a State which was the victim of such activities should be entitled to exercise the right of individual or collective self-defence under Article 51 of the Charter. That could open the way to misuse of the right of self-defence, which in turn could be tantamount to an act of aggression.

Comparing the operative paragraphs of the thirteen-Power draft and the Soviet Union draft, his delegation felt that operative paragraph 1 of the thirteen-Power draft gave a more precise and complete definition of the concept of aggression, especially in its treatment of the only two cases in which the use of force was legally permissible. Any definition of aggression should also include, as the thirteen-Power draft did, a provision to the effect that the State which was the victim of aggression must observe the principle of proportionality in taking measures to defend itself.

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(Mr. Jazic, Yugoslavia)

His delegation considered that the principle of first use should be included in the definition, whatever the difficulties of identifying the aggressor in each particular case. The Charter made it clear that a State which used armed force, except for the purpose of repelling an armed attack, was to be regarded as an aggressor. Any of the following acts, if committed in violation of the Charter, should be included in a list of acts of aggression: an invasion or attack, by the armed forces of a State against the territory of another State, the military occupation, however temporary, or annexation of the territory of another State or part thereof, the bombardment of the territory of another State, the use of any weapons, particularly weapons of mass destruction against another State, and the blockading of the coast or ports of another State. It had been pointed out that sometimes a declaration of war was not followed by the actual use of armed force, and that such a declaration did not in itself constitute an armed attack justifying the exercise of the right of self-defence. That point should be taken into consideration, because it was important to close any loop-hole which might permit a potential aggressor to wage a preventive war.

Where the competence of United Nations organs was concerned, the definition of aggression had to follow the provisions of the Charter. The competence and functions of the Security Council, as defined in Articles 24, 39, 41 and 42, must be adequately reflected in the definition, but at the same time it was important not to overlook the powers of the other competent organ, namely, the General Assembly.

His delegation could not possibly subscribe to the view that the definition must be acceptable to the permanent members of the Security Council. It was true that to fulfil its mandate the Committee must reach the broadest possible consensus, and that the big Powers bore great responsibility for questions of peace and security. But it was also true that the Committee had to work in accordance with the rules of procedure of the General Assembly and that none of its members had the right of veto.

His delegation considered that the definition should contain a preamble, and that the existing drafts contained most of the elements which could appropriately be included in it. The fourth preambular paragraph of the Soviet draft, however, was not acceptable in its present form, because it did not state clearly that all States, irrespective of their social systems, were entitled to peaceful coexistence.

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(Mr. Jazic, Yugoslavia)

Any use of force designed to influence the social and political development of the peoples of other States was contrary both to the fundamental principles of the Charter and to international law.

Amongst the important principles which should be adequately represented in the definition were, firstly, the principle that the territorial integrity of a State was invisible and that territorial gains resulting from the use of force could not be recognized; secondly, the principle that no considerations of any kind could justify acts of aggression; thirdly, that the right of all peoples, especially dependent peoples, to self-determination should be fully protected (on that point his delegation was prepared to accept as a basis the text prepared by the representative of France); fourthly, that enforcement action by regional agencies might be resorted to only in the event of a decision taken by the Security Council in accordance with Article 53 of the Charter; and finally, that armed aggression constituted a crime against international peace for which international responsibility was incurred.

The meeting rose at 12 noon.

SUMMARY RECORD OF THE FORTY-SECOND MEETING

Held on Monday, 24 March 1969, at 6.15 p.m.

Chairman: Mr. FAKHREDDINE Sudan

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CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTIONS 2330 (XXII) AND 2420 (XXIII)) (A/7185/Rev.1; A/AC.134/3; A/AC.134/L.12, L.15, L.16) (continued)

Mr. ROSSIDES (Cyprus) briefly introduced the new draft proposal before the Committee (A/AC.134/L.16), of which his delegation was a sponsor. Cyprus was still a sponsor of the thirteen-Power draft (A/AC.134/L.6).

The draft proposal in document A/AC.134/L.16 was in a sense a revision of the thirteen-Power draft, which it followed in broad outline, while taking into account the very constructive USSR draft (A/AC.134/L.12) and various suggestions. Preambular paragraph 1 was the same as the first paragraph of the Soviet draft. Preambular paragraph 2 was the same as preambular paragraph 2 of the thirteen-Power draft and close to the eighth preambular paragraph of the USSR draft. Preambular paragraph 3 was essentially preambular paragraph 6 of the thirteen-Power draft, with the addition of the phrase "and would facilitate the determination of acts of aggression". Preambular paragraph 4 was approximately the same as preambular paragraph 4 of the thirteen-Power draft and the fifth preambular paragraph of the USSR draft. Preambular paragraph 5 was essentially preambular paragraph 5 of the thirteen-Power draft. The words "facilitate that task" had been used instead of "as a guidance" in order to indicate that there was no question of limiting the Security Council's power of determination. Preambular paragraph 6 was very similar to operative paragraph 6 of the thirteen-Power draft.

Operative paragraph 1 of the new draft proposal dealt with the United Nations functions of maintaining peace. It generally corresponded to operative paragraph 2 of the thirteen-Power draft, with the difference that the reference to the Security Council had been omitted. Operative paragraph 2 was a considerable improvement over operative paragraph 1 of the thirteen-Power draft; the words "direct or indirect" had been omitted and the words "irrespective of the effect upon" had been replaced by "or in any way affecting". Operative paragraph 3 corresponded to operative paragraph 3 of the thirteen-Power draft. There was no equivalent paragraph in the USSR draft. Operative paragraph 4 was a modification of operative paragraph 4 of the thirteen-Power draft which came closer to the text of the Charter. Operative paragraph 5 was also an improvement over operative paragraph 5

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(Mr. Rossides, Cyprus)

of the thirteen-Power draft. It referred to the "powers and duties of the Security Council" and specified that the acts in question were "acts when committed by a State first against another State in violation of the Charter". Operative paragraph 6 was identical with operative paragraph 7 of the thirteen-Power draft. Operative paragraph 9 was nearly identical with operative paragraph 9 of the thirteen-Power draft. Operative paragraph 10 was new and had been based partly on the suggestions of the French representative.

He indicated that he might wish to refer in greater detail to some of the provisions of the new draft proposal at the following meeting.

The CHAIRMAN requested the sponsors of the draft proposal in document A/AC.134/L.16 to confer with the sponsors of the draft proposals submitted previously with a view to the possible withdrawal of those texts in order that the Committee might work on a single text.

The meeting rose at 6.40 p.m.

SUMMARY RECORD OF THE FORTY-THIRD MEETING

Held on Tuesday, 25 March 1969, at 10.55 a.m.

Chairman: Mr. FAKHREDDINE Sudan

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CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTIONS 2330 (XXII) AND 2420 (XXIII)) (A/7185/Rev.1; A/AC.134/3; A/AC.134/L.12, L.15 and L.16 (continued)

Mr. ABDULGANI (Indonesia) said that his country had long had an interest in the question of defining aggression, which it considered not only desirable but possible. He regarded the concept as a broad one: aggression could be armed, or ideological, direct or indirect.

Nevertheless, it welcomed the USSR draft proposal (A/AC.134/L.12), which was constructive in many respects. The reference to direct and indirect aggression in operative paragraph 1 was appropriate, and the brackets should be removed in order to avoid any ambiguity. A clear distinction was made between aggression and self-defence. The provision concerning nuclear, bacteriological, chemical and other weapons of mass destruction was important, particularly for the security of the developing countries. The concept of the first use of force as a criterion for determining the aggressor was also worthy of note; it should not, however, be applied automatically, but only after due consideration of preceding events such as preparations, intimidation and provocation by a potential aggressor. The fourth preambular paragraph was unfortunately worded; to stress the incompatibility of the use of force with the peaceful coexistence of States with different social systems might be taken to imply that the use of force was compatible with the peaceful coexistence of States with similar social systems.

In the draft resolution introduced by the representative of Cyprus at the previous meeting (A/AC.134/L.16) an attempt had been made to take into account the views expressed during the debate, and that draft resolution had his delegation's support. He particularly welcomed the inclusion of a paragraph concerning the activities of armed bands. Since, however, the draft resolution was more limited in scope than the twelve- and thirteen-Power draft proposals (A/7185/Rev.1, paras. 7 and 9), which his delegation had co-sponsored, and since it included an irrelevant reference to the non-recognition of territorial acquisitions obtained by aggression, his delegation had been unable to co-sponsor it.

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Mr. BEESLEY (Canada) said that he wished to make his delegation's position clear on the desirability of ensuring that a draft definition of aggression should be acceptable to the permanent members of the Security Council, since it might have been misunderstood. As he had said during the previous session, at the 11th meeting, any definition of aggression must be a constructive and positive contribution to the United Nations collective security system. To that end, it must be politically acceptable to the majority of the Members of the General Assembly and to all the permanent members of the Security Council, and it must be legally adequate. The definition would have to be generally acceptable if it was to provide an authoritative interpretation of the Charter. If it was to be effective, it would have to reflect the will of the world community, since international law relied for its effectiveness upon the will of the community. If a definition was unacceptable to one or more of the permanent members of the Security Council, it might frequently be disregarded by the Council. Those were purely practical considerations. His delegation had not suggested that it was a constitutional requirement for a definition to be acceptable to all the permanent members of the Security Council. The minimum constitutional requirement was that it should be acceptable to the General Assembly and the Security Council.

Mr. ALCIVAR (Ecuador) said that his delegation had supported the amendment (A/AC.134/L.8) submitted by the Sudan and the United Arab Republic to the thirteen-Power draft proposal concerning the deletion of the words "direct or indirect" in operative paragraph 1, because those words might create confusion in the definition of direct armed aggression which the Committee was attempting to formulate first. His delegation was also one of the sponsors of the draft resolution contained in document A/AC.134/L.16, which did not refer to "direct or indirect" aggression. That did not mean, however, that his delegation had abandoned its position that all forms of aggression must be defined. It was solely to facilitate the work of the Committee that it had agreed that direct armed aggression should be defined first.

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Mr. YASSEEN (Iraq) welcomed the Canadian representative's clear statement on a point which was somewhat confused. It was not a legal that the permanent members of the Security Council should accept a draft definition of aggression; the sovereign equality of States was a fundamental principle of the Charter. But it was, of course, desirable that a draft definition of aggression should be acceptable to all States.

The meeting rose at 11.15 a.m.

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SUMMARY RECORD OF THE FORTY-FOURTH MEETING

Held on Tuesday, 25 March 1969, at 3.30 p.m.

Chairman Mr. FAKHREDDINE Sudan

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CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTIONS 2330 (XXII) AND 2420 (XXIII)) (A/7185/Rev.1; A/AC.134/3; A/AC.134/L.12, L.15, L.16 and L.17) (continued)

Mr. ROSSIDES (Cyprus) wished to comment in greater detail on certain provisions of the draft proposal A/AC.134/L.16 which he had introduced the previous day on behalf of its sponsors (A/AC.134/SR.42). Operative paragraph 5 of the text, which enumerated certain acts of aggression, was designed to permit the exercise of the right of self-defence in accordance with Article 51 of the Charter. However, it was important to note that, for the moment, there was no generally accepted definition of what constituted an armed attack (armed aggression).

In paragraph 7 the sponsors of the draft had sought to take note of the fact that the presence of armed bands in the territory of a State was sufficient cause for that State to have recourse to the right of self-defence under Article 51 of the Charter. In certain circumstances, the presence of armed bands in the territory of a State constituted an armed attack because of the scope of the bands' operations, but that was a question of degree and not of kind. The expression "armed attack" had a more restricted meaning than "act of aggression" used in Article 39 of the Charter. For the purpose of interpreting Article 51, it was thus necessary to formulate a precise definition for an armed attack (armed aggression), as opposed to an act of aggression. As Article 39 of the Charter did not mention armed attacks, the conclusion could be drawn that the expression "act of aggression" in Article 39 encompassed the armed aggression mentioned in Article 51. That was why the sponsors had avoided stating in paragraph 7 that the presence of armed bands in the territory of a State constituted an act of aggression. The sending of armed bands did not in fact constitute an act of overt war.

Nevertheless, the sponsors were prepared to consider the possibility of adding a new paragraph that would take into account a State's right of self-defence in cases where the scope of the operations and the urgent nature of the situation suggested that the presence of those bands constituted an armed attack (armed aggression) justifying recourse to Article 51 of the Charter.

Operative paragraph 8 of the draft, which was fully in accordance with the provisions of the Charter, should not give rise to any objections. At the most, it could be said that it did not have to be included in a definition. Paragraph 9

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(Mr. Rossides, Cyprus)

dealt with crimes against the peace and security of mankind, which made it necessary to formulate a definition of aggression. Lastly, paragraph 10 referred to the Charter's provisions concerning the right of peoples to self-determination, sovereignty and territorial integrity.

With regard to operative paragraph 1, he wished to stress that the sponsors of the draft had not wished to prejudge the question of the respective rights and duties of the Security Council and the General Assembly with regard to the maintenance of peace. That was why the text stated that the United Nations only had competence to use force in conformity with the Charter, without specifying the competent body. Similarly, the fact that the Security Council was mentioned in operative paragraph 2 did not imply that the sponsors had adopted any particular position on the question.

In conclusion, he noted that the sponsors wished to be flexible and were open to any suggestions which would improve the text.

Mr. HARGROVE (United States of America) congratulated the sponsors of draft proposal A/AC.134/L.16 on having brought their labours to a conclusion but regretted that the views of various delegations, including his own, had not been taken into account in the preparation of the text. He concluded with regret that the new draft, far from moving the Committee closer to general agreement, only widened the differences of opinion in the Committee.

First, the new draft contained a number of provisions which, if adopted, would amount to a revision of the Charter by paraphrase. Operative paragraph 2 was an example. The corresponding paragraph in the thirteen-Power draft (A/AC.134/L.6) had stated that aggression was the use of armed force "by a State against the territory... of another State, irrespective of the effect upon the territorial integrity, sovereignty and political independence of such State...". Certain delegations, including his own, had pointed out that the language of that paragraph went far beyond Article 2 (4) of the Charter, which stated that Member States shall refrain "from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations". While it was true that the co-sponsors had taken into account the comments of the United States delegation in that regard, operative paragraph 2 of their draft nevertheless modified Article 2 (4) of the Charter so

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as to prohibit the use of force by one State either against another State or in any manner which would "affect" the territorial integrity, sovereignty or political independence of that State, even if in the latter case such use could not be said to be "against" the victim State. Moreover, operative paragraph 2 of the draft - like operative paragraph 1 of the thirteen-Power draft - omitted altogether any mention of inconsistency with the Purposes of the United Nations, which was one of the principles stated in Article 2 (4) of the Charter.

Another example of that type of "revision by paraphrase" occurred in operative paragraph 3 of the new draft, which departed from Article 51, particularly through the use of the parenthetical expression "armed aggression" in the English version of document A/AC.134/L.16. It was true that the French version of Article 51 of the Charter used the expression "agression armée", while the corresponding term in the English text was "armed attack". That was an unfortunate discrepancy, but the fact remained that in the English version of the Charter the concept of aggression and the concept of armed attack were quite distinct and that the expression "armed aggression" did not appear at all. Therefore, his delegation could not agree that the term "armed aggression" should be substituted for or taken as interchangeable with "armed attack" in Article 51.

A final example of revision appeared in operative paragraph 4 concerning Article 53 of the Charter. It had been said in the corresponding paragraph of the thirteen-Power draft that "Enforcement action or any use of armed force by regional agencies may only be resorted to in cases where the Security Council acting under Article 53 of the Charter decides to utilize for the purpose such regional agencies". The notion of "utilization" by the Security Council had been eliminated; that change was altogether appropriate, since the second sentence of Article 53 contained the relevant provisions, and that portion of the Article had been inaccurately paraphrased in operative paragraph 4 of the new draft. For example, the Charter mentioned not "decision" but "authorization", and use by regional agencies not of "armed force" but rather of "enforcement action" which was quite a different concept.

The new draft, furthermore, deprived the General Assembly of its most important responsibilities for the maintenance of international peace and

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security. Operative paragraph 2 of the thirteen-Power draft had stated that "... only the United Nations, and primarily the Security Council, has competence to use force in conformity with the Charter...". The effect of the paragraph taken by itself was clearly to distribute responsibility between the Security Council and the General Assembly. Operative paragraph 1 of the new draft, by contrast, had dropped the reference to the Security Council's primary responsibility and stated that "the United Nations only has competence to use force in conformity with the Charter". While that provision did not prejudice the issue, the latter was unequivocally decided in paragraph 2, which stated that "aggression is the use of armed force... save under the provisions of paragraph 3 hereof or when undertaken by or under the authority of the Security Council...". In that connexion, the provisions of Article 11 of the Charter and General Assembly resolution 377 (V), "Uniting for peace", should be recalled; the latter stated that "if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security". It was worth recalling that the Organization had invoked those provisions less than two years ago, on the initiative of a member of the Committee.

