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REPORT OF THE SPECIAL COMMITTEE ON THE QUESTION OF
DEFINING AGGRESSION

Report of the Sixth Committee

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INTRODUCTION

1. Pursuant to General Assembly resolution 2644 (XXV) of 25 November 1970, the Special Committee on the Question of Defining Aggression reconvened at United Nations Headquarters at New York from 1 February to 5 March 1971 in order to resume its work in accordance with General Assembly resolution 2330 (XXII) of 18 December 1967, and prepared a report covering the work of its 1971 session.^{1/}
2. At its 1939th plenary meeting, on 25 September 1971, the General Assembly decided to include in the agenda for its twenty-sixth session the item entitled "Report of the Special Committee on the Question of Defining Aggression", and allocated it to the Sixth Committee for consideration and report.
3. The agenda item was considered by the Sixth Committee at its 1268th-1276th and 1281st meetings, held between 26 October and 15 November 1971. At the 1268th meeting, on 26 October 1971, Mr. R. Al-Qaysi, the representative of Iraq and Rapporteur of the Special Committee on the Question of Defining Aggression, introduced the Special Committee's report.
4. At its 1281st meeting, on 15 November 1971, the Sixth Committee decided that its report on the agenda item should contain a summary of the principal juridical trends which had emerged during the debate, the financial implications of such a summary having previously been brought to its attention in accordance with General Assembly resolution 2292 (XXII).

^{1/} Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 19 (A/8419).

I. PROPOSAL SUBMITTED TO THE SIXTH COMMITTEE

5. At its 1281st meeting, on 15 November 1971, the representative of Mexico submitted a draft resolution sponsored by the following States: Bulgaria, Byelorussian Soviet Socialist Republic, Colombia, Cyprus, Czechoslovakia, Ecuador, Egypt, Ethiopia, Ghana, Haiti, Hungary, India, Iran, Jordan, Kenya, Libyan Arab Republic, Mali, Mexico, Mongolia, Poland, Romania, Sierra Leone, Syrian Arab Republic, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Republic of Tanzania, Yugoslavia and Zambia (A/C.6/L.827), Guinea, Guyana, Madagascar and Pakistan subsequently joined the sponsors. The draft resolution reads as follows:

The General Assembly,

Having considered the report of the Special Committee on the Question of Defining Aggression on the work of its fourth session held in New York from 1 February to 5 March 1971,

Taking note of the progress made by the Special Committee in its consideration of the question of defining aggression and on the draft definition, as reflected in the report of the Special Committee,

Considering that it was not possible for the Special Committee to complete its task at its fourth session,

Considering that in its resolutions 2330 (XXII) of 18 December 1967, 2420 (XXIII) of 18 December 1968, 2549 (XXIV) of 12 December 1969 and 2644 (XXV) of 25 November 1970, the General Assembly recognized the widespread conviction of the need to expedite the definition of aggression,

Considering 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,

Noting also the common desire of the members of the Special Committee to continue their work on the basis of the results achieved and to arrive at a draft definition,

1. Decides that the Special Committee on the Question of Defining Aggression shall resume its work, in accordance with General Assembly resolution 2330 (XXII) as early as possible in 1972;

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2. Requests the Secretary-General to provide the Special Committee with the necessary facilities and services;

3. Decides to include in the provisional agenda of its twenty-seventh session an item entitled "Report of the Special Committee on the Question of Defining Aggression".

II. DEBATE

6. Sections A and B below contain a summary of the main trends which emerged during the debate on certain general aspects of the question of defining aggression and on the content of the definition. It is, however, appropriate to draw attention here to the views expressed on the state of advancement of the work of the Special Committee and on its mandate, working methods and composition.

7. Several representatives pointed out that the Special Committee had made encouraging progress which they felt gave grounds for hope that a generally acceptable definition of aggression could be formulated in the near future. Hence, most of the representatives who spoke supported the resolution in which the Special Committee recommended that the General Assembly invite it to continue its work in 1972. One representative, however, was unable to share the optimism of those who believed that the Special Committee was on the verge of completing its work, and said he could not support the proposal that the mandate of the Special Committee should be renewed in 1972. In his opinion, it could either be dissolved temporarily or permanently or its work could be suspended for two years so as to allow States time for further reflection and, perhaps, informal consultations. Another representative also opposed extending the Special Committee's mandate, expressing the view that to do so, in addition to placing a financial burden on the Organization and creating additional work for Member States, would merely increase the ambiguity already existing, jeopardize the basic rights embodied in the Charter, and adversely affect the powers of the various organs of the United Nations, particularly the discretionary power of the Security Council.

