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1968 SPECIAL COMMITTEE ON THE QUESTION OF DEFINING AGGRESSION

SUMMARY RECORDS OF THE FIRST TO TWENTY-FOURTH MEETINGS

Held at the Palais des Nations, Geneva,
from 4 June to 6 July 1968

The list of representatives attending the session is to be found in the report of the Special Committee to the General Assembly (A/7185).

Chairman:	Mr. YASSEEN	(Iraq)
Rapporteur:	Mr. LAMPTEY	(Ghana)
Secretary of the Committee:	Mr. MOVCHAN	

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SUMMARY RECORD OF THE FIRST MEETING

Held on Tuesday, 4 June 1968, at 5.45 p.m.

Acting Chairman:	Mr. STAVROPOULOS	(Legal Counsel)
Chairman:	Mr. YASSEEN	(Iraq)

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

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

ELECTION OF OFFICERS (item 2 of the provisional agenda)

The ACTING CHAIRMAN said that the Committee had to elect a Chairman, three Vice-Chairmen and a Rapporteur.

Mr. MARTINEZ-COBO (Ecuador), seconded by Mr. ALLOUANE (Algeria) and Mr. RAHANGASOAVINA (Madagascar), nominated Mr. Yasseen (Iraq) for the office of Chairman.

Mr. Yasseen (Iraq) was elected Chairman by acclamation.

Mr. Yasseen (Iraq) took the Chair.

Mr. GROS ESPIELL (Uruguay), seconded by Mr. SIRRY (United Arab Republic), nominated Mr. Martinez-Cobo (Ecuador) for the office of First Vice-Chairman.

Mr. Martinez-Cobo (Ecuador) was elected First Vice-Chairman by acclamation.

Mr. JAHODA (Czechoslovakia), seconded by Mr. KOLESNIK (Union of Soviet Socialist Republics), nominated Mr. Harizanov (Bulgaria) for the office of Second Vice-Chairman.

Mr. Harizanov (Bulgaria) was elected Second Vice-Chairman by acclamation.

The CHAIRMAN suggested that, as there were no nominations for the office of Third Vice-Chairman, election to that office should be postponed until after the election of the Rapporteur.

Mr. HARGROVE (United States of America) suggested that the elections of the Rapporteur and the Third Vice-Chairman should be postponed until the next meeting.

It was so agreed.

ADOPTION OF THE AGENDA (item 3 of the provisional agenda)

The provisional agenda (A/AC.134/L.1) was adopted.

ORGANIZATION OF WORK (item 4 of the agenda)

Mr. STAVROPOULOS (Legal Counsel) briefly described the principal United Nations documents which had a bearing on the question of defining aggression and which were listed in the annex to document A/AC.134/1.

The subject had been discussed at length by the General Assembly, the International Law Commission and a number of committees; Governments had also submitted observations. The Committee might, therefore, feel that it could dispense with a general debate. On the other hand, under General Assembly resolution 2330 (XXII), it was called upon to consider all aspects of the question and to submit to the Assembly at its twenty-third

session a report which would reflect all the views expressed and the proposals made. It could thus properly express its views on the question as a whole. It would find the reports of the 1953 and 1956 Special Committees particularly useful in drawing up its work programme in the light of General Assembly resolution 2230 (XXII).

Mr. ROSSIDES (Cyprus) said it was essential to decide what aspects of aggression were to be discussed by the Committee. In his view, if the Committee wished to achieve concrete results, it should first concentrate on a definition of direct aggression, to which Articles 1 and 39 of the Charter referred, leaving the question of economic, ideological and cultural aggression to be considered later. A number of definitions and draft definitions of aggression already existed but, in the absence of general agreement on a definition of armed aggression, no international treaty to prevent the proliferation of nuclear weapons would be meaningful, since such a definition was needed if non-nuclear-weapon States were to be given guarantees against aggression with nuclear weapons.

Mr. GROS ESPIELL (Uruguay) thought that, in view of the Committee's terms of reference, the procedure suggested by the representative of Cyprus was not feasible. General Assembly resolution 2330 (XXII) stated that the Committee should consider all aspects of the question so that an adequate definition of aggression could be prepared. The Committee had the inescapable duty of preparing a report to the General Assembly covering all the points of view expressed during its deliberations. But it must also do its utmost to formulate a definition of aggression which would reflect the sense of the deliberations. The Committee should therefore hold a general debate in which all members could express their views on the question of aggression.

The meeting rose at 6.20 p.m.

SUMMARY RECORD OF THE SECOND MEETING

Held on Wednesday, 5 June 1968, at 3.15 p.m.

Chairman: Mr. YASSEEN (Iraq)

ELECTION OF OFFICERS (agenda item 2) (continued)

Election of the Third Vice-Chairman

Sir Kenneth BAILEY (Australia) proposed Mr. Capotorti (Italy) for the office of Third Vice-Chairman.

Mr. GROS ESPIELL (Uruguay), Mr. AL-OBAIDI (Iraq) and Mr. ASANTE (Ghana) supported the proposal.

Mr. Capotorti (Italy) was elected Third Vice-Chairman by acclamation.

Election of Rapporteur

Mr. ROSSIDES (Cyprus) proposed Mr. Lamptey (Ghana) for the office of Rapporteur.

Mr. SIRRY (United Arab Republic), Mr. ALCIVAR (Ecuador) and Mr. AL-OBAIDI (Iraq) supported the proposal.

Mr. Lamptey (Ghana) was elected Rapporteur by acclamation.

ORGANIZATION OF WORK (agenda item 4) (continued)

Mr. JAHODA (Czechoslovakia), referring to operative paragraph 3 of General Assembly resolution 2330 (XXII), which defined the Special Committee's terms of reference, expressed the view that work should be so organized that members of the Committee could have an exchange of views on the problems inherent in the definition of aggression. That part of the debate must be limited in time, because much more time should be devoted to the main task of the present session, namely the work on proposals on the definition of aggression.

As could be seen from its terms of reference, the Committee was to submit a report to the General Assembly at its twenty-third session; that report would contain not only the views expressed on the question, but also, principally, the proposals on the definition of aggression which the Committee might elaborate.

Mr. TARAZI (Syria) said that he felt it necessary to reiterate that until aggression had been precisely defined, the United Nations would be confronted with situations which, owing to their gravity and the suffering they entailed, could not but impair its authority and prestige. The aggression perpetrated exactly a year earlier against three Arab countries, with the acquiescence of the very countries which refused to accept any definition, was a flagrant example from which the Committee might usefully profit. The United Nations had been confronted with a major challenge and the territories usurped were still occupied, in defiance of

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the resolutions adopted by the supreme international authority. It was essential to ensure that the consequences of that aggression were eliminated and that there could be no recurrence of such an act in the future. The Special Committee should therefore consider the question in all its aspects and should hold a general debate for a given number of meetings, at the end of which a definition of aggression might be drawn up. He supported the Czechoslovak representative's suggestion.

Mr. RAMANGASOAVINA (Madagascar) thought that the tradition according to which the definition of aggression was included in the agenda of the United Nations General Assembly every year was not calculated to enhance the prestige of the United Nations. It was necessary to decide whether the Special Committee was empowered under its terms of reference to convert itself into a drafting committee with a view to preparing a definition of aggression or whether it had merely been requested to determine whether the time had come for the General Assembly to consider the question afresh. If the Special Committee was to do useful work, it must show a constructive spirit and not merely indulge in polemics.

It was common knowledge, moreover, that eminent jurists had already attempted, with varying success, to provide an adequate definition of aggression. Some authorities on the question even went so far as to consider that a definition of aggression might be dangerous in the present international situation, and that there must first be a reduction of tension and an agreement on disarmament and on the non-proliferation of nuclear weapons. Young countries like Madagascar, on the other hand, were convinced that a definition of aggression would be a step towards the maintenance of peace.

The Malagasy delegation, for its part, considered that there was no need to adhere to a systematic definition. The United Nations Charter, and more particularly Article 2 (4) and Articles 39 and 51, contained positive elements which might serve as guidelines for the definition of aggression.

His delegation thought that a general debate would be useful, provided the Committee avoided repetition and then concentrated on seeking a definition of aggression, even if only a provisional one.

Mr. KOLESNIK (Union of Soviet Socialist Republics) recalled that at the twenty-second session of the General Assembly the USSR delegation had taken the initiative in proposing the inclusion in the agenda of an item entitled "Need to expedite the drafting of a definition of aggression in the light of the present

(Mr. Kolesnik, USSR)

international situation". A number of other delegations had also advocated practical measures and those proposals had culminated in resolution 2330 (XXII), thus putting an end to the procedural debate which had been going on for years and which had been used in some circles as a pretext for delaying the drafting of a definition.

For the first time, favourable conditions for seeking a definition had been created. The developing countries were now better represented and their participation should have a positive influence on the Committee's deliberations.

At the previous meeting, the Uruguayan representative had affirmed that the Committee had not been invited to prepare the definition itself and that it should hold a general debate in which all members might express their views on the question of aggression. In that statement the Uruguayan representative did not appear to have taken sufficient account of paragraph 1 of resolution 2330 (XXII), which recognized the need to expedite the definition, or of paragraph 3, which in instructing the Special Committee to submit a report which would reflect all the views expressed, seemed to imply the need for the preparation of a definition. His delegation considered that any tendentious interpretation of the Committee's terms of reference might have an adverse effect on its work. It was convinced of the need to frame specific proposals for the drafting of a definition which would guarantee the security of all States and all peoples. Since the definition of aggression, however, was not exclusively a juridical task, his delegation agreed to a general debate, provided that the debate was limited in time and that each delegation took advantage of it to make specific suggestions which the Committee could endeavour progressively to reconcile. On that point, the USSR delegation supported the view expressed by the Czechoslovak delegation and endorsed by the Malagasy and Syrian delegations.

Mr. BADESCU (Romania) said that, while a general debate which would enable the various delegations to express their basic views on the definition of aggression was desirable, it should not be unduly prolonged, since the Special Committee's specific task, as defined by resolution 2330 (XXII), was "to consider all aspects of the question, so that an adequate definition of aggression may be prepared".

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Mr. ACLAND (United Kingdom) said that he too thought that an exchange of views on all aspects of the question would be useful. That would perhaps provide an answer to some of the questions raised by the representatives of Madagascar and Cyprus and enable the Committee to reach agreement on a general interpretation of aggression. On the basis of the general debate, the Committee could then decide what direction its work should take.

