



UNITED NATIONS
GENERAL
ASSEMBLY



Distr.
GENERAL

A/AC.134/SR.79-91
7 June 1971

ENGLISH
ORIGINAL: ENGLISH/FRENCH

SPECIAL COMMITTEE ON THE QUESTION OF DEFINING AGGRESSION

Fourth Session

SUMMARY RECORDS OF THE SEVENTY-NINTH TO NINETY-FIRST MEETINGS

Held at Headquarters, New York,
from 1 February to 5 March 1971

Chairman:

Mr. LEGNANI

(Uruguay)

Rapporteur:

Mr. AL-QAYSI

(Iraq)

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-sixth Session, Supplement No. 19, (A/8419)).

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SUMMARY RECORD OF THE SEVENTY-NINTH MEETING

Held on Monday, 1 February 1971, at 4.30 p.m.

Acting Chairman:

Mr. STAVROPOULOS

(Legal Counsel)

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OPENING OF THE SESSION (item 1 of the provisional agenda)

The ACTING CHAIRMAN welcomed the participants on behalf of the Secretary-General and conveyed the Secretary-General's cordial wishes for the success of the session.

In its resolution 2644 (XXV) of 25 November 1970, the General Assembly had taken note of the progress made by the Special Committee in its consideration of the question of defining aggression and on the draft definition and, considering the urgency of bringing the work of the Special Committee to a successful conclusion, had decided that the Special Committee would resume its work, in accordance with General Assembly resolution 2330 (XXII), as early as possible in 1971.

Furthermore, in operative paragraph 14 of its resolution 2734 (XXV) of 16 December 1970, entitled "Declaration on the Strengthening of International Security", the General Assembly had recommended that Member States should support the efforts of the Special Committee on the Question of Defining Aggression to bring its work to a successful conclusion, thus achieving the definition of aggression as soon as possible.

Before General Assembly resolution 2644 (XXV) had been adopted, the Sixth Committee had thoroughly considered the report of the Special Committee. The members of the Sixth Committee had expressed various views on certain general aspects of the question of defining aggression and on the draft definitions submitted to and discussed by the Special Committee; those views were contained in the report of the Sixth Committee (A/8171).

It had been anticipated that the Special Committee would do its work over a period of five weeks and complete it by 5 March 1971. However, several delegations had indicated that it would be preferable for the session to close at the end of February, since the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction would meet at Geneva on 1 March 1971. The Special Committee might therefore wish to endeavour to complete its work in four weeks.

He wished the Committee success in its work and pledged the Secretariat's full support.

ELECTION OF OFFICERS (item 2 of the provisional agenda)

Mr. VALLARTA (Mexico) nominated Mr. Augusto Legnani, Ambassador of Uruguay. Mr. Legnani, Doctor of Laws and Social Sciences, had been his country's Permanent Representative to the United Nations since August 1969, after having been Senator, Professor at the University of Montevideo, Member of the National Council of Government, Minister of the Interior and Minister for Foreign Affairs ad interim. His delegation was pleased to nominate the representative of a sister country with which his Government maintained the most friendly relations.

Mr. MUTUALE (Democratic Republic of the Congo), Mr. ROSSIDES (Cyprus) and Mr. CUENCA (Spain) warmly supported the nomination.

Mr. Legnani (Uruguay) was elected Chairman by acclamation.

Mrs. GAMOU (Uruguay), speaking on behalf of her Government and Mr. Legnani, who had been unable to attend the meeting for reasons beyond his control, thanked the members of the Special Committee for the honour they had bestowed on her country by electing Mr. Legnani Chairman.

The ACTING CHAIRMAN suggested that, since the Chairman was absent, the election of the Vice-Chairmen and Rapporteur should be postponed to the next day.

It was so decided.

The meeting rose at 4.45 p.m.

SUMMARY RECORD OF THE EIGHTIETH MEETING

Held on Tuesday, 2 February 1971, at 3.35 p.m.

Chairman:

Mr. LEGNANI

(Uruguay)

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ELECTION OF OFFICERS (item 2 of the provisional agenda) (concluded)

The CHAIRMAN thanked the members of the Special Committee for the honour they had bestowed on him and his country by electing him Chairman of the Special Committee. He assured the members of the Special Committee of his complete impartiality and devotion to his duties.

He invited the Committee to nominate candidates for the three posts of Vice-Chairmen.

Mr. TRESSELT (Norway) nominated Mr. Cawen (Finland).

Mr. KIKIC (Yugoslavia) supported the nomination.

Mr. ROSSIDES (Cyprus) nominated Mr. Mutuale (Democratic Republic of the Congo).

Mr. SAM (Ghana) supported that nomination.

Mr. IONESCU (Romania) nominated Mr. Hulinský (Czechoslovakia).

Mr. ALCIVAR (Ecuador) supported that nomination.

Mr. Cawen (Finland), Mr. Mutuale (Democratic Republic of the Congo) and Mr. Hulinský (Czechoslovakia) were elected Vice-Chairmen unanimously.

The CHAIRMAN invited the Committee to nominate candidates for the post of Rapporteur.

Mr. ROSSIDES (Cyprus) nominated Mr. Al-Qaysi (Iraq).

Mr. Al-Qaysi (Iraq) was elected Rapporteur unanimously.

ADOPTION OF THE AGENDA (item 3 of the provisional agenda) (A/AC.134/L.27)

The agenda was adopted.

ORGANIZATION OF WORK (agenda item 4)

The CHAIRMAN recalled that after having held in 1968, at its first session, a general preliminary discussion on the question of defining aggression and on the proposals which had been submitted to it, the Special Committee had resumed its work in 1969 and had set up a working group of the whole to give detailed consideration to the proposals, suggestions and points of view presented.

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(The Chairman)

At its third session, in 1970, the Special Committee had considered, paragraph by paragraph, the three draft definitions before it and had established a Working Group of eight members representing the sponsors of the three draft proposals in proportion to their number. The Working Group had been requested to help the Special Committee by formulating an agreed or generally accepted definition of aggression and, in case it was unable to reach such a definition, to report to the Special Committee its assessment of the progress made during the session, indicating both the points of agreement and disagreement. The Special Committee had decided to take note of the report of the Working Group and to annex it to its own report, since, for lack of time, the Special Committee had been unable to examine it.

In the circumstances, it would seem advisable for the Special Committee, at its present session, to resume its work where it had left off at the close of the 1970 session and to devote perhaps six meetings to the consideration of specific questions mentioned in the report of the Working Group, contained in annex II of the report of the Special Committee on the work of its 1970 session (A/8019). The Special Committee might also re-establish the Working Group, which would be invited to report periodically to the Special Committee on the progress of its work, taking into account any suggestions which might be made by the members of the Special Committee.

Mr. ROSSIDES (Cyprus) observed that it would be advisable to give the sponsors of the three draft proposals an opportunity to hold informal consultations, which had been very useful in the past.

The CHAIRMAN said that if there was no objection he would take it that the Committee agreed to devote the next six meetings to the consideration of the report of the Working Group.

It was so decided.

The CHAIRMAN said that, as suggested by the representative of Cyprus, it would indeed be advisable for informal consultations to begin as soon as possible, so as to enable the Committee to make progress in its work.

The meeting rose at 4.20 p.m.

SUMMARY RECORD OF THE EIGHTY-FIRST MEETING

Held on Wednesday, 3 February 1971, at 3.30 p.m.

Chairman:

Mr. LEGNANI

(Uruguay)

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY
RESOLUTIONS 2330 (XXII), 2420 (XXIII), 2549 (XXIV) and 2644 (XXV)) (agenda item 5)

Consideration of the report of the Working Group to the Special Committee at
its previous session (A/8019, annex II)

Mr. ROSSIDES (Cyprus) said he wished to discuss the question of the indirect use of force, on which the Working Group had not had time to reach any conclusions. At the previous session some delegations had proposed that the Special Committee should first consider direct aggression and deal later with the problems posed by indirect aggression. That approach had, however, met with opposition. His delegation had then proposed a compromise: recalling that the Charter referred to aggression without ever describing it as direct or indirect, it had suggested that those two adjectives should not be used in the definition.

An analysis of Article 1 of the Charter showed that it drew a distinction between "threats to the peace" and "acts of aggression or other breaches of the peace", the former being governed by Chapter VI and the latter by Chapter VII. The Charter dealt equally severely with acts of aggression and other breaches of the peace. It was not therefore true to say that only those acts which came under the heading of aggression were considered as grave. The only difference between "acts of aggression" and "breaches of the peace" was that the latter did not justify the exercise of the right of self-defence under Article 51. The purpose of the Charter was to limit the risk of war; that was why, in the event of a breach of the peace, States did not have the right to defend their own cause but had to appeal to the Security Council to take action.

The same wording could also be found in Article 39, which established a scale ranging from a "threat to the peace" to "a breach of the peace" and an "act of aggression". Once again, it was the applicability of Article 51 that differentiated a "breach of the peace" from an "act of aggression". Only an armed attack justified the exercise of the right of self-defence. Article 39 did not use the words "armed attack" because the authors of the Charter equated that concept with the concept of an "act of aggression". If one pursued that reasoning to its logical conclusion, it would be seen that an act of aggression was an act justifying the exercise of the right of self-defence.

Turning to the draft definitions of aggression before the Committee, he noted that they all included invasion by the armed forces of one State of the territory of another State and bombardment by the armed forces of one State of the territory of

(Mr. Rossides, Cyprus)

another State. The six-Power draft definition added the act of organizing, supporting or directing armed bands that infiltrated into another State. Yet such acts did not per se entitle the State against which they were directed to exercise its right of self-defence under Article 51 without first bringing the matter before the Security Council. That was why his delegation had refused to include those acts in the definition of aggression. They did not create an emergency or an immediate danger, as did "armed attack"; they gave States time to submit their case to the Security Council. They were "breaches of the peace" which entitled the United Nations to take collective action under Chapter VII of the Charter but did not justify self-defence.

Admittedly, however, there were marginal cases in which the infiltration was so substantial and the danger so great that they were tantamount to an armed attack and justified the exercise of the right of self-defence. His delegation would be prepared to include a paragraph to that effect in the definition of aggression.

A definition of aggression based on those principles would show States when they were entitled to take action in self-defence. It would in no way imply that acts not mentioned were considered less serious or would be less severely dealt with by the Security Council. If the Special Committee reached agreement on that point, it would have made much progress towards defining aggression. He hoped that his proposal would be favourably received and evoke constructive comments.

Mr. POLLARD (Guyana) felt that, in order to find a way out of the impasse in which it apparently found itself, the Working Group might adopt an analytical rather than a descriptive approach. It was disappointing that, although the Committee had reached agreement on certain general principles which were undoubtedly an adequate basis for a general definition, the Working Group had not made as much progress as it might have done by using those principles as a starting-point. It should be advised to use those areas of agreement to evolve a general formulation.

The representative of Cyprus had equated armed attack with armed aggression. While it was true that armed aggression necessarily went hand in hand with armed attack, the reverse was not true since the Charter permitted armed attack in some cases.

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Mr. ROSSIDES (Cyprus) explained that, in equating armed aggression with armed attack, he had been referring only to armed attack by one State on another State and not to collective action taken in accordance with the Charter and in pursuance of a decision of the Security Council. The term "armed aggression" was incorrect, since aggression was necessarily armed, as were breaches of the peace within the meaning of Article 1 of the Charter. It was true that the French text of Article 51 referred to "agression armée", but that was a translation of "armed attack".

Mr. MUTUALE (Democratic Republic of the Congo) agreed with the Cypriot representative that there was no reason to draw a distinction between direct aggression and indirect aggression, since the Working Group had to establish a general definition of aggression. As the Guyanese representative had suggested, the Working Group should begin by agreeing on a generally accepted definition, on the basis of which a kind of inventory or list of acts held to constitute aggression could then be prepared.

It had often been said that both the Soviet draft and the thirteen-Power draft were based on the principle of priority, namely, the criterion of first use of armed force. On the other hand, the six-Power draft was based mainly on the principle of intent; in his delegation's opinion, that was in fact the principle of the aim of the aggression namely, the desired result, which was contrary to the purposes of the Charter. The two criteria of priority and intent were not incompatible; the difference was more apparent than real. The Soviet draft stated that "Armed aggression... is the use by a State, first, of armed force against another State contrary to the purposes, principles and provisions of the Charter". Thus, in the view of the Soviet Union, first use of armed force could not be regarded as aggression unless the force was used contrary to the Charter of the United Nations. In both the Soviet draft and the thirteen-Power draft, the two criteria of intent and priority must therefore be considered cumulatively in order to determine whether aggression had been committed.

In his delegation's view, the six-Power draft, which was based mainly on the principle of intent, also involved a criterion of priority. It defined the term aggression as being "applicable... to the use of force in international relations... by a State against the territorial integrity or political independence of any other

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(Mr. Mutuale, Democratic
Republic of the Congo)

State, or in any other manner inconsistent with the purposes of the United Nations". A State which used its armed forces against the territorial integrity or political independence of another State was necessarily the first to use armed force contrary to the purposes of the United Nations. Even in cases where the use of force was authorized by the Charter, force was never lawful if its aim was to destroy the territorial integrity or political independence of another State. The six-Power draft definition therefore also contained the two criteria of priority and intent.

Those two criteria were therefore far from incompatible; it was simply that each draft definition laid more stress on one or other of the two principles. A formula should be found which would give equal weight to the two criteria.

Mr. POLLARD (Guyana) added that the principle of priority alone allowed only a presumption of guilt and was therefore complementary to the principle of intent.

The CHAIRMAN suggested that informal consultations should be held to determine the composition of the Working Group. He stressed that delegations which were not members of the Working Group would in no way be excluded from its work, since the Group would not submit a final report but would make suggestions to the Committee as its work progressed.

The meeting rose at 4.30 p.m.

SUMMARY RECORD OF THE EIGHTY-SECOND MEETING

Held on Thursday, 4 February 1971, at 3.25 p.m.

Chairman:

Mr. LEGNANI

(Uruguay)

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTIONS 2330 (XXII), 2420 (XXIII), 2549 (XXIV) AND 2644 (XXV)) (agenda item 5) (continued)

Mr. ROTHEMBERG (United States of America) noted that the views of the members of the Special Committee concerning the questions of priority and intent were getting closer. In its report, the Working Group had stated that all its members were in favour of introducing the principle of priority into the definition of aggression. The representatives of Guyana and the Democratic Republic of the Congo had also drawn attention to that common point of view. While his delegation believed that the element of priority should not be determinative, it agreed that it should be included in any definition. In addition, as those representatives had observed, all the proposals which had been submitted took account of the element of intent and he hoped that all the members of the Special Committee would agree to the inclusion of that factor, in an appropriate form, in the definition of aggression.

As the representative of Cyprus had pointed out, agreement to include the indirect use of force in a definition of aggression would represent an important step forward in the formulation of a generally acceptable definition. It was true that the descriptions "direct" and "indirect", as applied to the term "aggression", had no basis in the Charter and they could only complicate the discussion. However, the representative of the Democratic Republic of the Congo had rightly stated that a definition must be complete if it was to be of any value. Consequently, it was essential to mention direct and indirect use of force.

Nevertheless, after extricating itself from a barren discussion of so-called direct and indirect aggression, the Special Committee should now avoid engaging in an inconclusive conceptual debate on whether the term used in Article 1 and Article 39 of the Charter on the one hand, and the different term used in Article 51 on the other, were necessarily identical or equivalent. The Charter was not drafted that way and the collective security system was not intended to operate on that basis. The function of Article 39, which had to do with activating the collective security system, and the quite different function of Article 51, which was designed to exempt the inherent right of self-defence from the prescriptions of Article 2, illustrated the difficulties in adopting such an

(Mr. Rothemberg, United States)

approach. The terms used were different and the context was different. Any attempt to merge those two concepts would produce a distortion of the legal régime embodied in the Charter.

There was some merit in the idea that the degree of violence of a particular act affected both the wisdom and the feasibility of having the Security Council determine the existence of an act of aggression under Article 39 of the Charter. There might indeed be breaches of the peace where the collective security mechanism ought to be activated but which it would be neither right nor practical to designate as acts of aggression. However, in that case, the criterion should not be the means employed, for it mattered little whether the act had been committed by soldiers in uniform or by a band of armed saboteurs.

The notion that a State was not entitled in every case to use the whole of its military might against another State in response to an isolated act also had some merit. Once again, the criterion was not whether the isolated act had been a shell fired by the regular army of the other State on the orders of the Head of that State or a bomb smuggled across the border by a terrorist.

The concern that the Security Council would be compelled to determine the existence of an act of aggression when it would be unwise and impractical for it to do so could be met by including the notion of intent in the definition - which was generally recognized as necessary - and by preserving the discretionary powers of the Security Council.

There seemed to be no need for the Committee to consider in detail cases where States might seek to use force illegally under cover of Article 51 of the Charter. It was obvious, however, that in formulating guidelines for determining the existence of an act of aggression within the meaning of Article 39 of the Charter, the Special Committee must avoid providing States with excuses for interpreting Article 51 as authorizing them to overreact to an act of violence committed against them. That was the risk incurred by a simplistic application of the principle of priority and, for that reason, his Government was not prepared to accept it as an absolute.

The task of the Special Committee was to provide guidelines which would enable the competent organ of the United Nations to determine the existence of an act of aggression, but the Security Council would retain its discretionary power to

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(Mr. Rothemberg, United States)

establish that an act of aggression had been committed even if the act did not appear in the list which the Committee might produce. In that way, the Security Council would be able to determine that use of force other than first use could constitute an act of aggression; such a determination would be wholly consistent with the six-Power draft.