8. With regard to the method of work, some representatives estimated that the Special Committee should establish more than one working group, arguing that the single Working Group was insufficient since it consisted of a limited number of members, some of whom did not seem to be biased in favour of expediting the conclusion of the Special Committee's work, and that several small but representative working groups should be established which would meet concurrently to consider the major differences of opinion and report to the Special Committee. One representative said that the composition of the Working Group established by the Special Committee at its 1971 session was unsatisfactory and that if other working groups were appointed in the future, provision should be made for the

representation of States other than those which had sponsored the various draft proposals submitted to the Special Committee. Another representative noted that the Committee had frequently been unable, for lack of time, to consider all the topics on its agenda or those it had assigned to its Working Group, and said that there were various ways of solving that problem: (a) the Special Committee could refer certain principles, preferably those in which there was a near consensus, to its Working Group, which could make a thorough study of them with a view to reaching a definitive decision; (b) the time allotted to the Special Committee could be increased by five working days to enable it to make a detailed examination of the texts drawn up by its Working Group; (c) the general debate which took place at the beginning of each session of the Special Committee could be eliminated, since the position of all delegations was not well known. He suggested that it might be preferable to adopt solution (a), if necessary combined with solution (c).

9. Regarding the composition of the Special Committee, several representatives said that the People's Republic of China should be invited to participate in its work.

A. Opinions expressed on certain general aspects
of the question of defining aggression

10. A large number of representatives drew attention to the urgent need for a definition of aggression. A number of General Assembly resolutions were cited in that connexion, including resolution 2644 (XXV) and resolution 2734 (XXV) of 16 December 1970, containing the Declaration on the Strengthening of International Security. It was further pointed out that the adoption of a definition of aggression would not only contribute to the codification of international law but would also strengthen the system of collective security established by the Charter and promote the rule of law. It was said that a definition of aggression could contribute towards the formation of an enlightened public opinion, could be a yardstick against which to measure the conduct of States in the light of their obligations under the Charter, and could serve as a warning to any potential aggressor. It was observed that world public opinion had a strong influence on the development of international affairs, and in that connexion the definition of

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aggression could constitute an indirect but effective deterrent to acts of aggression; in particular, it would supply a legal basis, within the framework of the United Nations, for eliminating the lack of precision and the subjective nature of political judgements. It was also pointed out that a definition of aggression would be particularly useful for protecting small countries.

11. On the other hand, some representatives expressed doubts regarding the usefulness of a definition of aggression, holding that the clarification of legal norms was a useful step in promoting the rule of law but that it must be recognized that an agreed definition of aggression was not vital to the attainment of the Purposes and Principles of the Charter. It was argued that even if such a definition could be established it could neither have any impact on the development of international penal law nor remove provocation and aggression; moreover, after 26 years of activity, no evidence could be found that the Security Council had difficulty in performing its task of determining the existence of aggression merely because it lacked an appropriate definition. The opinion was expressed that international peace in fact depended on the political will of States; rules of law were at best no more than guides, whether for individuals or for States.

Furthermore, the various juridical instruments of general application at the disposal of the international community were quite adequate for its needs.

12. One representative said that, although his delegation still doubted the usefulness of a definition of aggression, it was prepared to support the continuance of the Special Committee's work. Yet it should be recognized, he said, that one unfortunate consequence of the decades of failure to define aggression was that further work had been suspended on other important legal matters: the formulation of the principles recognized in the Charter and judgement of the Nürnberg Tribunal,^{2/} the draft code of offences against the peace and security of mankind,^{3/} and the draft statute of an international criminal court;^{4/} several developments seemed to indicate that it would be possible, at least to some extent, to resume work on those questions without awaiting a definitive definition of aggression:

^{2/} Ibid., Fifth Session, Supplement No. 12 (A/1316), para. 97.

^{3/} Ibid., Sixth Session, Supplement No. 9 (A/1858), para. 59.

^{4/} Ibid., Fifth Session, Supplement No. 12 (A/1316), paras. 128-145.

13. One representative observed that the major difficulties encountered by the Special Committee in the formulation of a definition of aggression were largely due to political factors and that there was little hope that they would be quickly resolved. He therefore suggested, as an interim measure, that a provisional definition should be produced, covering those areas on which agreement already existed. In the view of another representative, that proposal seemed incompatible with the notion of a comprehensive definition, and an incomplete definition might well leave loopholes that would tempt a potential aggressor.