Mr. TSUKAHARA (Japan) said that he considered it a privilege to join all members of the Special Committee in trying to reach agreement on a generally acceptable definition of aggression. It was admittedly a most complex question, as was clear from the studies carried out so far without result by various United Nations organs, and views on most aspects of the question were known to differ profoundly. Nevertheless, it might be hoped that certain constructive suggestions would emerge from a joint effort. For that purpose, it was essential that the Committee's work should not be disturbed by political statements and that the juridical aspects of the question should be analysed dispassionately. It should, however, be borne in mind that fundamental differences of view existed, even among the States which considered a definition of aggression desirable. It was that situation which had led the International Law Commission to give up an attempt to produce a definition by enumeration.

His delegation wholeheartedly supported any efforts that might be made to prepare an adequate definition of aggression which should neither prejudice the function of the United Nations in maintaining international peace and security nor lend itself to purposes of propaganda. It considered, however, that such a definition should not be adopted by the General Assembly or by other organs on the basis of a majority decision which might give rise to arbitrary interpretations. Bearing in mind General Assembly resolution 2330 (XXII), the Special Committee should endeavour to reconcile the different views, in order to determine whether it was desirable to draw up a definition. It should therefore make a full study of the question and, if it could not agree on a generally acceptable definition, it could submit a report embodying the various proposals which had been made. The Committee's terms of reference, as set forth in resolution 2330 (XXII), were quite clear. The Committee was not asked to draft a definition and submit it to the General Assembly. Only after a general debate, which was a prior condition, could the Committee decide on the orientation of its subsequent work.

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Mr. GROS ESPIELL (Uruguay) said that the statements made at the current meeting had strengthened his conviction that a general debate was indispensable, provided that it was of limited duration. In reply to the USSR representative's remark concerning his statement at the previous meeting, he pointed out that he had never said that the Special Committee was not empowered to draft a definition of aggression. He had merely drawn attention to the exact terms of reference laid down by the General Assembly in resolution 2330 (XXII), under which the Committee was "to consider all aspects of the question, so that an adequate definition of aggression may be prepared and to submit to the General Assembly at its twenty-third session a report which will reflect all the views expressed and the proposals made".

With regard to the position taken by the Uruguayan delegation in the Sixth Committee, a glance at the Sixth Committee's report (A/6988, paragraphs 5 and 6), summarizing the debates, would show the difference between the resolution adopted and the amendment submitted by Chile, Colombia, Uruguay and Venezuela. Moreover, it could be seen from the same report (paragraph 19) that the amendment had been withdrawn by its sponsors. His delegation had no objection whatever to the Committee drawing up a definition of aggression if it was able to do so, but under its terms of reference, which must be scrupulously respected, it was required to submit a report to the General Assembly.

Lastly, his delegation associated itself with those which had pointed out that if the Special Committee was to bring its work to a successful conclusion, it must make an objective study of the question, certainly taking into account the realities of the contemporary world, but avoiding all polemics and all political digression, which would merely impede the efforts made to find a common definition of aggression.

Mr. TARAZI (Syria) thought that, whatever certain representatives might affirm, the Special Committee had not been instructed merely to prepare a report for the General Assembly. The need to elaborate a definition of aggression was apparent from the preambular paragraphs of resolution 2330 (XXII) and, more explicitly, from operative paragraph 1, which referred to "the need to expedite the definition of aggression". Some representatives had tried to find arguments for a limitation of the Special Committee's terms of reference in paragraph 3. In that paragraph, the General Assembly indicated the means whereby the Committee might arrive at a definition of aggression, namely by a study of the whole background and of all aspects of the question. Those who declared that the Committee's terms

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of reference did not include a definition of aggression were exceeding their powers, since it lay with the General Assembly alone to say whether the Special Committee should give up the attempt to find a definition.

Some delegations, however, did not want to define aggression at the present time and, having been unable to oppose the adoption of resolution 2330 (XXII), they were now trying to hold up the Special Committee's work. They were also refusing to listen to any reference to contemporary facts. It was impossible to draft rules of law in a purely abstract fashion, not based on reality. In fact, it had been thought necessary to set up a Special Committee on the question of defining aggression because of such events as the Second World War and the conflicts which had followed it and because of contemporary political events. It might therefore be agreed that the Special Committee should hold a general debate of limited duration, always bearing in mind that its task was to draw up a definition of aggression.

The CHAIRMAN pointed out that General Assembly resolution 2330 (XXII) fixed the limits of the Committee's terms of reference. All the Committee members would surely agree that consideration of the work already accomplished should not lead it to revert to questions already dealt with, such as the importance and necessity of defining aggression, to which resolution 2330 (XXII) constituted a reply. From the abundant documentation which the Secretariat had made available to it, the Committee should seek new and important elements which might help it to formulate an adequate definition of aggression. In its report to the General Assembly, it would have to take into account all the opinions expressed and all the proposals made, and it was on the basis of that report that the General Assembly would be able to take a decision.

It was therefore important that the general debate should be limited in order to avoid a repetition of what had already been said in other United Nations bodies. The Special Committee should endeavour to accomplish work that was intelligent, scientific, and juridically sound and to tackle the problem in such a way as to succeed where other United Nations bodies had failed.

Mr. ROSSIDES (Cyprus) said that a general debate could be constructive provided the Committee did not stray into useless repetition and took the existing elements as its point of departure, as resolution 2330 (XXII) instructed it to do. The general debate should be directed towards one aim, and that was the definition of aggression.

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Some appeared to think that aggression was an indefinable notion. Yet every crime was definable; to deny that would be tantamount to denying contemporary civilization. With regard to the need to define aggression, it did not behove the Committee to revert to a question with which the General Assembly had already dealt. The countries which did not wish such a definition to be drawn up could simply refrain from participating in the work. His delegation was further of the opinion that, since the Committee was a legal rather than a political body, it was essential that vain political recriminations should be avoided. While contemporary realities and the examples of aggression which might serve as a basis for preparing a definition should not, of course, be disregarded, all political propaganda should be excluded. With respect to the terms of reference assigned to the Committee, it was not explicitly instructed to prepare a definition of aggression, but that did not mean that it was prohibited from submitting constructive proposals to that end. The general debate could be useful for precisely that purpose.

Mr. CAPOTORTI (Italy) thought that the general debate should be opened without delay. Nevertheless, the somewhat disparate interpretations that had been given of the Committee's terms of reference, as set forth in General Assembly resolution 2330 (XXII), prompted him to make a few observations on that point. The text should not be interpreted literally, but the circumstances in which it had been approved by the Sixth Committee should be borne in mind. It was because the resolution sought to establish a certain balance between the various points of view that it had been unanimously adopted. If that balance was upset, the resolution might be erroneously interpreted. For example, by its very wording operative paragraph 1 acknowledged the existence of the conviction of a minority which did not see the need to expedite the definition of aggression. Furthermore, some representatives had drawn particular attention to operative paragraph 3, which spoke of the preparation of an adequate definition of aggression. In the same paragraph, however, the Special Committee was instructed to take into account all the relevant antecedents and the debates in the Sixth Committee and the General Assembly, as well as the present discussion. Thus resolution 2330 (XXII) contained a imperative, which was consideration of the antecedents and the submission of a report to the General Assembly, the definition of aggression being a possibility whos realization depended on the proposals which would be made in the Special Committee.

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(Mr. Capotorti, Italy)

That interpretation certainly did not mean that the Committee must confine itself to an academic debate. On the contrary, only after a broad and objective general debate, if possible of unlimited length, would it be possible to determine whether the Special Committee could define aggression or could do no more than submit a report to the General Assembly informing it of the results of the debate.

He noted that all the delegations agreed that all political polemics should be excluded because they could only be prejudicial to the Committee's work. Without confining itself to pure abstraction, the Committee should remember that the definition must be broad and general enough to stand the test of time.

Mr. SIRRY (United Arab Republic) thought that the Chairman should limit the general debate to one week, for that would give the various delegations ample time to express their opinions.

Mr. ALCIVAR (Ecuador) thought that the question was no longer whether or not agreession must be defined. The matter had been discussed in 1967 A/AR.134/SR.2. and General Assembly resolution 2330 (XXII) had put an end to the discussion. The task of the Special Committee now was to submit specific proposals for the definition of aggression.

His delegation had already stated that it hoped that a legal definition would be drawn up, but that did not prevent international political realities from being taken into account. What must be avoided at all costs, however, was the elaboration of rules of international law reflecting the polemics of the Great Powers. It was to be feared that a general debate might become unduly protracted and deflect the Committee from its specific objective. If the majority deemed the debate indispensable, however, his delegation would not oppose it, hoping, as did the United Arab Republic, that the debate would not go on for more than one week.

Sir Kenneth BAILEY (Australia) said that he saw no reason why the Special Committee should not follow the practice of other United Nations bodies, which was usually to begin with a general debate and then to submit proposals. It would be somewhat unusual to fix the length of the general debate in advance. Furthermore, General Assembly resolution 2330 (XXII) called for a thorough examination of many different elements. It would be necessary to look for the reasons why all past attempts at defining aggression had failed. It was possible that after a few days of general debate proposals might be submitted, and the Chairman, in consultation with the Bureau and the members of the Committee, would undoubtedly be able to determine whether the debate should be extended, taking into account the time needed to amend

Mr. GALVEZ (Mexico) said that he knew from experience that, as a rule, it was useless to discuss the terms of reference of a committee. In the case in point, a general debate on the substance of the question should be opened as soon as possible, for that would enable the Committee to form an idea of the methods to be adopted. Although opinions on the nature of the Committee's terms of reference differed, it was possible, in keeping with United Nations practice, to adopt a formula which would reconcile all points of view and allow of both narrow and broad interpretations of the Committee's terms of reference. An analysis of the third and other operative paragraphs of resolution 2330 (XXII) could hardly serve as a basis for formulating specific guidelines. Mexico, for its part, had already expressed its opinion in the General Assembly and the Sixth Committee, regarding the scope of the terms of reference assigned to the Committee.

With respect to the distinction which should be drawn between legal and political principles, which had been mentioned by the Japanese representative, he thought that specific references to concrete cases, either past or recent, could be avoided.

Mr. HARGROVE (United States of America) pointed out that there were differences of opinion concerning the organization of the Committee's work, but that almost all speakers thought that the Committee should begin with a general debate. Differences would relate primarily to what would follow the general debate.