The sponsors of the new draft had, furthermore, introduced the concept of "first use" as a criterion for determining the legitimacy of acts of force (operative paragraph 5). His delegation had already stated its objections on that matter; therefore, he would say only that his delegation was not satisfied that the new draft had avoided the anomalies attendant upon any effort to substitute the concept of "first use" for the inherent right of self-defence as a criterion for determining the legitimacy of acts of force in international relations. That was true even though "first use" was employed there on a somewhat more limited basis than in the Soviet draft.

With regard to the question of the various forms of illegal use of force which might constitute aggression, his delegation could not accept any definition of aggression which did not take full and equal account of aggression involving

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indirect or covert uses of illegal force. He knew of no reason, either in the Charter or in the facts of international life, which would justify such a change of position; the present draft was therefore not only completely unacceptable in that respect but also a regression from the thirteen-Power draft, operative paragraph 1 of which had expressly mentioned the use of "direct or indirect" armed force. The omission of those words in the present draft could lead only to the conclusion that it was designed to exclude from the definition of aggression a wide class of illegal uses of force. Statements of the co-sponsors seemed to confirm that conclusion, which was all the more remarkable because some of the co-sponsors had acknowledged in the Committee that "indirect" uses of force might constitute an "armed attack" and thus, in their view, an "aggression". That was nothing more than could be said of any form of the use of force, yet indirect uses of force had been excluded. That exclusion was arbitrary, because it was justified neither by facts nor by the Charter, which mentioned the "use of force" in international relations (Article 2, paragraph 4), without differentiating among the various kinds of illegal force or ascribing degrees of illegality according to the nature of the techniques employed. No provision of the Charter provided for any such distinction, and most of the violence committed during the past twenty-five years had been in the form of force by one State against another by less obvious and direct methods. To maintain that direct uses of force were more dangerous to peace was questionable; a breach of the peace by such methods might be potentially the more destructive, but it was not necessarily the more likely to occur. Nor were they necessarily the more dangerous to the State which was the victim, for which it was no comfort to know that, if more open methods had been used to inflict the same injury against it, they would have been condemned as "aggression".

The draft went further in that it expressly forbade any State which was the victim of aggression to exercise its right of self-defence recognized by the Charter in the case of acts of indirect force. Such a position had no foundation either in the provisions of the Charter or in the practical experience of the international community. Under the Charter, if armed personnel invaded the territory of another State, the right of the latter to self-defence did not depend on the obtrusiveness of the aggression. Nor did the magnitude of the danger, for a well-organized clandestine invasion obviously could cause more harm than a few shots across a frontier; the present draft, however, would deny the victim the right of self-defence in the former case while providing it in the latter. It had

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been argued that to acknowledge the right of self-defence in cases of indirect aggression would invite a response by the victim State out of proportion to the injury inflicted; however, there had been no explanation why the risk of such a response should be greater than in cases of direct aggression; in fact, it might well be less. The law of the Charter was the same for both situations: the victim of aggression might use whatever force was necessary to put an end to the injury being inflicted, and proportionate to it - no more, no less.

It had been said that proof of aggression was harder to establish in cases of indirect use of force than in other cases. In that regard, he recalled that questions of proof of aggression were not part of its definition. In any event, it had been argued that the aggressor was the one to fire first, yet that event, in cases of open conflict, might be more to establish than the fixing of responsibility for a clandestine invasion.

In short, the present draft was hardly consistent either with the Charter or with the facts of international life, and seemed to declare that, so far as the obligations of the Charter regarding the use of force were concerned, the question whether a State had the right to defend itself or not depended simply on the methods of force employed. That was not a principle on which international relations could be founded.

The United States delegation regretted that the sponsors of the new draft had failed to deal with a vital and difficult aspect of the definition of aggression: the problem of making sure that it covered acts by or against those political entitities whose claims to statehood might not be universally recognized but upon which the obligations of the Charter and international law as regards the use of force nevertheless fell. Any definition of aggression which failed to come to grips with that problem would be unrealistic and inadequate.

The United States delegation had already stated its position on the inclusion in the enumerative part of the definition, operative paragraph 5, of acts which did not necessarily involve a use of force. The provision relating to international criminal responsibility fell outside the scope of a definition of aggression. Finally, the general definition in operative paragraph 2, while apparently not intended to cover "indirect" uses of force, would extend even to trivial instances of direct use of force and would thus bring within the concept of "aggression" acts which could not reasonably be supposed to have been intended to engage the powers of the Security Council under Chapter VII of the Charter.

Mr. CHAUMONT (France) said he wished to make some general comments on draft resolution A/AC.134/L.16. He agreed with the United States representativ...

(Mr. Chaumont, France)

that operative paragraph 7 constituted a regression as compared with the corresponding paragraph of the thirteen-Power text. The paragraph in question modified the basic concept of the thirteen-Power text and of the Soviet proposal. It was for reasons related to the difficulty of proof that the French delegation found it hard to accept the wording in the thirteen-Power draft and in the Soviet text. He agreed with the United Kingdom and United States representatives that there were cases in which it was not the fact of wearing an official army uniform or not which modified the situation regarding aggression. When combatants were sent from outside into the territory of a State for the purpose of engaging in military operations, the fact that such combatants wore or did not wear a regular army uniform did not constitute an important difference. In that case, the question of proof did not give rise to the same difficulties as in the other cases. However, certain delegations accepted a concept of indirect aggression which was much more extendable, broad and vague. In their view, the idea of indirect armed aggression must include the situation in which the elements of the local population, i.e. those belonging by their origin and nationality to a given State, engaged in military operations within that State. In that case, the question of proof assumed capital importance. The problem was to ascertain whether it was a dispute between the elements of the local population and the local authorities. Could it be said in that case that there was foreign aggression if those elements of the local population received the support of a foreign Government? The proof that the local dispute had its origin solely abroad was difficult to establish. How was it possible to distinguish what could be a foreign dispute from a local dispute, governed by the principle of non-interference in the internal affairs of a State? It was very difficult, when there were no armed bands originating from abroad, to distinguish between an external aggression and a national dispute which involved local elements of the population.

Mr. DARWIN (United Kingdom) maintained that it would be illogical to say that a State whose frontiers had been crossed by military groups was not a victim of an armed attack. The only two questions which arose were the proof and the scale of the attack. As far as the proof was concerned, the realities of international life showed that there were cases in which an invasion was undoubtedly being organized by another State under cover of irregular elements. That constituted aggression. If the Committee intended to work out a valid definition of aggression, that question should be thoroughly studied. As for

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(Mr. Darwin, United Kingdom)

the scale of the attack, no one claimed that the right of self-defence was an unlimited right and that it justified an action of any scale without regard for the scale of the attack suffered. Any answer to that problem lay in the principle of proportionality. Article 39 of the Charter also mentioned a breach of the peace, a question which came within the competence of the Committee. Aggression was a very dangerous form of a breach of the peace. A breach of the peace included an element of violence. There could be cases of a breach of the peace which were not acts of aggression. However, in the case of an armed attack, even if it amounted to a breach of the peace, the State attacked could exercise its right of self-defence as referred to in Article 51 of the Charter. The relationships between Article 51 and other provisions of the Charter should not be examined too superficially. The difficulty was aggravated by the fact that the French text of Article 51 used the words "agression armée" and not "attaque armée". There was no point in dealing with the question as if it was a mere linguistic difficulty. Account must be taken of the context of the Charter and of the realities of international life.

Mr. ALCIVAR (Ecuador) said his delegation was a co-sponsor of the ten-Power draft (A/AC.134/L.16). Apparently, operative paragraph 7 of that text, which corresponded to paragraph 8 of the thirteen-Power draft, gave rise to the most objections at that stage of the debate. First of all, it was clear that paragraph 7 did not deal with direct armed aggression but with what might be called indirect armed aggression. However, even if that concept were accepted, it was impossible to deduce that the right of self-defence was unlimited. The danger was that invasion by armed bands might be invoked not only to exercise the right of self-defence but also, under cover of that right, to commit interventions. The representative of France had very rightly stressed that in that field it was very difficult to obtain proof. For that reason, the Committee should study thoroughly the basic juridical problem raised by the distinction between direct armed aggression and indirect armed aggression. It was absolutely essential to draw up clear demarcation lines in order to ensure respect for the principles of non-intervention and the sovereign equality of States.

Mr. ROSSIDES (Cyprus) said that he wished to comment on the remarks made by the representatives of the United States and the United Kingdom. Firstly, it should be noted that border incidents were not referred to in the ten-Power draft. Such incidents obviously did not constitute acts of war, and they did not appear

(Mr. Rossides, Cyprus)

in the list contained in operative paragraph 5 of the draft. Secondly he viewed the problem of armed bands in the light of the principle of proportionality. Armed bands presumably operated in a clandestine manner. However, Article 51 of the Charter must be taken to apply to a full-fledged attack; consequently, if the State invaded by armed bands launched an actual war against the State from which the bands supposedly came, there was no longer any proportionality. It had been the intention of the sponsors of the draft to provide no possible excuse for a State which started a war. He also wished to clear up a misunderstanding: it was not true that the sponsors of the draft sought to deny any means of defence to a State which was invaded by armed bands; they merely wished to state that Article 51 did not apply. Even if, in a given case, the invasion was of such proportions as to create an imminent danger of the kind envisaged in Article 51, and it was not possible for the State in question to bring the matter before the Security Council - and assuming that there had not been an act of aggression within the meaning of Article 39 - the invasion nevertheless constituted an act of aggression rather than an armed attack. Hence, the State in question could not invoke Article 51. Under the traditional rules of international law, it was recognized that a State could obtain reparation by the use of force if it was the victim of illegal acts committed by another State and there was no question that an invasion by armed bands did constitute an illegal act; the fact remained, however, that the victim of such an illegal act was not entitled to invoke Article 51. As the representative of France had pointed out, the question of proof was of the utmost importance. In one case, for example, armed bands organized by a State had invaded the territory of another State but had done so from the territory of a third State rather than from that of the first State. In such cases, granting the victim the right to react immediately had the effect of creating a situation which was inimical to the interests of peace. Operative paragraph 7 of the ten-Power draft was justified in two respects as far as the Charter was concerned. First of all, if an armed attack was not equivalent to an act of aggression that fact should be stated in Article 39 of the Charter; since that was not the case, an armed attack had to be regarded as equivalent to an act of aggression. Moreover, the French text of Article 51 used the term "agression armée", thus establishing a direct connexion between Articles 51 and 39. He was, however, prepared to consider a formula which

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(Mr. Rossides, Cyprus)

would specify that, in the event of a large-scale invasion by armed bands involving imminent danger comparable to that resulting from an armed attack, the victim of the invasion could react as if it were exercising its right of self-defence under Article 51, without first bringing the matter before the Security Council.

Further support of his position was to be found in the draft Code of Offences against the Peace and Security of Mankind. Article 2 of the draft Code listed a number of illegal acts which constituted offences against the peace and security of mankind. Paragraph (1) of the article dealt with all acts of aggression. The organization of armed bands was the subject of another paragraph, namely, paragraph 4. Finally, paragraph (9) referred to coercive measures of an economic or political nature taken by one State for the purpose of interfering in the affairs of another. It was apparent from the list that the acts referred to in paragraph (4) and (9) did not constitute acts of aggression, since if they did they would appear in paragraph (1). It was therefore difficult to accept the idea that the organization of armed bands constituted an act of aggression.

Mr. HARGROVE (United States of America) said that from the outset his delegation and others had tried to state their views frankly and precisely in the expectation that the sponsors of drafts would take them into account when preparing their texts. It was clear that a definition which failed to reflect those views together with the other schools of thought represented in the Committee would have no chance of becoming a generally accepted interpretation of international law and of the Charter and would therefore be of no legal significance. The Committee had so far had before it four draft definitions. None of those drafts had taken account of the views expressed by a number of delegations on a number of important issues. There had, however, been negotiations which had given reason to hope that the sponsors of the new draft (A/AC.134/L.16) would consider the views on basic points expressed by those delegations. Unfortunately, the new draft, far from producing agreement, served to widen the existing differences of opinion and was even further from being a fair and reasonable interpretation of the Charter. The delegations of Canada, Italy, Japan, the United Kingdom and the United States had therefore felt obliged to

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(Mr. Hargrove, United States)

submit their own draft definition (A/AC.134/L.17). Paragraph I indicated the role played by the concept of aggression in the Charter. The first sentence of paragraph II employed the language of Article 2 (4) of the Charter, on which any definition of aggression had to be based. It was designed to state clearly the legal irrelevance of such factors as the directness or openness of the force employed. The inclusion of the words "without prejudice to a finding of threat to the peace or breach of the peace" made it possible to take full account of the role of the concept of aggression in the Charter, as set out in paragraph I. The second sentence of paragraph II was intended to ensure that a definition of aggression covered political entities whose claim to statehood might be in some way disputed or qualified but which were nevertheless required to comply with the Charter and with international law in so far as related to the use of force. Paragraph III defined the uses of force which could not constitute aggression under the terms of the Charter. Finally, paragraph IV gave a non-exhaustive enumeration of the uses of force which could constitute aggression. It was clear from that enumeration that the draft took full account of the variety of forms of illegal use of force which could constitute aggression under the Charter. The essential feature of the draft was that it was completely consistent with the provisions of the Charter. Needless to say, it contained no provision which was intended in any way to derogate from the provisions of the Charter or to alter any right or obligation enumerated in the Charter. In the view of his delegation, those were the criteria which should be applied to all drafts before the Committee. The submission of the present text was a further example of the goodwill which his delegation had demonstrated since the start of the Committee's work. That did not mean that it had altered its position or that it did not remain sceptical with regard to the usefulness of a definition of aggression. It would, however, continue to associate itself in good faith with the efforts of members of the Committee to discharge the mandate given them by the General Assembly.

Mr. AKWEI (Ghana) said it was unfortunate that the five-Power draft (A/AC.134/L.17) which had just been put before the Committee had not been submitted earlier. However, he felt that it represented a sincere effort to assist the Committee in its search for a satisfactory definition of aggression.

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(Mr. Akwei, Ghana)

With regard to operative paragraph 7 of draft A/AC.134/L.16, he thought that at the present stage of the Committee's work those delegations which wanted a specific wording in order to express their views should take action themselves. The task of finding a definition was a political as well as a legal one. Some delegations were too concerned with strictly legal questions, thus creating further difficulties. In order to prevent acts of aggression, it was essential to try to anticipate the situations which might arise.

As to the question of armed bands, he wished to state once again that incursions by a few foreign volunteers into the territory of a State should not necessarily give that State grounds for exercising its right of self-defence. However, since such acts sometimes reached such proportions that they could well become more than mere acts of terrorism or subversion, the definition should take into account those types of incursions by armed bands which could justify recourse to self-defence.

Operative paragraph 7 of draft A/AC.134/L.16 reflected the view of certain delegations that small-scale activities by armed bands did not justify recourse to self-defence. Such situations could be controlled from within the country concerned. On the other hand, some delegations felt that acts other than an armed attack could justify recourse to self-defence, and a paragraph reflecting their views could perhaps be inserted in the definition. However, those delegations should themselves take the initiative in the matter.

Mr. ROSSIDES (Cyprus) said that he welcomed the submission of a new draft definition. Speaking on behalf of his delegation, he said that, as far as operative paragraph 7 of draft A/AC.134/L.16 was concerned, it might be possible to draft a text which took account of the following two ideas: firstly, that the sending of armed bands into the territory of a State did not immediately constitute a casus belli; secondly, if the State in question felt that the invasion of its territory was assuming sufficient proportions it could have recourse to self-defence, subject to a finding by the Security Council that an armed attack was occurring and in accordance with Article 51 of the Charter.

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Mr. CAPOTORTI (Italy), noting that his delegation was one of the sponsors of draft A/AC.134/L.17, said that he wished to state his views concerning the reason for the new proposal and the nature of that text. With regard to the first point, he recalled that the delegations which had expressed misgivings concerning the drafts previously submitted had been criticized for not taking a constructive approach. The new proposal was a response to those criticisms. As to the fact that the proposal had been submitted at a late stage, he pointed out that its sponsors had waited for the revised text of the thirteen-Power draft and had then needed more time to study that text. Moreover, he did not think that any time had been lost. Up to the present, the Committee had discussed the preambles of the various drafts, and the new proposal did not have a preamble.