14. With regard to the procedure to be followed for the formulation and adoption of a definition of aggression, some representatives considered that the only way of arriving at an acceptable and lasting definition of aggression was by consensus. Other representatives, however, held that it would not be necessary to apply that method to all aspects of the Special Committee's work, particularly those which were of relatively minor importance. It was also maintained that the definition should have the widest possible support of Member States, without which it would have little political or legal value. The opinion was expressed that instead of trying to resolve difficulties by decisions taken by majority vote, the Special Committee should follow the example of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, which had taken all its decisions unanimously; it was doubtful what value and use a definition of aggression would have if, for example, one or more of the permanent members of the Security Council opposed it. In the view of several representatives, where it was not possible to reach a consensus, the value of the definition adopted by a simple majority should not be disregarded; even though such a definition could not establish international legal norms, it could nevertheless exert an influence on world opinion and pave the way for the positive development of international law. It was also held that the method of seeking the consent of all the permanent members of the Security Council was obstructive and undemocratic, and should be abandoned; the fact that the Security Council had primary responsibility for the maintenance of international peace and security did not entitle it to reject rules of international law which were being elaborated by the General Assembly, in the present instance through the Special Committee set up by the Assembly to deal with the question of aggression.

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15. One representative said that a definition of aggression would gain in importance if it was adopted in a General Assembly resolution similar to that by which the Assembly had adopted the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. Another representative held that, though General Assembly resolutions were not mandatory either for States or for the Security Council, recommendations by the Assembly had more force than the mere exertion of moral pressure and were not devoid of all juridical value. He said that the establishment of rules of international conduct within international bodies had already had a palpable influence with regard to the scope and value of subsidiary sources of international law and the general principles of law, jurisprudence and theory; thus it was impossible to discard a priori the idea that a solemn declaration by the General Assembly embodying a definition of aggression, and approved by the majority of Member States, could serve as a basis for a general principle of law; although a General Assembly recommendation was not mandatory in itself, it could acquire juridical value by becoming incorporated into international law.

B. Opinions expressed on the content of the definition

1. General definition of aggression

16. In the view of some representatives, the draft general definition of aggression formulated by the Working Group in its 1971 report provided a constructive basis for further work. One representative said apropos of the draft that it would be advisable to avoid defining aggression by concepts which were themselves ill-defined, such as "territorial waters" and "air space". Another representative said that because of the lack of agreement among nations regarding the breadth of territorial waters, it was important for coastal States that a reference to "territorial waters" should be included in the general definition of aggression; there should be no objection to the inclusion of a reference to "air space"; and the differences of opinion regarding the inclusion of the term "sovereignty" in the general definition might be solved by finding a way to reflect the rights implicit in that principle. One representative held the

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view that the phrase "or in any other manner inconsistent with the purposes of the United Nations" contained in the draft general definition might be taken to mean that force could be used in achieving the purposes of the United Nations as defined in Article 1 of the Charter, which would of course be a false interpretation. Admittedly, that phrase was included in Article 2 (4) of the Charter, but only to emphasize that force should not be used in international relations; however, to insert those words in a general definition of aggression might well blur the Charter rules regarding the non-use of force.

17. One representative expressed the view that a general definition of aggression rationally combining the agreed elements might read as follows: "Without prejudice to the discretion of the Security Council to make a contrary finding, that State shall be presumed to be an aggressor which resorts to the use of armed force, first, against another State, in order to affect in any manner the territorial integrity, sovereignty or political integrity of the State aggrieved, contrary to the relevant provisions of the Charter." That definition, he argued, would appear to contain all the elements agreed by the members of the Special Committee to constitute aggression, since it preserved the discretionary powers of the Security Council, was confined to armed attack, raised the priority principle as a presumption, rebuttable by proof of the absence of intention, was restricted to States, recognized the necessity of animus aggressionis, was in strict conformity with the Charter, and was not applicable to situations where armed confrontation was legally permissible under the Charter.

18. One representative remarked that if the Special Committee intended to produce a compromise between the various projects before it, several years would no doubt be necessary. But in view of the importance and urgency of the problem, the Special Committee might do well to replace the definition by a description, merely giving a general formulation of aggression by way of a recital of its constituent factors, specifying the means to be used in identifying the culprit, and fixing the responsibility of the State concerned. That procedure would bring together all the aspects of aggression. Moreover, an unduly precise definition would have the drawback of enabling a potential aggressor to distort its provisions, for example by making use of the latest scientific inventions.