Operative paragraph 3 of resolution 2330 (XXII) gave virtually no specific indications in that respect, for although it instructed the Committee to consider all aspects of the question, it did not define those aspects. In his opinion, the purpose of the general debate was to identify those aspects with which the Committee's report was to deal. A number of speakers had already referred to one such aspect, the advisability and expediency of defining aggression, but the question had many other aspects. For example, it might be asked whether the word "aggression" was to be understood in the sense in which it was used in the Charter or in the context of other international legal instruments. Another question, as had been pointed out by the representative of Cyprus, was what body should be asked to prepare an adequate definition of aggression and what differences there would be, for example, between the definition that might be drawn up by the General Assembly and that of another body. The relationship, if any, between the concept of

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(Mr. Hargrove, United States)

aggression as used in the Charter, and that found in various other contexts - for instance, what was referred to as "ideological" aggression, or "cultural" aggression - would also have to be considered. Furthermore, if aggression was to be understood in the sense given to it in the Charter, what relation would a definition bear to the responsibilities of the various United Nations bodies in connexion with the maintenance of international peace and security? Lastly, the relationship between the work on the definition of aggression done by the Committee and that done by the Special Committee on Principles of International Law should be studied.

The General Assembly resolution did not give the Committee an explicit mandate to draft a definition of aggression, although that possibility was not excluded. He recalled in that connexion that in the Sixth Committee the original text of operative paragraph 3 had been much more emphatic in that regard and had explicitly instructed the Special Committee to draft a definition.

In conclusion, he thought that the general debate would give some indication of the procedure to be followed for the preparation of an adequate report and that the debate should begin without delay.

Mr. BEESLEY (Canada) said that he was prepared to consider in an impartial spirit all aspects of the question suggested by representatives or by the context of the relevant documentation. Referring to resolution 2330 (XXII), he pointed out that operative paragraph 1 implicitly acknowledged the existence of a difference of opinion concerning the need to expedite the definition of aggression since it used the expression "a widespread conviction", implying that only a majority of Members were of that opinion. Furthermore, in that paragraph the General Assembly did not instruct the Committee to accomplish a task, but merely recognized the existence of that conviction. Operative paragraph 3 assigned specific tasks to the Committee. None the less, an analysis of the terms of that paragraph showed that the preparation of a definition of aggression was envisaged only as a possibility; the only tasks explicitly assigned to the Special Committee were examination of all aspects of the question and submission to the General Assembly of a report reflecting all the views expressed and the proposals made. In his opinion, those terms of reference were flexible enough to allow of constructive work. The general debate was of special importance because it would show what were the areas of agreement.

Mr. ASANTE (Ghana) noted that all the members recognized the need for a general debate. The orientation of the Committee's work would hinge largely on that debate and on the points of agreement that would be revealed. The fact that the Committee's work had not yet achieved success did not mean that it would not do so in the current session. The important task was the preparation of a report with or without a draft definition.

Mr. ISINGOMA (Uganda) thought that the legal task entrusted to the Committee should be stressed. It was not simply a matter of drawing up a report or expressing opinions but of making progress towards a definition of aggression as rapidly as possible. Operative paragraph 3 of the resolution in question described the methods by which that aim could be achieved.

Polemics and repetition should be scrupulously avoided if constructive proposals were to be made.

Mr. RENOUARD (France) shared the view of the preceding speakers and thought that a general debate should be opened during the first phase, in which all delegations could state their positions. During the second phase, the Committee could undertake more concrete work and draw up formulae which would meet with the approval of the majority. The length of the debate need not be strictly limited; if a date had to be fixed, it should be looked upon as a desirable goal rather than as an obligation.

The CHAIRMAN observed that all the members agreed on the need to open the general debate as soon as possible. He did not think it necessary to limit the length of the general debate, which should not, in any event, exceed one week. The Committee's task was only to lay the ground-work for the elaboration of a definition of aggression by the United Nations and its role was to submit proposals to the General Assembly. If a single proposal could be reached, that would be a success for the Committee. Otherwise, consultations might be undertaken to reduce the areas of disagreement. If that course failed, the report would reflect the views expressed.

The meeting rose at 6.10 p.m.

SUMMARY RECORD OF THE THIRD MEETING

Held on Thursday, 6 June 1968, at 3.20 p.m.

Chairman: Mr. YASSEEN (Iraq)

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (General Assembly resolution 2330 (XXII)) (agenda item 5)

The CHAIRMAN said that, at the express desire of the Committee, he had reserved the current meeting for a general debate in which all members could express their views on the question of aggression. No applications to deliver general statements had been received by the Chair, and no other work was scheduled for the meeting.

The meeting rose at 3.25 p.m.

SUMMARY RECORD OF THE FOURTH MEETING

Held on Friday, 7 June 1968, at 3.15 p.m.

Chairman: Mr. YASSEEN (Iraq)

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (General Assembly resolution 2330(XXII)) (agenda item 5) (continued)

Mr. ROSSIDES (Cyprus) said that the sole purpose of the Special Committee set up under General Assembly resolution 2330 (XXII) was to expedite the definition of aggression, as was proved by the fact that the decision to establish such a Committee immediately followed the first operative paragraph in which it was recognized "that there is a widespread conviction of the need to expedite the definition of aggression". The way in which that task should be dealt with was specified in operative paragraph 3. The proposals to be reflected in the report could obviously contain a draft definition, thus meeting the actual purpose of the resolution. It should be noted that the resolution did not specify who would be instructed to prepare an adequate definition of aggression.

To judge by precedents, methods, practices and other relevant criteria, one would be tempted to think that the problem was virtually insoluble, but if that was so, it was hard to see why a Special Committee had been set up. If the General Assembly expected the Committee to do constructive work, its members should combine their efforts in a spirit of mutual understanding, without preconceived ideas, and be actuated by a common will to succeed. They must therefore be convinced of the necessity of the task which they were undertaking.

That necessity was particularly apparent at the present time. The international situation had steadily deteriorated during recent years in various parts of the world, which was living under the constant threat of generalized nuclear conflict.

The Security Council, the supreme body responsible for designating the aggressor in the event of conflict, should be in a position to pronounce an impartial judgement based on a legal definition, so that it could take an unbiased and just decision without being influenced by political motives and subjective considerations which often had the effect of paralyzing its action. As was common knowledge the Security Council had already found itself incapable of acting when a conflict had broken out and the situation had become so acute that a détente was no longer possible.

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(Mr. Rossides, Cyprus)

Although it was too much to expect that a definition in itself would act as a talisman for preventing aggression, it would nevertheless undoubtedly have a restraining influence on a potential aggressor. It would be difficult for the latter to embark upon an act of aggression if he knew that such an act fell within the scope of the definition of aggression. Indeed, it sometimes happened that States committed acts verging on aggression on the assumption that they did not constitute aggression or that the Security Council would not recognize them as such. The adversary, on the other hand, deeming it to be a case of aggression, replied with an armed attack, in the belief that he was exercising his right of legitimate self-defence. The uncertainty on both sides gave rise to a warlike situation which could have been avoided had a definition of aggression existed. The very fact of reaching agreement in the United Nations on a definition of aggression would be a happy augury, showing that the world was determined to renounce the principle of force as a political instrument and to advance towards the recognition of international law and order. Such recognition would have a profound psychological effect on behalf of peace.

The sort of revolt currently to be observed among young people might well be an expression of their anguish in the face of a world which, twenty-two years after the establishment of the United Nations, still presented them with the spectacle of war. In point of fact close interdependence existed between the various States, and between the States themselves and the international community. If they did not decide to make their policies conform to the fundamental principles of the United Nations Charter, States ran the risk of finding themselves faced with a dilemma: either law and order would replace the spirit of anarchy in the international community, or the spirit of anarchy would prevail over law and order in the national community. That was why the Cypriot delegation was firmly convinced that every effort should be made forthwith to see that law and order reigned in the international community. A definition of aggression would be a step in that direction.

Another very important reason for expediting the definition of aggression was that the Draft Code of offences against the Peace and Security of Mankind, formulated in 1951 by the International Law Commission in its report (A/2693) and submitted to the General Assembly that same year, had remained in abeyance pending a definition of aggression. The difficulties encountered by the London Conference of 1945 convened

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(Mr. Rossides, Cyprus)

to prepare the trial of war criminals, which stemmed from the absence of international criminal jurisdiction, were also well known. Judgment had therefore had to be based on a retroactive law contrary to the maxim "Nullum crimen, nulla poena, sine lege". It was expected that the United Nations, when it came into being, would define aggressio and prepare such a code of international criminal jurisdiction. Indeed, as long ago as 1946, the General Assembly in resolution 95 (I) directed the Committee on the Codification of International Law to treat as a matter of primary importance plans for the formulation, in the context of a general codification of offences against the peace and security of mankind, or of an International Criminal Code, of the principles recognized in the Charter of the Nürnberg Tribunal and in the judgment of the Tribunal. If a definition of aggression was unnecessary, how was it that measures of such importance designed to prevent offences against the peace and security of mankind could not even be considered for want of a definition of aggression?

In his view, the Special Committee should, as a first stage, consider the practices and methods followed by the various bodies which had dealt with the question, in order to avoid falling into past errors or being confronted with the same difficulties. The Secretary-General's report (A/2211) constituted a valuable guide in that respect because it placed in historical perspective the setbacks hitherto suffered each time that an attempt had been made to define aggression. If one went back to the League of Nations epoch, it was apparent that, although the efforts to define aggression had been very constructive, they had failed because the use of force had not yet been ruled out and because there existed a limit beyond which a country could invoke its right to go to war, not only in self-defence but also as an instrument of its national policy. The situation was entirely different today since Article 2, paragraph 4, of the United Nations Charter explicitly condemned recourse to the threat or of force. But another difficulty had arisen because some maintained that aggression was a "vague" concept which had to be defined according to its "natural" meaning and that such a definition should embrace all possible forms of aggression, whether economic, ideological or even cultural.

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(Mr. Rossides, Cyprus)

That was why the Special Committees set up in 1953 and 1956 had come up against insuperable difficulties and why the report of the 1956 Special Committee (A/3574) constituted, to repeat the words used on that occasion by the representative of Belgium, "a veritable maze of contrary opinions". In the Cypriot delegation's view, those difficulties were artificial, for the only definition required was a legal one complying with the requirements of the Charter, particularly Articles 1, 39, 42, 43 and 51 which dealt with aggression. It could not sincerely be asserted that aggression was a "vague" concept which would baffle definition, when the term was used in some of the most important articles of the Charter, particularly in Chapter VII concerning "action with respect to threats to the peace, breaches of the peace, and acts of aggression". The Special Committee should therefore endeavour first of all to define direct aggression, to the exclusion of any other form of aggression, threats to the peace and breaches of the peace. Although an act of aggression was indisputably a breach of the peace, the reverse was not the case. As Sub-Committee 1/1/A entrusted with the preparation of the Charter in 1945 had pointed out, breaches of the peace could occur other than those currently described as aggression. They constituted a different category which the Special Committee had not been called upon to define.