Mr. GONZALEZ GALVEZ (Mexico) observed that the procedure decided on by the Special Committee, which was to examine the report of the Working Group in plenary, was not likely to advance its work. Instead, it would be advisable to hold informal negotiations in small but representative working groups. However, his delegation wished to make a few general comments on the report of the Working Group.

Firstly, defining aggression should not raise any serious problems once it had been decided whether or not the definition should include the idea of indirect aggression, which had been the cause of considerable confusion.

Secondly, his delegation was glad to note that the Working Group had been unanimous in recognizing that the definition of aggression should include the principle of first use, or priority, which was specifically mentioned in both the USSR and the thirteen-Power drafts, which established a presumption of guilt for the party which first committed a particular act. However, as it had already stated, his delegation felt that it would be advisable to study whether or not a distinction should be made, in the definition of aggression, between acts of aggression and so-called "border incidents". Unlike the United States delegation, however, it was convinced that the principle of priority should be determinative, although it might be difficult to say whether there had been aggression when there had been a border incident first. During debate on the question in the Sixth Committee, his delegation had cited many examples where that criterion alone could not be applied: States which were the victims of a particular act should be allowed to regard that act as an incident and should not be forced to react as if it were an armed attack. In that connexion, the Special Committee might invite two or three delegations to attempt to define what constituted an armed attack within the meaning of Article 51 of the Charter. Moreover, the sponsors of the thirteen-Power draft, which included Mexico, and the Soviet Union should study the

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(Mr. Gonzalez Galvez, Mexico)

possibility of stating that armed aggression was the use by a State, first, of armed force "in an international conflict", which would make it clear that the party which committed an act of aggression was not necessarily the party committing one of the isolated acts enumerated in the various proposals, but rather the party which took the initiative in making illegitimate use of force and thus triggered an armed conflict.

Thirdly, it would be useful to consider carefully the proposal submitted by a number of delegations that the term "State" should also apply to political entities whose status as a State was in dispute. That explanation should not be construed to mean that the legal existence of a State could be placed in doubt simply because it was not recognized by a majority of members of the international community. His country, for example, was of the opinion that the existence of a State did not depend on its recognition by other States.

Fourthly, his delegation wished to stress that even if it was acknowledged that the list of acts of aggression to be drawn up would not be restrictive and even if that list was introduced by a statement indicating that it had been drawn up without prejudice to the functions and powers of the Security Council, that statement could not be interpreted as authorizing the Security Council to add other acts to the list; it was simply intended to indicate that the definition did not affect the Council's power to judge and decide who was the aggressor. In that connexion, the USSR might be well advised to change paragraph 3 of its proposal, which made the definition practically useless.

On the other hand, his delegation could not understand why certain delegations doubted the fact that self-defence was essentially an immediate and proportional reaction. The principle of proportionality must be clearly established in any definition of aggression; that would dispose not only of any disagreements concerning the definition of individual or collective self-defence, but also of the difficulties which might arise with regard to inclusion in the definition of a provision concerning armed bands.

He was of the opinion that certain problems, owing to their very nature, should be considered in informal negotiations rather than in plenary meeting. One of them was the question of the indirect use of force: his delegation had already expressed its concern with regard to the inclusion of that concept in the

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definition of aggression. While the question was undoubtedly an important one, the problems it raised in connexion with the implementation of regional agreements made it imperative to subject it to detailed examination. The same was true of the ideas of priority and intent. That also applied to the reference to the regional organizations contained in paragraph 4 of the thirteen-Power proposal. It had been argued that Article 53 of the Charter did not mention the use of force, but only "enforcement action". It was not a question of form but of substance, and his delegation felt that the measures envisaged in Articles 41 and 42 of the Charter should be understood within the meaning of the corollary to those Articles, namely, paragraph 4 of the thirteen-Power proposal.

On the other hand, the Committee should also consider the advisability of including in the definition provisions relating to the consequences of an act of aggression, for example, the illegality of territorial acquisition resulting from the use of force, which had already been recognized in the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States. That principle should be included in the definition of aggression. At the same time, it should be indicated whether the annexation of a territory could ipso facto be described as aggression; no one could deny that territorial acquisition resulting from the unlawful use of force was illegal. Moreover, a State could not acquire the territory or part of the territory of another State in the exercise of its right of self-defence, a principle which had long been recognized.

Finally, the Committee should consider the possibility of reaching compromise formulas on a question which, although not of primary importance, was fundamental for certain States, in particular for the nuclear Powers: was it advisable to mention the use of weapons of mass destruction as a typical act of aggression? That question had given rise to controversy in the Sixth Committee, but as early as 1954, during the disarmament talks held in London, France and the United Kingdom had submitted a proposal under which the use of nuclear weapons would be prohibited, in accordance with the terms of the Charter, except in defence against aggression. Sir Gerald Fitzmaurice had stressed at that time, on behalf of his country, that the legality of the use of nuclear weapons should not even be recognized in all

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(Mr. Gonzalez Galvez, Mexico)

cases of self-defence, and that point, in the view of the Mexican delegation, should be given closer scrutiny in the light of the resolutions which the General Assembly had adopted.

He again stressed the need to begin informal negotiations as early as possible, since that was the only way in which the Special Committee could make progress in its work.

The CHAIRMAN concurred in the final remarks of the Mexican representative and invited the members of the Committee to begin consultations with a view to working out compromise solutions.

The meeting rose at 4.5 p.m.

SUMMARY RECORD OF THE EIGHTY-THIRD MEETING

Held on Friday, 5 February 1971, at 11 a.m.

Chairman:

Mr. LEGNANI

(Uruguay)

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (General Assembly resolutions 2330 (XXII), 2420 (XXIII), 2549 (XXIV) and 2644 (XXV)) (agenda item 5) (continued)

Consideration of the Report of the Working Group to the Special Committee at its previous session (A/8019, annex II)

Mr. POLLARD (Guyana) said he wished to make clear that, when he had spoken at the eighty-first meeting, it had been his understanding that it was generally agreed that the element of intention should be reflected in any definition of aggression. That had seemed a logical conclusion in view of the fact that most members had agreed that the principle of priority led only to a rebuttable presumption of guilt, i.e. that the principle of priority necessarily involved presumed intent. That assumption was supported by the fact that he could conceive of no situation in which presumption of guilt could be rebutted except by proof of the absence of intention. He had not been suggesting that there was general agreement on the way in which the element of intention should be reflected. At the same time, his delegation did not think that the six-Power draft proposal (A/AC.134/L.17 and Add.1 and 2) reflected the element of intention in the way it should be reflected, since in that proposal the burden of proof was shifted to the victim of the first attack. Moreover, it did not accept the enumeration in paragraph (IV) (A) of the six-Power draft, in which intention seemed to be confused with motive. In the view of his delegation, intention was characterized by the immediacy of mental adversion, which in motive was usually more remote. His delegation was of the opinion that the mens rea in an act of aggression could be construed simply as the intention to affect in any way the sovereignty, political independence or territorial integrity of a State contrary to the provisions of the Charter. As such, intent was the mens rea of an act of aggression and was undeniably an important element.

Mr. ROSSIDES (Cyprus) thanked the representative of Guyana for making clear his position with regard to intent. He agreed that intent differed from motive or purpose in its legal sense. In his view, paragraph (IV) (A) of the six-Power draft definition contained an enumeration of purposes, and purpose was not relevant to aggression. He agreed with the representative of Guyana that the mens rea of an act of aggression was intent, i.e. the fact that the act was committed intentionally and not accidentally. The Charter of the

(Mr. Rossides, Cyprus)

United Nations did not mention intent in connexion with an act of aggression, but the element of intention was clearly implied. Acts committed by mistake presented no problem and were not covered by the Charter. Acts such as invasion and air and naval bombardment of sovereign territory were clearly acts of aggression in which an element of intention was to be assumed until the contrary was proved. Because an element of intention was clearly present in any act of aggression, intent was not mentioned in the thirteen-Power draft proposal (A/AC.134/L.16 and Add.1 and 2); however, in order to accommodate certain delegations, he would not object to amending the draft to include an explicit reference to intent.

The representative of the United States of America had indicated at the preceding meeting that he agreed that the Charter did not provide for direct and indirect aggression but had still seemed to feel that armed attack and aggression were two different things. In that connexion, he wished to point out that Article 1 (1) of the Charter defined two categories of offence. The first category was constituted by "threats to the peace" and did not concern the Special Committee. The second category included two kinds of offence, namely, acts of aggression and breaches of the peace, both of which were to be remedied by suppression. Again, in Article 39, the Charter made a distinction between a breach of the peace and an act of aggression. Any definition of aggression by a United Nations body would have to take that distinction into account. When the Charter was being drafted, the question had arisen as to the need to differentiate between acts of aggression and other breaches of the peace, and it had finally been decided that an act of aggression, while constituting a breach of the peace, was more serious than an ordinary breach of the peace. It was therefore logical to assume that the Charter would provide a more severe remedy for an act of aggression than for other breaches of the peace. He felt it was significant that in the Chapter of the Charter which dealt specifically with remedies, Article 51 made provision for recourse to self-defence, but only against armed attack. Since the Charter mentioned only two kinds of offence to be dealt with by suppression, the reference to armed attack in Article 51 must necessarily refer to the more serious of the two, i.e., an act of aggression.

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Mr. MUTUALE (Democratic Republic of the Congo) said that one of the most important problems confronting the Special Committee was to decide whether its definition of aggression should refer to both States and political entities or only to States. In defining aggression, it was essential to determine who could be classified as an aggressor. The Charter of the United Nations seemed to indicate that only a State could be an aggressor, and two of the draft proposals before the Special Committee were in accordance with the Charter in that respect. The third draft definition, (A/AC.134/L.17 and Add.1 and 2), differed from the Charter in that it provided (paragraph II) that an act of aggression could be committed by either a State or by some other political entity.

In his delegation's view, any definition of aggression had to fit into the general context of the Charter, which, legally speaking, was a treaty between the Members of the United Nations. Therefore any definition of aggression formulated by the Special Committee could apply only to those who acceded to the Charter. He was not denying that a State not a member of the United Nations could commit aggression, but no definition of aggression based on the Charter would be relevant to such a State. Aggression committed by States not members of the United Nations had to be dealt with under general international law. He therefore felt that the terms "States" and "other political entities" should be replaced in all three drafts by the term "Members of the Organization".

The meeting rose at 11.45 a.m.

SUMMARY RECORD OF THE EIGHTY-FOURTH MEETING

Held on Monday, 8 February 1971, at 3.30 p.m.

Chairman:

Mr. LEGNANI

(Uruguay)

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (General Assembly resolutions 2330 (XXII), 2420 (XXIII), 2549 (XXIV) and 2644 (XXV)) (agenda item 5) (continued)

Sir Laurence McINTYRE (Australia) said that the progress made by the Working Group was encouraging, although a number of difficulties were still outstanding. He referred particularly to the fact that its members had agreed on two very important considerations, namely, that the general definition of aggression should reflect the concept of aggression as contained in the Charter and that the list of acts constituting aggression should be preceded by a statement specifying that such acts were listed without prejudice to the full powers of the Security Council, as provided in the Charter, to declare other acts to constitute aggression.

For its part, the Australian delegation had always maintained that the Committee should take as the basis for a definition the concept of aggression contained in Articles 1 and 39 of the Charter. It was not the Committee's task to rewrite the Charter but only to agree to a satisfactory elaboration of the term "act of aggression" that was wholly consistent with the Charter. The need to take account of the realities of the present-day world made that task all the more difficult, and for that reason his delegation was glad that the Working Group had recognized the power of the Security Council to designate as aggression acts other than those that might be agreed upon for purposes of the definition. Nevertheless, the Committee had to try to elaborate a definition which was as comprehensive, balanced and, above all, widely acceptable as possible.

Again, on the credit side, his delegation was pleased to note that the Working Group had agreed on a number of details, which was an indication that it would continue to make good progress in its work.

On the other hand, the report revealed a number of important differences. In the first place, some members felt that if the general definition did not refer to the use of armed force, overt or covert, direct or indirect, it should at least refer to armed force "however exerted". Other members thought that the general definition should refer only to the use of armed force, without qualifying it as "direct" or "indirect". His delegation agreed with those who thought that a general definition should refer to the broad categories of aggression. Admittedly, the distinction between "direct" and "indirect" aggression was not always absolutely

(Sir Laurence McIntyre, Australia)

clear, but it reflected the realities of the present-day world, in which aggression was often carried out not by the open deployment of regular forces but by the clandestine infiltration of armed bands into the territory of another State.

In his delegation's view, it could not be argued that the direct or overt use of armed force to destroy the political independence or territorial integrity of another State was aggression while at the same time maintaining that the indirect or covert use of armed force for such purposes was not aggression. So far as the definition of aggression was concerned, it was immaterial whether a State exerted force directly or indirectly against another State. The only question was whether the use of force, however, exerted, was intended to accomplish one or other of the objectives that came under the heading of aggression.

The clandestine infiltration of armed bands into the territory of another State could be at least as dangerous as an open invasion and was the commonest form of aggression in the present-day world. That form of aggression could therefore not be excluded simply on grounds that it was too difficult to define. Unless the definition stipulated whether or not the indirect use of force constituted aggression, it would be hard to say whether for some members it would be clear enough that the Charter covered the essence of aggression in all its practical manifestations. Having said that, his delegation would be prepared to accept the words "however exerted", provided that those words were understood as including the concept of "indirect aggression".

His delegation shared the view of some members of the Working Group that the element of priority itself was not the determining factor, and that other elements should also be taken into account. However, it would be wrong to assert that the question of priority in no way helped to establish whether a breach of the peace should be classified as an act of aggression. The text proposed on that subject by a member of the Working Group deserved to be discussed further (A/8019, annex II, para. 5).

The report of the Working Group justified some hope with regard to the question of political entities; it stated that if the text did not expressly include States whose statehood was disputed, an explanatory note should be annexed to the definition to the effect that the term "States" included States in that category.

(Sir Laurence McIntyre, Australia)

His delegation felt that there must be a clear statement of the right of States to use force in the exercise of their inherent right of individual or collective self-defence. That right was not affected by Article 2 (4) of the Charter, and Article 51 mentioned the inherent right of self-defence. That right was therefore not dependent on Article 51 of the Charter and was not limited by that Article.

Although some members were opposed to any reference to the concept of intent in the definition and to the elaboration of any list of purposes, his delegation believed that the concept of intent was a basic principle of law and that it was difficult to conceive of a definition which did not indicate the principal illegal purposes constituting aggression. If that was so, a definition should necessarily indicate the nature of the aggressive intent.

The Working Group had been unable to agree on whether the question of proportionality should be included in the definition. His delegation was rather inclined not to include it, since the principle of proportionality could not by itself be used to establish whether or not an act of aggression had been committed. A disproportionate reaction to an act of aggression did not necessarily constitute aggression; it might, for example be due to a mistaken evaluation of the facts. In any case, it should be determined in each particular case whether or not there had been an aggressive intent.

His delegation felt that a definition should not refer to any supposed right of colonial peoples opposing forcible efforts to deprive them of their right to self-determination to receive support in accordance with the principles of the Charter. In the three drafts submitted to the Committee, aggression was defined as an act directed by one State against another and the use of force by dependent peoples in the exercise of their right of self-determination therefore did not come within the scope of a definition of aggression. In the field of inter-State relations it would not be possible to accept a provision to the effect that an act, which would under all other circumstances be defined as aggression, would not be considered aggression if it was committed in the context of self-determination. It should be stressed that the six-Power draft in no way derogated from the right of peoples to self-determination.

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(Sir Laurence McIntyre, Australia)

Although there were still substantial differences, his delegation was hopeful that the Committee would make progress in its work through mutual understanding and confidence and by remaining committed to the principle of consensus.

Mr. KAGAMI (Japan) said that although there were still substantial differences between the various drafts, the work accomplished by the Working Group had been very useful in that it had made it possible to define clearly the areas of agreement and disagreement as well as the possibilities for compromise. Further progress might be made by proceeding concurrently with discussions in the plenary Committee a detailed exchange of views in the Working Group and informal consultations.

It was regrettable that the Working Group had been unable to discuss the problem of the indirect use of force fully, because of lack of time. That was an absolutely essential point for the question of defining aggression; all the proposed texts referred to that specific point. Moreover, a number of armed conflicts which arose after the Second World War had been caused by indirect aggression. A definition of aggression should therefore necessarily include certain acts normally referred to as indirect aggression, in so far as they had essentially the same characteristics as the direct use of force. Some delegations seemed to fear that the right of self-defence might be abused if it was exercised against the indirect use of force. Aggression by the indirect use of force would in some cases be tantamount to "armed attack" under Article 51 of the Charter. A State which was the victim of real aggression committed by indirect means could not therefore be denied the right to self-defence because of the indirect nature of the means used against it.

In theory, it might be useful to consider the principle of priority as one of the criteria for defining aggression. However, the automatic application of that concept might result in classifying acts committed by accident or the use of force based on the right of self-defence as acts of aggression. That factor is important, but it is not a determinant in a definition of aggression. The formulation proposed by a member of the Working Group and contained in paragraph 5 of the report might serve as a basis for a compromise solution.