19. In the opinion of one representative, the definition should refer not only to "a State", but also to groups of States. An act of aggression could be committed by one or several States against one or several other States.

20. One representative said that the definition of aggression should cover the use of force by one or more States in a manner incompatible with any régime whatsoever established by the international community in respect of areas which were outside the limits of national jurisdiction or which fell within the limits of national jurisdiction but had been expressly isolated from the arms race or any particular form of the arms race. The inclusion of that point in the definition of aggression would give additional publicity to, and strengthen, efforts at demilitarization. One representative expressed considerable reservations about that suggestion. One of the most valuable features of the progress recently made by the Special Committee, he said, was its agreement to define aggression as that term was used in the Charter. The use of force within certain specified zones could not possibly be described as falling within the ambit of the phrase "act of aggression" as used in the Charter, for example in Article 39.

2. The definition and the power of the Security Council

21. Some representatives referred to the idea, generally accepted in principle, that the definition of aggression should safeguard the discretionary power of the Security Council as the United Nations organ with primary responsibility for the maintenance of international peace and security. One representative said that no definition of aggression could bind the Security Council in determining a particular case of aggression. The Security Council was and remained an organ of security. Without detracting from the Council's discretionary powers of appraisal, a definition should be prepared, within the framework of the Charter, which would give it guidance. The powers of appraisal which the Council exercised in connexion with any situation representing a threat to peace would also help to guard against the possibility of a fairly flexible definition being distorted by an aggressor. Another representative pointed out that the Security Council could not exceed the powers accorded to it under the Charter. Of course, the practice of the Council could contribute to the interpretation of the Charter, but it seemed difficult to maintain, as the Working Group had done in paragraph 12 of its 1970 report,^{5/} that

5/ Ibid., Twenty-fifth Session, Supplement No. 19 (A/8019), annex II.

the Security Council had fullness of power under the Charter to extend the definition of aggression while, at the same time, presenting for the guidance of the Council a definition of aggression also derived from the Charter. Another representative wondered whether the incorporation of a definition of aggression in international law would not have the effect of curtailing the powers of the Security Council. It must not be forgotten that action by the United Nations was not designed to restore legal order once it had been upset, but rather to maintain or restore peace. The aim must be to ensure that the United Nations organs as far as possible respected pre-established objectives and general legal principles rather than to place powers of absolute discretion at their disposal. There was no doubt, however, that the Security Council and the General Assembly could hardly openly defy a principle established by the General Assembly.

3. Political entities to which the definition should apply

22. Several representatives opposed the inclusion in the definition of aggression of a reference to political entities other than States. They argued that the definition of aggression should apply to all sovereign and independent States, whether they were Members of the United Nations or not. Otherwise the Special Committee would be obliged to find a precise definition of "State" and "political entity", and that was outside its mandate. Moreover, the notion of "political entity" was not embodied in the Charter, which had no provision for making the existence of a sovereign State dependent on its recognition by other States. They further argued that the term "political entities" had no precise meaning either in political science or in international law. Its inclusion in the definition might cause difficulties in its interpretation and application. It would imply a hierarchy among States, which would be tantamount to recognizing situations that were incompatible with the purposes of the Charter. States should be regarded in the definition as the only subjects of international law capable of committing or being the victim of an act of aggression. To ensure that the definition was given the widest possible application, some representatives suggested resorting to the compromise solution envisaged in paragraph 8 of the Working Group's 1971 report,^{6/}

^{6/} Ibid., Twenty-sixth Session, Supplement No. 19 (A/8419), annex III.

namely to annex to the definition an explanatory note to the effect that the term "State" included States whose statehood was disputed. Other representatives expressed reservations regarding that solution, arguing that if it was to be complete, the definition should include the concept of political entities. Agreement on certain aspects of that problem had been achieved in the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter, and it should be no more difficult in the present case. Making a distinction between the subject of aggression and its object, one representative said that with regard to the subject of aggression, the principles of the Charter were applicable only to States; in the absence of any indication in the Charter, the term "State" must be defined in the sense of general international law, i.e., as those political entities which met certain well-known factual criteria. When a State met those criteria no question of recognition arose. Until the explanatory note in question was produced, the relevant part of the general definition proposed by the Working Group in paragraph 3 of its 1971 report should be interpreted in that light. On the other hand, the object of aggression, i.e., its victim, might include political entities other than States.