In the opinion of the Cypriot delegation, it was necessary to renounce an all-inclusive definition and to adhere to a legal definition of aggression proper as intended under the Charter. The definition of what was called "indirect aggression" could be tackled separately and perhaps subsequently. A definition of aggression proper would in no way diminish the jurisdictional power of the Security Council to determine aggression or breaches of the peace beyond those covered by the definition. On the contrary, such a definition would provide the Security Council with legal guidance which would enable it to take objective decisions. When the report of the 1956 Special Committee was examined, the representative of Belgium had also considered that "in order to avoid complete confusion and certain contradictions, such concepts as indirect, economic or ideological aggression should be discarded, and efforts should be limited to defining aggression within the meaning of Article 51 of the Charter, with the specific proviso that that definition did not restrict or make subject to conditions the infinitely broader action of the Security Council". He hoped that, through the co-operation of all its members, the Committee would be able to achieve that result.

Mr. NADIM (Iran) thought that the general discussion should be a continuation of the talks which had taken place between the members of the Committee. There was no question of resuming the discussion on the desirability of defining direct, indirect, armed or economic aggression. In view of the abundant documentation at the Committee's disposal, there was no need at present for it to undertake such a study.

The Committee should rather concern itself with the procedure for carrying out the task entrusted to it by the General Assembly. First of all, it should be ascertained whether the Committee was competent to prepare a draft definition. In that connexion, it should be noted that the mandate given to the Committee by the General Assembly in resolution 2330 (XXII) was not as precise as that which it had given to previous Committees. Thus, under resolution 688 (VII) the first Special Committee had been requested to submit draft definitions of aggression or draft statements of the notion of aggression; similarly, under resolution 895 (IX) the second Special Committee had been requested to submit a detailed report followed by a draft definition of aggression.

The 1968 Committee had been instructed to consider all aspects of the question so that an adequate definition of aggression might be prepared, but it had not actually been asked to prepare such a definition. However, in his opinion, that did not mean that the Committee was not competent to submit to the General Assembly one or more draft definitions, on which the General Assembly would give a ruling in the final analysis.

However, the success of the Committee's work would depend on the methods which it adopted. For its part, Iran had always attached great importance to the question of the definition of aggression, and its policy had always been based on a sincere quest for peace, co-existence and mutual understanding with all countries, whatever their political system, and non-interference in the internal affairs of other countries. Even before the establishment of the United Nations, Iran had concluded treaties of non-aggression, or treaties containing definitions of aggression which still held good. From the time that the question had been broached by the General Assembly, Iran had taken an active part in the work of the Committee and had associated itself with the sponsors of a draft definition which had been fully discussed in the various United Nations bodies.

(Mr. Nadim, Iran)

In the light of its past experience, therefore, Iran considered that a definition of aggression, to be of real value, should be supported by the vast majority of the Members of the United Nations, including the Permanent Members of the Security Council, who had an essential part to play in the maintenance of peace.

A formula could, of course, be found which would obtain the required majority in the General Assembly, but would nevertheless be opposed by many Members of the United Nations; clearly, such a formula would not merely fail to contribute to the maintenance of peace, but might actually prove dangerous. Consequently, it was essential for the Committee to obtain the approval of an overwhelming majority, and, to that end, to explain at the outset the reasons why it had not so far been able to bring its work to a successful conclusion.

In his view, failure was due essentially to the fact that the draft definitions submitted aimed at laying down absolute criteria, valid at all times and in all circumstances. Such an ambition could not fail to create difficulties and give rise to disputes, and, if the Committee were at present to pursue the same end, it might encounter the same obstacles. It was therefore necessary to approach the question from a new angle and to explore fresh methods.

To be sure, the problem was a highly complex one, both from a political and a legal standpoint, but that did not mean that a definition of aggression was impossible. Numerous examples could be mentioned showing that happy solutions had been found for highly controversial problems, such as the Declaration on the Granting of Independence to Colonial Countries and Peoples, which had been adopted almost unanimously after lengthy negotiations; the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space, and Under Water; and the Treaty on Principles governing the Activities of States in Exploration and Use of Outer Space, including the Moon and other Celestial Bodies. Finally, the International Conference on Human Rights had recently adopted unanimously a Proclamation.

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(Mr. Nadim, Iran)

Those examples pointed the way. In the first place, flexible and pragmatic methods must be adopted, in the light of current realities; and secondly, the question must be dealt with from a legal angle and political polemics avoided. A study could also usefully be made of the satisfactory solutions found within the United Nations for problems very closely related to those before the Committee, such as the resolutions on the inadmissibility of intervention in the domestic affairs of States and the protection of their independence and sovereignty; on the right of peoples and nations to self-determination; and on the prohibition of the threat or use of force in international relations.

However, an essential prerequisite for the success of the Committee's work was that all its members should have the will to achieve results and to discover points of agreement. In that spirit, it was desirable, as was customary in the United Nations, to have informal consultations, to which the Chairman could contribute That compromise formula would enable the Committee to emerge from the present deadlock. For its part, the Iranian delegation was willing to participate in the discussions with an open mind, its sole desire being that the Committee's deliberation should lead to fruitful results.

Mr. SULIMAN (Sudan) said that, in his delegation's view, the question of the desirability and feasibility of defining aggression - a matter with which previous Committees appeared to have been greatly concerned - should in no wise arise on the present occasion.

The General Assembly had already answered that question in the affirmative in resolution 2330 (XXII) and in such an explicit fashion - both in the preamble and in operative paragraph 1 - that the Committee could hardly re-open the discussion without exceeding its mandate. The fact that the Committee, under operative paragrap 3, had been instructed to consider all aspects of the question, would not justify suc discussion, either.

Attempts to define aggression went back some thirty years, as was made clear in the report prepared by the Secretary-General in pursuance of General Assembly resolution 599 (VI) (A/2211). The first part of that report retraced the history of the search for a definition of aggression from the days of the League of Nations until the seventh session of the General Assembly.

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(Mr. Suliman, Sudan)

The Sudan was firmly convinced that a definition of aggression was essential, if the United Nations was to continue its work for peace; as a peaceful, developing African country, it considered that such a definition should lie within the reach of all peace-loving peoples.

The question of defining aggression was particularly urgent in the current international situation. It would be remembered that a year previously, the lack of such a definition had opened the way for a classic act of aggression.

His delegation did not believe that the concept of aggression was one which it was impossible to confine within the limits of a definition. In its view, the difficulty of the task was in no way inherent in the problem. Nor did his delegation believe that the existance of such a definition would enable unscrupulous nations so to shape events as to be covered by it, or that the whole enterprise was liable to lead the innocent to their doom, while the guilty benefited.

Judge Lauterpacht had observed that in civil law, generally speaking, no objections were raised to defining murder or assassination on the pretext that such a definition might, on occasion, prove inadequate or unjust, and that confidence was placed in the skill of the draftsman and the wisdom of the courts. Such was the attitude of the Sudan towards the definition of aggression.

It might perhaps be alleged that the General Assembly had no authority to exercise any form of constraint over nations and that, consequently, all its efforts to define the concept of aggression were in vain. But it was equally true that a definition adopted by the General Assembly could eventually become a principle of law recognized by civilized nations, and subsequently an integral part of international law.

In any event, the Committee's mandate was clear and precise: it had been asked to work out a draft definition of aggression and submit it to the General Assembly. It must begin where previous Committees had left off. It must avoid blind alleys, and make sure that its discussions did not degenerate into polemics or lose sight of the essentials of the problem.

Mr. SIRRY (United Arab Republic) thought that the representative of Iran has clearly stated the essentials of the problem. General Assembly resolution 2330 (XXII) clearly did not preclude the 1968 Special Committee from defining aggression: the letter and spirit of the resolution called for a definition of aggression.

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(Mr. Sirry, United Arab Republic)

The representative of Iran had rightly pointed out that such a definition must have the support of the vast majority of United Nations Member States. The possibilities he had outlined should enable the Committee to deliverate on its methods of work. He wholeheartedly supported the Iranian representative's suggestion that there should be consultations at group level to identify common ground and non-controversial issues. The report of the 1966 Special Committee, in whose work Iran, together with Iraq, had played a prominent part, contained some very useful proposals, as did some of the earlier texts quite rightly mentioned by the representative of Cyprus.

He therefore supported the very cogent suggestions made by the representative of Iran.

The meeting rose at 4.30 p.m.

SUMMARY RECORD OF THE FIFTH MEETING

Held on Monday, 10 June 1968, at 10.10 a.m.

Chairman: Mr. YASSEEN (Iraq)

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTION 2330 (XXII)) (agenda item 5) (continued)

Mr. GROS ESPIELL (Uruguay) stated that the value of a definition of aggression had already been sufficiently stressed and that the Committee should now set about the discussion of such a definition in concrete terms. It was clearly possible to arrive at a legal definition of aggression on the basis of the copious documentation available.

The first question which arose related to the form to be given to the international instrument which would embody such a definition. There were three theoretical possibilities. The first was to include the definition in the United Nations Charter. That possibility, however, would unfortunately have to be ruled out at the present time in view of the difficulties of procedure which would be involved in any attempt to revise the Charter. Indeed, the attempts made at San Francisco, mainly as a result of proposals from the Philippines and Bolivia, to have a definition of aggression included in the Charter had failed. The second possibility was to draw up a multilateral convention including such a definition. There, too, the procedural difficulties would be substantial and, even if it proved politically possible to draft and agree on such a convention, it would take far too long for it to come into effect.

The only feasible approach at present appeared to be the adoption of a resolution on the subject by the General Assembly, whose competence was established by Articles 10, 11 and 13 of the Charter. A well-founded juridical definition of aggression, arrived at by the States represented in the Committee and put forward as the recognized juridical norm of a major group of civilized countries, would provide the Security Council with a valuable general guideline for its future decisions, without entailing any violation of Article 39. Hitherto, the Security Council had not been equipped with such a general criterion and had been compelled to take action on specific situations as they arose. Furthermore, such a resolution, apart from serving initially as an indication of world public opinion on the matter of aggression, might even subsequently become an integral part of international law.

(Mr. Gros Espiell, Uruguay)

Hitherto, the attempts to define aggression had fallen into three categories. In the first place, there had been an enumerative and limitative definition, covering specific instances of aggression. The second type of definition, a general one, had been merely a synthetic and abstract classification without any reference to specific cases. The third type had constituted an attempt to combine the two schools of thought. It was that combination which the Committee should now aim at - a definition which should be at the same time conceptual and specific. It was essential to establish a juridical and objective criterion of aggression. In attempting to establish such a definition, however, the jurist should neither be overwhelmed by political considerations nor fall into the opposite error of complete abstraction.