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(Mr. Kagami, Japan)

His delegation felt that due consideration should be given not only to the element of illegality in the act committed, but also to the element of "aggressive intent" of the party committing the act. Notwithstanding the differences within the Working Group, it was encouraging to note that one delegation, which was not a sponsor of the six-Power draft, had suggested a formulation which made it possible to include that concept in the definition. In that connexion, the comments made by the representatives of Guyana and the Democratic Republic of the Congo at the eighty-first meeting justified the hope that progress would be made in that area.

With regard to the legitimate use of force, the members of the Committee all seemed to agree that the definition should clearly recognize the right of self-defence, as stated in Article 51 of the Charter. However, it should be stressed that the Committee's task was to define aggression, not self-defence, and the right of self-defence should be mentioned only in so far as it had a bearing on the definition of aggression. The formulation proposed in paragraph 7 (a) of the report (A/8019, annex II) laid the groundwork for a possible compromise. However, the text of paragraph 7 (b) was not relevant to the Committee's main task.

His delegation wished to point out that a definition of aggression must take into account different points of view and must be generally acceptable to the members of the international community; the importance of the method of consensus therefore could not be over-emphasized.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) said that his delegation attached great importance to the task entrusted to the Special Committee, which had a direct bearing on the destiny of the world. With that thought in mind it had submitted a draft definition of aggression. The Special Committee also had before it another draft, submitted by thirteen Powers, which was an extremely useful and positive document. There was further ground for satisfaction in the fact that six western Powers had also submitted a draft definition, even if the text was complex and contradictory. In any event, the USSR delegation was convinced that the only way of arriving at a lasting and acceptable definition of aggression was by means of consensus; to take any other course would be to deprive the definition of all meaning.

(Mr. Chkhikvadze, USSR)

At its current session, the Special Committee should endeavour to determine the constituent elements of aggression. Those elements could be defined only by reference to the Charter, which in Article 1 and Article 39 referred to threats to the peace, breaches of the peace and acts of aggression, and in Article 51 to armed attack. It followed that the notion of aggression embraced several types of situations, the most dangerous of which was armed attack. However, the fact that the Charter did not mention indirect aggression did not preclude the drawing of a distinction between direct and indirect aggression. Such a distinction had existed for a long time in diplomatic and State practice. Both forms constituted a threat to international peace, and the difference between direct and indirect aggression was the same as that existing between armed attack and a breach of the peace. It should be noted, however, that under Article 51 of the Charter, it was only armed attack, and not other breaches of the peace, that gave rise to the right of self-defence. Such a distinction must therefore be retained in any definition of aggression. Some delegations, particularly those of the Western countries, were arguing that indirect aggression gave rise to the right of self-defence. That was a subjective interpretation of the Charter, which was devoid of substance and which put two totally different notions on the same footing. It was not that no attempt should be made to define indirect aggression, but rather that the Special Committee should concentrate on defining direct aggression, namely armed attack. To that end, the Special Committee might decide to re-establish the Working Group that it had set up during its 1970 session, either with the same membership or with new members.

Another question to be examined - the legitimate use of armed force in accordance with the Charter - included not only cases of self-defence but also those cases in which the Security Council - the only body authorized to use armed force on behalf of the United Nations - decided to do so. In that connexion, any formula that was drafted too broadly would be unacceptable. Moreover, it was a mistake to speak of the right of regional organizations to use force without making it clear that that right existed only when the organizations concerned had been authorized by the Security Council to use force. Article 53 of the Charter was perfectly clear on that point. The whole of that question could also be referred to the Working Group for consideration.

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(Mr. Chkhikvadze, USSR)

The principle of priority, which should be taken into account in any definition, was accepted by all the members of the Special Committee and there seemed no reason therefore to dwell on it. The question of intent or animus aggressionis, on the other hand, should be accorded fuller treatment in the definition of aggression. It was an objective element which invariably played a very important part in the definition of premeditated crime in all legal systems. Aggression was a serious international crime and the responsibility of the aggressor was directly related to his intention. Aggression and the responsibility of the aggressor should therefore be considered simultaneously. Although in theory the intention could be different from the motives of the aggression, which might be the desire to obtain revenge, to secure economic advantages, to annex the territory, or to overthrow the Government of a State, etc., his delegation doubted whether there was any need to refer to motives in a definition of aggression. Aggressive intent would suffice.

The principle of proportionality, which appeared only in the thirteen-Power draft, also raised an important problem. However, his delegation had grave doubts as to whether it was wise to include the concept in the definition of aggression. Apart from the fact that it was not universally accepted in international law, the principle hardly lent itself to a legal definition and might even be advantageous to the one responsible for the aggression. An example was the recent aggression against the Republic of Guinea. If a definition of aggression had existed, which included the principle of proportionality, it would have produced a paradoxical situation in which the President of the Republic of Guinea, in order to deal with the aggression, would have had to assess the number of attackers and the types of arms used and have had to reply with troops and arms that were an exact counterpart. In such circumstances, the attack might not have been repelled, and the principle of proportionality would thus have been advantageous to the aggressor. Such a principle was unacceptable and should not be included in the definition of aggression.

His delegation also attached very great importance to the legal consequences of aggression. The inadmissibility of the acquisition of territories by force and the principle of responsibility for aggression, in particular, were two points on which there were a number of accepted norms of international law, which should be taken into account in the definition of aggression, as was the case in the USSR

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(Mr. Chkhikvadze, USSR)

draft. His delegation could not agree to the omission in the definition of a reference to the right of peoples to self-determination, and in fact the USSR draft and the thirteen-Power draft were very close to each other on that point. Campaigns conducted by peoples for freedom and independence could not be described as aggression, and the definition of aggression should include a clear reference to the legitimacy of recourse to force by colonial and non-self-governing peoples in order to exercise their right to self-determination.

In conclusion, he expressed the hope that the areas of agreement would widen and that the Special Committee would make progress with its task. It was therefore important to organize the work in the most efficient possible manner, for example, by setting up a Working Group.

Mr. EL-FATTAL (Syria) felt the work accomplished thus far by the Special Committee should not give rise to over-optimism or pessimism. Although some opposing positions had converged, there were still acute differences on important concepts.

The Special Committee should find both encouragement and a fresh source of inspiration in the Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States, adopted by the General Assembly at its twenty-fifth session. That document constituted a tacit invitation to the Special Committee to devise legal formulas that would prevent and punish crimes committed against the peace of nations. It was no accident that the Declaration had qualified wars of aggression as crimes against peace, and that it had solemnly recognized the legitimacy of the struggle of national liberation movements and had proclaimed the principle of non-recognition of territorial acquisition by force as well as the principle of the prohibition of military occupancy. The Committee's task was to remain strictly faithful to the Charter and to the principles of international law embodied in the Declaration. That could be done by avoiding any additions or excisions of any kind whatever in those fundamental documents.

Some of the points in the Working Group's report called for comment by his delegation, which reserved the right to make a more detailed analysis at a later stage.

(Mr. E.-Fattal, Syria)

The first point concerned the relationship between the criteria of priority and intent. Some representatives had stated that there was increasing agreement on that question. The report of the Working Group had noted that "all members were in favour of introducing the principle of priority into the definition". However, the representative of the United States had recently explained (A/AC.134/SR.82) that he could not agree that the element of priority should be considered as a "determinative" factor, which would imply that the element of intent, upon which the six-Power draft was entirely based, would remain the determinative criterion, while the question of first use would receive due consideration only when the existence of intent had been proved. Consequently, it was doubtful whether the Working Group had reached genuine agreement.

His delegation wished to stress that the first use of force could not be divorced from aggressive intent inasmuch as the second use of force was of necessity bound up with the concept of self-defence. Questions of intent, motivation and objectives were relevant criteria before the prohibition of wars of aggression. In the contemporary international legal system, the first use of force automatically presumed guilt. It was true that the appearance of new arms of mass destruction and their means of delivery had maximized the question of "mistake" or "accident", but it was not for jurists to interfere in a purely technological field. His delegation was convinced that the concept of aggressive intent was much too elusive to be incorporated into an attempt to formulate a legal definition of aggression. The views of an American author, Mr. Telford Taylor in a recently published book, Nuremberg and Viet-Nam: an American Tragedy, indicated the problems involved in using the criterion of intent to judge the American intervention in Viet-Nam.

There was still disagreement on the general definition of aggression, although the members of the Working Group had agreed that such a definition should reflect the concept of aggression as it appeared in the Charter. As the Charter did not refer to indirect aggression, it seemed that, as a result of the endeavours of the Soviet delegation in particular, progress had been achieved towards a general definition which would excise any reference to direct or indirect aggression and would speak only of "the use of armed force".

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(Mr. El-Fattal, Syria)

His delegation shared the view of many other delegations that the most dangerous form of aggression, namely armed attack, should be taken up first, and that indirect acts of force should be dealt with later, although they constituted a serious threat, especially to the developing countries. If an adequate description of indirect aggression was sought, paragraphs 6, 7 and 8 of section IV A of the six-Power draft were much too restrictive, since the use of "force" was not restricted to acts of violence. The list of more subtle, less overt, but none the less pernicious and destructive acts that ensured the attainment of the objectives enumerated in section IV A should be added to the means listed in section IV B of the six-Power draft. On the other hand, if the aim was to define "armed aggression", as the thirteen-Power draft sought to do, it would be better to concentrate on the most dangerous form of aggression, namely armed attack, which gave rise to self-defence in accordance with Article 51 of the Charter.

In its report, the Working Group had noted that the question of the indirect use of force needed further study. His delegation's final position on the question would depend on the widening of the scope of adequate safeguard clauses for the protection of peoples struggling for their independence, and on the rational application of the right of self-defence to armed aggression, although self-defence should not be used as a pretext for starting pre-emptive wars.

The idea of political entities as it appeared in the six-Power draft was controversial, and it was not certain that an explanatory note in the Working Group's report would suffice to eliminate the problem. Many delegations had expressed the fear that the reference to political entities other than States might give rise to a restrictive interpretation of the term "State" and blur the distinction between international conflicts and civil wars. At the last session of the Special Committee, his delegation had stressed that any extension of the political entity concept to cover territories which had not yet achieved independence, might raise extremely delicate problems. Moreover, Syria had stated that the fact that a State had not been recognized by other States, as in the case of Israel, should not prevent the application of enforcement action against that State.

With regard to the question of the legitimate use of force, it appeared clear that no agreement had been reached. His delegation preferred operative paragraph 3

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(Mr. El-Fattal, Syria)

of the thirteen-Power draft. A safeguard clause to protect the right of the peoples to self-determination was as essential as the safeguarding of Articles 51 and 53 of the Charter.

Occupation and annexation of a territory should be considered as constituting aggression in themselves since, while it was true that occupation and annexation were the result of an invasion or an armed attack, it was no less true that they could constitute an end in themselves, as the territorial expansion of Israel and the occupation of Namibia by South Africa had shown in contemporary history. No definition of aggression could ignore the concept of permanent aggression and the responsibilities arising therefrom. No compromise was possible on that point. His delegation believed that only the drafts of the USSR and the thirteen Powers were satisfactory in that respect.

His delegation reserved the right to state its position at a later stage on those questions which it had not taken up and wished to state that its final positions would depend upon the definition finally agreed.

If and when the Working Group resumed its work, such resumption should be carried out in accordance with the understanding reached at the last session of the Committee in Geneva and the views expressed by delegations, including Syria, on the mandate of the Working Group.

The meeting rose at 5.30 p.m.

SUMMARY RECORD OF THE EIGHTY-FIFTH MEETING

Held on Tuesday, 9 February 1971, at 3.20 p.m.

Chairman:

Mr. LEGNANI

(Uruguay)

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CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (General Assembly resolutions 2330 (XXII), 2420 (XXIII), 2549 (XXIV) and 2644 (XXV)) (agenda item 5) (continued)

Mr. STARACE (Italy), referring first to the scope of the concept of aggression, observed that all three draft definitions before the Committee defined aggression as the use of force in international relations. Consideration of the means utilized or of the way in which force was used should not alter that basic element of the definition, which was obviously based on Article 2 (4) of the Charter. If it was admitted that the existence of an act of aggression depended on the manner in which force was used, potential aggressors, far from being discouraged by the definition would use it to absolve themselves on the pretext that it did not prohibit the manner in which they had utilized force. If it was to be of any value, the definition of aggression must be complete. It must therefore include the use of such means as the sending of irregular armed forces, armed bands, mercenaries or terrorists, as well as the organization, support or direction of irregular forces that made excursions or infiltrated into another State and the organization, support and direction of civil strife or subversive activities aimed at the violent overthrow of the Government or institutions of another State. It was particularly essential to include such acts in the definition inasmuch as they accounted for the most serious and frequent types of aggression now being committed. Some delegations had proposed that consideration of indirect aggression should be deferred until a later stage and that priority should be given to consideration of so-called "direct" aggression. The fact that indirect aggression presented difficulties was not a valid reason for postponing consideration of it. His delegation was convinced that there were compelling reasons for including cases of aggression by indirect means in the definition which it was the Committee's task to prepare.

With regard to the question of self-defence, it should first of all be noted that the Special Committee had not been called upon to define it or clarify its scope. The definition of aggression should therefore simply state that self-defence as envisaged in Article 51 of the Charter, should not be described as aggression. His delegation nevertheless, wished to express its views on a number of points which had been raised in that connexion during the debate. The first concerned the limitation of the cases in which the right of self-defence should be considered acceptable. Operative paragraph 7 of the thirteen-Power draft provided that a

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(Mr. Starace, Italy)

State which was a victim in its own territory of subversive and/or terrorist acts committed at the instigation of another State could not have recourse to the right of self-defence. That provision, which limited self-defence to cases of direct aggression, was based on the very understandable desire to prevent the victim State from committing a further act of aggression, a situation which could arise if there were no limits to the exercise of the right of self-defence. That legitimate concern could not, however, justify the a priori prohibition of self-defence in the face of certain forms of aggression, particularly indirect aggression. The limits of the right of self-defence were not derived from the means employed by the aggressor, but from the basic objective of self-defence, which was to safeguard the State, the Government and its institutions. It was only where self-defence went beyond that objective that it ceased to constitute an acceptable use of force under the norms of international order and might become an illegal act. It was impossible, however, to determine a priori in what situations a State which used force by virtue of its right of self-defence was abusing that right. Under Article 51 of the Charter, the assessment of specific situations must be left either to the State or States concerned or to the Security Council, to which the State or States concerned were required to report immediately measures taken in the exercise of the right of self-defence. It would therefore be unjust and inadvisable to establish general rules making the exercise of that right dependent on the means of aggression used, as some delegations were proposing. For those reasons, provisions such as those in operative paragraph 7 of the thirteen-Power draft did not belong in a definition of aggression.

He wished to point out that the Charter contained no reference to the principle of proportionality, which some delegations wanted to use as a justification for limiting the exercise of the right of self-defence. In diplomatic practice and international law, the principle of proportionality had been applied to reprisals, which constituted sanctions and could not be placed in the same category as self-defence. The real limit of self-defence did not derive from the fact that the measures taken by the victim State were proportionate to the aggression suffered but from the fact that they conformed to the basic purpose of self-defence as recognized by the international community.

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(Mr. Starace, Italy)

There was no general rule that would make it possible to determine a priori whether such conformity existed. Under Article 51 of the Charter, that must be done by the State or the States concerned and the Security Council. The obvious conclusion was that the principle of proportionality should not be included in a definition of aggression.

With regard to the organs empowered to authorize the use of force or to use force themselves, some delegations had expressed opposition to the reference to "competent United Nations organs or regional organizations" contained in paragraph III of the six-Power draft. Those delegations argued that the Charter provided that the Security Council alone was empowered to authorize the use of force and to authorize regional organizations to utilize force. However, the Members of the Organization did not all interpret that aspect of the Charter in the same way. Some held that the use of force could be authorized not only by the Security Council but also, in cases where the Council was powerless to act, under Articles 10, 11 and 14 of the Charter and United Nations practice. Moreover, a number of States Members of the United Nations held that since Article 51 of the Charter recognized the right of collective self-defence it allowed organizations whose purpose was to establish a system of collective defence to use force in carrying out that purpose. Furthermore, while Article 53 of the Charter made enforcement action by regional agencies contingent upon the authorization of the Security Council, it was arguable that in certain cases such authorization might follow the enforcement action or be given implicitly. In view of such differences in interpretation, his delegation believed that it would be best to adopt as neutral a formula as possible. Paragraph III of the six-Power draft seemed satisfactory in that respect.

His delegation did not object to including the criterion of first use of force in the definition, provided that it was not regarded as a determining factor but simply as one element to be taken into consideration. On the other hand, aggressive intent had to be taken into consideration in determining the existence of an act of aggression. To allow an act carried out without aggressive intent to be termed an act of aggression would run entirely counter to justice, since it was the animus aggressionis which made it possible to distinguish between breaches of the peace and aggression as such. However, there was little need to belabour the point in view of the explanations given by the representative of the Soviet Union.

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(Mr. Starace, Italy)

Some delegations had viewed with suspicion the concept of political entities referred to in paragraph II of the six-Power draft. That term had been used for the sole purpose of ensuring that the definition was given the broadest application in international relations. It accorded perfectly with one of the purposes of the United Nations, which was "the suppression of acts of aggression". It would have the advantage of making it possible to qualify as aggression an act committed by a political entity with the objective characteristics of a State, which, having come into being in a manner condemned by the United Nations, could not be recognized as a State by that Organization.

Finally, he was satisfied with the methods of work adopted and was prepared to take part in all efforts to enable the Special Committee to accomplish its task.