With regard to the substance of the proposal, he wished to point out that the problem of "indirect" aggression had assumed more and more importance during the debates. He therefore thought it regrettable that there was no reference to that type of aggression in the thirteen-Power draft. It was surprising to note that, a few years earlier, there had been general agreement on at least certain aspects of the problem, as could be seen from the first Soviet draft and the Mexican draft. A gradual tendency had developed to omit any reference to the matter. However, the sponsors of the new proposal attached very great importance to it, and the text which they had drawn up emphasized the need to place direct and indirect aggression on the same plane. The text was in complete conformity with the Charter in that it stressed the authority conferred on the Security Council by Articles 24 and 39 of the Charter and frequently employed the language of that instrument. The list of possible cases contained in paragraph IV of the new proposal was in no way intended to be exhaustive. It was meant to provide general guidance, thus leaving the Security Council the greatest possible freedom of action.

Mr. NASINOVSKY (Union of Soviet Socialist Republics) observed that, with the submission of the new proposal, no objections were being raised any longer against attempts to define aggression. The members of the Committee were now unanimous in the view that such a definition must be formulated.

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Mr. BEESLEY (Canada), noting that his delegation was one of the sponsors of the new proposal (A/AC.134/L.17), observed that Canada felt that the definition should meet certain criteria and that it had considered the various drafts in the light of those criteria. Although the ten-Power draft (A/AC.134/L.16) contained many constructive elements, it did not satisfy that basic requirement. That was why Canada has joined with a number of other countries in submitting a new proposal which met all the criteria that had been put forward. The new draft preserved the discretionary power which the Security Council enjoyed as the United Nations organ having primary responsibility for the maintenance of peace. It did not restrict the Council's power to determine the existence of an act of aggression. It precluded any automatic application of the definition by the Council. It was in conformity with the provisions of the Charter, particularly Articles 24, 39 and 51. It was applicable both to States and to entities which were not universally recognized as States. It omitted the idea that the aggressor was the one who attacked first, without taking into account the inherent right of self-defence. It was neither too general nor too specific. It respected the inherent right of self-defence laid down in Articles 51 and 52 of the Charter. Finally, it was applicable to indirect aggression or at least to the indirect use of force. In that connexion, he had listened with great interest to the statements of the representatives of Ghana and Cyprus, who had initiated a constructive dialogue on that point.

The meeting rose at 6.25 p.m.

SUMMARY RECORD OF THE FORTY-FIFTH MEETING

Held on Wednesday, 26 March 1969, at 11.5 a.m.

Chairman: Mr. FAKHREDDINE Sudan

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTIONS 2330 (XXII) AND 2420 (XXIII) (A/7185/Rev.1; A/AC.134/3; A/AC.134/L.12, L.15, L.16 and L.17 (continued)

Mr. CAÑADAS (Spain) said that his delegation had noted with satisfaction the increasingly technical and constructive tone of the proposals submitted and the discussions taking place in the Committee. It was difficult to find even the smallest amount of common ground when certain countries stood to gain by maintaining the status quo in all its ambiguity. But law must take the place of force if there was to be coexistence based on justice. His country had always taken that position and had accordingly tried to help pave the way for an adequate definition of aggression. Although it considered that the definition should preferably deal with aggression in a broad sense, it had agreed that the Committee should devote its efforts in the first stage to defining direct aggression. Accordingly it had been a co-sponsor of the thirteen-Power draft (A/7185/Rev.1, para. 9). That draft was not regarded as perfect, but as a basis on which agreement might be reached. Once a set of principles had been agreed upon, it would be possible to seek more precise formulations which took account of the positions taken by the various delegations. He appreciated the spirit of co-operation in which a number of delegations had commented on the thirteen-Power draft, although he could not agree with all the criticisms levelled at the principles it contained.

The Committee now had before it a new draft proposal submitted by the Soviet Union (A/AC.134/L.12), a helpful contribution on which the sponsor was to be congratulated. There were various of its provisions, however, that his delegation was unable to support. In that connexion, it agreed with many of the penetrating observations made by the representative of France.

His delegation welcomed the new five-Power draft proposal (A/AC.134/L.17). While it was too early to discuss it in detail, he noted that its submission was in itself an encouraging sign. The form of the text was original and attractive, the first part of paragraph II was very interesting and paragraph IV, sub-paragraphs A and B, appeared to contain some highly relevant points. His delegation had reservations, however, about other elements of the draft.

(Mr. Cañadas, Spain)

His delegation felt that the ten-Power proposal (A/AC.134/L.16), more than any other, gave a comprehensive definition of aggression in an objective, concrete and precise manner and yet left the way open for subsequent improvements. The preamble combined elements of the thirteen-Power draft with ideas, suggestions and proposals formulated in the course of the Committee's debates. It reaffirmed the relevant provisions of the Charter and explained the need for a definition and its importance at the present time. In the operative part his delegation had noted especially paragraphs 2, 5, 8 and 10, which contained the basic elements that should be included in any definition of aggression. Operative paragraph 2 indicated the basic elements constituting the integrity and sovereignty of the State. Any violation of them was an attack on the concept of statehood and thus threatened the security of the international community. If those elements were established no act which might interfere with them could escape the scope of the definition. The provisions contained in paragraphs 5 and 8 were particularly relevant in view of the present international situation. International law differed from domestic law in that it had no means of enforcement, no courts to inflict penalties, and therefore the only way to make a definition of aggression effective was to link the illegal act to its consequences and refuse to recognize any situation resulting from the commission of an illegal act. The annexation of a territory by force was a particularly important case in point.

The definition could not be retroactive, nor should it sanction unjust situations or deprive people of the exercise of rights which were older and therefore more important than the concept of aggression. Article 10 of the draft was designed to provide for that aspect.

Believing that the most effective possible approach had been taken in the ten-Power draft (A/AC.134/L.16), his delegation wished to add its name to the list of sponsors.

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The CHAIRMAN said that Australia wished to join the sponsors of document A/AC.134/L.17.

Mr. BEESLEY (Canada) said that his delegation had voted in favour of the resolution continuing the Special Committee, because it believed that more progress had been achieved than was reflected in the texts then before the Committee. It did not, however, consider any of the definitions so far presented, including document A/AC.134/L.16, to be legally adequate. Although his delegation had long-standing reservations about the utility of a definition of aggression and continuing doubts as to the possibility of reaching agreement on an adequate one, it did not oppose the idea of a definition provided that it met certain essential legal and political criteria.

The members of the Special Committee were more than mere representatives of Governments, for the whole membership of the United Nations was represented through them and consequently they owed a duty to the other Member States on whose behalf they were acting. They should therefore concentrate on their common task and avoid, as far as possible, allowing themselves to be diverted by their respective national preoccupations. They all shared a concern to maintain international peace and security and protect the sovereign equality, territorial integrity and political independence of States against aggression, and that common aim should be the yardstick against which they should measure every statement, proposal or draft definition. Canada had always taken an active part in United Nations peace-keeping operations and therefore had good reason to judge any definition of aggression very strictly and against criteria of universal application. Although the new draft definition (A/AC.134/L.17) co-sponsored by Canada contained certain controversial ideas, he believed it to meet the necessary requirements.

His delegation had no strong feelings about the desirability or otherwise of a preamble, but in the present case it had not been considered necessary to include one. Regarding the operative part, there were certain criteria which any proposed definition should fulfil and which his delegation had set forth in Geneva at the 11th meeting.

Firstly, it should safeguard the discretionary authority of the Security Council as the United Nations organ with the primary peace-keeping responsibility

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(Mr. Beesley, Canada)

and should not restrict the Council's power to make a finding of aggression in any case of a threat to or breach of the peace. The first operative paragraph of the new draft had been specifically drafted so as to safeguard the Council's discretionary authority by allowing it to apply the definition "when appropriate". Moreover, it emphasized the Security Council's primary responsibility for the maintenance of international peace and security and referred specifically to Articles 24 and 39.

Secondly, there should be no element of automaticity in the definition. It should be left open to the Security Council to apply it or not, as the particular case might require. As his delegation had said in Geneva (A/AC.134/SR.11), if the Security Council was to be expected to use the Committee's definition, its role would change from policeman to judge and jury. It would not only have to prevent the crime of aggression but would have to identify and punish the culprit, and to do so, according to the wishes of some speakers, virtually automatically. The aim might seem unexceptionable, but it was open to question whether the international community was ready to take such a major step forward in international law enforcement. Many countries still refused to accept compulsory third party settlement even of strictly legal disputes. Paragraphs I, II and IV were therefore all couched in language which made it clear that the proposed definition was not to be applied automatically in any situation and which was also specifically intended to leave various possible courses of action open to the Security Council.

Thirdly, the definition should be consistent with and founded upon the provisions of the Charter of the United Nations, particularly Articles 1, 24 and 39. There had been considerable discussion both in the Working Group and in the Special Committee on the relationship between an act of aggression and a breach of the peace, and some speakers had drawn attention to the fact that the relationship between the two was treated differently in Article 1 and in Articles 39 and 51. Paragraphs I and II of the proposed definition had therefore been drafted to avoid prejudging that question in any way.

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(Mr. Beesley, Canada)

Fourthly, the definition should be consistent with the Charter provisions concerning self-defence, in particular Article 51, and regional security arrangements (Article 52). As his delegation had pointed out in Geneva (A/AC.134/SR.11), it seemed to be generally agreed that the only legitimate exceptions to the Charter's prohibition of the use of force were the inherent right of individual or collective self-defence and participation in measures to maintain or restore international peace and security decided on by the appropriate organs of the United Nations or by other competent bodies. As regards self-defence, the key questions were at what point in time the right came into being and what kind of action constituted aggression: whether it was sufficient to ask merely who fired the first shot; whether there must be an actual use of force; whether a threat of force could be so serious as to constitute a threat to the peace and, as such, aggression; whether a State which massed troops on its border in order to menace a neighbouring State was guilty of aggression; and whether a country must await the actual use of force before invoking its right of self-defence. His delegation considered that it was not the task of the Committee to interpret the Charter principle of the prohibition of the use of force. The wisest course would be to indicate the general exceptions to the prohibition of force and leave the Security Council to determine whether those exceptions were applicable in any given instance. That was done in paragraph III.

Fifthly, the definition should be equally applicable to States and to entities not generally recognized as States. He drew attention to the second sentence of paragraph II which he believed dealt with the problem successfully.

Sixthly, the definition should not make the first party to use force automatically the aggressor. It should focus instead on the two elements of unlawful intent and illegality of the act itself. Reference to intent was made in paragraph II, which spoke of acts of aggression by a State against the territorial integrity or political independence of any other State, in paragraph III, which dealt with the use of force in self-defence or pursuant to decisions of the United Nations or other competent organizations, and in much greater detail in paragraph IV A.

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(Mr. Beesley, Canada)

Seventhly, the definition should be applicable not only to direct use of force but also to so-called indirect armed aggression (infiltration across frontiers by armed bands or external participation in acts of terrorism, subversion or other acts of violence) intended to infringe the territorial integrity of States. Neither direct nor indirect aggression should be stressed to the exclusion of the other; both posed equally serious threats to international peace and security and to the territorial integrity and political independence of States. He therefore drew attention to the reference in paragraph II of the proposed definition to "overt or covert, direct or indirect" use of force, and to paragraph IV B, in particular sub-paragraphs (6), (7) and (8).

Eighthly, the definition should be neither so general as merely to repeat Charter principles nor so specific as to suggest that it was exhaustive, but should be a mixed definition, both general and specific. Paragraphs I and II of the proposal could be deemed to constitute a general definition and could conceivably stand alone; paragraph IV was the enumerative section, but, as indicated in the introductory words, it was not exhaustive.

Lastly, in order to be of real utility, the definition must be acceptable to a majority of the Members of the General Assembly and to all the permanent members of the Security Council, a point which he had dealt with at the Committee's 43rd meeting. As he had said at the previous session, the crux of the peace-keeping problem, in Canada's experience, was the existence of a common will to act in support of international peace and security. While an acceptable definition of aggression would not of itself prevent aggression, nor its absence prevent the Security Council from taking effective action, any definition must be acceptable to all the permanent members of the Security Council if it was not to impede rather than assist the Council in carrying out its functions. That was not a legal requirement but a political one.

His delegation's sponsorship of the proposed definition should not be taken as an indication that its position was any less reserved concerning the practical utility of a definition or the likelihood of general agreement on an adequate

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(Mr. Beesley, Canada)

definition, but rather as a sincere effort to co-operate in carrying the Committee's work a stage further in response to views expressed by the majority of Members of the United Nations.

Mr. OWADA (Japan) said that he wished to explain the basic considerations that had prompted his delegation to co-sponsor the proposal contained in document A/AC.134/L.17.

As he had said at the Committee's 34th meeting, Japan was prepared to join in a common effort to find a generally acceptable definition of aggression, but the definition should not prejudice the functions of the United Nations in maintaining international peace and security, nor should it be misused for the purposes of political propaganda. The proposal in document A/AC.134/L.17 reflected the six specific points which he had mentioned in his previous statement and met the criteria for a satisfactory formulation.

First, his delegation had always stressed that the essential prerequisite for maintaining and strengthening international peace and security was strict and faithful observance of the Charter of the United Nations by all States without exception. The basic purpose of a definition of aggression should be to clarify the term "act of aggression" as it appeared in Articles 1 and 39 of the Charter and it should therefore be consistent with the relevant provisions of the Charter. The proposed definition was intended to achieve that aim and not to limit or modify the scope of those provisions.

Secondly, it was essential that any definition, if it was to be workable in practice, should be acceptable to all the permanent members of the Security Council. That was not, of course, a legal requirement arising from the provisions of the Charter or from any other rules of international law. Paragraph I of the proposed definition laid particular stress on the special role that the Security Council was expected to play, under the Charter, in the determination of the existence of aggression.

Thirdly, any definition must preserve the discretionary power of the Security Council to decide whether a specific situation involved an act of aggression under Article 39 of the Charter. That principle was covered in paragraph I of the proposed definition. It was not sufficient, however, to have a general reference

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(Mr. Owada, Japan)

to the principle; the whole definition should be based on it, in order not to undermine the security system provided for in the Charter. The proposal was therefore worded in a flexible way, avoiding any element of automaticity. He drew attention in particular to paragraph IV.

Fourthly, the definition should include certain acts which were normally referred to as indirect aggression inasmuch as those acts involved the naked use of armed force. That point was amply covered, first, by the inclusion of the phrase "overt or covert, direct or indirect" in paragraph II and, secondly, by the enumeration of certain typical cases of such acts in paragraph IV.B. (6), (7) and (8).

Fifthly, due consideration should be given not only to the element of illegality of the act, but also to the element of unlawful intent. That point was met by the formula employed in the proposed definition, which included those two aspects in paragraph IV, sub-paragraphs A and B. His delegation was convinced that that formula, together with the discretionary power of the Security Council to determine the existence of an act of aggression in each particular case, would go a long way towards eliminating the danger of abuse and misapplication of a definition and towards safeguarding the legitimate interests of the States involved.

Lastly, the question of aggression ratione personae was covered by the second sentence of paragraph II.

Mr. TWINE-BIGOMBE (Uganda) welcomed the submission of the proposal contained in document A/AC.134/L.17 as a positive contribution to the work of the Committee. With regard to paragraph I, his delegation believed that a definition of aggression would serve a number of purposes, one of which was that it would facilitate the work of the Security Council without restricting its authority. It hoped that the definition would serve as a moral guide to possible aggressors and that it would find a place in law schools and make a positive contribution to the study of the question as a whole, all of which might have been reflected in a preamble. Since the proposal did not have a preamble, however, he hoped that paragraph I would be redrafted to indicate what it was hoped to achieve by a definition of aggression.

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(Mr. Twine-Bigombe, Uganda)

With regard to paragraph III, while his delegation recognized the inherent right of individual and collective self-defence, it considered that one of the sponsoring delegations was adopting a double standard in agreeing to the inclusion of a provision dealing with what did not constitute aggression after having previously maintained that it was not necessary to do so.

Some delegations had rejected the idea of including a statement on the right of self-determination on the grounds, first, that it was the internal affairs of the State concerned and not a matter of inter-State relations, and, secondly, that it was irrelevant since it stated what did not constitute aggression while the Committee was dealing with what did constitute aggression. His delegation believed, first, that the exercise of the right of self-determination often involved more than one State, and, secondly, that if the definition would be clearer by stating what did not constitute aggression it should do so. If, for instance, the Government of Uganda gave active material support to the people of Namibia in their struggle for self-determination, that could, according to the proposal in document A/AC.134/L.17, be regarded as an act of aggression. As his delegation had, however, made clear during the twenty-third session of the General Assembly, a situation such as that existing in Namibia or the Territories under Portuguese administration constituted continued aggression, since an external Power was maintaining its domination over the people by military force. His delegation believed that a definition of aggression should contain a provision concerning the struggle for self-determination.

The sponsors of the six-Power proposal (A/AC.134/L.17) had criticized the sponsors of the eleven-Power proposal (A/AC.134/L.16) for not having taken their views into consideration. Those views had in fact been taken into consideration, but the text which had been submitted by the eleven Powers showed that the latter's views differed more from those of the six Powers than from those of the USSR.