The best approach would be to refer every part of the text adopted specifically to the appropriate Articles of the United Nations Charter. The definition should include, for example, provisions to the effect that not only States but also unions of States and even international organizations could be the authors or victims of aggression. Secondly, it should be recognized that a nation which was struggling for independence but which was not yet established as a State should also be regarded as capable of being an author or a victim of aggression. Attention should also be paid to the question of the chronology of the use of force, since the right of self-defence was well established by the United Nations Charter itself, among other instruments. Furthermore, it should be recognized that no political, economic, strategic or social consideration should be regarded as adequate justification for the commission of acts of aggression. Furthermore, the definition should exclude such subjective considerations as the will to aggression. The act of aggression should be immediately identifiable as a concrete, objective and unquestionable fact. An excellent basis for a definition of armed aggression was provided, for example, by the draft submitted in 1956 by the Dominican Republic, Mexico, Paraguay and Peru.

There were, however, other forms of aggression which, although much more difficult to define, were perhaps nonetheless important. Those were the indirect forms, such as economic and ideological aggression. Although there would probably not be time to establish precise criteria for such indirect forms of aggression, the Committee might usefully make some progress in their study so as to provide a basis for later efforts.

Mr. AUGUST MARPAUNG (Indonesia) stated that a definition of aggression, by providing an authoritative interpretation of the provisions of the Charter relating to the maintenance of international peace and security, would provide a vital guideline for the United Nations, for other international bodies and for Member States in their attempts to consolidate the world security system.

His delegation was in favour of a combined definition of aggression: a general section describing the characteristics of aggressive acts -- the time element, the will to dominate and/or the use of force -- based on the relevant provisions of the Charter and the General Assembly resolutions, and an enumerative section giving a non-limitative and non-exhaustive series of examples of aggression.

The definition should cover both direct and indirect aggression, divided as follows:

Under direct aggression could be listed the following cases:

(i) invasion by the armed forces of one State of the territory of another State;

(ii) armed attack by one State with its armed forces or armed masses against another State;

(iii) blockade of the coasts or ports or any other part of the territory of a State by the land, naval or air forces of another State;

(iv) the organization or the encouragement of the organization of armed bands by a State within its territory or any other territory for incursions into the territory of another State; the toleration of the organization of such bands in its own territo or the toleration of the use by such armed bands of its territory as a base of operations or as a point of departure for incursions into the territory of another State, as well as direct participation in or support of such incursions.

Under indirect aggression should be understood:

(i) intervention by one State in the domestic as well as in the external affairs of another State, violating the territorial integrity and the political independence of the latter;

(ii) participating in or encouraging subversive activities against another State acts of terrorism, infiltration and diversionary acts, etc.;

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(Mr. August Marpaung, Indonesia)

(iii) promoting the fomenting of civil war within another State;

(iv) promoting an internal upheaval or rebellion in another State against the constitutional Government;

The concept of indirect aggression should also include the following:

(i) acts of one State paralyzing the national economic life of another State;

(ii) acts of imposing a certain ideology upon another nation.

Furthermore, his delegation thought that no political, military, economic or social considerations could serve as a justification for aggression.

Although he would agree to a separate discussion of direct and indirect aggression, it should not be inferred that his delegation considered indirect aggression to be of secondary importance.

Mr. JELIC (Yugoslavia) said that his delegation agreed wholeheartedly with what appeared to be the general view that aggression could and should be defined. In other words, the problem could be tackled constructively once the Committee agreed upon the type of definition it wished to arrive at, namely, a general abstract definition an analytical and enumerative definition, or a combined definition. In any event, the views of Governments were clearly stated in the Committee's documents, which provided a comprehensive list of the relative merits and disadvantages of various types of definition.

He warmly supported the Iranian representative's proposal that the Committee should first deal with problems on which agreement could be reached. That approach was all the more desirable in that, by first agreeing upon the various elements to be covered by a definition, the Committee would be in a better position to make an objective choice of the type of definition required.

In that connexion, the Committee would have to decide a number of questions, such as whether the definition should be confined to direct armed aggression or be extended to cover indirect aggression, economic aggression, cultural aggression and ideological aggression and whether it should be based on a time factor, namely, whether the State which committed the aggression should be in all cases recognized as the aggressor. The Committee would similarly have to decide whether the definition should take into account the degree of aggression and exclude from the concept of aggression acts such as frontier incidents, and whether it should take into account the intent of the aggression (animus agressionis) and refusal to put an end to hostilities.

(Mr. Jelic, Yugoslavia)

All those problems had been discussed at length in the past without any apparent result. The Committee, however, was in a much better position to find compromise or even agreed solutions, and at the end of its discussion it could decide whether agreement had been reached on a sufficient number of points so that a valid joint definition could be drawn up or whether a number of alternative definitions should be prepared. In any event, the task of drafting one or more definitions would be greatly facilitated by an exchange of views which would bring the Committee closer to its goal. If the exercise was to be successful, however, delegations would have to embark upon the discussion in a spirit of good will and co-operation.

Mr. RAMANGASOAVINA (Madagascar) said that the abundant background information available made it quite clear what path the Committee should follow.

In his delegation's view, the Committee should try to reach agreement on a single definition and submit only one proposal to the General Assembly, since in essence the aims of its members were the same: namely, to safeguard peace and security and to develop a body of international law dealing with aggression. For that reason, every effort should be made to draw up a legal definition reflecting the views of the overwhelming majority of members of the Committee and covering all types of aggression. Needless to say, the Committee should proceed with caution and in stages, in view of the various types of aggression, such as direct, indirect and insidious, with which it would have to deal. As the preparation of a comprehensive definition would obviously require a great deal of time, efforts should first be concentrated on a definition of direct aggression, which could be supplemented later by a definition of indirect aggression. That procedure would, in his view, be particularly desirable in that it would stimulate a general exchange of views and at the same time constitute progress towards the Committee's goal.

He emphasized that the preparation of a definition of aggression was vital, not only in order to make good a serious gap in international law but also to safeguard the independence and collective security of the international community and particularl the developing countries.

The meeting rose at 11.15 a.m.

SUMMARY RECORD OF THE SIXTH MEETING

Held on Tuesday, 11 June 1968, at 3.15 p.m.

Chairman: Mr. YASSEEN (Iraq)

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (General Assembly resolution 2330 (XXII)) (agenda item 5) (continued)

Mr. CAPOTORTI (Italy) considered that, under resolution 2330 (XXII), the Committee was entitled but not obliged to submit a draft definition to the General Assembly. The success of its work would not depend on the formulation of a definition at all costs. A definition must be found which was really acceptable to all and the points on which agreement could be reached must be brought out.

Consequently, his delegation, while it was still convinced that its initial perplexity about the usefulness of a definition had not been groundless, now intended to collaborate in seeking an acceptable definition and to indicate what should be the characteristics of such a definition.

There was one fundamental requirement in that connexion, namely, respect for the Charter. There could be no question either of amending the Charter or of submitting to the Assembly a draft multilateral convention. What was necessary was to provide the General Assembly with the basic elements of a resolution or recommendation which it would formulate in accordance with Article 11, paragraph 1, of the Charter. The Assembly must in fact act within the framework of the Charter and, in particular, it could not contemplate any change in the powers of the Security Council, which was responsible for the maintenance of peace, as set forth in Article 24, paragraph 1, in the three cases listed in article 39: threat to the peace, breach of the peace and act of aggression.

The Committee was only called upon to define the act of aggression. The concept of threat to the peace, including the threat of aggression, did not concern it, and while it was true that the concept of breach of the peace included the concept of aggression, that was no reason why the Committee should attempt to identify all cases of breach of the peace. The Security Council must remain free to designate a situation as a threat to the peace, breach of the peace or act of aggression, to adopt a recommendation or decision and to choose the measures to be taken. Those three powers, defined in Article 39, were essential to the balance of the Charter. There were therefore no grounds for envisaging automatic action by the Council, even after the adoption of a definition of aggression, since the problem had been resolved at San Francisco by the decision to assign to the Council those discretionary powers.

(Mr. Capotorti, Italy)

A correct interpretation of the Charter also provided the basic elements for a definition of the concept of aggression. Aggression was an act of breach of the peace (Article 1, paragraph 1), hence an act incompatible with the maintenance of peaceful relations. Although the Charter, in order to prevent any dispute on the matter, did not mention war, it spoke of the use of force (Article 2, paragraph 4). There was, moreover, an indisputable harmony and correlation between the purposes of the United Nations set forth in Article 1, paragraph 1, which referred to "acts of aggression" and the principles set forth in article 2, paragraph 4, which mentioned the "use of force", just as there was between the latter paragraph and Article 51 which related to derogations of the principles of Article 2 if an armed attack occurred against a Member but not, he emphasized, in the case of a mere threat.

There appeared to emerge from those various provisions a concept of aggression comprising two basic elements: for there to be aggression, there must be resort to arms and violation of territorial integrity and political independence. Two cases were dealt with: armed attack (Article 51) and action based on recommendations or decisions of competent organs of the United Nations (Article 42 et seq). Those elements recurred in many drafts of a general definition.

In view of the inadequacy of general definitions, which merely repeated the Charter, and the risks inherent in lists which were always incomplete and inflexible, he was in favour of a mixed type of definition. It seemed to him essential both to formulate the general concept in accordance with the Charter and to give a list of hypothetical cases (for example, declaration of war, invasion, intrusion of armies without the consent of the government concerned, naval blockade), while making it clear that such a list was not exhaustive. In addition, it was necessary to safeguard the Security Council's power to appraise the situation, since the Security Council decided whether it was a case of aggression or legitimate self-defence, verified the chronological order of events and determined the element of intent, the intention of aggression being presumptive, but resort to arms having possibly been accidental.

(Mr. Capotorti, Italy)

Various problems arose in seeking a definition of aggression; in the first place, the problem of indirect aggression, by which was meant the organization or support of armed bands, active support of an insurrection, encouragement of civil war, despatch of volunteers, etc. In his view, that type of aggression should be distinguished from ideological or economic aggression and should be classified with direct aggression, in so far as it involved the use of force.

In indicating circumstances serving as a pretext for aggression, it was better not to establish too detailed a formula and to rely on the Council's power to appraise the situation.

The problem of international criminal law went beyond the existing terms of reference of the Committee. The definition of aggression could probably be used in that connexion, but it would be necessary to resolve other aspects of the question, including that of international criminal jurisdiction.