Mr. MULINSKY (Czechoslovakia) noted with satisfaction that at the present time all the members of the Special Committee wanted to arrive at a definition and that the report of the Working Group established at the end of the preceding session attested to the fact that the areas of understanding were gradually becoming broader. It could therefore be hoped that it would at least be possible to elaborate a precise definition of armed aggression, it being understood that the consensus was the only valid method of attaining that end. He shared the views expressed by the representative of the Democratic Republic of the Congo (A/AC.134/SR.81) and by the representative of Mexico (A/AC.134/SR.82), who had recommended that the Special Committee should seek concrete, generally acceptable formulas in informal meetings.

The report drawn up by the Working Group in August 1970 (A/8019, annex II) provided the skeleton of a future definition and should therefore be taken as a point of departure at the current session.

A study of the report revealed that solutions to some problems, such as the problem of a general definition of aggression, seemed very near. The texts of a general definition of armed aggression contained in paragraph 2 of the report represented an attempt to combine the fundamental elements of the three proposals before the Committee and could serve as a starting point for drafting a text which would be unanimously accepted, even though, for the time being, the sponsors of the

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(Mr. Hulinsky, Czechoslovakia)

three proposals were maintaining their respective formulations. His delegation preferred the version contained in paragraph 2 (a), which was derived directly from the Charter in that it treated armed aggression as the most dangerous form of aggression and drew a distinction between the use of armed force for aggressive purposes and its use in exercise of the right of self-defence.

Moreover, there no longer seemed to be any objection to including the principle of priority in the definition. The report also showed that agreement had been reached on the matters dealt with in paragraph 15, 16, 17, 18 and 21.

With regard to areas of agreement, he reminded the Committee that the Chairman of the Committee in 1969 and 1970 had suggested that a separate working group should be set up to complete the text of the preamble, on which agreement had been reached in 1969.

Furthermore, it was evident from the report that there were some areas where divergencies might be bridged, for example, the problem of the legal consequences of aggression and the two texts relating to the legitimate use of force.

However, there was still substantial disagreement on certain points, in particular concerning the general problems of direct or indirect aggression, aggressive intent and the question of proportionality. It would not be easy to reach mutually acceptable positions on those questions. However, the fact that the collective effort made on the occasion of the twenty-fifth anniversary of the United Nations had led to the adoption of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States gave grounds for some optimism.

Finally, his delegation hoped that the Working Group would resume its work and concentrate on drafting specific formulations for each of the elements of the definition. It also hoped that the Working Group would report periodically to the Special Committee on its progress. In addition it might be useful to consider establishing other smaller groups to examine specific elements of the definition.

Mr. PETIT (France) said that for the Committee to begin its work by considering the report of the Working Group was in accordance with the resolution under which the General Assembly had given the Committee a mandate to continue its work on the basis of the results achieved at the previous session.

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(Mr. Petit, France)

The Working Group had been requested to help the Special Committee in the fulfilment of its task by formulating an agreed or generally accepted definition of aggression and, in case it was unable to reach such a definition, to report to the Special Committee its assessment of the progress made during the session, indicating both the points of agreement and disagreement. Since it had not been able to fulfil the first part of its task, the Working Group had noted the points of agreement and disagreement and had made suggestions which might help the Committee break the deadlock. Even the existence of the report was a positive achievement, since it was always a good thing to record the results achieved in writing, and because that was a good way to avoid getting bogged down.

His delegation felt that the spirit of the Working Group's work was consistent with its general position. It welcomed any action which enabled a coherent decision acceptable to the Committee to be reached more quickly. Moreover, it regarded the Committee as a committee of jurists working for the future; consequently it should not dwell on political or historical aspects, but should adopt a broader view. It was in that spirit that his delegation made it a rule to be open to any suggestion provided it was in accordance with the Charter.

The structure of the report of the Working Group itself could serve as an outline for the definition of aggression. With regard to the content of the report, he wished to refer in particular to two main themes, namely the question of direct and indirect aggression and the question of the principles of priority and intent. The first had assumed paramount importance, and it had to be clarified if a solution was to be reached. His delegation understood the word "aggression" to mean primarily a physical act which was objectively observable and especially serious. Article 2 (4) of the Charter did not define aggression, but merely mentioned categories of prohibited behaviour of which aggression was only one specific case. Article 39 enumerated such behaviour in order of seriousness, the highest level being aggression. The most serious act was the one which entitled the victim to exercise the right of self-defence under Article 51. Without any doubt that act constituted aggression and should first be defined. The Committee's task was to provide guidance for the Security Council by giving it clear and specific examples of aggression. However, every case could not be provided for and it was most important to leave the Security Council freedom to compare any observed act with the definition of aggression and to state that it constituted aggression. It might not

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(Mr. Petit, France)

be possible to establish a lower limit as regarded the seriousness of the acts deemed to constitute aggression; an act which would not be classified as aggression at the present time might be placed in that category at a later stage.

The Committee appeared to be very close to agreement on the question of priority. On the other hand, the concept of intent was much less clear. The representative of the Soviet Union had made a distinction between the aggressive intent and the motive for aggression. In the opinion of the Soviet delegation, the motive need not be taken into account; intent was sufficient. For his own delegation, it would be sufficient in that case to speak of deliberate aggression. However, in a spirit of compromise, it would agree to go further and to take into account the declared intention and purposes of the aggression.

Like many other delegations, his delegation felt that it would be desirable to establish a new working group, provided there was some idea of what it would be asked to do. It might, for example, rework the whole of the previous Group's report, with a view to making it more concise, or, as the Soviet representative had suggested, it might go into detail on one or two particularly controversial questions. It had been suggested that several working groups should be established, but for reasons of practical convenience it would be simpler to have a single group which, if necessary, could consider various questions one after the other. It could have the same composition as the previous year's Working Group, disregarding the base on which it had been constituted. But if the composition was changed, it would be necessary to bear in mind the States which had not submitted proposals.

Mr. MORALES SUAREZ (Colombia) said that delegations should consult informally as soon as possible, and a working group should be set up without delay. The first task would then be to try to reach agreement on the thirteen-Power draft and the Soviet proposal, which were very close on many points. Agreement could then be sought on the six-Power draft, which would be more complicated in view of the many divergencies.

His delegation agreed that armed attack was the most dangerous form of aggression, and the one which should be defined first. However, the definition would be complete only when all forms of aggression had been defined. His delegation also felt that the definition should include all the aspects

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(Mr. Morales Suarez, Colombia)

characteristic of aggression, for example the declaration of war, although the latter had almost become obsolete. To define armed attack would not be sufficient.

His delegation was convinced that a definition should include the legal consequences of aggression, in order that the principle could achieve broad support and be effective. It was useful to stress the points which the Soviet draft and the thirteen-Power draft had in common on that subject despite the minor differences in wording. Agreement in that area therefore seemed possible.

The Soviet delegation had stressed the disadvantages of considering the criterion of proportionality in the form of a simple arithmetical equation. Nevertheless, his own delegation believed that the concept of proportionality was useful, and understood it as meaning the use of force to the extent necessary to re-establish the rule of law.

His delegation would listen with interest to any suggestions concerning the use of force under regional arrangements, in accordance with Article 53 of the Charter, and concerning the right of self-defence laid down in Article 51.

Mr. FREELAND (United Kingdom) said that the report of the Working Group established at the 1970 session (A/8019, annex II) provided clear evidence of an increased willingness to find ways round difficulties and to reconcile differences of opinion. What was now needed was to widen existing areas of agreement, rather than to emphasise divisions, and to make constructive efforts to bridge the distance between well-known positions.

It was with that aim in view that some of the delegations that had sponsored the six-Power draft had suggested a number of new formulations at the 1970 session. The report of the Working Group referred, for example, to a formulation suggested by his delegation on the question of "first use" of force, as well as to wordings suggested by other delegations on various points. His delegation considered that some of the statements made at the current session gave cause for encouragement. For example, the representatives of the Democratic Republic of the Congo and Guyana had discussed the questions of "first use" and of "intent" in terms which suggested to him that the Special Committee might make progress on those two issues if it adopted formulations which would ensure that both elements were appropriately taken into account. In putting forward its suggestion concerning "first use" of force, his delegation had made it clear that it was ready to accept that "first use"

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was a factor to which due weight should be given in determining whether in a particular case force had been used with aggressive intent. The view that the factor of "first use" should be given due, but not determinative, weight now appeared to be widely shared in the Special Committee. Members of the Committee also recognized that intent, as inferred from an analysis of the objective circumstances surrounding the act, was an important factor to be taken into consideration in each case. In that connexion, the formulation suggested by the Soviet Union (report of the Working Group, para. 9) seemed a helpful one, although his delegation had reservations about the particular examples listed.

The progress which had been made towards an accommodation of the different positions on those two issues showed that, where there were conflicts between strongly held positions of principle, it could not reasonably be expected that a way forward would be found on the basis of one such position to the exclusion of another. To take only one example, it was well known in the Committee that there were two main schools of thought on the interpretation of Article 51 of the Charter. Some considered that the right of self-defence derived from that Article and that it only arose in the event of what the Article described as "an armed attack". There were others, however, including his own delegation, who thought that what Article 51 referred to as "the inherent right of self-defence" was a right which existed independently of the Charter and was not limited to cases of "armed attack". To base a definition of aggression on one of these interpretations to the exclusion of the other would be to increase the difficulties with which the Special Committee had to deal. As it had already stated in the past, his delegation did not believe that Article 51 of the Charter and the right of self-defence were appropriate points of departure for a definition of aggression. The Special Committee would be wise to content itself with a general formulation safeguarding, in a manner acceptable to both schools of thought, the inherent right of self-defence as recognized in the Charter. That was particularly evident since arguments based on a particular interpretation of Article 51 had been used to justify the exclusion of certain indirect uses of force from the definition of aggression. But, to be satisfactory, any definition of aggression must be complete, which implied that it must include uses of force which, although indirect, were in

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other respects fully comparable, both in their purposes and in their effects, with direct uses of force which all would agree without hesitation to regard as aggression. Indirect uses of force such as those covered by paragraph IV (6) to (8) of the six-Power draft could not be dismissed, in contemporary circumstances, as "mere" infiltration or "mere" subversion. Nor could an armed response to them be safely characterized as "starting a war". There were problems here which must be resolved in a manner properly reflecting the experiences and needs of the international community if a satisfactory definition were to be elaborated. Notwithstanding the statements made by some delegations, indirect use of force could be just as dangerous for the victim as direct use. Any definition which did not satisfactorily cover both direct and indirect uses of force would be worse than inadequate: it would be seriously misleading.

The sponsors of the six-Power draft had made it clear that they were, however, willing to consider different formulations on these and other issues and to take account of constructive criticisms. Indeed, on a number of points it seemed that the time might have come to build on the suggestions put forward during the 1970 session of the Working Group, rather than on the particular terms of one draft definition or another. For example, as stated in the report of the Working Group, it had been suggested that if the definition of aggression did not expressly include States whose statehood was disputed, an explanatory note should be annexed to the effect that the term "States" included cases of disputed statehood. The discussion in the Special Committee appeared to have gone a considerable way towards clearing up earlier misunderstanding on that issue, and had led to the hope that a generally acceptable outcome could be found, even if certain doubts remained. His delegation had heard with interest the solution suggested on that point by the representative of the Democratic Republic of the Congo, to the effect that the definition should be limited to cases affecting States Members of the United Nations. However, they foresaw considerable difficulty if the Security Council had to apply a definition that was so limited that it left open entirely cases involving non-member States.

With regard to the question of self-determination, which was referred to in paragraph 29 of the report of the Working Group, the fact that force might have been used to deprive peoples of their right to self-determination did not

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constitute an adequate reason for dealing with such a situation in a definition of aggression. In the view of his delegation, a definition of aggression should be concerned with the activities of States, or comparable entities, in relation to one another. The purpose of such a definition was not to cover all uses of force whether in international relations or not. In any event, provisions dealing with the situation in question were already included in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, (and those provisions related quite properly not merely to colonial peoples, as did the form of words in the Working Group report, but to all peoples). That Declaration had been accepted by the United Kingdom and by all the other States represented in the Special Committee. There was therefore no good case for covering the same ground in the present context.

In connexion with the method of work to be employed, there had been suggestions that more than one working group might be established. In his view, however, at the present stage at least, all aspects of a definition should be seen in close relation to one another, and it would be preferable to entrust to a single body the task of carrying the work forward. His delegation therefore preferred the establishment of a single working group - either with the same composition as in 1970 or, if there should be a general preference for a change, with a different composition - on the understanding that it would be free at any stage to set up a sub-group or sub-groups to examine particular aspects if it considered that course appropriate.

The meeting rose at 5.5 p.m.

SUMMARY RECORD OF THE EIGHTY-SIXTH MEETING

Held on Wednesday, 10 February 1971, at 3.30 p.m.

Chairman:

Mr. MUTUALE

(Democratic Republic of
the Congo)

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CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (General Assembly resolutions 2330 (XXII), 2420 (XXIII), 2459 (XXIV) and 2644 (XXV) (agenda item 5) (continued))

Mrs. GAMOU (Uruguay) felt that the difficulties which the Special Committee was encountering might prove to be insurmountable if it was insisted that the definition of aggression must be restrictive and rigid to the point of automatically entailing the adoption of sanctions. As provided for in the Charter, margin should be allowed for the exercise of discretion when determining whether an act of aggression had been committed. If, instead of concentrating on a restrictive definition of aggression, the Special Committee attempted to identify the basic elements and to indicate some specific instances of aggression, it might arrive at a definition that would make it possible to determine whether an act of aggression had been committed, for the purpose of applying sanctions in accordance with the Charter.

The Special Committee had before it three draft definitions which were in some respects complementary and which might form the basis for a single text. The deliberations of the Working Group had resulted in substantial progress, particularly in defining the areas of agreement and disagreement. The report of the Working Group (A/8019, annex II) indicated that agreement might be reached on a general definition of aggression which would provisionally deal only with direct armed aggression, and that the various delegations felt unanimously that the principle of priority should be introduced into the definition, although some additional elements might also be necessary. Moreover, it seemed that a compromise solution might be arrived at concerning the need for the definition to cover States whose statehood was disputed, concerning the provisions relating to the legitimate use of force - which could, however, be improved - and concerning the enumeration, among the examples of aggression, of certain acts such as invasion or bombardment of the territory of a State, attacks against the armed forces, ships or aircraft of another State, and the like. However, certain differences persisted, especially with regard to the advisability of including in the definition the concepts of aggressive intent and proportionality, of listing the motives underlying an act of aggression or of taking into account the legal consequences of aggression.

In any case, her delegation considered that, broadly speaking, aggression should be defined without resorting to such subjective criteria as the concept of

(Mrs. Gamou, Uruguay)

aggressive intent, which might distort the legal framework for the exercise of the right of self-defence. That did not mean that aggressive intent or the aims of aggression should be overlooked; those elements should be evaluated by the Security Council, which was the competent body to establish the existence of an act of aggression and which should not be bound by a definition which explicitly or implicitly included such subjective criteria. If the Committee defined aggression as any attack by the armed forces of one State against another State in violation of the principles and requirements of the Charter it would be adopting an approach that was strictly in keeping with the provisions of the Charter. Any definition should therefore specify that only armed attack, that is, direct aggression, conferred the right of self-defence under Article 51 of the Charter. Once direct aggression was defined, it would also be necessary to define and regulate indirect armed aggression, which was assuming increasingly varied and serious forms.

It was to be hoped that the Special Committee would continue its work in a spirit of compromise, having in mind not only the dictates of logic, but also and above all the realities of the present-day world and the need to strengthen international security.

Mr. HARBI (Algeria) said that most of the difficulties involved in defining aggression arose because a clear and precise definition would inevitably pose a threat to political, economic and strategic interests. Small countries like Algeria, which were latecomers to international life precisely because of colonial aggression, were particularly aware of the meaning and scope of a definition of aggression. Although it was difficult to break new ground, the Special Committee must try to bring differing points of view closer together and to reconcile the various positions.

With regard to the scope of the definition, his delegation felt that for practical reasons the Special Committee should deal with the question in stages and confine its discussions to the most dangerous form of aggression, namely direct armed aggression.

It would seem that any definition should start from the principle of priority, which was based on Article 51 of the Charter and confined the right of self-defence against armed aggression. The purpose of that principle was

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to prevent States from committing acts of aggression in the guise of so-called preventive wars. Certain delegations had argued that the principle of aggressive intent was also basic; however, apart from the fact that that criterion was subjective and therefore difficult to evaluate, it was hard to see how intent could be separated from the act of aggression itself.

His delegation took the view that the definition should refer only to political entities which qualified as States under the concept of statehood implied in the Charter. Recognition was not a prerequisite for statehood.

All delegations agreed that a definition of aggression must preserve the powers of the Security Council as the principle organ responsible for the maintenance of international peace and security. However, it must be clearly understood that the Security Council was not to be given the power to interpret the term "aggression" as it pleased. Moreover, the definition of aggression must take into account the legal consequences of aggression: the occupation of a territory as a result of aggression or territorial gains resulting from the use of force were no less important than aggression itself. The definition must also cover cases in which the use of force was legitimate, such as the use of force by the United Nations for the maintenance of international security or by colonial peoples in order to apply a fundamental principle of the Charter - the right to self-determination.

He hoped that the Working Group would resume its work as soon as possible so that the hopeful indications in its report could be reflected in real progress.

Mr. KOSTOV (Bulgaria) felt that the General Assembly's recent adoption of the Declaration on the Principles of International Law Concerning Friendly Relations and Co-operation among States would make matters much easier for the Special Committee. In a way, a definition of aggression would simply be a sequel to the Declaration and supplement it in certain respects.