4. Acts proposed for inclusion in the definition of aggression

23. A large number of representatives expressed the view that the definition should be limited, at least at the present stage, to the use of armed force. Different opinions were, however, expressed with regard to the question whether the definition should cover, for the purposes of the exercise of the right of self-defence, the so-called indirect use of armed force.

24. Several representatives maintained that at the current stage of its work the Special Committee should not concern itself with defining "indirect aggression" because of the extreme difficulty of finding a precise definition and because of the time-consuming process of obtaining a consensus. With reference to the text of the general definition contained in the 1971 report of the Working Group, they stressed that if the phrase "however exerted" in the text were to be retained, it should be qualified to mean armed force necessitating recourse to self-defence under Article 51 of the Charter. They said that care should be taken not to confuse the concept of "breach of the peace" with that of "armed attack" or "aggression"; the Special Committee's report had cited as examples of acts constituting aggression

acts which, in fact, would only result in a breach of the peace unless they had been of such intensity as to necessitate recourse to self-defence, in which case they would pose an imminent danger to life and property as well as to the existence of a State. They also argued that the definition should make it possible 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; the Charter did not ignore the idea of the indirect use of force, as was evident from its references to "breaches of the peace", but any attempt to enlarge the concept to include consideration of the circumstances of a casus belli would go beyond the Charter and the Special Committee's mandate. They also said that the definition should contain a list specifying the most serious kinds of aggression, i.e., those contemplated in Articles 39 and 51 of the Charter; the inclusion in that list of the sending of armed bands by one State into the territory of another might be justified; however, unduly vague concepts such as support for acts of subversion should be excluded, since a State might use them as a pretext for aggression under the guise of self-defence.

25. On the other hand, some representatives maintained that the definition of aggression should cover any illegal use of armed force, whether direct or indirect. They said that a definition of aggression must be exhaustive and not partial; attempts to draw a distinction between "direct" and "indirect" aggression sometimes served as an excuse for accepting a partial definition. Such a distinction had no basis in the Charter, which in Article 2 (4) referred to the "use of force" in international relations and did not differentiate between the various kinds of illegal resort to force. Articles 1 and 39 referred to "aggression"; they made no distinction between the various types of aggression on the basis of the means employed by the aggressor; there was no provision in the Charter which suggested that a State could in any way escape the Charter's condemnation of illegal acts of force against another State by a judicious selection of means to an illegal end. It was further contended that indirect aggression was the most serious contemporary manifestation of aggression and that any enumeration of acts of aggression which overlooked that particular form would have no great practical value; current violations of the provisions of the Charter were due as much to indirect as to direct aggression. The view was advanced that action such as infiltration of armed

bands across frontiers and external participation in terrorism and subversion must be categorized as aggression in appropriate circumstances. With regard to the suggestion that that categorization could be considered liable to lead to an extension of the right of self-defence, it was stated that the principle of proportionality might find a useful application in that connexion. Referring to the general definition of aggression prepared by the Working Group and contained in its 1971 report, it was observed that the part of the text on which the Working Group had agreed: "Aggression is the use of armed force by a State against the territorial integrity or political independence of another State, or in any other manner inconsistent with the purposes of the United Nations", was to a large extent based on Article 2 (4) of the Charter; that provision necessarily covered the use of armed force in all its forms, including indirect forms; if the primary purpose of defining aggression was to deter potential aggressors, the definition should certainly not contain any loopholes, and it would be dangerous to classify indirect aggression as a less serious violation of the Charter than direct aggression.

26. According to one representative, the definition of aggression should be first and foremost comprehensive and should not be limited to armed aggression; there were a great many kinds of aggression, and any definition covering only direct forms would be incomplete and therefore dangerous. Some representatives stressed the necessity of defining economic aggression. According to one, the Special Committee should consider the inclusion in the definition of an appropriate reference to that form of aggression as one of the most serious forms of attack or challenge. Others felt that the Special Committee should recognize the need to define the concept of economic aggression at a later stage.