In his opinion, the Committee should recommend co-ordinating the results of its work with that of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation Among States, which was studying the principle of Article 2, paragraph 4 and which had an overall view of the question.

In conclusion, he emphasized that if the Committee wished to achieve more positive results than its predecessors, it must observe two conditions: it must limit its field of research so that the definition would be a strict one and in accordance with the Charter, and it must record the points of general agreement; it must seek unanimous consent without which the definition would serve no purpose.

Mr. JAHODA (Czechoslovakia) said that his delegation felt sure that a definition of aggression would contribute greatly to the maintenance of peace between nations and universal security. Czechoslovakia's keen interest in the question could be explained primarily by its historical experience, its geographical location and its approach to questions concerning the maintenance of peace and security in Europe and throughout the world.

The Committee's work was facilitated by the experience accumulated during previous exchanges of opinions and the fact that it could make use of proposed definitions which had already been approved or submitted.

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(Mr. Jahoda, Czechoslovakia)

During previous sessions of the General Assembly and its Special Committees, a considerable degree of rapprochement had been achieved between many delegations on some essential points. In his delegation's view, the points of agreement appeared to be the following: any definition of aggression must be based on the Charter and proceed from its principles; aggression constituted the most dangerous breach of international peace and was described by international law as the gravest international offence; it appeared desirable, in drafting a definition of aggression, to concentrate on its most dangerous form and first of all on armed attack; it was recognized that the definition of aggression was possible both juridically and technically.

He believed that the Committee, in seeking a common formula, could also consult General Assembly resolution 2131 (XX) on the inadmissibility of intervention in the domestic affairs of States and the protection of their independence and sovereignty, and General Assembly resolution 2160 (XXI) on strict observance of the prohibition of the threat or use of force in international relations, and of the right of peoples to self-determination. The purpose of both those resolutions, which was to prevent the creation of situations which were dangerous for the maintenance of international peace and security, was very similar to that of a definition of aggression.

In his opinion, it seemed expedient that the Committee, after studying the provisions on which there had been a rapprochement of views, should concentrate on what were still controversial questions in order to try to eliminate differences of opinion and work out an acceptable definition in conformity with the Charter.

The Charter, which banned the use of force in relations between States, was a political instrument but at the same time a basis of international law in general. It was true that Article 39 made no precise distinction between the concepts of "threat to the peace", "breach of the peace" and "act of aggression", but the concept of "aggression" as referred to in the Charter certainly included armed attack as defined in Article 51. Moreover, Article 41 in speaking of "measures not involving the use of armed force" to be decided upon by the Security Council envisaged also forms of aggression other than armed attack.

(Mr. Jahoda, Czechoslovakia)

That the Charter understood under the term "aggression" not only direct armed attack, was clearly attested by the formulation of Article 1, paragraph 1 of which expressly clarified the notions mentioned in Article 39. It was precisely that paragraph on which the provisions of the entire Chapter VII of the Charter were based.

The Charter in Article 2, paragraph 4, absolutely prohibited aggression of any kind, not only armed attack. The term "force" in that paragraph did not imply armed force only, but any force used illegally against the independence, sovereignty or territorial integrity of any State. The term "force" thus constituted the cornerstone not only of the notion of armed attack, but also of the notions of the other known forms of aggression such as indirect, economic and ideological aggression. Thus under Article 39 all known forms of aggression were to be understood.

In his delegation's view, the ban on aggression and the proposed draft definition should cover not only the relations between States, but also between States and nations that exercised their right to self-determination and independence. That opinion was based on resolution 2270 (XXII), regarding Territories under Portuguese administration, in which the General Assembly strongly condemned the colonial war being waged by the Government of Portugal against the peaceful peoples of the Territories under its domination, which constituted a crime against humanity and a grave threat to international peace and security.

His delegation considered that all the elements of a definition were already incorporated in the text of the Charter and it was not necessary to amend the Charter in order to define aggression. The merit of the definition consisted precisely in determining the elements constituting aggression. Those elements being predetermined by the Charter, the definition became a question of procedure and method. The existing wording of the Charter made it possible to define aggression both technically and juridically.

Three principal types of definition had been proposed. His delegation favoured a definition containing the basic elements constituting aggression. Such a definition had been presented in the Soviet Union proposal whose clear-cut formulation fully satisfied the needs of the international community. Czechoslovakia was moreover a party to the Convention for the Definition of Aggression signed in

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(Mr. Jahoda, Czechoslovakia)

London in 1933 by the Soviet Union, Turkey, Romania and Yugoslavia, which was based on the draft definition of aggression proposed at that time by the USSR. His delegation was however prepared to consider carefully any other definitions and to do everything necessary for a rapprochement of views in a spirit of co-operation.

His delegation wished to point out the urgency of defining armed attack, which had always entailed the greatest loss of human life and the destruction of immense cultural and material values. The international situation was particularly alarming from that point of view. The Committee should therefore give priority to that form of aggression, without neglecting other forms which it might study at a later stage of the current session. It must be realized that in existing circumstances it was for the individual State to decide whether or not it was entitled to use force.

The definition of aggression was necessary not only in order to achieve the objectives of the United Nations but also for the development of international law. More than forty instruments of international law, not to mention the United Nations Charter, referred to the notion of aggression; hence international law could hardly get along without a definition of aggression.

Moreover, the Security Council, which was empowered under the Charter to establish the existence of any breach of the peace or act of aggression, would be greatly assisted in its task if there was a clear-cut definition of aggression to guide it in determining the guilty party and to reduce the risk of arbitrary or unjust decisions and the application of subjective political criteria. A definition of aggression would also serve to guide world public opinion which had for some time been exercising a decisive influence on the course of world events. Finally, such a definition would be effective in restraining aggression.

In that connexion, he emphasized that his Government had welcomed the idea of an agreement on renouncing force and securing strict application among European nations of the fundamental principles of the Charter. It had actively supported the proposal to conclude an all-European treaty on the subject and on non-intervention in the internal affairs of States. His delegation was firmly convinced that the definition of aggression could contribute to progress in that respect.

(Mr. Jahoda, Czechoslovakia)

The drafting of a definition was a difficult undertaking when one considered its scope and content and the fact that it had to command acceptance and be observed by the largest possible number of States. His delegation was nevertheless optimistic and thought that the task could be successfully carried out since few principles were as widely supported as the condemnation of aggression. His delegation's optimism also sprang from the fact that important changes had taken place in the world and in the membership of the United Nations since the last time the organization had taken up the problem of defining aggression. His delegation, for its part, would spare no effort to help the Committee to complete its undertaking.

Mr. ISINGOMA (Uganda) said that the preamble to General Assembly resolution 2330 (XXII) establishing the Special Committee gave an excellent summary of the general views expressed during the debates in the Sixth Committee and in the plenary meetings of the General Assembly with regard to the urgent need to define aggression. The Committee should therefore try to examine as quickly as possible some of the essential features of that concept. It should avoid engaging in further procedural discussions, which had been the cause of previous failures.

The question was not a new one and adequate data were available for its discussion. The General Assembly had taken decisions which the Committee might find it useful to bear in mind, particularly resolutions 290 (IX), 377 (V), 378 (V), 380 (V), 1514 (XV), 1815 (XVII), 2131 (XX) and 2160 (XXI), all of them more or less directly concerned with the problem of aggression. However, the most important international legal instrument was still the United Nations Charter, notably Articles 1, 39, 41, 42 and 51 bearing directly on aggression and more especially on "armed" attack, which could be described as direct aggression.

All those articles referred to armed attack, the use of force, acts of aggression and breaches of the peace, but the main theme was a breach of the peace by armed attack. That was the form of aggression which, in the opinion of his delegation, should have the immediate attention of the Special Committee. The question of indirect aggression could be examined at a later stage if time allowed. Although the Committee's terms of reference required it to consider all aspects of the question, there was nothing to prevent it from classifying those aspects and dealing with them systematically. It could, on the other hand, consider all aspects

(Mr. Isingoma, Uganda)

of the question as a background to its work without laying undue emphasis on them as had been done hitherto. The Committee was asked to propose a legal definition. The procedure was no different from that followed in municipal law, where the legislature took into account the various aspects of the crime, but only as guidelines to indicate its precise nature and scope.

It had been said that a definition of aggression would provide an easy escape for a potential aggressor. That might be true but the mere fact that a would-be aggressor would have to consider, before embarking on an act of aggression, whether his action would come under the definition, would be an indirect deterrent. Some aggressors might go unpunished, but that was not peculiar to the crime of aggression. In that respect, a parallel could be drawn between aggression and burglary. Besides, it was not a valid argument, for action was always preferable to inaction. The Security Council or any other competent United Nation organ needed a legal basis to enable it to identify an aggressor. Its examination of the evidence ought to be based on a juridical criterion, so as to remove or at least to reduce the risk of an arbitrary decision on its part.

The Committee's terms of reference did not require it to consider the possible effects of a definition of aggression on the organs of the United Nations; that was for the General Assembly to decide. The difficulty could however be overcome if the Committee were to reach agreement on an objective definition based on realities and on the provisions of the Charter.

The work of the Committee had a direct bearing on the draft Treaty on Non-Proliferation of Nuclear Weapons (A/7072), which had annexed to it a draft Security Council resolution co-sponsored by the Soviet Union, the United Kingdom and the United States of America (ENDC 222). Operative paragraph 1 of that draft resolution read: "Recognizes that aggression with nuclear weapons or the threat of such aggression against a non-nuclear-weapon State would create a situation in which the Security Council, and above all its nuclear-weapon State permanent members, would have to act immediately in accordance with their obligations under the United Nations Charter".

(Mr. Isingoma, Uganda)

During the debate in the First Committee of the General Assembly on that question, some delegations, including his own, had pointed out that lack of agreement as to what constituted an act of aggression weakened the security guarantees. As long as the question of what constituted aggression remained unanswered all professions of peace and world order would remain no more than pious hopes. The collective security system of the Charter had to be strengthened and peace-keeping procedures improved so that in dealing with a given situation the Security Council or some other competent international organ could reach an objective and equitable decision based on a recognized juridical principle.

If the members of the Committee were prepared to approach the problem from a strictly legal and unbiased standpoint, they should be able to reach agreement on a single definition embodying the essential elements of armed attack. A definition of that kind would exert a restraining influence on a potential aggressor and facilitate the task of competent bodies in determining the existence of an act of aggression and in adopting speedy and effective measures to end it. It would, moreover, help to preserve the territorial integrity and independence of all States. That was both desirable and feasible. The Committee's task was a difficult one, but it was essential for the maintenance of satisfactory international relations both at the present time and in the future that it should be carried out successfully.