His delegation considered that the Working Group had achieved positive results. For the time being, it might be best if priority were given to a general definition of aggression. The fact that the Committee had agreed on that approach in principle, that the three drafts which had been submitted

(Mr. Kostov, Bulgaria)

indicated how it should be drawn up and that the report of the Working Group contained two very similar versions provided an adequate basis for constructive work. In his delegation's view, the definition must necessarily include two concepts, namely that aggression was the use of armed force by one State against another State and that use of armed force was incompatible with the purposes and principles of the Charter. The concepts of priority and intent could also be included as means of determining whether or not a certain act constituted aggression.

The Working Group had made good progress toward establishing fundamental criteria for determining whether an act of aggression had occurred. However, those criteria were only points of departure; as the three draft definitions all indicated in similar terms, the circumstances of each particular case should be considered as a whole. It should be possible to arrive at a compromise on that point.

It was an encouraging sign that all the members of the Working Group had been in favour of including the principle of priority in the definition. However, differences of opinion persisted with regard to the importance to be attached to the principle. The wording proposed by one member of the Working Group (A/8019, annex II, para. 5) was unacceptable to his delegation, which considered that the principle of priority was a fundamental criterion, not an incidental one which should merely be given "due weight". The second fundamental criterion was that of aggressive intent, whereby an act of aggression could be distinguished from an unpremeditated incident. The arguments put forward for the inclusion of that principle had convinced his delegation of its importance. An act of aggression was the result of conscious and premeditated human activity carried out with a definite aim in view. The pursuit of an unlawful end was therefore inherent in an act of aggression, and any definition of aggression must take that fact into account.

The only entities which needed to be considered in a definition of aggression, in his delegation's view, were States, which were full subjects of international law and which were the only entities that could commit or be the victims of an act of aggression. The reference to political entities other than States in paragraph II of the six-Power draft had no basis in the Charter and lent itself to differing interpretations. Important as it might be, the question

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of recognition to which the six-Power draft seemed to refer, had nothing to do with a definition of aggression. It would be dangerous to stray from the framework of the Charter and introduce concepts which might cause confusion. The term "State", as used in the Charter, was broad enough to cover all entities to which the definition should apply.

The definition should draw the line between aggression and the legitimate use of force. To do so, it need only state clearly and unambiguously the circumstances in which the use of force was legitimate. The best solution would surely be to have a general statement which excluded from the scope of the definition all cases in which the use of force was legitimate. The wording in paragraph 6 of the USSR draft seemed satisfactory in that respect.

Similarly, it was necessary to specify the organs that could use force legitimately. His delegation felt that the Charter should be followed strictly in that regard. It therefore could not endorse proposals which sought to give the General Assembly and regional organizations powers that were not granted to them by the Charter. Articles 39 and 42 of the Charter were quite clear: the only organ which could decide to take coercive measures involving the use of armed force was the Security Council.

In conclusion, he made some suggestions regarding the organization of the Committee's work. He was in favour of establishing a working group which would deal first with a general definition of aggression and then take up other matters. The working group, taking last year's report as its point of departure, could seek to draft parts of the definition relating to points on which there was sufficient agreement, leaving controversial matters aside for the time being.

Mr. RAKOTOSIHANAKA (Madagascar) said that he had the impression, from reading the Working Group's report, that a definition of aggression was now possible and that henceforth the only obstacle to its formulation would be a lack of political will on the part of Committee members. The main difficulties arose from the fact that the approach so far has been to contrast the objective elements with the subjective, the direct with the indirect and what was amenable to regulation by law with what was not.

In the first juxtaposition, the physical act was invoked as against the intent and, simultaneously, the principle of priority as against that of animus aggressionis. In that instance, however, the term "as against" was perhaps

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(Mr. Rakotosihanaka, Madagascar)

too strong because the tenets of the two hypotheses were not based on ideas which were altogether mutually exclusive. As the representative of the Democratic Republic of the Congo had most skillfully demonstrated, the two hypotheses were not irreconcilable but appeared, on the contrary, to be complementary. The use of the two criteria of priority and aggressive intent would enable the Security Council to establish unerringly the guilt of the real aggressor.

The problem was to determine the value to be attached to each of those two criteria and the order in which they should be invoked. To find an answer to those questions the Committee should abandon theoretical consideration and deliberately adopt a pragmatic approach; in other words, the prime concern should be to see that the criteria were applied efficiently to determine responsibility when a case of aggression occurred. To that end, the objective criterion was simpler and more effective whereas the subjective criterion was merely an aid in the refinement and qualification of the judgement formed on the basis of the objective criterion. In municipal law, the judge always proceeded on the basis of the material evidence to determine whether, for example, there were attenuating or aggravating circumstances - the establishment of intent becoming relevant only as a secondary and subordinate consideration - but he almost never did so to obscure the actual act which has been committed. An impartial observer would always base his judgement in the first place on the act. In defining aggression, the objective criterion should therefore be paramount. The question of aggressive intent should not be neglected in the process but it was no more than a secondary consideration. That interpretation was, moreover, in conformity with Article 39 of the Charter which stated: "The Security Council shall determine the existence of any ... act of aggression". The use of the verb "determine" suggested a material, physical and positive finding. There was no question that the Security Council had the power to inquire into the intent of the author of an act but the inquiry could only be held at a later stage. On the basis of the foregoing considerations it could be said that the Security Council had the right to inquire into the intent of a party committing an act endangering international peace. That right was inherent in the latitude which the Security Council must enjoy as the organ responsible for maintaining peace. Yet it was extremely

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(Mr. Rakotosihanaka, Madagascar)

difficult to mention it in a general definition of aggression. It would doubtless be preferable to refer to it in a paragraph defining the Council's powers and authority.

With regard to the argument concerning the direct as against the indirect, his delegation proceeded from the principle that peace was one and indivisible and consequently relevant to all international relations and all possible subjects of law. Peace was indivisible in respect of acts which could endanger it. However, as the Special Committee was required to give a reasonable interpretation of the Charter in a general definition, his delegation believed that it would proceed with caution and by stages. At the present stage, it would be wise to concentrate on the act of aggression in its simplest form, namely, armed attack as referred to in Article 51 of the Charter and to consider indirect acts of aggression only to the extent that they could immediately be likened to armed aggression. Such an approach was based on a pragmatic concern for efficiency and prudence; it did not in any way preclude the possibility of widening the field of application of the definition.

Again basing itself on the principle that peace was one and indivisible, his delegation felt that there was no harm in not distinguishing between subjects of law. Its position differed on that point from that of the delegation of the Democratic Republic of the Congo. It was true that the Charter was a contract between the Members of the United Nations, but its intent was universal in scope, as was clear from Article 2 (6), Article 32 and Article 35 (2). His delegation therefore hoped that a compromise could be reached on the paragraph dealing with political entities.

Lastly, he observed that the Committee should adopt working procedures which allowed considerable scope for negotiation and consultations and should concentrate on matters on which general agreement had been or could be achieved.

Mr. GÜNEY (Turkey) said that a definition consonant with the provisions of the Charter would serve to promote the cause of peace and that it was gratifying to note that, despite the many differences of opinion concerning the substance of the question, there were constructive elements in the Working Group's report.

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(Mr. Güney, Turkey)

His delegation believed that the general definition of aggression should, as a minimum, refer to armed force however exerted or even cover all uses of force whether or not they were direct.

The inclusion in the definition of the principle of priority had not been opposed in principle in the Working Group; the only differences had concerned the prominence to be given to it. That principle had the dual advantage of providing an objective criterion for a finding of aggression and of placing the onus of proof on the party which had been the first to attack. It was not, however, determinative in every case - particularly in the case of indirect aggression. Other factors must therefore be taken into account in establishing that aggression had been committed.

In some cases the criterion of aggressive intent could be a determinative factor. Where an act of aggression in itself constituted a breach of the peace, there was no need to establish whether it had been committed with intent. Where, however, it was a question of illegal acts which might bring about a breach of the peace if they became generalized, the criterion of intent became relevant. The criterion of intent therefore belonged not in a general definition of aggression but in a list of specific cases.

With regard to self-defence, his delegation felt that it would suffice for the definition to refer to Article 51 of the Charter to get over the difficulties inherent in that question. Moreover, it was encouraging to note that the Working Group had agreed that the list of acts of aggression justifying intervention by the Security Council would not be exhaustive. Although a declaration of war was not in itself necessarily an act of aggression, it was a major element which must be taken into account in determining whether an act of aggression had been committed. His delegation considered that the other most serious acts were invasion and attack, occupation, the use of weapons of mass destruction, bombardment of the territory of another State and blockade.

The definition should include the indirect use of force and the non-recognition of territorial gains resulting from aggression, and due recognition should be given to the right of colonial peoples to self-determination.

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Mr. SAM (Ghana) said that a working group should be established as soon as possible and that it should start its work with the areas in which consensus appeared near.

Since the Charter did not distinguish between direct and indirect aggression and since the Special Committee's task was simply to define aggression, the Committee should confine itself to preparing a general definition which adequately reflected the concept of aggression as contained in the Charter. If the definition included the expression "armed force however exerted", it should be explained that that meant armed force necessitating the exercise of the right of self-defence as established in Article 51 of the Charter.

In order to avoid ambiguity, the Committee should agree to construe the term "aggression", as used in the Charter, to mean "armed attack"; if it were construed otherwise, an explanatory note would have to be added to that effect.

The principle of priority should be embodied in the definition in such a way that the onus of proof was placed on the aggressor, and not on the victim. The principle, however, should not apply automatically, and it was for the Security Council to determine what had actually happened in each case.

The definition should apply to all States, whether or not they were recognized by some States Members of the United Nations. Otherwise, the Committee would be compelled to establish a precise definition of the terms "State" and "political entity", a task which would be outside its terms of reference.

The principle of proportionality should not be included in the definition. If it were, it would place the victim of aggression at a disadvantage in that it would have to decide the intensity or degree of force it was permitted to use in the exercise of its right of self-defence. Perhaps the principle could be applied in the case of indirect armed attack or a breach of the peace, where the danger was less imminent. Article 51 of the Charter recognized the right of self-defence as an inherent right without any restriction whatsoever. The meaning of that Article could not be stretched to include the principle of proportionality. The sponsors of the thirteen-Power draft accordingly should consider amending operative paragraph 6 of their text.

His delegation could not accept the view that the element of intent was not necessarily subjective and that it was generally inferred from the objective

(Mr. Sam, Ghana)

circumstances of the offence. Nor did it believe that the element of priority and that of intent could be given equal weight. The element of intent became irrelevant once the Security Council had determined that a certain State had been the first to use armed force against another. One of the main purposes of defining aggression was to discourage would-be aggressors. The inclusion of the element of intent would give the aggressor the opportunity to justify his act. The burden of proof should always be on the aggressor, not on the victim, and that principle of law could be applied in the context of aggression only by excluding the element of intent from the definition.

The concept of "breach of the peace" must not be confused with "armed attack" or "aggression". Some of the acts enumerated in operative paragraph IV B of the six-Power draft as constituting aggression would only result in a breach of the peace, unless they were of particularly great intensity.

Since the Committee's task was to define aggression, which was the illegitimate use of force, it would be logical to define the situations in which the use of force could be considered legitimate, as, for example, in connexion with the exercise by colonial peoples of their inalienable right to oppose any attempt to deprive them by force of their right to self-determination. That principle was incorporated in both the Soviet and thirteen-Power drafts.

If the definition was to be adequate, and therefore effective, it should refer either in the preamble or the operative part to the consequences of aggression. In that connexion, his delegation considered that occupation in itself constituted aggression, which was not necessarily the case for annexation.

The Committee should endeavour, in a spirit of compromise, to reach its conclusions by consensus; it was perhaps unnecessary, however, to apply that method systematically to all - even non-essential - aspects of its work.

The meeting rose at 4.50 p.m.

SUMMARY RECORD OF THE EIGHTY-EIGHTH MEETING

Held on Friday, 12 February 1971, at 12.10 p.m.

Chairman:

Mr. LEGNANI

(Uruguay)

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ORGANIZATION OF WORK (agenda item 4) (continued)

The CHAIRMAN announced that following informal consultations among members of the Special Committee it had been proposed that the Working Group should be composed of the eight Member States which had formed its membership during the third session, together with the Rapporteur. The membership of the Working Group at the fourth session would therefore consist of Cyprus, Ecuador, France, Ghana, Iraq, the Union of Soviet Socialist Republics, the United Arab Republic, the United Kingdom and the United States of America. It was also envisaged that members of the Group might be replaced by non-members when certain issues were being discussed. Furthermore, it was understood that non-members could attend meetings of the Group if they wished.

Mr. GÜNEY (Turkey) asked whether non-members of the Working Group would have the right to speak at its meetings.

The CHAIRMAN said that non-members would be able to participate fully in the Group's discussions but would not participate in the making of decisions.

It was also proposed that the Group should report back to the Committee as and when progress was made.

If there was no objection, he would take it that the Committee agreed with the proposed membership and procedures of the Working Group.

It was so decided.

The CHAIRMAN suggested that the mandate of the Working Group should be to help the Special Committee in the fulfilment of its task by formulating an agreed or generally accepted definition of aggression and, in case it was unable to reach such a definition, to report to the Special Committee its assessment of the progress made during the session, indicating both the points of agreement and disagreement.

It was so decided.

The CHAIRMAN expressed the hope that the members of the Working Group would carry out their mandate with success and offered them his best wishes in their endeavours.

The meeting rose at 12.20 p.m.

SUMMARY RECORD OF THE EIGHTY-NINTH MEETING

Held on Monday, 22 February 1971, at 3.35 p.m.

Chairman:

Mr. LEGNANI

(Uruguay)

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (General Assembly resolutions 2330 (XXII), 2420 (XXIII), 2549 (XXIV) and 2644 (XXV) (agenda item 5) (continued) (A/8019; A/AC.134/L.28, L.30)

Mr. DESCHAMPS (France) introduced the report of the Working Group (A/AC.134/L.30) on behalf of the Group and its Chairman, who had had to return to his country for urgent personal reasons. The Group had based its work on its previous report (A/8019, annex II) and had taken up two of the questions discussed therein: the general definition of aggression and the principle of priority. Although the Group had not been able to reach agreement on those questions, it was nevertheless presenting a single text, giving alternative readings in brackets.

Mr. AL-ZAHAWIE (Iraq) said that his delegation felt that the object of the definition of aggression should be to guide the Security Council in determining whether or not any particular use of force constituted an act of aggression, to limit the legitimate use of force to a minimum, and to discourage States from using armed attack as an instrument of national policy under any pretext whatsoever. It therefore objected to the proposed inclusion in the general definition of the words "however exerted", which referred to indirect aggression. The Charter did not ignore the idea of indirect aggression, as could be seen from its references to "breaches of the peace" and "threats to the peace", but to seek to enlarge that concept into a consideration of the circumstances of a casus belli would be to go beyond the Charter and the Committee's mandate.

The question raised by the principle of priority was whether or not priority should be the decisive consideration in determining whether or not an act of aggression had been committed. In that connexion, the reference to the powers and duties of the Security Council was irrelevant because the discretion of the Security Council would apply throughout the whole of the definition rather than merely to the question of priority. In his delegation's view, priority was of the very essence of aggression, not a mere condition. That was shown in Article 51 of the Charter. The principle of priority must be dealt with clearly and on its own merits; it should not be confused with other elements.

Mr. EL-FATTAI (Syria) said that his delegation understood that comments by the members of the Special Committee on every point in the report of the Working Group would appear as extensively as possible in the Committee's report to the General Assembly.

Despite the praiseworthy efforts made by the Working Group to produce a single text on the general definition of aggression, its text reflected three different positions. The first position defined aggression as "the use of armed force by a State against another State or in any way affecting the sovereignty or the territorial integrity, including the territorial waters and airspace, or political independence of another State, or in any other manner inconsistent with the purposes of the United Nations". His delegation supported that formulation, since it was closest to the original thirteen-Power draft. The second position defined aggression as "the use of armed force by a State against the sovereignty or the territorial integrity or political independence of another State, or in any other manner inconsistent with the purposes of the United Nations". Although the wording of that text was close to that of Article 2 (4) of the Charter, it was not satisfactory to his delegation, firstly because there could be cases in which the object of armed aggression was not limited to the territorial integrity or political independence of a State and, secondly, because it omitted the concept of "territorial waters and airspace", which, though implicit in the concept of territorial integrity, should nevertheless be expressly stated. In his delegation's view, those two positions could be easily reconciled.

The third position was implicit in the phrase "however exerted". In his view, the introduction of such a highly controversial element in a single text only complicated the Committee's task, since it reopened the question of direct and indirect aggression. Although other phrases in brackets in the general definition were also controversial, those words were more objectionable than the others because they departed so basically from the position taken by the majority of members and because they prejudged the question of proportionality. He therefore believed that, despite the statement in paragraph 3 that the phrase "however exerted" was completely unacceptable to many members, the Working Group should have presented two texts instead of one.

Although he was gratified that all members of the Working Group had unanimously expressed their attachment to the important principle of priority,

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(Mr. El-Fattal, Syria)

the text submitted raised more questions than it answered. Specifically, it raised three problems: the discretionary powers of the Security Council with regard to the first use of force, whether or not priority was determinative, and animus aggressionis.

The phrase "due weight shall be given to the question whether" an act was committed first deprived the principle of priority of both its obligatory and its determinative nature and would mean that while the Security Council was to give due weight to that principle, it would not actually be required to take it into account. Such a formulation was self-defeating and completely unacceptable to his delegation.