Mr. MUTUALE (Democratic Republic of the Congo) said that he wished to clarify his delegation's position on the question of armed bands, a matter on which it had strong feelings. Under international law and the Charter, armed activities by subversive or terrorist bands were distinct from the activities of insurrectional movements or liberation movements. Insurrectional movements were

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(Mr. Mutuale, Democratic Republic of the Congo)

composed of nationals of the State in which they carried out their activities, who did so without the active or passive complicity of a third State. Armed bands, on the other hand, were composed of foreigners, persons alien to the territory in which they carried out their activities, and who did so with the active or passive complicity of a third State. Armed bands should not be confused with liberation movements; liberation movements carried out an international function and acted as the agents of the United Nations since they were fighting to implement a fundamental principle of the United Nations, namely, the principle of self-determination.

There appeared to be three schools of thought in the Committee: those who believed that armed subversion constituted armed aggression; those who saw dangers in that position and therefore considered it unacceptable; and those who thought that although armed subversion did not constitute armed aggression in all cases it did in some, and consequently the victim of armed subversion was sometimes entitled to act in self-defence. For the third group, it depended on the degree and imminence of the danger to which the State concerned was exposed.

Those who contended that armed subversion, while illegal, was not aggression were motivated by the fear of extending the concept of self-defence and of providing powerful States with a pretext for paternalistic intervention in the affairs of other States. However, to deny that armed subversion was armed aggression was to deny the victim the right to determine for itself whether or not it was justified in exercising its right of self-defence. To deny to a State a right given to it under the Charter was surely fraught with danger at a time when armed subversion was increasingly becoming a substitute for the more conventional methods of armed aggression. He could not see how extending the concept of armed aggression to include armed subversion would unduly extend the right of self-defence. The purpose of the principle of proportionality, which his delegation had first advanced, was to oblige a State which was the victim of an armed attack and which was using armed force in self-defence to control its reactions and to keep them within the bounds of what was necessary and sufficient to halt the aggression. A State victim of armed subversion by foreign bands would

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(Mr. Mutuale, Democratic Republic of the Congo)

be violating the principles of good faith, proportionality and the peaceful settlement of international disputes if in calculating the gravity of the situation or the nature and scope of its reaction, it termed "aggression" actions which neither the Charter nor the Security Council would so describe or "self-defence" what was really aggression on its part. Clearly, armed subversion did not automatically call for a precisely similar response, just as a blockade did not call for a blockade, for example, or an invasion for an invasion. The problem of armed subversion was particularly important to his country. If, as the eleven-Power proposal (A/AC.134/L.16) assumed, armed aggression was the same thing as armed attack, the armed subversion that had been directed against his country was armed aggression, because the Security Council itself had found that it had been the victim of armed attacks committed against it by foreign mercenary forces; yet it had not sent its army into action against Portugal.

Mr. DARWIN (United Kingdom) observed that the proposal co-sponsored by his delegation (A/AC.134/L.17) contained no preamble. Many delegations had expressed reservations regarding the preamble, the need for which, he felt, was not self-evident and had to be proved.

The six-Power proposal (A/AC.134/L.17) and the eleven-Power proposal (A/AC.134/L.16) were in agreement on the Security Council's power to determine whether or not an act constituted an act of aggression. Both drafts also recognized that the use of force was the main element of aggression and both gave definitions of the "mixed type". Finally, both drafts also contained a provision dealing with the right of self-defence and the legitimate use of force.

The two texts showed some terminological differences. The six-Power proposal was concerned with the use of force and did not cover other lawful or unlawful forms of coercion, because the sponsors felt that aggression required the use of armed forces acting under the control or with the consent of the aggressor State. The six-Power draft extended the strict meaning of the word "State" in international law to cover political entities in order to avoid ambiguity and anomalous situations. There was also a discrepancy in the use of the terms "armed aggression" and "aggression". The final definition must use terms which would not create unacceptable implications outside the field with which the

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(Mr. Darwin, United Kingdom)

Committee was concerned. Those differences, however, need not stand in the way of an acceptable and useful study of the problem.

One of the differences between the two proposals concerned attacks by armed bands which were not part of the official forces of a State, a problem dealt with in paragraph IV (B) (6) of the six-Power draft and in paragraph 7 of the eleven-Power draft. It had to be admitted in all logic that under the Charter the exercise of the right of self-defence was authorized in the case of attacks by foreign armed bands.

The six-Power text proposed a mixed definition because, although his delegation would have preferred a general definition, it was willing to yield to the Committee's desire for a mixed definition provided that the illustrative list enriched the definition. In his view, the six-Power proposal gave the most suitable form of enumeration. The logical inference to be drawn from Article I of the Charter was that not all breaches of the peace were acts of aggression; the list should therefore make it clear why the breaches of the peace enumerated were acts of aggression. Paragraph IV of that proposal constituted a single whole; part A described the aims of a breach of the peace which justified the Security Council in concluding that an act of aggression had been committed and part B listed examples of specific means whereby the intentions described in A were carried out. Parts A and B must therefore be read together. For example, the crossing by a unit of the armed forces of one country of the border of another country due to a navigational error could not be deemed to constitute aggression since none of the conditions listed in part A were present. Though it might be argued that the case he had given was a particular case, a definition, to yield satisfactory results, must fit all the particular cases likely to arise. It was not good enough if it fitted only the majority of them. The Committee's work would be seriously complicated if it also discussed the consequences of an act of aggression or situations other than those arising in international relations.

His delegation saw no need for the adoption of a definition, which it felt was unlikely to simplify the work of the United Nations. Even some legal definitions with binding force had failed to have any deterrent effect and a bad definition could be extremely harmful to the cause of peace and security. Nevertheless, he

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had co-sponsored the six-Power proposal because it met the criteria which his delegation had laid down in its statement at the 32nd meeting.

Mr. CAÑADAS (Spain) suggested that, to eliminate one ambiguity in paragraph I of the Spanish text of A/AC.134/L.17, the words "cuando lo estime oportuno" should be replaced by "cuando sea oportuno". He wondered whether the term "a State as described in paragraph II" used in paragraph IV applied also to political entities, which were mentioned in the second part of that paragraph.

Mr. CAPOTORTI (Italy), on behalf of the sponsors, accepted the wording proposed by the Spanish representative for paragraph I.

The meeting rose at 1.20 p.m.

SUMMARY RECORD OF THE FORTY-SIXTH MEETING

Held on Wednesday, 26 March 1969, at 3.35 p.m.

Chairman: Mr. FAKHREDDINE Sudan

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTIONS 2330 (XXII) and 2420 (XXIII)) (A/7185/Rev.1; A/AC.134/3; A/AC.134/L.12, L.15, L.16 and Add.1 and L.17 and Add.1) (continued)

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) expressed surprise at the secrecy which had surrounded the preparation of the six-Power draft (A/AC.134/L.17 and Add.1). He was also surprised to note the distance separating the statements made by the sponsors of the new draft before and after the submission of the text. His comments would be purely preliminary in nature; more detailed analysis would be given later. In the first place, the Russian translation of the six-Power draft was extremely bad. His impression was that certain Western Powers had decided to reconsider their position on the question of the definition of aggression. Although the Soviet delegation welcomed all initiatives intended to achieve a definition of aggression, if they were designed to help the Committee in its task, it could not say the same about the new draft.

The formulation used in paragraph I of the six-Power draft, which considered aggression merely as a term, revealed a desire to diminish the importance of the definition of aggression and consequently to disparage all the work done by the Special Committee since its establishment. The question was not simply one of terminology; it involved the definition of the principal crime in international law, in other words a legal concept of vital importance. The Special Committee had been established not for the formulation of a term but to define a concept of aggression, to show what was the content of the international crime of aggression, and to indicate the consequences of that crime.

Even a preliminary reading of the new draft showed that its sponsors seemed to be ignoring all the results already achieved by the Special Committee. It was known, for example, that the Committee had recognized that such a definition should be elaborated so as to describe aggression in all its forms and show all its dangers; it was also known that, at its Geneva session, the Committee had recognized the need for a preamble; some of the sponsors of the new draft had raised no objection to that at Geneva. Yet the new draft contained no preamble - obviously a step backwards. Similarly, the Committee had decided at Geneva that the definition should refer to the most dangerous aspects of aggression; practically nobody had objected to the idea that the definition should emphasize the special danger represented by the use of weapons of mass destruction as a means of committing an

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act of aggression; that idea was clearly expressed in paragraph 5 (c) of the eleven-Power draft (A/AC.134/L.16 and Add.1) and was stated still more forcefully in the Soviet draft (A/AC.134/L.12). It was therefore a generally accepted idea which should be retained, particularly in view of the current development of military techniques. Yet the six-Power draft contained no reference to that problem.

His next objection to the six-Power draft was that it ignored one of the most important social and political questions of the day - the struggle of peoples for their national independence, self-determination and sovereignty. That meant that the sponsors of the draft tended to give legal sanction to the colonial system in the definition of aggression, as could be seen from paragraph IV B (1) and (3), which used the expression "territory under the jurisdiction of another State". The illegality of colonial suppression was now a well-established principle of international law. That principle was confirmed by the Declaration on the Granting of Independence to Colonial Countries and Peoples set forth in General Assembly resolution 1514 (XV). That Declaration stressed the inadmissibility of any armed action or repressive measures against the dependent peoples and any attempts to destroy their national unity and the integrity of their national territories. In the opinion of the Soviet delegation, aggression was the use of armed force by one State against another; the sponsors of the new draft were introducing a new concept of territory under the jurisdiction of another State. The meaning given to that term by certain colonial Powers was well known. It was an attempt to claim that the territory of their colonial dependencies was under their jurisdiction. Needless to say, it was in flagrant violation of the above-mentioned Declaration contained in Assembly resolution 1514 (XV).

Several provisions in the six-Power draft were in contradiction with the Charter, including one of its most important ones - Article 53. Paragraph III of the six-Power draft quite simply placed regional organizations on the same footing as the United Nations. That was entirely incompatible with Article 53, which stated that no enforcement action should be taken under regional arrangements or by regional agencies without the authorization of the Security Council. That was why paragraph III of the six-Power draft was quite unacceptable, being contrary to both the letter and the spirit of the Charter. Attempts to place regional organizations

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on an equal footing with the United Nations were contrary to the Charter; that had been stressed by many delegations. The approach of the eleven-Power draft to regional organizations was much more rational; that draft stated in particular that enforcement action by regional arrangements or agencies might only be resorted to if there was a decision to that effect by the Security Council (see A/AC.134/L.16 and Add.1).

Lastly, the six-Power draft introduced certain concepts which complicated the Committee's task instead of facilitating it. For example, the second sentence in paragraph II referred to concepts such as "political entity", "international boundaries" and "internationally agreed lines of demarcation", which were quite irrelevant to the definition of aggression and which were not contained in the Charter.

It was necessary to draw attention to the notion of the "competent United Nations organs" which was included in the six-Power draft. That notion, as all knew, was meant to change the meaning of the most important provisions of the Charter and above all to diminish the primary responsibility of the Security Council for the maintenance of international peace and security under Article 24 and the specific powers of the Council laid down in Chapters VI, VII, VIII and XII.

On the whole, the six-Power draft far from dispelled the scepticism of the Western Powers towards the definition of aggression. Frankly speaking, the Soviet delegation was of the opinion that that draft could not be the basis for a serious discussion.

On the other hand, the eleven-Power draft did provide a good starting-point; in that connexion, the Soviet delegation had every reason to hope that it would be able to reach agreement with the sponsors of that draft on the essential points of the definition. It was willing to hold consultations with those sponsors. For instance, the Soviet delegation accepted in principle the whole of the preamble of the text and endorsed a number of elements in the operative part of the draft. The Soviet delegation was willing to establish fruitful contacts with the sponsors of the eleven-Power draft in order to bring the Committee's vitally important work to a successful conclusion. Such a result was vital for the United Nations and the members of the Special Committee.

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Mr. CHAUMONT (France) said that he wished to make some preliminary general comments on the two most recent drafts to be submitted (A/AC.134/L.16 and Add.1 and A/AC.134/L.17 and Add.1), reserving the right to make more detailed observations at a later stage. With regard to the first draft, namely, that submitted by the eleven Powers, his work was made partly easier by the fact that some of the items contained in the new draft were taken from the thirteen-Power draft and, in addition, the new text, as the representative of Cyprus had pointed out, took into account the views set forth in the Soviet draft (A/AC.134/L.12) as well as those expressed during the discussion on the Soviet draft and the thirteen-Power draft.

With the exception of certain questions of terminology, which he did not wish to go into for the moment, he considered the preamble of the eleven-Power draft to be generally acceptable. Thus, he had no comments on the first six preambular paragraphs, except that a slight alteration should be made to paragraph 4, by restoring the text of Article 39 in its entirety. His delegation had already suggested such an alteration with regard to the Soviet text; it had, moreover, been accepted by the sponsor of that text.

He did not wish to take a position as yet on operative paragraph 2, the wording of which did not appear to be absolutely clear, because certain qualifying elements which did not originate directly from the Charter had been introduced into it - he was referring in particular to the words "including its territorial waters or air space" - and his delegation's position with regard to the general part of the definition was well known. He thus had reservations concerning his delegation's position with regard to operative paragraph 2, to the extent to which its wording did not exactly correspond with the Charter. He preferred the wording of operative paragraph 1 of the Soviet draft.

As to operative paragraph 1 of the eleven-Power draft, he felt it was unnecessary to remind the Committee of his Government's position on the distribution of powers among the principal organs of the United Nations in connexion with the maintenance of peace. It would be realized that the expression "the United Nations only has competence to use force in conformity with the Charter" appeared to his delegation a little too broad. True, the representative of Cyprus had said that the reason for that wording was precisely the desire not to prejudge the question of the distribution of powers; nevertheless, in the following provisions it would

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be preferable to find a paragraph, or at least a sentence, which unequivocally stated that the Security Council had competence to determine an act of aggression, in accordance with Article 39 of the Charter. At the moment the eleven-Power draft contained no provision of that kind, for it had to be admitted that paragraph 5 was worded in too general a manner to express that idea. On the other hand, his delegation accepted paragraph 3, which duly emphasized the importance of adhering to Article 51; such adherence obviously did not depend on the Special Committee, but since some delegations had criticized the Soviet draft for not mentioning Article 51, his delegation saw no objection to referring to the right of self-defence, nor to using a dual formula relating to armed aggression and armed attack, since it felt that armed aggression should be understood within the meaning of Article 51.

With regard to operative paragraph 4, he had nothing against reiterating the principle set forth in the first part of Article 53 of the Charter and relating to the competence of regional agencies. However, there was some ambiguity, owing to the wording of that paragraph and in particular to the use of the terms "armed force" and "decision". In fact, Article 53 of the Charter mentioned only "enforcement action"; the use of the expression "armed force" therefore widened the scope of Article 53. Furthermore, the word "decision" seemed to imply that a decision of the Security Council was essential before regional agencies could resort to enforcement action. That was only one of the two possibilities provided for in Article 53, under which the Security Council could "utilize" the regional agencies or give them its "authorization". If reference was to be made to Article 53, the exact language of the Charter should be reproduced.

With regard to paragraph 5, his delegation had already stated its views on the enumerations already contained in the Soviet draft and in that of the thirteen Powers. If acts which constituted acts of aggression were to be enumerated, a legal connexion should be established between the various elements of the enumeration in such a way that, if a State which was the victim of an act of aggression not featuring in the acts enumerated resorted to self-defence, it would not for that reason be considered an aggressor itself.

His delegation reserved its position with regard to the principle of proportionality contained in operative paragraph 6; such a notion was difficult

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to handle, except if it was regarded as signifying that there was aggression only when the operations were sufficiently serious. With regard to paragraph 7, his delegation's views concerning the use of armed bands had already been stated in the Committee.

He also reserved his position on paragraphs 8 and 9, not because there could be any valid territorial acquisition resulting from aggression but because they were concerned with a legal consequence of the act of aggression, so that the principle might be placed more appropriately in the preamble rather than in the definition itself.

Finally, he thanked the sponsors for having taken into account in paragraph 10 the amendment put forward by his delegation with regard to the right of peoples to self-determination, but reserved his delegation's position on the second part of the paragraph for, if there was to be a mention of sovereignty and territorial integrity, reference should be made to Article 2 (1) and (4) of the Charter and it should be made plain that what was meant was the sovereignty and territorial integrity of States.

In conclusion, his delegation believed that draft A/AC.134/L.16 was, on the whole, a very constructive proposal.

Turning to the draft contained in document A/AC.134/L.17, he paid a tribute to the motives inspiring the sponsors and said that their proposal marked a stage in the Committee's work which was all the more important since some delegations had hitherto adopted, to differing degrees, an entirely negative stand as regards the definition of aggression. The proposal was evidence that no delegation had any longer a rootedly and absolutely hostile attitude to the principle that aggression should be defined and that, henceforth, all delegations would take an active part in efforts towards solving the difficulties of drawing up such a definition.