Mr. GONZALEZ GALVEZ (Mexico) observed that his delegation had come to the Committee to set forth its position on the question of defining aggression with the moral authority of a country which had never attacked another and in the conviction that only through peace could progress and human harmony be ensured.

Mexico's position on the legal and technical feasibility of defining aggression had already been stated in the General Assembly and in the Sixth Committee, and also in the draft definitions which it had submitted (A/AC.77/L.10 and A/AC.77/L.11). In the Mexican delegation's view, the General Assembly had already answered that question in the affirmative through the mandate which it had given to the Committee in resolution 2330 (XXII), which had nevertheless been interpreted in a variety of ways.

The purpose of a legal definition was not to prevent or encourage a given course of action, but to mark the limits of what was permissible for legal persons. Aggression could occur or cease, depending on the effectiveness of the coercive

(Mr. Gonzalez Galvez, Mexico)

machinery supporting a given legal definition, not because of the definition itself; for that reason, if aggression was to be defined, a series of related problems should be analysed, such as the effect which the definition would have on the United Nations constitutional system.

Moreover, while a definition was not of direct use, unlike the adoption of measures to strengthen the coercive machinery of international law, in accordance with Article 43 of the Charter, it would nevertheless make it possible to overcome the uncertainty and subjectivity of political judgements not based on law. To be sure, an arbitrary action (in the sense that it did not conform to a pre-established pattern of conduct) might nevertheless be a just one and mean peace; but, as a standing practice, such action indicated a total lack of legal security and a complete divorce between the United Nations political activities and international law.

Those considerations did not in any way mean that his delegation thought it necessary to amend the Charter. For that purpose, a reform would be required, if it was desired to establish a new legal norm to replace Articles 39 and 51 of the Charter, worded more or less as follows: "A State which commits any of the following acts... shall be declared an aggressor by the Security Council." Indeed, whether or not a definition of aggression existed, the Security Council must retain full freedom to appraise the situation and decide what steps would be necessary to maintain peace. A fortiori, the object was not to replace one legal rule in the Charter by another, but to interpret it from a legal standpoint, in other words, to determine its scope and content, account being taken of world public opinion, which was exerting an increasing influence on the elaboration of national policies.

With regard to the methods to be adopted, he considered that the most appropriate formula would be a mixed definition, first of all setting out the essential elements of the legal and political notion of aggression, and then listing the most typical examples of aggression; additions could be made to that list as developments of international law and practice in United Nations bodies progressed. In that connexion, the Secretariat might be asked to prepare, after the close of the general debate, a working paper containing the views expressed on the content of the definition, bearing in mind the ideas expounded in the General Assembly and in the Sixth Committee, in a form similar to that of

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(Mr. Gonzalez Galvez, Mexico)

document DC.10 of 30 September 1964, which had been of very great value in the negotiations on the formulation of principles of international law concerning friendly relations and co-operation among States.

So far as the substance of the definition itself was concerned, his delegation had reservations as to the advisability of including a provision expressly empowering competent bodies of the United Nations to add another act to the list of the most typical cases of aggression, as proposed by the Soviet Union in 1957, for it would be contradictory to provide a guide for the Security Council, and at the same time invite it to add other acts to the list.

In his delegation's view, the criterion of priority was fundamental in deciding whether aggression had been committed, i.e., which country was the first to attack. It could not be maintained that the country which had been preparing for war was the aggressor, for it should be remembered that in practice war preparations were hardly distinguishable from the arms race; moreover, it would be difficult to distinguish preparations for legitimate self-defence from those for a war of aggression. That criterion was also recognized in the Charter, for Article 51 clearly stated that the right of legitimate self-defence could be invoked if an "armed attack" occurred against a Member of the United Nations.

In view of the importance of the Committee's task and the need to avoid the mistakes of the past, it would be desirable, as the representative of Cyprus had proposed, to begin by defining direct aggression.

Again, the Committee could seek a definition of the "armed attack" referred to in Article 51, as distinguished from the "act of aggression" in Article 39, and should not try to adopt a definition which would apply to both cases. Clearly Article 39 conferred on the Security Council the right to decide what measures should be taken to maintain or restore peace, including military action, while Article 51 permitted a country to wage war only for the purpose of legitimate self-defence. "Armed attack" should be given a strict definition limiting the scope of a State's reaction.

Such a definition should exclude "indirect" - i.e., ideological or economic - aggression. There existed in international law a principle - non-intervention - which permitted a country to condemn those illicit activities, which nevertheless did not, strictly speaking, constitute aggression.

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(Mr. Gonzalez Galvez, Mexico)

Lastly, he approved of the Italian delegation's suggestion that the need should be established of co-ordinating the Committee's work with that of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States.

It must be borne in mind that a definition of aggression would serve to characterize and stigmatize "preventive war" by mobilizing public opinion against that kind of activity. Furthermore, the need to adopt a definition of aggression was more evident at the present time, in view of the tendency of several legal experts to distort the meaning of Article 51 of the Charter. Lastly, one of the Committee's legitimate preoccupations should be to analyse, in all their aspects, the possible consequences of a definition of aggression on the collective security system of the United Nations. He reserved the right to deal more fully later with some of those aspects, notably the question of the value which a definition of aggression embodied in a General Assembly resolution would have in comparison with the general theory of international law sources.

Mr. RATON (Secretariat) referring to the suggestion made by the Mexican representative to the effect that the Secretariat should prepare a document setting out the opinions expressed in the General Assembly, the Sixth Committee and the Special Committee on the question of defining aggression, asked how long a period that document was to cover and what form it should take.

Mr. GONZALEZ GALVEZ (Mexico) replied that the document would deal solely with the period 1967 and 1968 and would summarize only the opinions expressed concerning the proposed content of the definition, all related questions being excluded.

Mr. CHIKVADZE (Union of Soviet Socialist Republics) pointed out that in 1952 and 1957 the Soviet Union had submitted proposals relating to the definition of aggression; he hoped that those proposals would be included in the document in question.

The CHAIRMAN pointed out that the suggestion made by the Mexican representative limited the scope of the document to the debates that had taken place during the last session of the General Assembly, in plenary and in the Sixth Committee and during the current session of the Special Committee. If the Soviet Union so desired, however, its proposals could also appear in the document.

The CHIKVADZE (Union of Soviet Socialist Republics) stressed that proposals made by other delegations could likewise appear in the proposed document.

Mr. ROSSIDES (Cyprus) supported the suggestion made by the Mexican representative and considered that a summary of the discussions would be extremely helpful for the Committee's work. As the representative of Ecuador had proposed in the General Assembly, it would be useful if, during the first stage, consideration could be given to all the draft definitions dealing with direct armed attack, to the exclusion of other aspects of aggression which could be studied later.

The CHAIRMAN pointed out that the Committee had not decided to define direct aggression. Moreover, the draft resolutions submitted to the bodies that had been requested by the General Assembly to define aggression were not confined to direct aggression; consequently, it might be difficult for the Secretariat to separate the various components of those drafts.

Mr. ROSSIDES (Cyprus) maintained that such an analysis would nevertheless be possible. For instance, the draft resolution submitted to the Special Committee by the Soviet Union in 1957 made separate mention of armed attack.

Mr. CAPOTORTI (Italy) said that although the proposed summary would undoubtedly be useful, it could not take the place of the formal proposals submitted to the Committee in the context of the current situation.

The CHAIRMAN said that the summary would be presented purely for information and that the Committee would not be called upon to pronounce on proposals made during earlier discussions.

Sir Kenneth BAILEY (Australia) considered that the suggestion made by the Mexican representative would be likely to help the Committee in its work. As the Soviet Union representative had suggested, the document might also contain the proposals put forward by the Soviet Union and other delegations, including those made by the representative of Uruguay at the preceding meeting. Those proposals should be reproduced in toto, since it was not desirable to ask the Secretariat to try to distinguish the various elements in past proposals with a view to limiting the document to references to "direct" aggression; the Chairman had already pointed out the difficulties of doing so, and, as the Italian representative had observed, it was not yet certain whether the expression "indirect aggression" had the same meaning for all members.

Mr. ALCIVAR (Ecuador) said that, however impressive, the documentation produced by the Secretariat was too voluminous to permit a study in depth. He supported the suggestions made by the Mexican and Australian representatives to the effect that a recapitulatory report should be prepared; such a document, setting out the proposals so far submitted and preceded by a summary of the discussions, would be most useful.

Mr. GROS ESPIELL (Uruguay) suggested that the proposed document should be divided into two parts, the first of which would contain, as suggested by the Mexican representative, a summary of the opinions expressed during the last session of the General Assembly, in plenary and in the Sixth Committee and during the general debate in the Special Committee. Such a summary, produced as a working paper, would commit none of the members but would give an over-all idea of the possible content of a definition of aggression and of the methods to be followed for its elaboration. The second part of the document would consist of the text of the draft resolutions relating to the definition of aggression that had been submitted to the various bodies since the United Nations had taken up the question, including those put forward by the USSR and Mexico, Paraguay, the Dominican Republic and Peru, and proposals submitted by other delegations. That second part would consist of only eight or ten pages, since the texts would be reproduced without comment. The Committee would then have an excellent basis for its work. It was important, however, that the preparation of such a document should not hold up the Committee's work.

The CHAIRMAN, noting that all the members of the Committee agreed that the document in question would be useful, requested the Secretariat to take the necessary steps to prepare it.

Mr. ROSSIDES (Cyprus) said that he was obliged to go to New York to take part in the work of the Security Council and would not be back before the end of the general debate in the Committee. He therefore repeated his country's concern for the establishment of an international order and hence for the elaboration of a definition of aggression. His delegation had taken part in the work of all the successive Committees which had considered the question and had always submitted concrete proposals. It was glad to collaborate again in a conciliatory spirit and was pleased to note that other delegations had expressed the same desire.

(Mr. Rossides, Cyprus)

The recent adoption by the First Committee of the draft Treaty on the Non-Proliferation of Nuclear Weapons (A/7072) and its probable reference to the General Assembly was a proof of the collaboration which had been established among the great Powers. The draft was accompanied by a draft resolution (ENDC/222), sponsored by the United Kingdom, the United States and the USSR, whose purpose it was to guarantee the security of States not in possession of nuclear weapons against any act of aggression with nuclear weapons or the threat of such aggression. The sponsors of that draft resolution were obviously anxious that the concept of aggression should be defined and it was to be hoped that they would unite their efforts to that end. The work of the Special Committee was therefore proceeding under favourable auspices which made it possible to hope for a positive result.