Paragraph 4 of the report clearly showed that few members still believed that the use of armed force could be divorced from animus aggressionis; thus, the controversy on the question of "intent" had crept into the question of the principle of priority, prejudging the Working Group's future work. His delegation could not regard any other element as being equal in importance to the first use of force in determining whether or not an act of aggression had been committed, and its equation with any other element would only confuse and paralyse the Security Council.

Mr. DIACONESCU (Romania) said that the general definition of aggression raised the question whether or not a reference to armed aggression "in any form" should be included in it and whether or not such a reference should also be included in the passages of the definition listing specific acts of aggression. Although that was a controversial point, he did not feel that the attempt to include such a reference should be abandoned. In its enumeration of acts which constituted armed aggression, article 1 of the 1933 London Convention for the Definition of the Aggressor had included acts of aggression other than acts of direct armed aggression; moreover, the eighth and ninth paragraphs of the principle that States shall refrain in their international relations 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 (Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, General Assembly resolution 2625 (XXV)), a very important international instrument which had been drawn up only after strenuous and

(Mr. Diaconescu, Romania)

prolonged efforts to reach agreement on every formulation utilized, were devoted to forms of aggression other than direct armed aggression. The three draft definitions given in tabular form in document A/AC.134/L.22 each contained, although in very different words, the idea of the use of force "in any form", showing that their authors understood the necessity for such a reference in the definition. Moreover, the inclusion of such a reference would be in full conformity with the principles of international law embodied in the Charter and would serve to make the definition an effective political and legal instrument which would discourage possible aggressors. Its inclusion in the general definition of aggression would also be in keeping with the references to various types of aggression in other parts of the definition.

Notwithstanding its support of the inclusion of a reference to the use of armed force "in any form" in the general definition, his delegation believed that the right of self-defence as defined in Article 51 of the Charter could be legally exercised only to repel a direct armed attack. The right of self-defence, as an exception to the categorical prohibition of the use of force in international relations, must be interpreted very strictly.

His delegation would express its views on the proposal to insert the words "however exerted" at a later stage.

His delegation had proposed in the Working Group the insertion in the general definition of a reference to the fact that aggression could also be committed by a group of States against a State or group of States. Aggression by groups of States, usually belonging to the same military alliance, was a fact of history, and a reference to the idea in the general definition would make it conform to Article 51 of the Charter, which provided for individual or collective self-defence.

Although his delegation attached great importance to the principle of priority, the automatic application of that principle would only detract from its essence. It had been to prevent such automatic application that the preamble of the Soviet and thirteen-Power drafts (A/AC.134/L.22) both stated that the question whether an act of aggression had been committed must be considered in the light of all the circumstances in each particular case. In view of the interpretative value of a preamble, some such formula should guide

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(Mr. Diaconescu, Romania)

the Security Council in deciding whether or not an act of aggression had been committed; thus, the Council would declare a State an aggressor only after thorough examination of all the relevant circumstances and after giving primary, but neither exclusive nor absolute, importance to the principle of priority. That was why the phrase relating to the powers and duties of the Security Council had been proposed. His delegation was prepared to support a formula which, while not affecting the essence of the principle, would make its application contingent on the circumstances of particular cases.

Mr. CAWEN (Finland) said that, although the report of the Working Group (A/AC.134/L.30) reflected the great efforts made by its Chairman to produce a single text, it also showed that many basic differences remained. If a decision on a definition of aggression was to be reached, the brackets now employed would have to be gradually eliminated so as to produce a text acceptable to a majority of the Committee and to the permanent members of the Security Council. If the definition did not meet the latter requirement, it could not guide the Council in the discharge of its primary responsibility for the maintenance of international peace and security.

The general definition of aggression could not be dissociated from the definition as a whole; only when the Committee saw the entire definition could it evaluate the relative importance of the general definition. Accordingly, he felt that the text submitted by the Working Group should be left in its present form for the moment and reconsidered only after the Working Group had reported on all other elements of the definition. His delegation felt that the principle of priority, although important, was not the sole factor which should determine whether or not any particular use of force constituted aggression. Priority could not be separated from other elements, particularly the question of intent.

The Working Group should continue its efforts to distil the three different drafts into a single text, even if that text was replete with brackets.

Mr. BEESLEY (Canada) pointed out that the Working Group's report was only its first and that further progress could be expected. The definition of aggression should not be an academic exercise; to be useful it would have to be

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(Mr. Beesley, Canada)

acceptable to the membership of the United Nations and to the permanent members of the Security Council. The report made much use of the useful device of the bracket, but he hoped that the phrases within brackets did not reflect definitive positions since middle positions on some issues were possible. For example, the States which felt that a definition that did not include all possible types of aggression would be dangerous had proposed the insertion of the words "however exerted" in the general definition. However, there might be a middle position involving a formulation which made it clear that while not every use of force was an act of aggression, some were, depending on the circumstances and at the discretion of the Security Council.

Three positions had, however, been taken on the question of priority. The first was the doctrinaire one that the first use of force was virtually conclusive evidence that an act of aggression had been committed and should be the main element of a definition, while the opposing view, shared by Canada was that the first use of force, while of great importance, was only one among a number of elements to be considered. A third position had now become evident for the first time postulating that the Security Council should determine which party had first used force, without prejudging the consequences of such a finding.

Thus it should be possible to find a middle ground. He had noticed a real movement forward in the position of the socialist and western delegations and appealed to the members of other groups to make every effort to accommodate the views of all members of the United Nations including those not represented on the Committee.

Mr. ROSSIDES (Cyprus) said he agreed with the Canadian representative that, although the report of the Working Group reflected no change from positions previously taken, accommodations could still be made. For example, in the general definition the words "however exerted" were unnecessary because they were implicit in the use of the words "armed force" without any qualification. They had been proposed in order to cover the idea of indirect aggression, but they did not in fact do so and could safely be eliminated, although the idea must, of course, appear elsewhere in the definition. There also seemed to be no reason to place the words "the sovereignty or" in brackets, since it was untenable and contrary to the Charter to suggest that an armed attack against the sovereignty of a State was not aggression. The phrase had been placed in brackets because it did not appear in Article 2 (4) of the Charter, but that paragraph, although it covered aggression,

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(Mr. Rossides, Cyprus)

was concerned with the more general notion of the threat or use of force. Accordingly, there was no need to follow the wording of the article, since the Committee was concerned solely with aggression, which was exclusively the use of armed force within the meaning of Articles 1 and 39 of the Charter. That point should not therefore be a stumbling block. Although the words "including the territorial waters and air space" were necessarily implicit in the reference to sovereignty, he could see no reason not to insert them since they did no harm.

Turning to the principle of priority, he recalled that according to the Politis definition, which the Committee on Security Questions of the Disarmament Conference had discussed at the League of Nations in 1933, the State which was the first to resort to the use of force was regarded as the aggressor. Furthermore, at the conference which had drafted the Charter of the Nürnberg Tribunal the United States delegation had proposed that that document should contain the following definition of the crime of aggression: "An aggressor for the purposes of this article is that State which is the first to commit any of the following actions:...". As the principle of priority had been honoured by time, it seemed likely that agreement could be reached on the principle that the first State to carry out an invasion was the aggressor. There was no reason why the Security Council could not make an alternative finding if special circumstances existed in a particular case.

On the subject of the connexion between the principle of priority and aggressive intent, which was an essential part of the position adopted by the six Powers, he agreed with the view that the first State to launch an attack was showing aggressive intent. It could not be denied that actions undertaken for the purposes set out in article IV A of the six-Power draft were acts of aggression. In that connexion, he agreed with the position of the Democratic Republic of the Congo.

With regard to the question of indirect aggression, which had been referred to by the representatives of Romania and Canada, he felt that attacks or infiltration by armed bands or mercenaries were as serious as other uses of force and, whether overt or covert, were covered by Article 1 (1) of the Charter, which referred to the suppression of acts of aggression or other breaches of the peace. They were also covered by Article 39. He pointed out, however, that the right of self-defence under Article 51 could be invoked only in the event of armed attack, and he suggested that infiltration by armed bands and other forms of indirect

(Mr. Rossides, Cyprus)

aggression should, if they did not amount to armed attack, be treated as breaches of the peace. If a State's independence was threatened by an armed attack, it was a serious situation giving rise, under Article 51, to the right of self-defence, and the State under attack was entitled to take defensive measures not only in its own territory but also beyond its frontiers. In the case of attacks or infiltration by armed bands, as a result of which a State's independence was not threatened, the State's right of self-defence should be limited to its own territory. Not all indirect uses of force were acts of aggression, although some might be, and it should be possible to reach agreement on the subject on the basis of the text set out in paragraph 22 of the Working Group's 1970 report (A/8019, annex II). He agreed that ideally the definition of aggression should enjoy the largest possible support in the United Nations and the agreement of the five permanent members of the Security Council. However, although the permanent members were entitled to use their veto in the Council they did not have the right to impede the development of international law, for which many small countries felt a strong responsibility. It was perfectly proper for the majority of the membership of the United Nations to develop international law, if necessary without the support of the permanent members of the Security Council.

Mr. CAPOTORTI (Italy) said that since the report of the Working Group (A/AC.134/L.30) dealt only with the beginning of the definition, many items of which were interrelated, it was of limited use. He believed that the Working Group should continue its work, although, if fundamental difficulties remained, it should not attempt to solve them through the use of drafting devices. The ambiguities that would arise from such a solution might lead to serious dangers.

His delegation agreed with the view that, although aggression involved the use of force, the use of force was not necessarily aggression, and he pointed out that the right of self-defence, dealt with in Article 51 of the Charter, was an exception to the rules of conduct laid down in earlier articles. It should therefore be introduced at a correspondingly later point in the definition.

With regard to the controversial question of indirect aggression, a number of States now agreed that the extent and circumstances of indirect aggression should

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(Mr. Capotorti, Italy)

determine whether it was included in the definition, although some States were adamant that it should be excluded. His delegation hoped that it would be possible to find a formula flexible enough not to exclude indirect aggression, and he thought that it was possible to reach a compromise along the lines suggested by the representatives of Romania, Canada and Cyprus.

While the six Powers felt that the phrase "however exerted" was felicitous, they were not wedded to it, although it was difficult to consider that phrase in isolation from other parts of the definition.

He expressed the view that the use of armed force should be distinguished from the use of regular armed forces and also that the reference to sovereignty could be deleted from the general definition since that notion was already contained in the terms "territorial integrity" and "political independence".

He reminded the Special Committee that the six Powers had now agreed to the inclusion of the principle of priority, although his delegation was still concerned that priority might become a de jure presumption, which might, for example, damage the interests of an innocent State that had been involved in a minor border incident. The other State involved could use such an incident as an excuse to unleash an aggressive attack and invoke the right of self-defence referred to in Article 51 of the Charter. He hoped it would be possible to reach agreement on the question.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) said that the Working Group deserved the Special Committee's gratitude for its businesslike approach to the task entrusted to it. During its discussions, the positions of different delegations had been clarified, and some progress had been made. The Group had done well to use the device of putting controversial parts of the text in brackets, and he saw no reason why the brackets should not be progressively eliminated in the course of further negotiations. Although his delegation could not approve the substance of the report, which did not reflect a consensus, he proposed that the Special Committee should take note of it.

Mr. REIS (United States of America) said that he had been disappointed by the deliberations of the Working Group, which had not become, as he had hoped it would, a forum for negotiating mutually advantageous concessions. Although his own delegation had made a proposal on the question of priority which was

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(Mr. Reis, United States)

substantially different from its original position and another member of the six-Power group had indicated that its position on the question of political entities was flexible, movement on the part of the other sponsoring delegations had been minimal and restricted to the thirteen-Power group.

Mr. SAM (Ghana) said he agreed with the representative of the Soviet Union that the Special Committee should take note of the report of the Working Group, although he did not feel that the report did full justice to the work actually accomplished in the Group. His delegation felt that the expression "however exerted", which had been placed in brackets in the general definition of aggression, was unnecessary and served only to provoke a great deal of controversy regarding the question of direct and indirect aggression. With regard to the text on the principle of priority, his delegation favoured replacing the words "and act referred to in ... constitutes aggression" by the words "an act of aggression had occurred" in view of the fact that the general definition would precede the text on the principle of priority.

ORGANIZATION OF WORK (agenda item 4) (concluded)

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) proposed that, in order to hasten progress towards agreement on the definition, the Working Group should continue its work the next day and hold regular morning and afternoon meetings. Furthermore, a second working group should be established to start work on the preamble of the definition. Both bodies could report their progress to the Special Committee during the first week of March.

Mr. REIS (United States of America) said that he agreed with the Soviet Union's suggestion that the Working Group should continue its work but believed that the Special Committee should bring its session to an end before the end of February, since the Sea-Bed Committee was meeting at Geneva on 1 March. Even the most optimistic members of the Special Committee could hardly expect a complete definition of aggression to emerge from the present session, and it was undesirable, because of representational difficulties, for two legal bodies to overlap. In any event, he disagreed with the proposal that the preamble of the definition should be taken up by a second working group. The best policy at plenipotentiary conferences

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(Mr. Reis, United States)

was to draft the preamble of a declaration after the substantive parts had been agreed upon and to use it as a repository for controversial subjects that might weaken the substantive parts. The failure of the Special Committee on Friendly Relations to adopt that policy had resulted in a long and not altogether satisfactory preamble. The second working group should, if anything, take up the question of the other specific acts proposed for inclusion in the definition. In conclusion, he emphasized that his delegation would be happy to see the Committee continue with its work if there was a possibility of reaching agreement.

Mr. ROSSIDES (Cyprus) said that he agreed with the Soviet Union on the establishment of a second working group and with the United States on the question of what the second group should do. Although difficulties might arise for smaller delegations as a result of the Special Committee and the Sea-Bed Committee meeting simultaneously, he did not see how the United States delegations could have any problems of representation. Neither did he believe that it was right to bring the Special Committee's session to an early end. He reminded the Committee that the General Assembly had requested it to expedite its work on the definition of aggression. Not a day should be lost.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) expressed surprise at the United States proposal and said he agreed with the representative of Cyprus that representation at the two sessions could hardly present a problem for a large delegation like that of the United States. The definition of aggression was, of course, a difficult matter in which progress was inevitably slow. It was also true that it presented political as well as legal problems, but the United Nations had successfully solved other problems of a similar nature, of which the Declaration on Friendly Relations was a good example. He saw no reason for concluding the Special Committee's work before the end of the five-week period that had been allocated to it, and, in view of the importance of the definition, he would have preferred a one-week extension.

Mr. REIS (United States of America) stated that he strongly resented the personal remarks of the USSR representative and Mr. Chkhikvadze's assertions as to the supposed motivation of the United States. He expressed the view that this sort of baseless attack would make progress in the work of the Committee and bilateral discussions impossible.

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Mr. ALCIVAR (Ecuador) said he agreed with the representative of the Soviet Union that the time-table of the Special Committee should not be changed to accommodate that of another, unrelated Committee. While it was true that it would be difficult for small delegations like his own to participate simultaneously in two working groups, he, for his part, would have no objection to being replaced in the second group by a representative of another Latin American country.

Mr. AL-ZAHAWIE (Iraq) said that he supported the proposal made by the representative of the Soviet Union.

Mr. SAM (Ghana) said he agreed with the representative of the Soviet Union that, because of the importance of its work, the Special Committee should utilize the full time allotted to it. His delegation had no objection to the idea of setting up another working group even though, being a small delegation, it might not be able to participate in both of them. If a second group was established, his delegation felt it would be advisable for it to deal with the main substantive points and leave the preamble in abeyance.

Mr. FREELAND (United Kingdom) said that he doubted whether the establishment of a second working group would speed the Committee's work. If, however, such a group were to be established, he did not feel that its mandate should be to consider the preamble. Although that might create an illusion of progress, it was likely to bring in its train nothing but disappointment at the present stage. The 1969 session had been almost entirely devoted to an incomplete and inconclusive discussion of the preamble. The device of leaving the preamble to the end of the period of negotiation had often been found helpful, and he believed that that would be the best course to follow in the case of a definition of aggression. He also did not think it would be very useful now to establish a second group to consider other aspects of the definition, since the latter had to be a carefully articulated document all the parts of which should be seen in close relation to one another. As the representative of Ghana had said, more had been accomplished in the present Working Group than its rather short report would indicate and the way had been prepared for some useful progress. The Group's proceedings to date had been characterized by an encouraging measure of

(Mr. Freeland, United Kingdom)

co-operation, and he felt that it provided the most promising basis for further work. Accordingly, the best course would be to ask the existing Group to resume its work and to pursue its task of considering all the elements of the definition. In that connexion, he felt that a strong case could be made for not following the exact order of topics observed in the report of the 1970 Working Group, since there was a possibility of making real progress on the issues of priority and intention at the current session. The sooner the question of intention was brought into conjunction with that of priority, the better.

Mr. MORALEZ-SUAREZ (Colombia) said that his delegation sincerely hoped that some progress on the definition of aggression would be made at the current session and could therefore not support any proposal to curtail the work of the Special Committee. On the other hand, it felt that it would not be advisable to take up the preamble at the present time and that it would be preferable to continue with the consideration of the operative part of the definition in a single working group.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) said that since some delegations had indicated that, because of their limited representation, they would find it difficult to participate in two working groups, he would suggest that they could be replaced on the second working group by representatives of other States. He did not insist that the second group should devote itself to the preamble but had mentioned that as a possibility since at previous sessions there had been more points of agreement on the preamble than on certain other aspects of the definition. However, if the other members of the Committee felt that it would be more appropriate for the second working group to deal with the enumeration of acts constituting aggression, as suggested by the representative of Cyprus, he would have no objection to its being assigned that task. In any case, he appealed to the Committee and its officers to adopt his proposal for setting up a second group as a means of speeding up the Committee's work.