With regard to the text itself, it represented a novel attempt to approach the problem in a different manner from that traditionally adopted so far. Paragraph IV of the draft contained a new, interesting element, namely, an attempt to link the means with the ends, something that had never before been attempted. It was true that the starting point was entirely different, since the Soviet draft, in particular, was based on a desire to present aggression only as an objective and

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concrete reality and it therefore introduced an element of priority in the commission of certain material acts. As soon as one ceased to take the principle of priority as the basis, one was obliged to characterize the aggressor by the aims pursued, and that was the most original feature of draft A/AC.134/L.17.

There was need for some clarification of two points in paragraph I. In particular, the sponsors should specify what exactly they meant by the expression "when appropriate". Further, that paragraph, in the French version, meant that the determination of aggression was made by the Security Council alone. That appeared to contradict the language used in paragraph III, namely, "pursuant to decisions of or authorization by competent United Nations organs", which meant without any doubt that other United Nations bodies could authorize the use of force. That point of view was totally unacceptable to his delegation. The sponsors should thus try to remove the contradiction between the provisions of paragraph I and paragraph III.

The wording of paragraph II was far too general and could hardly be accepted in its present form. First, the word "force" referred to a much too general concept which was not what the Committee was trying to define, namely, armed force. Secondly, the expression "overt or covert, direct or indirect" was also too general and could cover practically any situation. Moreoever, if the aggression was "covert", it became by definition very difficult to prove. Thirdly, the concept of "political entity" was difficult to accept from the point of view of positive international law. The term "State" should be retained and there should be no departure from the framework of the Charter, which governed relations between States. That did not preclude the possibility of interpreting the word State in a broader sense, without requiring that the "State" in question should be totally and unanimously recognized by all Member States of the United Nations. Nevertheless, more appropriate terminology should be sought, in keeping with the principles of modern international law and with the language of the Charter.

With regard to paragraph III, his delegation had already stated its view that the language of the first paragraph of Article 53 of the Charter should be reproduced in its entirety.

(Mr. Chaumont, France)

He would be grateful if the sponsors of the draft would explain the meaning of the phrase "but are not necessarily limited to" used in the introductory sentence of paragraph IV. Was that merely an effort to preserve the discretionary power of the Security Council, or did it mean that the Council did not have to be guided by the definition - which was already far too broad - contained in paragraph II? He also had some misgivings about the two lists appearing in paragraph IV. The list of means (part B) was not exhaustive, as was apparent from the use of the phrase "by such means as"; however, the list of objectives (part A) was exhaustive. Did that imply that any of the means listed in part B became legal if the desired objective was not among those listed in part A? For example, if it was necessary to enforce an international decision, such as a judgement of the International Court of Justice, which was not among the objectives listed, could States legitimately have recourse for that purpose to one of the means listed in part B? Similarly, if a State considered that another State had failed to fulfil an international commitment, could it make use of one of the means listed in order to ensure respect for the commitment inasmuch as that objective was not included in part A? Many other situations of that kind could arise; that was why it was dangerous to include a list in a definition of aggression. In that connexion, the Soviet draft had the advantage of taking only material facts into account (basing itself particularly on the principle of priority), which made it possible to avoid such difficulties. That had also been the approach taken by the sponsors of draft A/AC.134/L.16, who had similarly adopted the principle of priority.

With regard to the list of means, particularly sub-paragraphs (6), (7) and (8) of paragraph IV, part B, he felt that insufficient account had been taken of the basic differences among the various means listed, since they alone helped to clarify the very difficult question of distinguishing internal revolts or dissident movements from acts of aggression of external origin. In order to establish that distinction, an effort could, of course, be made to determine whether the participants in such acts were nationals of the country concerned or foreign nationals, but the problem was nevertheless a very complex one and the list appeared to go much too far.

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(Mr. Chaumont, France)

In conclusion, his delegation considered that draft A/AC.134/L.17 merited the most careful consideration; the fact that it had been submitted gave cause for viewing the future with a measure of optimism.

Sir Kenneth BAILEY (Australia) said that his country had joined the sponsors of draft A/AC.134/L.17.

During the general debate, his delegation had expressed its doubts and reservations about the usefulness of adopting a definition of aggression. Under the provisions of the Charter, it was not necessary under any circumstances to determine that an act of aggression had been committed in order to enable the United Nations to take action for the maintenance or restoration of international peace and security. Moreover, it was a matter of record that the Security Council had only once found it desirable to determine that an act of aggression existed; on all other occasions, it had dealt with the situation on the basis of a threat to the peace or a breach of the peace.

Accordingly, his delegation did not feel that the formulation of a definition of aggression was of such great importance to the basic task of the United Nations, i.e. the maintenance of international peace and security. Nevertheless, it accepted its responsibilities in that regard in common with all other members of the Special Committee. In view of the fact that the Committee was now to consider several draft definitions and that his country did not share the views explicitly or implicitly expressed in those texts, particularly with respect to the interpretation of the Charter, it had seemed desirable to his delegation to express its own views in concrete form. For that reason, after carefully considering the other texts before the Committee, it had decided to join the sponsors of the proposal contained in document A/AC.134/L.17. His delegation would restrict itself, for the time being, to making comments of a general character on the draft definition.

First of all, the definition of aggression proposed in the document was not intended to enlarge the meaning given to the phrase "act of aggression" in the Charter. In the terms of the two articles where those words were used (Articles 1 and 39), an "act of aggression" was necessarily an act involving the use of force. It fell within the general category of "breaches of the peace". The first sentence of paragraph II of the six-Power proposal made clear the intention of

(Sir Kenneth Bailey, Australia)

the sponsors to keep within the meaning of the phrase as it was used in the Charter. Paragraphs III and IV confirmed that intention; paragraph III provided for certain cases in which the use of force did not constitute aggression, and paragraph IV contained a list of cases in which the use of force might constitute aggression. The constant thread running through the entire text was that an act of aggression was an act which involved the use of force in international relations. In the social sciences, no doubt, the concept of aggression might have different and wider scope. However, the Special Committee was concerned only with the meaning to be given of the term "aggression" as it was used in the Charter. In reply to a question by the representative of France, who had asked to know the sense in which the sponsors were using the word "force", he explained that they were referring to "armed force".

Secondly, the proposed definition was not intended to affect in any way the powers conferred on the Security Council by the Charter. Even if it was unanimously adopted by the General Assembly in a resolution, the proposal could neither extend nor limit the powers of the Council. It would not require the Council to determine the existence of aggression in every case of a breach of the peace. Nor, if the Council decided in any particular case that it was desirable to determine whether or not an act of aggression existed, would the definition have the effect of prescribing what elements were to be considered by the Council or of controlling the use it would make of those elements. In other words, the definition would not require the Security Council to find that an act of aggression existed even in a case where the circumstances were clearly covered by the definition. The Security Council would retain complete discretion in that regard.

Thirdly, paragraph IV of document A/AC.134/L.17 was important in that, taken in conjunction with paragraph II, it gave the draft definition the character of a "mixed" definition. Paragraph II was the general part. Paragraph IV contained a list of examples which was not exhaustive, as was stated at the beginning of the paragraph. All the means listed in paragraph IV, part B, could (if the Security Council so decided) constitute aggression. However, the uses of force which could constitute aggression were not necessarily

(Sir Kenneth Bailey, Australia)

limited to the cases listed. As the representative of France had pointed out, the list contained in part B was preceded by a statement indicating that the means listed were merely examples and that the list was incomplete. Other uses of force might well constitute aggression for the purposes of the definition in that they would fall within the general definition of "aggression" given in paragraph II.

The reference in the opening words of paragraph IV to "a use of force... as described in paragraph II" had a twofold effect: on the one hand, it made it clear that the list contained in paragraph IV was to be read in the light of the general definition in paragraph II; on the other hand, it made paragraph IV apply to the political entities other than States which were referred to in paragraph II.

Fourthly, his delegation had emphasized in the course of the general debate, the importance it attached to the inclusion in the definition of an effective provision regarding armed bands, saboteurs, terrorists and other irregular forces, whether directly sent by one State into another State or merely supported by a State which assisted their entry into another State. The provisions of paragraph IV, part B (6), when read in conjunction with the general words of paragraph II, answered that description. A definition which did not contain such a provision would do little to facilitate the application of the Charter to contemporary events, because in many areas of the world the customary method of aggression was the use of armed bands and infiltrators as distinct from conventional armed attack. The words used in paragraph IV, part B (6), were broad and comprehensive and should be interpreted in the light of the general provisions of paragraph II, under which the term "aggression" was applicable to the use of force in international relations, "overt or covert, direct or indirect".

He would try to reply to the comments which had been made on draft A/AC.134/L.17 during the meeting, although he had not had an opportunity to consult the other sponsors. The representative of the Soviet Union had pointed out that certain provisions which he considered important and which were contained in other drafts before the Committee were not included in the text in question. However that might be, he was disappointed that the Soviet representative had not commented on the substance of the draft. The sponsors had intentionally

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(Sir Kenneth Bailey, Australia)

not dealt with aggression as a crime against peace. Other organs were entrusted with the consideration of that question, but it was not within the Special Committee's terms of reference. Previous committees discussing the definition of aggression had been specifically entrusted with a mandate to define aggression as a crime. No such mandate had been given to the present Committee. The Soviet representative had also pointed out that there was no preamble. He personally had an open mind on whether a preamble was necessary. In and of itself, however, a definition of aggression did not require a preamble. The Committee's terms of reference called for it to try to devise a definition of aggression, and it would be the task of the General Assembly to draft a preamble. Hence, the fact that there was no preamble in draft A/AC.134/L.17 should not be taken to indicate a negative attitude towards the idea of defining aggression. The Soviet representative had expressed regret that the draft did not contain a specific provision establishing the right of peoples still under colonial rule to resort to force if the colonial Power was unwilling to withdraw. The Soviet representative had asserted that the use of the words "under the jurisdiction of another State" in paragraph IV, part B (1) and (3), was intended to perpetuate colonialism. His delegation could not accept the view that there was a right to use force to gain self-determination nor could it accept that the words "under the jurisdiction of another State" implied an intention to perpetuate colonial situations. The uses of force in accordance with the United Nations Charter were spelt out in paragraph III of document A/AC.134/L.17. In the course of its discussions, the Committee had tried to find a formula which did not prejudge the solution of the problems involved. However, the provisions of the Charter were clear as regarded the progress of dependent peoples towards self-government or independence. Concerning the references by the Soviet representative to the effect that the six-Power draft contradicted Article 53 of the Charter, it should be pointed out that Article 52 of the Charter provided for appropriate action by regional arrangements or agencies for the maintenance of international peace and security consistent with the purposes and principles of the United Nations.

He would reply to the remarks of the French representative at a later stage, since he wished first to consult the other sponsors of the draft.

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Mr. CAPOTORTI (Italy) said that he had listened closely to the comments on draft A/AC.134/L.17, of which his delegation was a sponsor. He noted that two types of criticism had been made. One was constructive and based on objective study of the text; the other was negative and merely impugned the sponsors' intentions. Of course, every text could be improved through dialogue, but the concept of dialogue implied mutual respect. It was very easy to distort the sponsors' intentions, but it did not contribute anything constructive. On the other hand, he was most grateful to the representative of France, who had brought out both the strong and the weak points of the draft.

The sponsors had been criticized for preparing their draft in private. He personally thought that it would hardly have been courteous to the sponsors of the other drafts to announce that a new text was being prepared, since that might have diverted attention from their own drafts. The absence of a preamble had been pointed out a number of times. However, the fact that the sponsors had not drafted a preamble did not necessarily mean that they were opposed to having one but simply that they felt that the Committee as a whole could prepare it. The Soviet representative had said that aggression was not a term but a crime. It should be pointed out that all terms, whatever they were used to describe, were nevertheless terms. That obviously did not mean that they could not also serve to describe crimes. In the draft, aggression was regarded as a term since it was necessary to find a definition for it.

In reply to the representative of France, who had asked the meaning of the words "when appropriate" in paragraph I, he explained that the words in question were intended to emphasize the discretionary power of the Security Council and were therefore closely linked with the words "without prejudice" in the first line of paragraph II. In the second line of paragraph II, the word "force" meant "armed force". The phrases "overt or covert" and "direct or indirect" had to be read in conjunction with each other. The sponsors had wished to make it clear that aggression was not always committed from outside. It sometimes involved the means listed in paragraph IV, part B (6), (7) and (8). The reference to political entities which were not States, i.e., which were not recognized as such by certain countries, was intended to put them on the same footing as States so that they could not try to evade the application of the definition. The representative of France had raised the objection that there was a contradiction between paragraph III,

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(Mr. Capotorti, Italy)

which referred to the competent United Nations organs, and paragraph I, which referred to the Security Council. It should be pointed out that the Charter conferred "primary", but not sole, responsibility on the Council for the maintenance of peace and security. In certain cases, the General Assembly could play a role. In the case of colonial problems, for example, in the opinion of some delegations, the General Assembly could make a ruling on the use of force. Hence, without prejudging the various points of view concerning the competence of other United Nations organs, paragraph III covered the cases in which a recommendation on the use of force could be made by organs other than the Security Council.

The Soviet representative had accused the sponsors of departing from Article 53 of the Charter in the reference to regional organizations. There was no basis for that accusation, since the phrase "consistent with the Charter of the United Nations" followed immediately afterwards. The text therefore did not go beyond the provisions of the Charter.

The difficulties of interpretation to which attention had been drawn in connexion with paragraph IV resulted from the fact that the French text was not sufficiently clear. There should be a comma after the word "Etat" so that it would be understood that the phrase "tel qu'il est décrit au paragraphe II" referred to the use of force. Moreover, the words "emploi de la force" should be linked more directly to the words "tendant à". The lists of objectives and means in parts A and B were not exhaustive. Lastly, in reply to the Soviet representative's objection to the use of the expression "territory under the jurisdiction of another State", he wished to say that he personally did not see any difference in meaning between that and the expression "territory of another State".

The meeting rose at 6.25 p.m.

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SUMMARY RECORD OF THE FORTY-SEVENTH MEETING

Held on Thursday, 27 March 1969, at 11 a.m.

Chairman: Mr. FAKHREDDINE Sudan

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTIONS 2330 (XXII) and 2420 (XXIII)) (A/7185/Rev.1; A/AC.134/3; A/AC.134/L.12, L.15, L.16 and Add.1, L.17 and Add.1) (continued)

Mr. VALLARTA (Mexico) said that his delegation had stated its position on the definition of aggression at the Committee's 6th and 20th meetings and would therefore provisionally confine its remarks at the present meeting to the six-Power proposal (A/AC.134/L.17 and Add.1), although his Government might have further comments to make later on. The submission of that proposal showed that its sponsors recognized that a definition of the concept of aggression contained in the Charter could in some circumstances act as a deterrent to a potential aggressor. However, paragraph IV A of that text, like paragraph 2 C of the USSR draft proposal (A/AC.134/L.12), followed a doubtful procedure in proposing a list of aims or intentions as factors determining the existence of aggression. Neither the proposal in document A/AC.134/L.16 and Add.1, nor the Latin American proposal, nor the thirteen-Power proposal (A/7185/Rev.1, paras. 8 and 9 respectively) made any reference to the aims or intentions of the aggressor, which, in his view, were impossible to establish and in any case not worth considering. The introduction of such subjective elements in the criteria for determining aggression had the further disadvantage of encouraging an aggressor to find arguments to cover up his crime. As history demonstrated, aggressors always tried to justify themselves by claiming that their aggression had noble motives - to protect their nationals, for example, or to defend certain political, social or economic institutions or régimes. In any case, neither did the end justify the means, nor was it the aggressor's end that made his aggression wrong; it was the aggression itself that was wrong. In his view, therefore, there should be no teleological criterion in any draft definition of aggression. In conclusion, he pointed out that his delegation's position was the same as it had adopted at the preceding session at Geneva.

Mr. YASSEEN (Iraq) considered that both the eleven-Power draft (A/AC.134/L.16 and Add.1) and the USSR draft (A/AC.134/L.12) fulfilled his delegation's hopes of what a definition of aggression should be. The approach adopted in both was sound, particularly in view of the existing gaps in the international juridical order. Both embodied the only principle on which such a definition could be based: the principle of the first use of force.

Under the Charter, the use of force was prohibited except in the cases of self-defence and action undertaken by United Nations organs in the exercise of their responsibility for the maintenance of international peace and security. In

(Mr. Yasseen, Iraq)

accordance with Article 51, the right of self-defence could be exercised, not in response to threats and provocations, but only in response to an armed attack, which must therefore precede it. Those who maintained the contrary were drawing their arguments either from analogy with domestic law, where the concept of self-defence was highly developed, or from international law as it had existed prior to the Charter, when force had been accepted as a means of pursuing national policies.