27. Regarding the specific acts which should be enumerated in the definition as examples of aggression, one representative maintained that a declaration of war in itself was generally considered an act of aggression. As to whether a declaration of war constituted aggression, another representative observed that the view seemed to be emerging that it was not necessarily the case but was an important element in determining an act of aggression, because of its inherent seriousness and the formal juridical consequences that flowed from it. He added that occupation which was initially legitimate, for example, under a treaty, might become illegal if

continued against the will of the host State, and thus amount to aggression. One representative expressed the view that the most serious act of aggression was invasion or attack on the territory of a State by the armed forces of another State, and the occupation of that territory; the aggressor might go so far as to annex part of the territory of another State or incorporate it within its frontiers; the Special Committee should therefore include the notions of occupation or annexation of the territory of a State by force in the definition of aggression. Referring to paragraph 14 of the Working Group's 1971 report,^{7/} another representative stated that he was unable to support the inclusion of the text proposed in the paragraph under the subheading "Other acts of armed force" and "Maintenance of armed forces in another State", since the former seemed unduly vague and the latter would amount to interference in the internal affairs of sovereign States in their bilateral treaty agreements.

28. According to one representative, the definition should specify that where a State placed a territory at the disposal of another to enable it to commit aggression against a third State, that likewise constituted an act of aggression.

5. The principle of priority

29. There seemed to be no basic objection to the inclusion of the principle of priority in the definition of aggression. According to several representatives, however, that principle must be retained as being a basic and determinative criterion. Accordingly, they argued, the principle of priority made it impossible for an aggressor State to plead innocence on the grounds that it was conducting a preventive war; the burden of proof was placed on the State which first resorted to force; hence the view that priority was a factor of secondary importance that should merely be "taken into account" was not acceptable; similarly, the clause "due weight shall be given to the question whether" in paragraph 5 of the Working Group's 1971 report^{8/} was unsuitable for the purpose sought by the definition of aggression. It was observed that if the element of priority was not to have decisive weight, it would be impossible to prevent States from committing

^{7/} Ibid.

^{8/} Ibid.

acts of aggression in the guise of "preventive" wars; furthermore, the phrase "without prejudice to the powers and duties of the Security Council", which appeared in paragraph 5 of the Working Group's report, was not acceptable. The discretion of the Security Council should apply to the whole of the definition rather than to the question of priority in particular.

30. Other representatives were of the opinion that the principle of priority could not in itself constitute a determining factor and should only figure in the definition as one element among others. It should not be applied automatically. In that regard it was stated that certain acts of aggression, such as blockade, could oblige the State against which they were directed to have recourse to its inherent right of collective or individual self-defence. It was also observed that the question of priority might be solved by postulating that the Security Council should determine, in each case, which party first used force and treat its finding as a fact of considerable significance, but without prejudice to the ultimate consequences of the finding. It was further suggested that care should be taken to ensure that the onus of proof would be on the accused and not on the victim State and that the presumption of the culpability of the aggressor should be rebuttable.

31. According to one representative, it was essential to pinpoint in the definition of aggression exactly when the illegal use of force took place. Was it when the territorial integrity of the victim State was violated by the arms of the aggressor State, or when the victim had taken the irrevocable step of launching its weapons of destruction, even if they had not yet violated the territorial boundary of the victim State? The Special Committee would be all the more justified in studying that question in that it was intimately bound up with the notion of priority; if first use of nuclear weapons was in all instances illegal, what was the position of the victim State? Was it entitled to use nuclear devices as a means of self-defence, or would it in turn become an aggressor if it used such devices before the weapons launched by the other State violated its territory? The definition would be incomplete if it did not specify how to determine the time and place of the act of aggression.

6. Aggressive intent

32. In the view of some representatives, the element of intent should be a fundamental ingredient of any definition of aggression. It was observed that since aggression was a crime, that element could not be overlooked; it was the intention which determined the act, and it should be remembered that the Security Council, when determining the existence of an act of aggression, had to take into consideration the intention of the parties. The view was expressed that it was essential to include the element of intent in the definition of aggression, since it made it possible to distinguish between an act of aggression properly speaking, on the one hand, and an unpremeditated incident or an act of self-defence, on the other. However, several representatives felt that since aggressive intent was necessarily implied in any act of aggression, it would not be necessary to include the principle in the definition; the principles of priority and of aggressive intent could not be placed on the same footing; the element of intent became irrelevant when the Security Council had determined that a certain State had been the first to use armed force against another State; the inclusion of the element of intent in a definition would in fact permit an aggressor State to seek to justify its actions; the burden of proof should always be on the aggressor and not on the victim State, and that legal principle could not be applied in the context of aggression unless the element of intent was excluded from the definition. It was also stated that the question of aggressive intent should be a matter for the discretionary power of the Security Council, which should take motive and purpose into consideration in determining the existence or non-existence of aggression; inclusion of the notion of intent in the definition could only add to the complexity of the problem.