With regard to the statement by the United Kingdom representative, he wished to point out that what had delayed the work of the Committee at its previous sessions had been the inflexible position of certain delegations regarding the question of priority and intent. In fact, most of the first session had been

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(Mr. Chkhikvadze, USSR)

devoted to convincing certain members of the Committee that a definition of aggression was possible, and it was only towards the end of the third session that the Western Powers had finally submitted a draft and the work of reconciling the various positions had begun. Although it was not likely that final agreement would be reached at the current session, a great deal could be accomplished. From the statements that had been made, it was obvious that the question of the duration of the session had been settled and that it was the consensus of the Committee that it should continue to work throughout the time allotted to it.

The CHAIRMAN suggested that the Working Group itself was probably in the best position to determine whether or not it would be advantageous to establish an additional group and whether such a group, if established, should complete the consideration of the operative parts of the definition or begin to work on the preamble.

Mr. GUNEY (Turkey) said that his delegation felt the same hesitation about the establishment of a second working group that it had felt about the establishment of the present group. At the time the present group had been set up, his delegation had, in a spirit of compromise, refrained from voicing its doubts; in the present instance, however, it could not remain silent. The first group had been established to determine the points of agreement and disagreement on the existing draft, but the preamble could not be treated in the same way. Any working group established to draft a preamble should include representatives of States which were not sponsors of draft definitions. Furthermore, his delegation did not think that the existing group was competent to decide whether it was necessary or appropriate to set up a new group to draft the preamble; only the Special Committee was competent to decide that matter.

His delegation had no firm position regarding the duration of the current session and would agree to any view held by a majority of the members.

Mr. TEYMOUR (United Arab Republic) said he agreed with the representative of Turkey that the existing Working Group was not competent to decide whether or not to set up another group and that a question of that kind had to be settled by the plenary Committee. On the other hand, he agreed with the representatives of the Soviet Union and Cyprus that since the definition of aggression was a

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(Mr. Teymour, United Arab Republic)

matter of great importance to all States Members of the United Nations, the Special Committee needed all the time at its disposal.

The CHAIRMAN said that when he had suggested that the Working Group should determine the best course of action with respect to the proposals of the Soviet and United States representatives, he had not intended that it should exceed its competence in so doing. He had meant that the Working Group should hold informal consultations with the various members of the Special Committee in order to facilitate a solution of the various questions raised at the current meeting. After holding such consultations, it would return to plenary and report on its findings. The final decision would then be taken by the entire Committee.

If there were no objections, he would take it that the Committee wished to request the existing Working Group to continue the work assigned to it and to hold informal consultations on the proposals made by the representatives of the Soviet Union and the United States, it being understood that it would report back to the plenary Committee on the results of those consultations.

It was so decided.

The meeting rose at 6.25 p.m.

SUMMARY RECORD OF THE NINTIETH MEETING

Held on Friday, 5 March 1971, at 11.45 a.m.

Chairman:

Mr. LEGNANI

(Uruguay)

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CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (General Assembly resolutions 2330 (XXII), 2420 (XXIII), 2549 (XXIV) and 2644 (XXV)) (agenda item 5) (continued) (A/8019; A/AC.134/L.32, L.34, L.35)

Mr. DESCHAMPS (France), introducing the second report of the Working Group (A/AC.134/L.35), noted that it gave an account of the Group's work since the submission of the first report, which had covered the meetings of 16, 17 and 18 February (A/AC.134/L.30). If the Committee wished, the first report could be combined with the second in a single document, which could, in turn, be annexed to the Committee's final report to the General Assembly.

During the current session, the Working Group had considered the questions of a general definition of aggression, the principle of priority, political entities other than States, legitimate use of force, aggressive intent, acts constituting aggression, proportionality and the right of peoples to self-determination, all of which had been included in the report of the Working Group to the Special Committee at its third session (A/8019, annex II). He pointed out that a new topic entitled "Purposes of the definition of aggression" had been introduced in the current report. The Working Group had not, however, had time to consider that question in detail. Indeed, it had been unable to give sufficient attention to any of the general questions it had discussed and, in spite of all its efforts, had failed to find generally acceptable solutions to the various problems with which it had dealt. In some instances, it had been possible to work out a text, but certain passages had had to be put in square brackets so as to reflect the positions of various delegations. In other instances, the Working Group had been able to do no more than include in its report as faithful a rendering as possible of the various views expressed during the debates. The fact that the Group had not been able to achieve better results was certainly due in large measure to the fact that the various delegations still diverged widely in their positions; despite the goodwill shown by all the members, it had not been possible to bring about a meeting of minds.

In his view, another difficulty which had confronted the Working Group had been the terms of reference given it by the Special Committee, which had asked the Group to assist it in its task by formulating a generally acceptable definition. Those terms of reference had given the Working Group a status half-way between that of a plenary committee and that of a drafting group. He

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(Mr. Deschamps, France)

hoped that at its fifth session the Committee would give some thought to the possibility of making a clearer distinction between the two roles assigned to the Working Group by setting up an actual drafting group to assist the Working Group in its task.

In its terms of reference, the Working Group had been requested to keep the Special Committee informed as to its progress. In assessing the Group's work, he felt that the key word was the word "hope" used in paragraph 20 of the report and that, despite the Group's inability to draft a single text acceptable to all its members, a generally acceptable definition would eventually emerge.

The CHAIRMAN pointed out that, where the report of its Working Group was concerned, the Committee seemed to be in the same position as at the end of its previous session. Since the Working Group had not been able to complete its work until late the previous day, its second report had not been circulated in time for thorough study by the members of the Committee. He therefore suggested that, after hearing any general observations which members might wish to make, the Committee should take note of the report and decide to annex it to its own report, together with a statement to the effect that, owing to lack of time, it had not been able to examine the Group's report.

Mr. DIACONESCU (Romania) said that his delegation felt that the general debates held by the Special Committee at its current session had provided a clearer picture of the various elements comprising the definition of aggression and a deeper understanding of the fundamental concepts which had to be considered in formulating an adequate definition. In his opinion, the Committee would have found it helpful to refer to the most recent United Nations documents reaffirming and developing certain principles of international law. He cited specifically the Declaration of Principles of International Law Concerning Friendly Relations and Co-operation among States, which had been adopted at the Commemorative Session of the General Assembly in 1970. If the members of the Special Committee had paid more attention to that document, solutions could have been found to many of the controversial questions confronting it. He found it difficult to understand why the Committee had failed to take advantage of certain decisions reached by the Special Committee on Principles

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(Mr. Diaconescu, Romania)

of International Law concerning Friendly Relations and Co-operation among States and preferred to re-examine formulations on which a consensus had already been reached.

His delegation felt that in future the activities of the plenary Committee and of its Working Group should be better co-ordinated. Some ideas expressed by delegations which were not members of the Working Group had received insufficient attention in the Group, which, generally speaking, had confined itself to the consideration of existing drafts. His delegation was, however, convinced that, despite the difficulties confronting it, the Special Committee would succeed in its task of formulating a definition of aggression that would make a significant contribution to international peace and security.

In the light of those considerations, his delegation supported the draft resolution submitted by Czechoslovakia and Mexico (A/AC.134/L.34), especially the last preambular paragraph, which noted the common desire of the members of the Special Committee to continue their work on the basis of the results attained and to arrive at a draft definition.

Mr. SIDIK (Indonesia) said that, although the Working Group's report (A/AC.134/L.35) showed that no significant progress had been made, it had the merit of elucidating the points of agreement and disagreement among its members.

Recalling that the fifth preambular paragraph of General Assembly resolution 2644 (XXV) stressed the urgency of bringing the work of the Special Committee to a successful conclusion and the desirability of achieving the definition of aggression as soon as possible, he pointed out that the Committee must produce not a partial definition but a complete one couched in terms that would cover all situations that might arise in practice. The definition should amplify the relevant provisions of the Charter and not merely repeat them. His delegation felt that the phrase "the use of armed force" in the part of the Working Group's first report (A/AC.134/L.30) dealing with the general definition of aggression should be qualified; however, since the qualification "however exerted" seemed to be unacceptable, his delegation would suggest as an alternative the words "in any form", a phrase first proposed in document A/AC.134/L.3/Add.1, which had been submitted to the Special Committee in June 1968 by twelve Powers, most

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(Mr. Sidik, Indonesia)

of which were also sponsors of the thirteen-Power draft resolution. If, however, the Committee could not accept any qualification of the phrase "the use of armed force", he would suggest that, to avoid ambiguity and cover all possible situations, the section dealing with "acts proposed for inclusion" in the second report should include mention of the organizing, supporting, directing and/or sending by a State of armed bands of irregulars or mercenaries to invade or infiltrate another State. In his delegation's view, either alternative would be a fair compromise which would neither weaken nor expand the concept of aggression. Then, to make the general definition widely acceptable, all brackets should be removed from the rest of the text.

The principles of priority and of aggressive intent should be dealt with together because of their close interrelationship. While it was sometimes the case that the principle of priority could be the overriding consideration for the Security Council, since "intent" was clearly implicit in an act of aggression, in other cases "intent" and "purpose" had to be established in order to determine whether or not an act constituted aggression. The text proposed in paragraph 7 (e) of the report seemed to his delegation an acceptable basis for further discussion.

The inclusion of the question of political entities in the definition might give certain countries a pretext for not implementing General Assembly resolution 1514 (XV) and for quelling national liberation movements. Because of the provisional nature of internationally agreed lines of demarcation, which did not prejudice the rights, claims or positions of any of the opposing parties, the use of armed force across such boundaries, though certainly a violation of international agreements, would not necessarily constitute aggression.

With regard to the legitimate use of force, on which the 1970 positions of the members of the Working Group seemed to be unchanged, his delegation wished to stress that the use of force by dependent peoples for the purpose of exercising their right to self-determination was a legitimate act.

With regard to paragraph 9 of the report, his delegation supported the introductory formula with the brackets deleted but doubted the advisability of inserting the phrase "under the jurisdiction" in sub-paragraphs (b) and (c)

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(Mr. Sidik, Indonesia)

since those words would stretch the concept of a State to include colonies and would thus adversely affect national liberation movements. His delegation supported the formula contained in sub-paragraph (g), which it felt was realistic and took account of all possible situations. In that connexion, he agreed with the representative of Cyprus that in some cases infiltration was so substantial and posed so great a danger that it was tantamount to an armed attack and justified the exercise of the right of self-defence.

With regard to the principle of proportionality, he agreed both with the Japanese representative, who had stated that victims of subversion and infiltration should not be deprived of their right of self-defence, and with the representative of Cyprus, who had said that, in the case of subversive or terrorist activities or the use of armed bands, there was no justification for unleashing a full-scale war. It was precisely in such cases that the principle of proportionality was of vital importance.

His delegation was somewhat disappointed at the meagre results achieved by the Working Group and regretted that members of the Committee who had not sponsored any of the existing drafts had been prevented from giving a substantial contribution owing to the limited time at the Special Committee's disposal.

Mr. REIS (United States of America) observed that paragraphs 15 and 18 of the report were incorrect and expressed the hope that the Committee's report would indicate that some members of the Working Group who had not been able to read those paragraphs before the report was forwarded to the Committee did not agree that the proposals referred to in those paragraphs should serve as a basis of discussion.

Mr. ROSSIDES (Cyprus) pointed out that the first two sentences of paragraph 6 required clarification. The meaning of the first sentence was presumably that an act of aggression had to be a deliberate act and not a mistake or an accident. However, the concept of "aggressive intent" was a complicated one, and "intent" must not be confused with "purpose", with which it had nothing in common. If "purpose" was to be taken into consideration in determining whether or not an act of aggression had been committed, the United Nations would be reverting to the world of the nineteenth century, which had drawn a distinction

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(Mr. Rossides, Cyprus)

between just and unjust wars, whereas the United Nations Charter prohibited all wars, just or unjust, even when they were for the purpose of enforcing a legitimate claim. The paragraph in question was confused and did justice to neither of the viewpoints which it purported to present.

Noting that much of paragraph 9 consisted only of phrases within brackets, he expressed the view that the Working Group's report would have to be discussed at length in the Committee and put into more presentable form before it could be submitted to the General Assembly. However, that would require time which the Committee did not at present have at its disposal. He therefore suggested that the Committee should follow the practice it had adopted the previous year and defer its discussion of the Working Group's report until its next session.

Mr. AL-QAYSI (Iraq), speaking as a member of the Working Group in reply to the representative of Cyprus, said that there had been general agreement in the Group that intention to attack existed in any act of aggression. The wording of paragraph 6 of the second report (A/AC.134/L.35) was a revised version of paragraph 6 of an earlier document prepared by the Group (A/AC/134/W.G.2/R.1). The earlier wording of the first sentence of paragraph 6 had been considered unsatisfactory by some delegations, and the revised version was a solution suggested by the representative of Italy. All members of the Working Group were in agreement that aggressive intent was a component of aggression, but they had differed as to how it should be reflected in the text. The second sentence of paragraph 6 represented the position of those who took the view that it is not necessary to reflect either intention or purpose in the definition of aggression. Unlike the representative of Cyprus, he did not think that there was a lack of clarity in the composition of the sentence. The reference to the concepts of intent and that of purpose in the same sentence is not to the effect of combining them together since the two are separated by the conjunction "or", and it is clear from the wording of the sentence that the proposal to exclude any references in the definition to intent and purpose were being made for different reasons: in the case of intent, because it was implied in any act of aggression, and in the case of purpose, because it could not in any event justify aggression.

Mr. CAPOTORTI (Italy), speaking on a point of order, proposed that the Committee should, as the Chairman had suggested, merely take note of the second report of the Working Group.

Mr. ROSSIDES (Cyprus) said that he fully agreed with the Italian proposal. However, it was not possible to make any comments on the second report without touching upon the substance of the matter, on which comments had already been made by previous speakers.

With regard to the Rapporteur's reply to his criticisms of paragraph 6 of the report, he insisted that purpose and intent were entirely different concepts and could not be treated as being in the same category. If an attack was intended and not accidental, it must be an act of aggression regardless of the purpose, and under the Charter a State with a legitimate grievance against another State was not entitled to take the law into its own hands but had a duty to submit it to the Security Council or the International Court of Justice rather than use it as justification for aggression.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics), speaking on a point of order, said that many members of the Working Group had special views on various paragraphs in the second report: the United States disagreed with paragraphs 15 and 18; his own delegation disliked paragraph 9; other delegations also had reservations. There were too many controversial points for the Committee to be able to undertake an exhaustive discussion of the document on the last day of its session, when it still had to consider its own report and its future work. It was clear from paragraph 20 of the second report that all positions taken by delegations were of a provisional nature, and he therefore proposed that the Committee should discuss the document at its next session.

Mr. ROSSIDES (Cyprus) pointed out that the procedure proposed by the Soviet Union would mean that the report of the Working Group would not have the formal approval of the Committee and could not therefore be discussed by the Sixth Committee at the twenty-sixth session of the General Assembly.

The CHAIRMAN suggested that, since there appeared to be a general disinclination to consider the document in detail, the Committee should take note of the second report of the Working Group (A/AC.134/L.35) and decide to annex it to the report which it would submit to the General Assembly.

It was so decided.

The meeting rose at 1.15 p.m.

SUMMARY RECORD OF THE NINETY-FIRST MEETING

Held on Friday, 5 March 1971, at 3.30 p.m.

Chairman:

Mr. LEGNANI

(Uruguay)

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ADOPTION OF THE REPORT (agenda item 6) (A/AC.134/L.33 and Add.1; A/AC.134/L.34)

Mr. AL-QAYSI (Iraq), Rapporteur, submitted the draft report of the Special Committee (A/AC.134/L.33 and Add.1). The report consisted of an introduction followed by two sections; section I consisted of the draft proposals submitted to the Committee, while section II was devoted to the Committee's debates and was itself divided into two parts, dealing respectively with the views expressed on the report submitted by the Working Group to the Committee at its 1970 session and with those expressed on the reports submitted by the Working Group to the Committee at its 1971 session.

Some changes should be made in the draft report. Firstly, paragraphs 1 and 2 of document A/AC.134/L.33/Add.1 should be incorporated into the general introduction to the draft report. Secondly, paragraph 7 of the introduction should mention the decision of the Special Committee to give those of its members who were not members of the Working Group the right to participate in the latter's work, with the understanding that only members of the Working Group could take part in its decisions and that those members could be replaced by other members of the Special Committee. Thirdly, the report should be followed by four annexes: annex I would enumerate the draft proposals submitted to the Special Committee, annex II would consist of the text of the Working Group's reports, annex III would reproduce the working paper submitted by Mexico (A/AC.134/L.28 and Corr.1) and annex IV would contain the list of participants.

Lastly, for the sake of convenience the views expressed had been presented in the same order and under the same headings as in the previous reports of the Committee.

The CHAIRMAN invited the Committee to consider the draft report section by section.

It was so decided.

Introduction

Mr. CAPORTORTI (Italy) pointed out that Mr. Al-Qaysi had participated in proceedings of the Working Group as Rapporteur and not as the representative of Iraq. In the first sentence of paragraph 7, therefore, the name of Iraq should be deleted from the list of States members of the Working Group.