Although his delegation supported the preamble and operative parts of both the eleven-Power and USSR texts, with some exceptions, it could not support the inclusion in those texts of a provision relating to indirect aggression. Its reasons were twofold. First, subversive or terrorist acts and the activities of armed bands fell within the scope of another principle of international law - namely, the duty of States to refrain from interference in the internal affairs of other States - and must therefore be considered in connexion with it. Secondly, the circumstances could differ greatly from one case of indirect expression to another. The question therefore required further study with a view to arriving at a formula which would allow for those differences.

The eleven-Power draft had the further merit of embodying in its operative paragraph 6 the principle of proportionality, which, if not yet a principle of modern positive law, was nevertheless a highly useful one helping to curb extreme reactions. Both the USSR and the eleven-Power drafts correctly mentioned the right of colonial peoples to struggle against their oppressors, which no definition should omit.

He welcomed the submission of the six-Power draft (A/AC.134/L.17 and Add.1, which he considered a step forward from its sponsors' previous position that a definition was neither desirable nor necessary. However, the approach taken in their draft was not satisfactory, because it required the weighing of intentions. While the intentions of an accused aggressor were no doubt relevant, to make a determination of aggression dependent on them would be highly dangerous in the present poorly organized state of the international community. Moreover, such a criterion could hardly be an effective deterrent to potential aggressors. Not only would it be impossible to list all possible intentions, but aggressors always

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(Mr. Yasseen, Iraq)

claimed that their goal was a legitimate one - for example, that they were acting in the interests of the international community or in exercise of their right of self-defence. The definition must be based on objective, not subjective, criteria, deriving from the nature of the act itself.

The six-Power draft also authorized the use of force not only by the competent organs of the United Nations but also by regional organizations. While these organizations could discuss a breach of the peace and recommend the measures that should be taken to deal with it, the Charter made it perfectly clear that the coercive measures decided upon by regional organizations could not be taken until they were authorized by the Security Council.

Mr. ELSHEIKH (Sudan) said that the adoption of General Assembly resolution 2330 (XXII) should have removed all uncertainty about the need for defining aggression. His delegation, which had co-sponsored the twelve-Power draft proposal (A/7185, para. 7), felt that the following principles should be embodied in any such definition. First, the inviolability of sovereignty and territorial integrity should be clearly established. Secondly, the inherent right of dependent peoples to self-determination should be stated, since liberation movements were fully justified in using force to attain independence and national unity. His delegation which, at the previous session, had co-sponsored an amendment embodying that principle (A/7185/Rev.1, para. 10), was glad to find it included in the preamble and operative part of the USSR draft. It also welcomed the addition of the words "sovereignty and territorial integrity" to the provision concerning self-determination originally proposed by the French representative and now embodied in operative paragraph 10 of the eleven-Power draft. Thirdly, the definition should set forth the right of self-defence under Article 51 of the Charter in such a way that it would prohibit aggression while leaving States sufficient freedom of action to ensure their security. A satisfactory statement of that right was contained in operative paragraph 3 of the eleven-Power draft. His delegation had serious reservations about the question of the indirect use of force, which, it felt, should be excluded from the definition of armed attack, since State responsibility was not incurred by moral support or even overt condonement of acts of indirect aggression. Fourthly, the definition must state the principle of non-recognition of

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(Mr. Elsheikh, Sudan)

territorial acquisitions or any other advantages gained through armed aggression and of the invalidity of legislation designed to legalize an act of aggression. Fifthly, the definition should be in conformity with the United Nations Charter and should be without prejudice to the functions and powers of the Security Council as stated in Articles 39, 41 and 42. The argument put forward by some delegations that an enumeration of examples of aggression would limit the functions and powers of the Security Council was not well founded. Such an enumeration would merely be a list of typical cases in recent years intended to facilitate the work of the Security Council and lessen the chances of disagreement among its members. Sixthly, first use should be treated as an important, though not absolute, criterion in determining whether an act constituted aggression. That principle could hardly jeopardize the right of self-defence because the right of self-defence was limited to cases of armed attack under Article 51; indeed, no act of defence was conceivable unless it had been provoked by a previous use of force for aggressive purposes. Lastly, the definition must include the principle of proportionality, in order to prevent a small border incident, for example, from being used as a pretext to justify a massive armed attack.

He welcomed the submission of the six-Power draft (A/AC.134/L.17), since the majority of the sponsors had often expressed scepticism about the possibility of adopting a definition of aggression. It seemed, however, to approach the question from a semantic point of view, aggression being described as a "term" rather than an "act". That impression was confirmed by paragraph II, which implied that the whole problem of aggression revolved around the propriety of the use of a certain term. He wondered why the sponsors had used the word "applicable", which suggested that the acts in question might or might not be described as aggression. Furthermore, he wondered how the intentions underlying an armed attack could be determined at its outset. The draft failed to state the principle that territory acquired through aggression should not be enjoyed by the aggressor and that in general such illegality should not confer any benefit on the law-breaker. That point was well brought out in operative paragraph 4 of the USSR draft proposal. A further serious omission in the six-Power draft was the fact that it made no mention whatever of the right of peoples to self-determination.

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Mr. EL-FATTAL (Syria) said that he wished to make a few preliminary comments on the two new draft proposals. The eleven-Power draft (A/AC.134/L.16 and Add.1) was largely based on the thirteen-Power draft (A/AC.134/L.6), which in turn reflected the same general principles as the twelve-Power draft (A/AC.134/L.3), of which his delegation had been a sponsor. The eleven-Power draft expressed the views put forward by the majority of delegations in the Special Committee. Among its most important points were, firstly, the principle of first use; secondly, the principle of the right of peoples to self-determination, sovereignty and territorial integrity; and thirdly, the principle of the inviolability of the territory of a State and the non-recognition of territorial acquisitions obtained by force. The provision contained in operative paragraph 7 was, strictly speaking, irrelevant, because the definition was supposed to be concerned solely with direct armed aggression. If it was to be included, however, he felt that the text would be improved by the insertion of the words "in its territory" in the third line after the words "it may take".

The six-Power draft (A/AC.134/L.17 and Add.1), although unexpected in timing, was not surprising in content. Its submission was an official admission on the part of the sponsors that the defining of aggression was after all feasible, but it was also an attempt to make the task impossible. He wished to comment not on the content of the draft, which was unacceptable to his delegation, but on its deliberate omissions. It did not contain the basic principles that his delegation considered essential. First of all, it disregarded the right of peoples to fight for self-determination and was thus at variance with the Charter, international law and the principles of elementary justice. That omission, together with the use of terms such as "territory under the jurisdiction of another State" in paragraph IV B, was an invitation to any aggressor and an encouragement to the colonial Powers to strengthen their grip. Secondly, his delegation considered that the omission of a reference to the non-recognition of the fruits of aggression was a serious departure from the principles of international law. If a definition of aggression was to discourage potential aggressors, it must at least deprive them of the prospect of enjoying the fruits of their action. Thirdly, any definition of aggression which did not declare armed aggression to be an international crime

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(Mr. El-Fattal, Syria)

against peace entailing the political and material responsibility of the State and the criminal responsibility of the individual did not meet the requirements of the modern world.

Mr. EL-ERIAN (United Arab Republic) said he wished to give a preliminary indication of his delegation's position on the two new draft proposals. The sponsors of the eleven-Power draft (A/AC.134/L.16 and Add.1) had obviously worked in a spirit of conciliation and taken into account the Soviet, twelve-Power and thirteen-Power drafts and the views and suggestions put forward in the course of the debate. He noted with satisfaction the inclusion in that draft of two basic principles, the non-recognition of territorial acquisitions obtained by force and international responsibility for acts of aggression. As he had pointed out at the 33rd meeting, the first of those principles in particular had been well established by a number of basic international legal instruments; he could also have cited Security Council resolution 242, which emphasized the inadmissibility of the acquisition of territory by war. The retention by the aggressor of the fruits of his action made the aggression a continuing crime, a concept which existed in all systems of criminal law. That principle was therefore an essential ingredient in a definition of aggression. Finally, his delegation noted with satisfaction that the eleven-Power draft also contained, in operative paragraph 10, the basic principle of the right of peoples to self-determination, sovereignty and territorial integrity.

The new six-Power draft (A/AC.134/L.17 and Add.1) was a constructive step which served to focus attention on the particular line of approach taken by its sponsors. His delegation, however, found that approach disappointing, because the draft had two basic defects. Firstly, it was incomplete, because it confined itself to enumerating acts of aggression and did not cover the legal aspects of the question. It did not deal with responsibility or with the illegality of acts of aggression and their consequences, nor did it include any provision on the right of peoples to struggle for self-determination and independence. Secondly, it was unbalanced, giving prominence to indirect rather than to direct aggression. Believing that priority should be given to direct armed aggression, his delegation had reservations about operative paragraph 7 of the eleven-Power draft, not because of the principle underlying it but because it was irrelevant at the present stage of the Committee's work.

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Mrs. GAVRILOVA (Bulgaria) said that the eleven-Power draft (A/AC.134/L.16 and Add.1) was basically in accordance with her delegation's position on the question of defining aggression. It took into account present international conditions and recent developments in international law. Her delegation was convinced that if that draft and the Soviet draft (A/AC.134/L.12) were taken as a basis for further discussion, it was more than possible that the Committee could complete its task of producing a generally agreed definition of aggression. As regards the six-Power draft proposal (A/AC.134/L.17 and Add.1), it was surprising that the sponsors, instead of revealing their disagreement with the rest of the Committee earlier, had now chosen to produce a draft proposal which at first sight did not seem to be intended as a serious and constructive contribution at all. It was the function of the United Nations to heal breaches in international relations, and the Committee therefore clearly had to treat aggression, which was a unilateral violation of peaceful relations between States, as an international crime. The six-Power draft, failed to do so and sought to divert the Committee from the task laid down for it by the General Assembly. Moreover, it attempted to attribute an aggressive nature to the legitimate struggle of peoples for independence, freedom and better living conditions, equating that struggle, which had nothing to do with aggression, with conflicts of a completely different kind.

Mr. HARGROVE (United States of America) said that his delegation, as a sponsor of the new six-Power draft (A/AC.134/L.17 and Add.1), greatly appreciated the efforts which at least some members of the Committee had made to analyse and comment on its legal content. The expressions of surprise at the submission of the new draft were themselves surprising, particularly coming from representatives who had urged those who did not support earlier drafts to produce a proposal of their own. He wished to make three points in response to comments made at the meeting.

Firstly, the representative of Sudan had questioned the use of the expressions "'aggression' is a term to be applied" and "'aggression' is applicable" in paragraphs I and II, and had said that the problem of aggression was not a problem of the propriety of the use of a certain term. That was true, but the Committee was dealing with the problem of defining aggression, not with the

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(Mr. Hargrove, United States)

problem of aggression itself, and the problem of defining any term was the problem of its proper application. The sponsors had merely tried to achieve precision and had in no way intended to belittle the importance of aggression in the world.

Secondly, his delegation could not share the view expressed by the representative of Iraq with reference to paragraph III, that the Charter contained no provisions authorizing the use of force by regional organizations or arrangements.

The Charter did contain such a provision in Article 52. The granting of a similar authorization, in specific circumstances, was also envisaged in Article 53.

Thirdly, several delegations had argued that paragraph IV A introduced the question of the intention of the aggressor, and that that could have undesirable consequences because intentions were difficult to prove and the aggressor could always claim that he had none of the aims specified in that paragraph in mind. It was generally agreed that not every use of force, nor even every use of force in violation of Article 2 (4) of the Charter, constituted an act of aggression. As the representative of Cyprus had often said, aggression comprised only some of the illegal uses of force. The reason for that restriction was clear if it was considered that the application of the concept of aggression engaged the powers and the responsibility of the Security Council under Chapter VII of the Charter; to label trivial incidents as aggression would give the Security Council vast responsibilities that it could not discharge, thus causing it to be constantly in dereliction of its duties. In the view of his delegation, the eleven-Power and thirteen-Power drafts and to a lesser extent the Soviet draft, had precisely that effect. If that effect was to be avoided, it was essential at least to exclude acts which were unintentional, and that requirement was met by paragraph IV A (5) of the six-Power draft. His delegation had little doubt that the Security Council was capable of determining in any event whether an act of aggression was deliberate, in other words, designed to inflict the harm that it actually did inflict. If the facts of the case were really so unclear that the Security Council could not make even that determination, then presumably no one would wish the Council to decide that aggression had occurred. The elements of purpose or effect listed in paragraph IV A (1)-(4) were given only as examples or paradigm cases of aggression, and did not constitute any limitation on the Council in making determinations of aggression. Therefore the only question which needed to be asked to determine

(Mr. Hargrove, United States)

appropriateness of those paragraphs was whether in fact such cases had ever arisen or were likely to arise, but a glance at history should leave no doubt as to the answer. If a particular case did not fall into any of those categories, the Security Council was free to pass a different judgement on it.

Mr. ROSSIDES (Cyprus) said that if, as he understood it, any of the acts listed in paragraph IV B of the six-Power proposal (A/AC.134/L.17 and Add.1) must be shown to have been committed for one of the purposes listed in paragraph IV A in order to constitute aggression, an invasion by the armed forces of a State of territory under the jurisdiction of another State for some other purpose not included in the list, such as to protect its nationals in that State or to ensure the observance of bilateral economic treaties, would not be regarded as aggression according to that definition. That would mean a return to a situation which had existed before the United Nations Charter had been drafted. It was not a trivial matter for a State to invade the territory of another State even for purposes other than those stated in paragraph IV A; frontier incidents such as stray shots might be trivial incidents, but invasion or bombardment was not.

He did not consider that the activities listed in paragraph IV B should be included in the same paragraph as invasion or bombardment. It implied that such activities would create the same emergency as an open attack against a State by the use of armed force. When the activities of armed bands were such as to constitute a real threat, because of their magnitude and because of the danger involved, and to require immediate action by the victim State, then they constituted armed attack; otherwise they were breaches of the peace and the victim State was not entitled to take the law into its own hands.

Mr. CAPOTORTI (Italy) pointed out that paragraph II of the proposal in document A/AC.134/L.17 reproduced the fundamental principle contained in Article 2 (4) of the Charter, a principle from which none of the delegations sponsoring that proposal wished to depart. The cases mentioned by the representative of Cyprus would be violations of that principle. Furthermore, he pointed out that the enumeration of purposes and means in paragraph IV was

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(Mr. Capotorti, Italy)

illustrative, not exhaustive; it listed the cases which occurred most frequently, but any act which was contrary to Article 2 (4) of the Charter also constituted aggression.

Mr. CHAUMONT (France) said that the question raised by the representative of Cyprus was closely related to one he himself had raised at the previous meeting, concerning the exact meaning of the procedures suggested. He agreed with what he understood to be one of the two basic intentions of the sponsors, namely, that acts of limited scope should not be considered to be acts of aggression. He still had questions, however, concerning examples which were not included in paragraph IV A. The representative of Italy had said that any acts likely to threaten the territorial integrity or political independence of another State were convered by Article 2 (4) of the Charter. But that did not solve the question as to whether it was or was not "inconsistent with the Purposes of the United Nations" to use acceptable means to take any of the actions listed in paragraph IV B. Under Article 2 (4) it was not clear whether it was proper to use force to execute an international decision or to respond to a breach of international law. Some maintained that it was admissible to use force only after the Security Council had taken action, in cases other than those covered by Article 51. That was a very controversial matter in international law. He would appreciate a precise answer from the United States representative as to whether, since the list in paragraph IV A was not exhaustive and in view of Article 2 (4), he considered that the use of force for reasons which were apparently compatible with international law was comprehended in paragraph IV A.

Mr. HARGROVE (United States of America) said that it was essential to emphasize, as the representative of Italy had done, that the sponsors of the proposal had taken Article 2 (4) of the Charter, which was the basic prohibition of the use of force, as the keystone of their text. It was not their intention that any use of force in violation of that provision should be admitted. No specific enumeration could be exhaustive and there must therefore be cases in which one would have to rely on Article 2 (4), which, as the representative of France had said, had a certain vagueness and generality. The intention of the sponsors of the six-Power proposal was to eliminate a certain degree of that generality by mentioning classic cases which definitely fell within the provisions of

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(Mr. Hargrove, United States)

Article 2 (4). As to the hypothetical cases mentioned by the representatives of France and Cyprus, he had heard no cases mentioned which he would not regard as being designed to obtain some sort of concession or at least to inflict harm, which was the language of paragraph IV A (5). That sub-paragraph was very broad and made clear the illegality of certain uses of force which, before the adoption of the Charter, could be claimed to be legal because of the purpose for which they were alleged to be carried out.