33. Several representatives drew a distinction between aggressive intent and the motive for aggression. It was stated that one of the main difficulties facing the Special Committee was the unwillingness of some members to differentiate between motive and intention; intention implied that a person committing an act not only foresaw but also desired the possible consequences of his act, whereas motive denoted a legally impermissible emotion evoked by an external objective to be achieved by the contemplated act; in other words, the motive merely explained the crime while intention was an essential ingredient of it; for the purposes of

defining aggression, aggressive intent was the will to inflict harm on a State, contrary to the provisions of the Charter; motives, on the other hand, were set out in paragraph IV A of the six-Power draft.^{9/}

7. Legitimate use of force

34. Some representatives pointed out that the definition of aggression should distinguish clearly between aggression and the legitimate use of force. In that connexion, it was observed that the Charter provided expressly in Article 51 that the right of self-defence could be exercised in the event of armed attack. That Article could be incorporated bodily into the definition of aggression; a definition not expressly based on that Article would run the risk of encouraging the use of force in violation of the provisions of the Charter. Other representatives maintained that the Special Committee's terms of reference did not entitle it to embark on a definition of the right of self-defence and that any attempt to do so would simply place an insurmountable obstacle in its way. All that was required, it was argued, was that the definition should contain a suitable saving provision to the effect that the definition did not apply to what was done in the exercise of the inherent right of self-defence. Reference was also made to the following provision of the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations: "Nothing in the foregoing paragraphs shall be construed as enlarging or diminishing in any way the scope of the provisions of the Charter concerning cases in which the use of force is lawful";^{10/} it was suggested that the Special Committee might proceed on the basis of that provision, which would help it to avoid other dangerous pitfalls such as an attempt to determine the organs or institutions competent to authorize the use of force and the question of proportionality in cases of self-defence.

35. One representative considered that it should be expressly stipulated in the definition of aggression that no consideration of a political, military, economic or other character could be invoked by a State to justify the use of force against another State.

^{9/} Ibid., annex I, section C.

^{10/} General Assembly resolution 2625 (XXV) of 24 October 1970, annex.

36. Some representatives were opposed to including the principle of proportionality in the definition of aggression. It was observed that no such principle appeared in the Charter and that it was by no means universally recognized in international law; its inclusion in the definition would favour the aggressor by throwing the burden of proof on the victim of aggression; furthermore, a State that had been attacked should not be required to assess the strength of the enemy forces in order to ensure that its defence was commensurate with the aggression; such a principle would encourage rather than discourage the aggressor, which was quite contrary to the purpose of the definition. That principle, it was also maintained, might be applied in the case of indirect armed attack or breaches of the peace, which were less urgent; in any case, Article 51 of the Charter recognized the right of self-defence as an inherent right without any restrictions whatsoever; the meaning of that Article could not be stretched to subject its operation to the principle of proportionality, which had now become obsolete, at least in the context of the right of self-defence. Other representatives considered that it would be useful to include the principle of proportionality in the definition. The view was expressed that the principle was not a new concept in municipal law and that it would be relatively easy to transfer it to international law; the fear that incorporating the principle in the definition of aggression would only encourage aggression was not supported by the facts; proportionality should be based on the danger rationally perceived by the victim. The view was also expressed that the principle of proportionality would be an excellent criterion for determining whether an action was defensive or aggressive; the right of self-defence should be closely linked to the principle of proportionality; any definition of aggression should be so worded as to make it impossible for a State to find loopholes to provide a pretext for waging a preventive war.

37. With regard to the organs empowered to use force, some representatives maintained that the Security Council alone could decide on the use of force. Article 11 of the Charter, it was observed, left no room for doubt on that question; any attempt to grant such powers to other organs would be tantamount to a revision of the Charter. It was also observed, that, under Article 53 of the Charter, the use of armed force by regional arrangements or agencies was not legitimate without prior authorization by the Security Council. Other representatives were of the

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opinion that the questions raised regarding regional agencies had been based on a confusion between the authorization of the use of force and the taking of enforcement action. The view was expressed that the Security Council and the General Assembly could authorize the use of force in certain circumstances; similarly, regional agencies could authorize the use of force in so far as the use involved was compatible with Article 2, paragraph 4, of the Charter.