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The CHAIRMAN said that the change would be made in the final text of the report.

Mr. GUNEY (Turkey) proposed inserting the following sentence after the words "the points of agreement and disagreement" in paragraph 7: "It was also decided that delegations not members of the Working Group would have the right to participate and speak without restriction in the debates of the Working Group."

Mr. TEYMOUR (United Arab Republic) said that the decision should be reported in the exact language used by the Committee.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) added that the report should make it clear that the decision applied only to the current session and did not constitute a precedent.

Mrs. BOIVINEAU (France) said that it should also be stated that only members of the Working Group had the right to take part in its decisions.

The CHAIRMAN suggested that the exact wording to be used in the report should be left to the Rapporteur.

It was so decided.

The introduction was adopted.

Section I (para. 8)

Section I was adopted.

Section II (para. 9)

Paragraph 9 was adopted.

A. Views expressed on the report submitted by the Working Group to the Special Committee at its 1970 session

Paragraphs 10 to 12

Mr. CAPOTORTI (Italy), supported by Mr. FREELAND (United Kingdom), believed that in the third sentence of paragraph 11 the word "preceded" should be replaced by the word "accompanied", which did not prejudice the question whether the statement would precede or follow the list of acts constituting aggression.

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Mr. HARBI (Algeria) observed that two views had been expressed with regard to the procedure to be used for adopting a definition of aggression: some had asserted that the only way of arriving at a definition of aggression was by means of consensus, while the others had felt that it might not be necessary to apply the consensus method systematically. The first view was satisfactorily stated in paragraph 12, but the second was not. In the second sentence of the paragraph, therefore, the words "that it might not be" should be replaced by the words "that it was not".

Mr. TEYMOUR (United Arab Republic) said that the words "several representatives" in the first sentence of paragraph 12 should be replaced by the words "some representatives".

Mr. MOUSHOUTAS (Cyprus) supported the proposal of the United Arab Republic representative.

The CHAIRMAN said that the Rapporteur would take account of the various comments made with regard to that part of the report.

Paragraphs 10 to 12 were adopted.

Section 1 (paragraphs 13 to 17)

Mr. VALLARTA (Mexico) requested the addition, after paragraph 13 of the following statement, which his delegation would like to have included in the report and which might appear as paragraph 13 bis:

"Several delegations were of the opinion that the definition would provide the Security Council with guidelines for determining acts of aggression under Article 39 of the Charter and that it would also serve, inter alia, to guide world opinion, discourage potential aggressors, determine what constituted acts of aggression and regulate inter-State relations generally, taking into account the fact that the definition would codify and develop the principles of international law."

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Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) suggested that the phrase "for the time being" should simply be deleted.

Mr. FREELAND (United Kingdom) supported the amendment proposed by the Italian representative. The present wording did, in fact, imply that all the members of the Committee agreed that it should go on with the work of definition after establishing a definition limited to the use of armed force.

Mr. SEVILLA-BORJA (Ecuador) thought that the present text of the report fully reflected the divergent positions taken in the Committee. He was therefore in favour of retaining the present wording, including the words "for the time being".

Mr. TEYMOUR (United Arab Republic) and Mr. HARBI (Algeria) agreed with the representative of Ecuador.

Mr. CAPOTORTI (Italy) proposed that the controversial phrase should be amended to read: "... the definition relates to the use of armed force", which came closer to the USSR suggestion.

Mr. AL-QAYSI (Iraq), Rapporteur, said that in his opinion the text of paragraph 18 was a faithful reflection of the debate and did not prejudice the future. The wording used in the present report was more non-committal than that in the report of the previous year which was "for the present at least".

Mr. REIS (United States of America) said that the corresponding sentence in the previous year's report referred to "most of the members of the Special Committee". On the other hand, the present text implied that a consensus had now been reached, which was not the case. Some members of the Committee believed that it would have finished its work once it had established a definition of aggression that was limited to the use of force; other delegations thought differently. That being the case, his delegation could not accept the wording "for the time being". He proposed that a second sentence should be added to the effect that some delegations had expressed the view that the term "aggression" was limited, in the Charter, to the use of armed force and that consequently the Committee's task was necessarily limited to the formulation of a definition relating to the use of armed force.

Mr. SEVILLA-BORJA (Ecuador) asked whether the sentence proposed by the United States representative reflected what had been said in the Committee. He did not recall that that view had been expressed during the discussion and was therefore opposed to the inclusion of such a sentence.

Mr. AL-QAYSI (Iraq), Rapporteur, said that that point had been raised in the Working Group established in 1971 and that it was therefore difficult to include such a statement under the heading "The definition and the power of the Security Council" together with statements made in the Special Committee concerning the report of the Working Group established in 1970. Moreover, the second report of the Working Group (A/AC.134/L.35) included, in paragraph 19, a statement which did not prejudge the positions of delegations on that point. In the circumstances, he appealed to the Mexican delegation not to press for the inclusion of such a statement.

Mr. VALLARTA (Mexico) withdrew his proposal but requested that his delegation's statement should be duly reflected in the report.

The CHAIRMAN said that the Rapporteur would take the Mexican delegation's comments into account.

Section 1 of the report (paras. 13-17) was adopted.

Section 2 (paras. 18-22)

Mr. CAPOTORTI (Italy) said that the first sentence of paragraph 18 was ambiguous. The words "for the time being" implied that the Committee might at a later stage extend the scope of the definition to acts other than the use of armed force. He proposed that those words should be deleted and the second part of the sentence reworded to read: "... prepared by the Special Committee should be limited to the use of armed force".

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) said that the Italian amendment raised a question of substance. The present wording indicated merely that the Committee felt that, for the time being, it should confine its attention to the use of armed force. The Italian wording would imply that the Committee had made a final decision concerning the scope of its mandate.

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Mr. CAPOTORTI (Italy) said that his sole aim in proposing the amendment was to avoid prejudging the future. The expression "for the time being" introduced an element of ambiguity. The report should reflect the Committee's current work. Both he and the USSR representative seemed to agree on that point.

Mr. AL-QAYSI (Iraq), Rapporteur, replied that the text corresponded to what had been said in the discussion. He was prepared to insert the additional sentence proposed by the United States if someone could indicate to him when and where the views referred to had been expressed.

Mr. FREELAND (United Kingdom) said that the proposition in question had not been formally taken up before the Committee and that the difficulty arose from this fact. He reiterated his support for the Italian amendment, which was itself fully consistent with the course of discussion in the Committee.

Mr. SEVILLA-BORJA (Ecuador) said that the deletion of the words "for the time being" would give a false picture of the discussions and of the strong position taken in that regard by a number of delegations, including his own. For example, the Colombian representative had stated at the 85th meeting that the definition would only be complete when all forms of aggression had been defined (A/AC.134/SR.85). Some members of the Committee therefore considered that the fact of limiting the definition to the use of armed force was only a first step towards a complete definition. That view must be clearly reflected in the report.

Mr. COLES (Australia) suggested that, in order to bring the debate to a close, the first sentence should simply be deleted.

The CHAIRMAN suggested that the Rapporteur should be asked to draft the final version of paragraph 18, bearing in mind the observations which had been made.

It was so decided.

Mr. FREELAND (United Kingdom) observed that the wording of the first sentence of paragraph 20 implied that the argument involved was based on Article 51 of the Charter. For greater clarity, the second subordinate clause should be so phrased as not to appear the reason for the first; the word "since" should be replaced by "and that".

The CHAIRMAN said that the Rapporteur would take that suggestion into account.

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Section 2 of the report (paras. 18-22) was adopted.

Section 3 of the report (paras. 23-24) was adopted.

Section 4 (paras. 25-28)

Mr. ROSSIDES (Cyprus) observed that the first sentence of paragraph 25 did not accurately reflect the balance of the discussions. The argument reproduced in the sentence had called forth objections not only from the sponsors of the thirteen-Power draft definition but also from other delegations. The word "most" should therefore be replaced by the word "some" in the first line of the paragraph. Moreover, the words "the arguments put forward for the inclusion of that principle were convincing" in the same paragraph should be deleted, since they implied a value judgement which was out of place in the report.

Mr. TEYMOUR (United Arab Republic) supported the suggestions made by the representative of Cyprus.

Mr. FREELAND (United Kingdom) said that in the first sentence as drafted the point at issue was not the number of delegations which supported the position in question but the number that did so among those who had spoken on the subject. He had no doubt that the report objectively reflected what had taken place within the Committee: it could not be expected to reflect opinions not expressed there by delegations.

Mr. AL-QAYSI (Iraq), Rapporteur, said that the clause criticized by Mr. Rossides was placed between semi-colons, which, in view of what went before, indicated that it was an argument advanced by one delegation. That passage of the report did not contain any value judgement. However, he was prepared to delete the sentence if the Committee so desired. The first sentence did objectively reflect the discussions, given the number of representatives who had actually spoken on the subject.

Mr. ROSSIDES (Cyprus) emphasized that the expression "most representatives" implied a majority. However, an analysis of the discussion showed that seven members of the Committee had maintained that the element of intent was a fundamental element in the definition and that six had opposed that view; however, among those who had not spoken on the subject, a substantial number of delegations

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were against treating the element of intent as a fundamental element. That was the case, in particular, with the sponsors of the thirteen-Power draft definition.

Mr. AL-QAYSI (Iraq) Rapporteur, said that he was willing to replace the opening words of the paragraph by the words "In the view of several representatives" and to delete the controversial clause in the third sentence.

Mr. GUNEY (Turkey) said that his delegation saw no reason why the beginning of paragraph 25 should be changed or why the words "the arguments put forward for the inclusion of that principle were convincing" should be deleted.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) proposed that paragraph 25 of the Special Committee's report should be brought into line with paragraph 6 of the report of the Working Group (A/AC.134/L.35), the first sentence of which, reading "There was agreement in the Working Group that there is no aggression without aggressive intent" might be reproduced in the paragraph under discussion.

He requested that the words "and purpose was not relevant to aggression" in the fifth sentence of paragraph 26 should be deleted.

Mr. GUNEY (Turkey) was opposed to the Special Committee's report being brought into line with that of the Working Group, since that would be to disregard the position of fifteen delegations who had spoken but had not submitted a draft definition. The Special Committee's report should reflect the debates of the Special Committee and not those of the Working Group.

Mr. DUPLESSY (Haiti) considered that the first sentence of paragraph 25 gave a wrong idea of the arguments put forward during the Special Committee's discussions and suggested that it should be amended to read, for instance: "The concept of intent was, as some representatives stated, a fundamental concept".

Mr. ROSSIDES (Cyprus) said that in paragraph 26, which was intended to reflect the position of the thirteen-Powers, the words "there was no need to

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refer to motives in a definition of aggression; aggressive intent would suffice" should be deleted, since none of the representatives who had spoken in favour of the thirteen-Power draft had expressed that opinion. He also requested that in the third sentence the word "some" should be replaced by "several" and that the second clause of the fourth sentence should be amended to read "the element of intent in an act of aggression could be construed only as the international act, to distinguish it from one due to accident or error". Lastly, he said that in the same sentence the words "as such, intent was the element of a desire to do wrong, the mens rea of an act of aggression, and was undeniably an important element" were out of place in paragraph 26 and should be included in another paragraph. He requested that they should be deleted.

Mr. AL-QAYSI (Iraq), Rapporteur, said the report reflected statements that had been made during the discussion of the report of the Working Group. He read out parts of the summary record of the statements made by the representatives of Guyana and Cyprus at the eighty-third meeting of the Committee (A/AC.134/SR.83), at which the representative of Cyprus had said that, in order to accommodate certain delegations, he would not object to amending the thirteen-Power draft to include an explicit reference to intent. The words "aggressive intent would suffice" in the second sentence of paragraph 26 had been taken from a statement made at the eighty-fourth meeting by the representative of the USSR (A/AC.134/SR.84).

Mr. ROSSIDES (Cyprus) maintained his objections.

The CHAIRMAN suggested that the Committee should approve paragraphs 25-28, and ask the Rapporteur to revise the text, in the light of the comments made by delegations.

It was so decided.

Section 4 of the report (paras. 25-28) was adopted.

Section 5 (paras. 29-33)

Section 5 of the report (paras. 29-33) was adopted.

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Section 6 (para. 34)

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) said the heading of the section should be the same as that of section 7 of chapter B of the Special Committee's report for 1970 (A/8019); the Committee would then be acting in accordance with its own decision, recorded in paragraph 10 of the draft report, to present the views expressed on the report submitted by the Working Group to the Special Committee at its 1970 session in the same order and under the same headings as in the Special Committee's earlier report. Section 6 should therefore be entitled: "The right of self-determination".

Mr. AL-QAYSI (Iraq), Rapporteur, said that the heading "Acts considered not to constitute acts of aggression" had been taken from paragraph 27 of the Special Committee's report on its 1970 session; the heading could, however, be changed if the members of the Committee so desired.

Mr. EL-FATTAL (Syria) said that the word "observed" in the first sentence should be replaced by the word "stated" and the words "by force" transposed so that they appeared after the words "to oppose". The word "confirmed" in the second sentence should be replaced by the word "reaffirmed".

Mr. FREELAND (United Kingdom) said he saw no need to change the heading that had been used in the corresponding part of the previous year's report, which was Section III A.6 (paragraph 47).

Mr. TEYMOUR (United Arab Republic) said that the heading of paragraph 34 should reflect its content; he therefore supported the USSR proposal.

The CHAIRMAN suggested that the reference to the right of self-determination might be made in a subheading.

Mr. REIS (United States of America) opposed the USSR proposal, which would have the effect of causing the Committee to reopen its earlier decision to adopt paragraph 10 of the draft report.

Mr. SEVILLA-BORJA (Ecuador) supported the Chairman's suggestion to have the right of self-determination mentioned in a subheading.

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Mr. AL-QAYSI (Iraq), Rapporteur, said he would try to reconcile the different opinions expressed in consultations with the delegations, with a view to reaching a satisfactory solution.

The CHAIRMAN suggested that the Committee should accept the Rapporteur's suggestion and adopt paragraph 34, subject to possible changes in the heading.

It was so decided.

Section 6 of the report (para. 34) was adopted.

Section 7 (para. 35)

Mr. TEYMOUR (United Arab Republic) remarked that the first sentence of paragraph 35 needed clarification.

The CHAIRMAN said that that sentence would be rephrased in the final text of the report.

Section 7 of the report (para. 35) was adopted.

B. Views expressed on the reports submitted by the Working Group to the Special Committee at its 1971 session (A/AC.134/L.33/Add.1)

Mr. EL-FATTAL (Syria) drew attention to an omission in the part of paragraph 2 summarizing the brief discussion which the Special Committee had held at its 89th meeting on the organization of its work. The paragraph in question failed to mention the suggestion made at that meeting by the United States delegation to the effect that the Special Committee should bring its session to an end one week earlier than had been scheduled. He requested that paragraph 2 should be amended so as to mention the United States proposal on the same footing as the Soviet proposal.

Mr. REIS (United States of America) proposed that the omission should be rectified by inserting the following sentence between the fourth and fifth sentences of the paragraph: "One representative suggested that the Special Committee should bring its work to an end one week earlier than had been scheduled so as not to overlap with the important first session of the new Sea-bed Committee, which was scheduled to meet at Geneva on 1 March."

The CHAIRMAN said that the Rapporteur would take account of those observations.

The part of the report contained in document A/AC.134/L.33/Add.1 was adopted.

The report of the Special Committee (A/AC.134/L.33 and Add.1), as a whole, was adopted.

The CHAIRMAN suggested that the Committee should consider the draft resolution submitted by Mexico and Czechoslovakia (A/AC.134/L.34).

Mr. HULINSKY (Czechoslovakia), introducing draft resolution A/AC.134/L.34, said that previous sessions of the Special Committee issued a statement of common desire of the Committee's members to arrive at a definition. At the conclusion of the third session - as it is evident from the report of the working group of August 1970 - a skeleton of a future definition was designed. This year the reports of the working group attested to the fact that the group was engaged in efforts to draft generally acceptable formulations of the individual elements of a definition. The delegation of Mexico and his own, after consultations with other members of the Special Committee, had decided to submit a draft resolution recommending that the General Assembly should invite the Special Committee to resume its work in 1972.

Mr. REIS (United States of America) thanked the Mexican and Czechoslovak delegations for having taken the initiative in submitting the draft resolution. The document contained no provision relating to the length and place of the following session of the Special Committee. Its length might approximately be the subject of informal consultations among members and the Secretariat during the twenty-sixth session of the General Assembly. Also it had been suggested in the corridors that the following session of the Special Committee might be held in Geneva but that question did not need to be decided yet. In any case, consideration would have to be given to the additional cost of a meeting in Geneva, and his delegation would at the General Assembly want to be certain that the cost factor was carefully considered and taken into account.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) supported draft resolution A/AC.134/L.34. The length of the following session of the Special Committee would be determined by the General Assembly, but it was hoped that it

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(Mr. Chkhikvadze, USSR)

would not be shorter than the current session; it should indeed, be longer. The place of the session would be decided in accordance with the usual procedure and practice, under which sessions were convened alternately in New York and Geneva; the atmosphere in Geneva was more favourable for the work of the Special Committee.

Mr. GUNEY (Turkey) supported draft resolution A/AC.134/L.34.

Draft resolution A/AC.134/L.34 was adopted unanimously.

CLOSURE OF THE SESSION .

Following an exchange of congratulations and expressions of appreciation, the CHAIRMAN declared closed the fourth session of the Special Committee on the Question of Defining Aggression.

The meeting rose at 7.5 p.m.