Mr. BEESLEY (Canada) reminded the Committee that in his statement at the Committee's 45th meeting he had specifically referred to Article 2 (4) of the Charter in connexion with paragraph IV A, and had said that the element of intent should be spelled out. He agreed with the United States representative; he could not conceive of a case of the kinds mentioned which was not covered by paragraph IV A (5). If that sub-paragraph was not broad enough then it should be broadened.

Mr. ROSSIDES (Cyprus) asked whether the United States and Canadian representatives meant that under paragraph II of the six-Power proposal, actions not termed aggression in that definition might nevertheless constitute a violation of Article 2 (4); in other words, that if an act listed in paragraph IV B was carried out for a purpose other than those listed in paragraph IV A, it would not be an act of aggression but might be a violation of Article 2 (4). In that case, the victim State would not be entitled to exercise its right of self-defence under Article 51 of the Charter.

Mr. BEESLEY (Canada) said that if one of the acts listed in paragraph IV B was carried out by a State for the purpose of enforcing a treaty or protecting its nationals it was difficult to see how that would not be intended to "inflict harm or obtain concessions of any sort". It had been precisely to avoid the type of situation mentioned by the representative of Cyprus that sub-paragraph (5) had been included. Furthermore, it was clearly stated that the list was not exhaustive.

Mr. CAPOTORTI (Italy) said that no definition could claim to be a modification of the Charter. In all the cases mentioned by the representative of Cyprus it would always be for each State to decide whether it was appropriate to

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(Mr. Capotorti, Italy)

have recourse to Article 51 of the Charter and for the Security Council to decide subsequently whether it had indeed acted in accordance with that Article. No definition could alter that. The language used in paragraph II identified as aggression the use of force which was forbidden under Article 2 (4) and did not limit a State's right to act in self-defence, but rather gave it wider possibilities to exercise that right. The text of paragraph II was faithful to the Charter; it equated aggression to the use of force within the meaning of Article 2 (4), but without prejudice to a different assessment of the situation by the Security Council.

Mr. ROSSIDES (Cyprus) said that he did not agree with the representative of Canada that if a State invaded another State in order to enforce a bilateral economic treaty or to protect its nationals it intended to inflict harm or obtain concessions. In his opinion, it intended to protect its nationals, not to inflict harm, or to exercise its rights, not to obtain concessions. Every invasion of a State inflicted harm on its territorial integrity and independence, except when that invasion was carried out in self-defence in accordance with Article 51 of the Charter or in the exercise of collective defence by the United Nations; it was therefore an act of aggression. Paragraph IV A therefore had no place in a definition of aggression; it would serve to encourage invasions or other acts ostensibly carried out for purposes not mentioned in that paragraph.

Mr. HARGROVE (United States of America) said that the proposition of the representative of Cyprus that any invasion inflicted harm appeared to be an acknowledgement of the Canadian position.

The meeting rose at 1.25 p.m.

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SUMMARY RECORD OF THE FORTY-EIGHTH MEETING

Held on Thursday, 27 March 1969, at 5.10 p.m.

Chairman:	Mr. FAKHREDDINE	Sudan
later,	Mrs. GAVRILOVA	Bulgaria

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ADOPTION OF THE REPORT OF THE WORKING GROUP (A/AC.134/L.19)

The CHAIRMAN invited the Committee to adopt the report of the Working Group (A/AC.134/L.19).

The report of the Working Group was adopted.

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTIONS 2330 (XXII) AND 2420 (XXIII)) (A/7185/Rev.1; A/AC.134/3; A/AC.134/L.12, L.15, L.16 and Add.1 and 2, L.17 and Add.1 and L.18) (concluded)

Mr. VALLARTA (Mexico) said that Mexico wished to be included among the sponsors of the proposal in document A/AC.134/L.16 and Add.1.

Mr. BERRO (Uruguay), whose delegation was one of the sponsors of the thirteen-Power proposal submitted at Geneva (A/7185/Rev.1, para. 9), emphasized that it had been and was still the Committee's intention, at the present stage of its work, to concentrate on defining "direct aggression" by means of armed force, i.e., the classic type of aggression, which was the best known, most common and most dangerous form of breach of the peace. For the time being, the Committee had thus voluntarily ruled out consideration of indirect aggression - economic, ideological, cultural or other - although that did not mean that it was not aware of its existence and importance. Consequently, it should make it a fixed and strict rule to concern itself exclusively with defining the act of aggression committed through the direct use of force or armed attack (Arts. 1, 2, 4, 24, 39 and 51 of the Charter). To define meant "to fix the limits of" and the Committee's task was thus to establish the differences between the act of aggression and cases having similar or apparently similar features, which might cause confusion or misunderstanding, or even give rise to specious interpretations. The definition of all the forms of indirect aggression should be postponed to a later stage not only because of their complexity and changing character, but also because of the lack, in present circumstances, of a generally applicable criterion. That was the approach which his delegation had taken during the current session, setting itself both to improve the Geneva draft and to consider with the other sponsors of the draft all the ideas, proposals, and suggestions advanced by other delegations, in order to see how far they were compatible with the principles maintained by the thirteen Powers.

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(Mr. Berro, Uruguay)

During the general debate, his delegation had expressed the hope that the original thirteen-Power proposal would be revised in such a way as to take account of its observations. It had in particular emphasized the problem of subversive or terrorist acts by irregular, volunteer or armed bands organized by another State in order to bring out the idea that such acts constituted a new type of aggression, which in some cases might exhibit the same features as armed attack and which should therefore be studied as part of the attempt to define direct aggression. Two acts could be of the same kind but have different effects, depending, generally speaking, on their dangerousness and scale, as the representative of the Democratic Republic of the Congo had rightly pointed out. A distinction should therefore be made between the different types of breach of the peace according to their potential consequences, just as domestic criminal law made a distinction between robbery and burglary. Considering operative paragraph 7 of draft resolution A/AC.134/L.16 and Add.1 in the light of those observations, it was clear that armed bands organized or supported by a State could in some cases imperil only domestic law and order in the victim State without affecting the stability of its institutions; however, there were other cases where the activities of such bands could and did affect the institutional life of the invaded country and it was even possible, as the representative of the Congo had observed, that an extremely serious situation could arise in which not only were the institutions of the victim State impaired but also the imminent danger could be so great as to jeopardize the very political independence and territorial integrity of that State. In such a case, what was important was not so much the nature of the act committed as the danger it had created and the consequences following from it; that was the kind of breach of the peace which could be equated with aggression and which therefore entitled the victim to exercise its natural right of self-defence under Article 51 of the Charter. Clearly it was for the victim to judge the imminence of the danger, without paternalistic help from powerful States, and the principle of non-intervention should be fully respected, without prejudice to the lawful application of regional agreements at the victim's request. It was obvious, in his delegation's view, that border incidents or minor acts of sabotage or terrorism which did not have the features he had indicated could never entitle the State in question to exercise its right of self-defence.

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(Mr. Berro, Uruguay)

He hoped that his delegation's ideas would be taken into account and in general that a text would be arrived at which represented the common denominator of the world's opinions and aspirations. He agreed with the Cypriot representative's wish to have a formula which would stipulate that where invasion by armed bands on a large scale posed an imminent danger similar to that created by an armed attack the State which was the victim of the invasion should be able to react as if it were exercising its right of self-defence under Article 51 and to inform the Security Council beforehand. In view of those considerations, but without abandoning its deep convictions, his delegation wished to associate itself, like the other Latin American countries which were members of the Committee, with the sponsors of the proposal in document A/AC.134/L.16 and Add.1, which contained the main ideas that should be found in a definition of the term "act of aggression".

Mr. ALCIVAR (Ecuador) said that his delegation had been among those which had most strongly supported operative paragraph 7 of the proposal in document A/AC.134/L.16 and Add.1. Its main concern had been to avoid any undue broadening of the right of self-defence laid down in Article 51 of the Charter. Nevertheless, after having heard the statements made by the representatives of France and the Democratic Republic of the Congo on that extremely important legal problem, it felt that paragraph 7 should be gone into more deeply in order to find an appropriate legal solution to the difficulties which had been pointed out. In short, while it was true that the provision in question should in no case make it possible to justify acts of intervention, it was no less true that some means must be found of taking account of the idea expressed by the representative of the Congo. He therefore hoped that the Committee would succeed in drafting the appropriate legal rules to deal with that problem.

Mr. ROSSIDES (Cyprus) expressed his particular appreciation to the delegations of Mexico and Uruguay, thanks to whom the sponsors of the new proposal (A/AC.134/L.16 and Add.1) were now the same as the sponsors of the thirteen-Power draft proposal submitted at Geneva (A/7185/Rev.1, para. 9). It should therefore be possible to withdraw the Geneva draft.

While it was unfortunate that the Special Committee had not finished the task given to it by the General Assembly, it had nevertheless made considerable progress,

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(Mr. Rossides, Cyprus)

proof of which was the fact that two new draft declarations had been submitted. The submission of the six-Power draft (A/AC.134/L.17 and Add.1) in particular showed that the current session had brought about a change of heart which gave grounds for anticipating fruitful co-operation in the future. However, the results achieved by the Working Group were far from encouraging; its work, which had required much time and effort on the part of all of its members, had achieved only one positive result, namely, agreement on a provision which merely reiterated Article 39 of the Charter. That lack of success was to be attributed to the procedure adopted; he therefore wished to state that in his view the Special Committee was in no way bound by that procedure and that it should, under the new terms of reference to be given to it by the General Assembly, be able to select any procedure which it deemed appropriate for the conduct of its work.

Lastly, he introduced draft resolution A/AC.134/L.18. In the second preambular paragraph, the sponsors had preferred the expression "the draft definition" to "a draft definition" and had made no mention in that paragraph of the report of the Working Group for obvious reasons. He hoped that the draft resolution would receive the unanimous support of the members of the Committee.

Mr. VALLARTA (Mexico) said that he fully understood the logic behind the proposal of the representative of Cyprus to the effect that the first thirteen-Power draft proposal should be withdrawn, but would ask that no decision should be taken on the matter until the following meeting of the Special Committee since his delegation had not been prepared for such a move.

Mr. CHAUMONT (France) said that he wished to propose certain drafting changes in draft resolution A/AC.134/L.18. First, the words "and on the draft definition" in the second preambular paragraph implied that there was only one draft definition; it would be preferable to delete them.

The fourth preambular paragraph, in its present form, appeared to indicate that the Committee had a very high opinion of its own work and that the length of time available to it had been insufficient, which, it was implied, explained the fact that no definition had been formulated. That paragraph should therefore also be deleted. The end of the preceding paragraph could be changed and might read: "Noting that new proposals... were submitted at the end of the session", which would explain why the Committee had been unable to complete its work.

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(Mr. Chaumont, France)

Lastly, the Committee should not tie the General Assembly down by recommending that it should be asked to resume its work "early in 1970". The French delegation thought that it would be better to use an expression such as "before the summer of 1970", as the representative of Cyprus had proposed.

Mr. KOLESNIK (Union of Soviet Socialist Republics) said that he did not share the view of the representative of Cyprus that the Working Group had achieved no result. In fact, for the first time, a drafting committee had been formed which had been able to reach agreement on a number of points.

It was true that the procedure adopted for the Working Group did not set a precedent for the future working methods of the Committee or of other groups which might be established, but it should nevertheless be recognized that it had proved useful.

With regard to draft resolution A/AC.134/L.18, he would like to know if it would not be possible for the Committee to hold another session before the twenty-fourth session of the General Assembly since many members obviously wished to see its work move faster.

Mr. STAVROPOULOS (Legal Counsel) said that it would be impossible to hold another session of the Committee at Headquarters before the twenty-fourth session of the General Assembly on account of the large number of meetings and conferences which were to be held between June and August. There might be a possibility at Geneva, but that was very doubtful and it was unlikely that the reply of the European Office to the request to the effect which had been made to it would be positive.

Mr. ALCIVAR (Ecuador), referring to the amendments suggested by the representative of France, said he thought that the words "and on the draft definition" in the second preambular paragraph could be deleted; in the last preambular paragraph, it might simply be said that the Committee had not been able to complete its work during the session. Lastly, the use of the words "before the summer" in the operative paragraph of the draft resolution would create some ambiguity on account of the difference in seasons between the northern and southern hemispheres; it would be preferable to say "before the twenty-fifth session of the General Assembly".

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Mr. ROSSIDES (Cyprus) said that the sponsors of the draft resolution were prepared to replace the words "the draft definition" with the words "a draft definition" in the second preambular paragraph. His delegation, for its part, did not see any objection to the deletion or modification of the last preambular paragraph, but it did not know the views of the other sponsors on that point.

Mr. EL-FATTAL (Syria) pointed out that despite the disagreements which had emerged during the debates, it was undeniable that great progress had been achieved by comparison with previous sessions, if only because all delegations were now participating actively in the Committee's work and had submitted draft proposals. His delegation therefore thought that the Committee should give the General Assembly a more accurate impression of the progress which had actually been achieved and that a new paragraph should be inserted after the second preambular paragraph which might read: "Noting the strong common desire among the members of the Special Committee to continue consideration of the question of defining aggression".

Mr. HARGROVE (United States of America) supported the amendment proposed by the representative of Ecuador concerning the operative paragraph of the draft resolution.

Mr. CHAUMONT (France) supported the amendments proposed by the representatives of Cyprus and Ecuador.

Mrs. Gavrilova (Bulgaria), Vice-Chairman, took the Chair.

Mr. ROBERTSON (Canada) suggested that in the operative paragraph of the draft resolution the words "as early as possible" should be used since that seemed more in line with the desire of members of the Committee to resume their work as soon as possible. He expressed the hope that before fixing the date of the next session of the Special Committee, the Committee on Conferences would take greater care to ensure that it did not coincide with or come too close to the sessions of other organs.

Mr. KOLESNIK (Union of Soviet Socialist Republics) and Mr. EL-ERIAN (United Arab Republic) supported the proposal of the representative of Canada and the amendment proposed by the Syrian delegation.

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Mr. DARWIN (United Kingdom) thought that it would be preferable if the Committee did not try to specify when in 1970 its next session should be held, on the understanding that that session should take place before the twenty-fifth session of the General Assembly.

With regard to the amendment proposed by the Syrian delegation, he thought that the words "the strong common desire among the members" were perhaps not quite exact and that an expression such as "the common willingness" might be more accurate.

The CHAIRMAN invited the sponsors of draft resolution A/AC.134/L.18 and delegations which had proposed amendments to consult each other with a view to producing a final text for the next meeting of the Committee.

The meeting rose at 6.25 p.m.

SUMMARY RECORD OF THE FORTY-NINTH MEETING

Held on Friday, 28 March 1969, at 11.15 a.m.

Chairman: Mr. FAKHREDDINE Sudan

ADOPTION OF THE REPORT (A/AC.134/4 and Corr.1)

Mr. CAWEN (Finland), Rapporteur, introduced the draft report of the Special Committee (A/AC.134/4 and Corr.1). As stated in paragraph 18, the discussion of the two draft proposals (A/AC.134/L.16 and Add.1 and 2, L.17 and Add.1) which had been submitted during the later stages of the Committee's work would be dealt with in an addendum. Those two texts were now a thirteen-Power and a six-Power proposal respectively. The final report would also contain the report of the Working Group which had been adopted at the previous meeting and would record every decision adopted by the Committee during the session.

The CHAIRMAN asked the representative of Mexico whether he was now in a position to state his delegation's position on the proposal made by the representative of Cyprus at the previous meeting concerning the withdrawal of the thirteen-Power draft proposal in document A/7185/Rev.1, para. 9.

Mr. VALLARTA (Mexico) said that his Government did not wish the draft proposal in document A/7185/Rev.1, para. 9 to be withdrawn; both thirteen-Power draft proposals should remain before the Committee.

Mr. BADESCU (Romania) asked that mention should be made in the report of the following points which his delegation had said should be included in a definition of aggression: first, that any act of aggression should be condemned, a point on which there had been considerable discussion in the Committee; secondly, that if a State permitted another State to use its territory in order to attack a third State, that constituted an act of indirect aggression; and thirdly, that States should refrain from using force by mobilizing or concentrating their armed forces near the border of another State, a point which could be included in the report as the proposal of one delegation.

Mr. POLLARD (Guyana), referring to the first sentence of paragraph 47 said that the sponsors of the draft proposal in document A/7185/Rev.1, para. 9, had felt very strongly about the inclusion of operative paragraph 4. Some of the reasons put forward during the debate should be mentioned in the report. His delegation, for instance, had stressed the original competence of the Security Council with regard to enforcement action as distinct from the purely derivative competence of regional agencies.

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Mr. HARGROVE (United States of America) said that the reference to the views of those who had criticized operative paragraph 4 of the draft proposal in document A/7185/Rev.1, para. 9, should be expanded. They had noted that the paragraph referred to a decision of the Security Council and not to authorization by the Security Council, which was the term used in Article 53 of the Charter, and that it appeared also to curtail the competence of regional agencies under Article 52.