38. One representative observed that there was some disagreement as to whether Chapter VIII of the Charter could be applied to regional agencies established for the defence of one specific region or whether such agencies were subject only to Article 51, which dealt with the question of collective security. In his view, that distinction was an important one, for States linked in collective defence covenants exercised their right without the authorization of the Security Council, to the extent of course that armed aggression had occurred, whereas in the case of regional agreements the authorization of the Security Council was required in order to apply enforcement action; there was clearly a difference between collective self-defence and enforcement action; collective self-defence was a reaction against armed aggression, whereas the purpose of enforcement action was to maintain international peace and security. He pointed out that although the definition of enforcement action was perfectly clear, the sponsors of the 13-Power draft had decided to make express mention of the use of force, since some members of the Special Committee still maintained that action not involving the use of force would not be enforcement.

8. The right of self-determination

39. Several representatives pointed out that logically it was a duty of the Special Committee, the body responsible for defining aggression, namely, the illegal use of force, to consider situations in which the use of force was legitimate, in particular the inalienable right of colonial peoples to oppose any attempt to deprive them by force of their right to self-determination. The legitimacy of the use of force in exercising the right of self-determination, it was said, flowed from the Charter and from several General Assembly resolutions. In the opinion of some representatives, that right should not be mentioned in the

definition of aggression. It was argued that the right of self-determination was dealt with in other instruments and therefore was not relevant to the definition of aggression; it could not be made part of that definition without an unacceptable distortion of the scope and function which the definition should have. It was further observed that the carefully prepared provisions of the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations should be respected; the relevant provisions could either be reproduced in the definition or expressly referred to. One representative thought that there was no need to include the right of peoples to self-determination in the definition unless it was done in the form in which that right was presented in paragraph 10 of the 13-Power draft.^{11/}

9. Legal consequences of aggression

40. Several representatives said that the definition of aggression should include a provision concerning the legal consequences of aggression. It was stated, in this connexion, that the task of the Special Committee was to work on a general theory of aggression which would necessarily include both its component elements and its legal consequences; it must be stated that aggression, once established, entailed responsibility; it was also important to mention the principle of non-recognition and to declare that no territorial gain from aggression should be recognized. The principle of non-recognition of any territorial gain acquired by the threat or use of force, it was further observed, was in keeping with the collective security system established by the Charter to protect the sovereignty, territorial integrity and political independence of States; that principle must be applied from the moment when force was used against the territory of any State until the termination of aggression through the restoration of any occupied or annexed territory or piece of territory to the injured State. On the other hand, some representatives maintained that the definition should not mention the legal consequences of aggression. In their view, that was a question that went beyond the Special Committee's terms of

^{11/} See Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 19 (A/8419), annex I, section B.

reference and, in any case, had been adequately dealt with in the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations; the clear language of the Declaration made it unnecessary to try to cover that matter in a definition of aggression.

III. VOTING

41. At its 1281st meeting, on 15 November 1971, the Sixth Committee adopted the 33-Power draft resolution (A/C.6/L.827) by 84 votes to none, with 3 abstentions (see para. 42 below). The representatives of Belgium, Cameroon, Liberia, the United Kingdom of Great Britain and Northern Ireland and the United States of America made statements in explanation of their votes.

IV. RECOMMENDATION OF THE SIXTH COMMITTEE

42. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolution:

Report of the Special Committee on the Question of Defining Aggression

The General Assembly,

Having considered the report of the Special Committee on the Question of Defining Aggression on the work of its fourth session^{12/} held in New York from 1 February to 5 March 1971,

Taking note of the progress made by the Special Committee in its consideration of the question of defining aggression and on the draft definition, as reflected in the report of the Special Committee,

Considering that it was not possible for the Special Committee to complete its task at its fourth session.

Considering that in its resolutions 2330 (XXII) of 18 December 1967, 2420 (XXIII) of 18 December 1968, 2549 (XXIV) of 12 December 1969 and 2644 (XXV) of 25 November 1970, the General Assembly recognized the widespread conviction of the need to expedite the definition of aggression,

^{12/} See Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 19 (A/8419).

Considering 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,

Noting also the common desire of the members of the Special Committee to continue their work on the basis of the results achieved and to arrive at a draft definition,

1. Decides that the Special Committee on the Question of Defining Aggression shall resume its work, in accordance with General Assembly resolution 2330 (XXII) as early as possible in 1972;

2. Requests the Secretary-General to provide the Special Committee with the necessary facilities and services;

3. Decides to include in the provisional agenda of its twenty-seventh session an item entitled "Report of the Special Committee on the Question of Defining Aggression".