After a discussion in which Sir Kenneth BAILEY (Australia), Mr. CHAUMONT (France), Mr. CHKHIKVADZE (Union of Soviet Socialist Republics), Mr. BEESLEY (Canada) and Mr. DARWIN (United Kingdom) took part, Mr. BEESLEY (Canada) proposed that in the third line of paragraph 16 the words "would be capable of ensuring" should be replaced by the words "could contribute to" and that the words "of guaranteeing" in the fifth line of the paragraph should be replaced by the words "the protection of".

It was so decided.

Mr. DUPLESSY (Haiti), referring to the last sentence of paragraph 20, said that the phrase "a definition of aggression should not have regard to the power of discretion vested in the Security Council" was too strong. He did not think that any representative would say that the discretionary power of the Security Council should be disregarded, but rather that it could not be affected by the formulation of a definition of aggression.

Mr. MUTUALE (Democratic Republic of the Congo) asked that the principle of proportionality, which his delegation had raised during the debate and on which other representatives had commented, should be properly reflected in the report.

Mr. EL-FATTAL (Syria) said that the report should include under the heading of acts considered not to constitute acts of aggression (paragraph 47) repelling an invader and resisting occupation forces, both of which had been mentioned during the debate.

The meeting rose at 1.5 p.m.

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SUMMARY RECORD OF THE FIFTIETH MEETING

Held on Friday, 28 March 1969, at 4.10 p.m.

Chairman: Mr. FAKHREDDINE Sudan

TRIBUTE TO THE MEMORY OF GENERAL EISENHOWER, FORMER PRESIDENT OF THE UNITED STATES OF AMERICA

The CHAIRMAN informed the Special Committee of the death of General Eisenhower, former President of the United States of America. He requested the United States delegation to convey his condolences and those of the Committee to his Government and to General Eisenhower's family.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics), Mr. ROSSIDES (Cyprus), Mr. BERRO (Uruguay), Mr. ALCIVAR (Ecuador), Mr. VALLARTA (Mexico), Mr. CHAUMONT (France), Mr. DUPLESSY (Haiti), Mr. DARWIN (United Kingdom), Mr. BEESLEY (Canada), Mr. SAM (Ghana), Mr. CAPOTORTI (Italy), Mr. EVANS (Australia), Mr. AKYAMAC (Turkey), Mr. OWADA (Japan), Mr. POLLARD (Guyana) and Mr. BADESCU (Romania) expressed their sympathy to the United States delegation.

Mr. HARGROVE (United States of America) thanked the Chairman and the members of the Committee for their expressions of sympathy.

ADOPTION OF THE REPORT (A/AC.134/4 and Corr.1) (continued)

At the invitation of the CHAIRMAN, Mr. STAVROPOULOS (Legal Counsel) informed the Committee that it had been the practice in many United Nations organs since 1952 that when a draft report was not ready at the end of a session the Rapporteur transmitted it later to the members of the body in question, who sent him in writing their comments and any corrections they wished to make before the report was issued in its final form.

In his view, the Special Committee might consider adopting that procedure, since, at best, the last part of the draft report of the Committee could not be ready before Thursday or Friday of the following week.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) and Mr. BERRO (Uruguay) said they could not agree to the procedure suggested by the Legal Counsel because there was no substitute for direct exchanges of views and for the atmosphere of co-operation which prevailed during meetings. A procedure calling for written communications might lead some delegations to crystallize their positions and even unwittingly to harden them, especially since the recollection of precisely what had been said at the meetings tended to fade.

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Mr. BEESLEY (Canada) said he felt that the Legal Counsel's suggestion was the most practical solution in the present circumstance, since some members of the Committee had to attend other meetings or conferences. The procedure in question should not cause any particular difficulty if every delegation confined itself to making comments or proposing corrections relating solely to its own statements.

Mr. MUTUALE (Democratic Republic of the Congo), observing that he shared the misgivings of the Soviet and Uruguayan representatives, suggested that the Special Committee should meet on the first day of the General Assembly's twenty-fourth session in order to consider and adopt the final part of its report.

Mr. ROSENSTOCK (United States of America) said that the Committee did not, of course, have to follow past practice if it did not wish to do so. His delegation saw no reason why the Committee should not follow the procedure proposed by the Legal Counsel, but it nevertheless preferred the suggestion made at the previous meeting that the Committee should leave the drafting of the report entirely to the Rapporteur.

Mr. EVANS (Australia) said that both procedures struck him as being equally satisfactory.

Mr. VALLARTA (Mexico) said that he favoured the procedure proposed by the Legal Counsel.

Mr. POLLARD (Guyana) felt that the Committee could place its full confidence in the Rapporteur. If the Committee was divided on the matter, however, it would be better to settle it by taking a vote.

Mr. ROSSIDES (Cyprus) expressed the view that the procedure calling for the submission of written comments was too complicated. He appealed to the members of the Committee to agree to leave it to the Rapporteur to draft the last part of the report himself, for they would thus be paying a tribute to the Secretariat for the excellent work it had done.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) said he felt it would be preferable for the Committee to consider the last part of the report in the same way as it had considered the first part. The procedure calling for

(Mr. Chkhikvadze, USSR)

consultation in written form, which was unduly rigid and did not permit exchanges of views, should be rejected. There were two other possibilities: either to extend the session by a few days in order to enable the Committee to consider the last part of its report, or to postpone the adoption of the report until the beginning of the General Assembly's twenty-fourth session. He appealed to the sponsors of draft resolution A/AC.134/L.17 to agree to the first alternative.

Mr. DARWIN (United Kingdom) said he thought that informal consultations in writing might give rise to difficulties and, furthermore, that the matter should be settled as quickly as possible. The Rapporteur could employ a simpler method which had been used in the past, namely that of consulting the delegations concerned on controversial points.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) said that he could not agree to that procedure, which the Committee had already considered and rejected.

The CHAIRMAN, summing up the debate, said that the Committee had three proposals before it, namely (1) to hold a special meeting the following week or during the twenty-fourth session of the General Assembly in order to adopt the last part of its report, (2) to leave it entirely to the Rapporteur to draft the last part of the report, (3) to arrange for consultations in writing.

Mr. DARWIN (United Kingdom) said that he thought it essential for the report to be adopted a considerable time before the opening of the twenty-fourth session of the General Assembly so that Governments would receive it in sufficient time.

Mr. STAVROPOULOS (Legal Counsel) said that the French text of the last part of the report would be ready on 3 April. The Committee therefore had a choice between holding a meeting the following week and holding one during the twenty-fourth session of the General Assembly.

Mr. HARGROVE (United States of America), Mr. POLLARD (Guyana) and Mr. EVANS (Australia) said that they were prepared to accept the idea of holding an additional meeting, on condition that it was devoted exclusively to the consideration and adoption of the report and that it took place preferably on Thursday, 3 April, it being also understood that the report would be circulated in English in good time.

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The CHAIRMAN proposed that the Special Committee should hold a meeting on 3 April to adopt the last part of its report.

It was so decided.

Mr. DUPLESSY (Haiti), referring to the part of the report that had already been issued, deplored the fact that it did not contain certain essential ideas put forward in the course of the debate. In his statement, for example, he had stressed the fact that Article 39 of the Charter conferred two distinct powers on the Security Council, namely a sovereign power of assessment, exercised by the Council in judging the situation under consideration, and the discretionary power to take whatever measures it thought best. That distinction was clearly fundamental if it was borne in mind that the Security Council's power of assessment could not be strengthened by the existence of a definition of aggression, while, on the other hand, its discretionary power could not be lessened by such a definition. In addition, he had stated during the general debate that there was no reason to think that the definition of aggression would be used only by the Security Council and that to make that assumption would be to prejudge a question which was for the General Assembly to decide. It had therefore been astonishing, in view of General Assembly resolution 2330 (XXII) and the fact that one permanent member of the Security Council was not a member of the Committee, to hear certain representatives assert that the definition would have to be approved by all the permanent members of the Council. The representative of Iraq, making the same point, had observed that the right of veto of the permanent members was an exceptional rule of procedure; finally the representative of Canada had acknowledged that the demand for the agreement of the permanent members of the Security Council was based on political rather than legal considerations. He himself attached the greatest importance to all those ideas and wished to see them appear in the report.

Mr. YASSEEN (Iraq) expressed support for the representative of Haiti.

FUTURE WORK OF THE COMMITTEE (A/AC.134/L.18)

Mr. ROSSIDES (Cyprus) read out the text of draft resolution A/AC.134/L.18 as amended by its sponsors following consultations with the other members of the Committee. The following changes had been made in the original text: in the second preambular paragraph, the words "the draft definition" were replaced

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(Mr. Rossides, Cyprus)

by the words "a draft definition"; the following new preambular paragraph was inserted between the third and fourth paragraphs of the original text: "Noting also the common will of the members of the Special Committee to continue consideration of the question of defining aggression"; in the fifth preambular paragraph, the word "important" was deleted; finally, in the operative paragraph, the words "early in 1970" were replaced by the words "as early as possible in 1970". Those changes should enable the draft resolution to command the unanimous support of the members of the Committee.

Mr. PRAWIRODIRDJO (Indonesia) said that he agreed to that formulation, although he would have preferred to see in the fifth preambular paragraph the words "time did not allow completion of" rather than the words "there was not enough time in which to complete".

Mr. HARGROVE (United States of America), supported by Mr. BEESLEY (Canada), said that he understood the "common will" referred to in the fourth preambular paragraph to mean willingness rather than determination.

Mr. CHAUMONT (France) said that he found the words "pour mener à bien son travail" in the fifth preambular paragraph of the French text unsatisfactory; the use of that phrase gave the impression that the Special Committee had done nothing, which was an unduly pessimistic view of the results achieved. He would therefore prefer to use the words "pour achever son travail".

Mr. DARWIN (United Kingdom) said that in his delegation's view the words "as early as possible in 1970" in the operative paragraph did not in any way restrict the competence of the Committee on Conferences or the General Assembly to determine, in the light of the date of other meetings, the date on which the Special Committee would resume its work.

Mr. EL-FATTAL (Syria) thanked the sponsors of the draft resolution for adopting the basic idea of the proposal which he had put forward at the 48th meeting.

Draft resolution A/AC.134/L.18, as orally amended, was adopted.

The meeting rose at 6.10 p.m.

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SUMMARY RECORD OF THE FIFTY-FIRST MEETING

Held on Thursday, 3 April 1969, at 11 a.m.

Chairman: Mr. FAKHREDDINE Sudan

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ADOPTION OF THE REPORT (A/AC.134/4 and Corr.1, A/AC.134/4/Add.1 and Corr.1) (concluded)

Mr. ROSSIDES (Cyprus) said that in his delegation's view the first sentence of paragraph 47 of document A/AC.134/4 did not accurately reflect the views expressed in the Committee, since there had been no particularly emphatic reference to dependent peoples. He therefore suggested that the phrase "especially dependent peoples", and also the word "all" in the phrase "the right of all peoples", should be deleted.

Mr. CAWEN (Finland), Rapporteur, introduced the second part of the Special Committee's report (A/AC.134/4/Add.1). Upon its approval by the Committee, it would be incorporated into the final version of the report as sections III.C and IV.

Mr. NASINOVSKY (Union of Soviet Socialist Republics) requested the addition of a sentence at the end of paragraph 4 stating that some representatives had stressed that the new thirteen-Power draft represented a considerable step forward and that there was a basis for bringing closer together the provisions of that draft and the provisions of the Soviet draft during the course of the Committee's further work.

Mr. HARGROVE (United States of America) suggested that a further sentence should be added to that paragraph stating that some representatives, on the other hand, had felt that the new thirteen-Power draft represented an increasing divergence from sound and reasonable interpretations of the Charter.

Mr. BERRO (Uruguay), referring to paragraph 8, said that during the debate his delegation and others had expressed the view that the Charter did not grant the Security Council discretionary powers; it simply stated that the Council should determine the existence of an act of aggression. On the suggestion of his delegation, the new thirteen-Power draft referred to the "powers and duties" of the Security Council in order to remain faithful to the purposes and principles of the Charter. He suggested that paragraph 8 should contain a sentence to the effect that some delegations had maintained that the powers of the Security Council were not discretionary in nature.

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Mr. ARIAS SALGADO (Spain) said that he agreed with the Uruguayan representative's interpretation of the Security Council's powers. Some corresponding reference should be made in the report not only to the powers but also to the duties of the Security Council with regard to the maintenance of international peace and security.

Mr. MASLOVSKY (Union of Soviet Socialist Republics) suggested that a further sentence should be added at the end of paragraph 8 stating that it had been pointed out that the six-Power draft was of a very abstract and artificial character which did not constitute a clearer idea of the definition of aggression and that the draft could therefore hardly serve to help the Security Council in the discharge of its functions.

Mr. EVANS (Australia) suggested that the following sentence should be added at the end of paragraph 10: "Some representatives stated that a definition which did not contain an adequate provision regarding armed bands would make little contribution to the task of applying the Charter to contemporary facts."

Mr. HARGROVE (United States of America) suggested that the second sentence of paragraph 10 would more accurately reflect the views expressed in the Committee if it was altered to read: "The definition, therefore, should fully cover aggression involving indirect or covert uses of illegal force intended to infringe the territorial integrity and the political independence of States."

Mr. ROSSIDES (Cyprus), referring to paragraph 11, suggested, first of all, that the words "by military action by virtue of Article 51 of the Charter" should be added at the end of the second sentence; secondly, that the words "had a more restricted meaning than" in the third sentence should be replaced by the words "referred directly to the"; and, thirdly, that the last part of the third sentence, starting with the words "it was thus necessary", should be deleted.

Mr. HARGROVE (United States of America) suggested that the latter part of the last sentence in paragraph 18 should be altered to read: "if the facts of the case were really so unclear that the Security Council could not determine even that the act was intentional, i.e. calculated to inflict the harm which it in fact inflicted, then presumably no one would wish the Security Council to decide that aggression had occurred".

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Mr. VALLARTA (Mexico) suggested that an additional sentence should be added at the end of paragraph 19 stating that it had also been pointed out that only the Latin American draft and the two thirteen-Power drafts used solely objective criteria.

Mr. BERRO (Uruguay) said that his delegation still felt that its views were not adequately reflected in the report and hoped that the Rapporteur would bear in mind in preparing the final version of the report.

Mr. NASINOVSKY (Union of Soviet Socialist Republics) objected to the words "there seemed to be a general agreement that" in the second sentence of paragraph 21. His delegation and others had stressed repeatedly that the only organ which could make decisions relating to a situation of the kind referred to was the Security Council. He therefore suggested that, to avoid misrepresentation, those words should be omitted. He also objected to the wording of the last two sentences of that paragraph. The use of the phrase "the wisest course" in the penultimate sentence appeared to imply criticism of the view reported in the last sentence. To counteract that impression, he suggested that the last sentence should be amended to state that in the view of some representatives it would be even wiser to reproduce in its entirety in paragraph III the language of the first paragraph of Article 53 of the Charter.

Mr. HARGROVE (United States of America) suggested that paragraph 27 should be expanded to reflect the opposing point of view on the two new draft proposals by the addition of a sentence to the effect that other delegations had expressed the view that such a notion was no part of a definition of aggression and consequently did not fall within the Committee's terms of reference.

Mr. EL-FATTAL (Syria) suggested that the word "some" in the first sentence of paragraph 28 should be replaced by the word "several" in order to make it clear that the view expressed in that sentence had been more widely supported than the opposing view. He suggested also that the words "and in the Soviet draft" should be inserted after the words "the new thirteen-Power draft" in the first sentence.

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Mr. HARGROVE (United States of America) suggested that the heading of section IV should not be "Voting" but rather something like "Recommendations of the Committee", since no vote had in fact been taken.

Mr. STAVROPOULOS (Legal Counsel) said, in response to a question from the representative of the Soviet Union, that the final version of the Committee's report would be ready in mimeographed form within a few days and in printed form some time later.

Document A/AC.134/4/Add.1, as amended, was adopted.

The draft report as a whole, as amended, was adopted.

CLOSURE OF THE SESSION

The CHAIRMAN said that the Committee had brought the work of its second session to a successful conclusion. In view of the long history of the question, the fact that no definition of aggression had yet been produced should not be a cause for discouragement. It was understandable that some countries, particularly those with extensive interests and obligations, were still inclined to prefer the ad hoc approach to the question of aggression, but otherwise there seemed to be more or less general agreement that a definition would be useful. He felt that the present composition of the Committee was ideal for its purpose; the Working Group of the Whole, however, should perhaps be replaced by a smaller, select body at subsequent sessions. The draft proposals submitted in the course of the session showed that notable progress had been made, and it was doubtful that any more could have been achieved in a mere thirty-three days. He hoped that in 1970 the Special Committee might have a longer session or even more than one session.

After the customary exchange of courtesies, the Chairman declared the session closed.

The meeting rose at 1.5 p.m.