With regard to the draft code of offences against the peace and security of mankind, he recalled that in 1957, the General Assembly had decided by resolution 1186 (XII) to defer consideration of the question "until such time as the General Assembly took up again the question of defining aggression". The General Assembly had taken the same decision with regard to consideration of the question of an international criminal jurisdiction by resolution 1187 (XII). That made it clear how urgent it was to define aggression.

With regard to the document which the Committee had asked the Secretariat to prepare, he thought that it might be desirable to include the Politis draft, the work of an eminent Greek jurist, which formed a classical basis for defining aggression. Priority should be given to the definition of direct aggression, in other words armed attack. Consideration of indirect aggression could not fail to give rise to confusion. While a definition would not solve every problem, it would be a step in the right direction.

The meeting rose at 5.15 p.m.

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SUMMARY RECORD OF THE SEVENTH MEETING

Held on Wednesday, 12 June 1968, at 3.10 p.m.

Chairman: Mr. YASSEEN (Iraq)

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (General Assembly resolution 2330 (XXII) (agenda item 5)(continued)

Mr. ASANTE (Ghana) considered that it was the Committee's duty to make a real effort to further the search for a definition of aggression. It should not be daunted by previous failures but should rather learn from the shortcomings of its predecessors.

His delegation suggested that priority should be given to the definition of direct aggression, and in particular armed aggression. It favoured a mixed definition, defini armed aggression as comprehensively as possible and enumerating by way of example action which constituted aggression. The list would not be exhaustive, nor would it oversimpl the issue or leave loopholes which would exonerate acts not included in the definition.

The definition envisaged by his delegation would amplify the provisions of the Charter of the United Nations and be complementary to the work being done by other Unite Nations bodies.

It was not his delegation's purpose to prevent consideration of forms of indirect aggression, including economic and ideological aggression. To many small countries aggression in such forms was as dangerous as direct armed aggression and more likely to occur. His delegation was asking for priority to be given to armed aggression because was firmly convinced that the definition of aggression was not a mere legal or intellect exercise but a vital necessity for world peace. Armed aggression was ripe for a defini although enough had been said about other forms of aggression to enable the Committee to attempt a useful draft, time was limited and if the Committee tried to cover all aspects of aggression at once it might end by achieving nothing.

Whether legally justified or not, a definition would tend to give moral justificati to unilateral action against States accused of aggression. In the case of indirect aggression, that would lead to dangerous situations and more care was needed not only in drafting the definition but also in examining and delimiting the action that might be taken by an aggrieved party. Moreover, the Committee's definition should clearly excl certain actions which would normally be regarded as constituting indirect aggression. For instance, the organization and encouragement by a State of armed bands within its territory for the purpose of overthrowing a colonialist or apartheid regime should be justifiable if the Charter of the United Nations and its various pronouncements were to

(Mr. Asante, Ghana)

have any meaning. His delegation felt that as soon as the Committee had completed its consideration of the definition of direct aggression it should go on to study other forms of aggression. Consideration of the indirect forms, including indirect economic and ideological aggression, would then follow. If the Committee was unable to complete its task in the time at its disposal, that should be stated clearly in its report. It might be argued that a piecemeal definition would create difficulties but that point could be dealt with in the preamble of the definition.

Mr. RENOUARD (France) recalled that the question of a definition of aggression had originally been raised, on his country's initiative, in the League of Nations, since when his country had always supported efforts to arrive at such a definition.

His delegation was well aware of the difficulties involved. It thought that the only way to obtain satisfactory results was to consider the matter from the point of view of positive international law, of which the sole universally accepted expression was the Charter of the United Nations. Since international affairs were characterized by divergent interests and conflicting ideologies, to abandon the Charter would be to open the way to disputes between the various positions. Since, however, the rules laid down in the Charter were of too general a nature, the Committee's task was to define them more precisely. In so doing, it should bear the following two points in mind.

Firstly, any definition that went beyond the Charter could have only the force of a directive, not of a contractual obligation. To convert such a directive into an obligation, the Charter itself would have to be amended in accordance with Article 108, which in his delegation's view was undesirable.

Secondly, a definition of aggression based on the Charter could be used only in accordance with the procedure laid down in Article 39, which empowered the Security Council to determine the existence of an act of aggression and to decide what measures should be taken to restore peace and security. No United Nations organ, not even the General Assembly, could compel the Security Council to adopt a given line of conduct in the matter. The Committee's definition of aggression must therefore be general enough to leave the Security Council its powers under the Charter. It should be a comprehensive definition, and not merely descriptive. The inclusion of some examples of acts of aggression would, moreover, be useful.

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(Mr. Renouard, France)

His delegation concluded from Article 2 (4) of the Charter, which stated that "All members shall refrain in their international relations from the threat or use of force", that aggression, within the meaning of the Charter, could only be a certain use of armed force and could not have an unlimited meaning, covering all forms of economic, political or ideological pressure. Any mention of such pressures should therefore be excluded from the definition. That did not of course mean that coercion other than by armed force could be considered lawful under the Charter, but simply that such coercion was covered by other principles of international law, in particular by the principle of non-intervention in the domestic and external affairs of States.

Not all uses of armed force could be considered to warrant intervention by the United Nations. Under the Charter, only the use or threat of force against the territorial integrity or political independence of a State or in any other manner inconsistent with the purposes of the United Nations could justify such intervention.

Moreover, Chapters VII and VIII of the Charter provided exceptions to the prohibition of the use of force; in fact, Article 51 concerning the right of self-defence constituted a permanent exception. That exception was perhaps the greatest obstacle in the way of defining aggression, for the test of which party had acted first was extremely hard to apply, and the problem of proof remained untouched.

Despite those difficulties, his delegation felt that an objective definition of aggression which would receive the approval of the great majority of Member States and also that of the Powers bearing the primary responsibility for the maintenance of peace could not fail to be of value to the Security Council in arriving at its decisions.

Mr. BADESCU (Romania) said that the need to work out a definition of aggression followed logically from the postulate that the use or threat of armed force was inadmissible as a method of solving international problems. The basic principle of non-aggression had long been recognized in international law and was embodied in the Charter of the United Nations.

His country's position with regard to the definition of aggression stemmed from its active policy of promoting peace, world security, and co-operation with all States whatever their political and social systems, and from its acceptance of the principles of independence and national sovereignty, equality of rights and

(Mr. Badescu, Romania)

non-interference in domestic affairs. Respect for those principles was the only sound basis for international relations.

The legal, political and moral essence of such relations resided in the exclusive right of each nation to choose its own destiny and the paths it wished to follow in its development without any foreign interference, to assert its personality and dignity and to create the conditions necessary for developing its available human, material and spiritual potential.

The adoption of a scientific definition of aggression would help to prevent and put down acts of aggression, which, like those being committed in Viet-Nam, were a grave threat to international peace and security. His country resolutely condemned the United States aggression against the heroic people of Viet-Nam.

The complete, immediate and unconditional cessation of the bombing and all acts of war against the Democratic Republic of Viet-Nam would create favourable conditions for a political solution on the basis of the 1954 Geneva Agreements and for respecting the legitimate right of the Viet-Namese people to self-determination without any outside interference. Romania was following with close attention the Paris talks, which were intended to clear the way for peace negotiations.

His delegation considered that a definition of aggression was possible, necessary and expedient, and should constitute a legal and political indictment of aggression in any form. In drawing up the definition, account must be taken of the right of individual or collective self-defence against armed aggression, as laid down in Article 51 of the Charter, and of the legitimacy of the struggle against colonialist rule.

Mr. HARIZANOV (Bulgaria) said that his delegation considered the question of the definition of aggression to be of fundamental importance, not only for the development of international law but for the maintenance of international peace and security.

The United Nations Charter had introduced a system of collective security, but the efficacy of the system had been reduced by the general terms in which the Charter was drafted and particularly by the absence of a definition of aggression, which had on several occasions rendered the United Nations powerless in the face of acts of aggression. Under Article 39 of the Charter the Security Council had three legal functions: to determine the existence of any threat to peace, breach of the peace or act of aggression; to choose between making a recommendation or taking a decision; and to indicate what measures should be taken to maintain or

(Mr. Harizanov, Bulgaria)

restore international peace and security. To enable it to fulfil those functions, greater legal precision should be given to the terms of the Charter relating to some of the forms of aggression in international life. In the opinion of the Bulgarian delegation, an adequate definition of aggression adopted by the General Assembly would go a long way towards clarifying the terms used in the Charter.

Aggression constituted the greatest danger to peace and security and indeed, in the current atomic era, to the survival of humanity. Since aggression took place at the international level, an international legal rule was necessary in order to establish the responsibility of the aggressor State. Such a rule could take the form of a General Assembly resolution, which could thereafter be applied in practice and become in due course a rule of international law. His delegation was convinced that a General Assembly resolution of the kind would exercise a restraining influence on potential aggressors as soon as it was adopted.

Doubts had been expressed by certain delegations about the possibility of defining aggression; his delegation considered that the crime of aggression was more manifest than many penal law crimes and should therefore be easier to define, provided subjective considerations were not allowed to confuse the issue. Nor was the question as complex as some countries maintained; the obstructionist policies of certain States, in particular the United States of America, had complicated the discussion without contributing anything of value to the study of the substantive problem and had also been responsible for the suspension of work on it for several years. The reasons for the obstructive attitude of the United States were common knowledge. While it was true that legal considerations should predominate in the elaboration of a definition of aggression, it was no less true that that definition must be based on real events in international life, since it was only from the examination of those events that the constituent elements of the phenomenon of aggression could be determined.

His delegation was of the opinion that, apart from legal considerations, a definition of aggression was necessary for political reasons, especially in the prevailing state of international tension created by the aggressive policies of certain States.

The absence of a definition of aggression had made it easier for the United States to perpetrate crimes against the peoples of dependent countries in all parts of the world, carrying out acts of military aggression against national liberation movements and intervening forcibly in the domestic affairs of other

(Mr. Harizanov, Bulgaria)

States. United States aggression in Viet-Nam and the aggression of Israel in the Near East; the use of political and economic pressure; the armed intervention of sovereign States; mass bombing of peaceful populations and the recruitment and dispatch of mercenaries to attack and occupy foreign territories; all those were only some of the forms of the aggressive policy of imperialism, which sought by all possible means to prevent the United Nations from producing a precise legal definition of aggression and thereby contributing to the preservation of peace.

He shared the views expressed by several delegations on the value of having a definition of aggression adopted by the General Assembly. He would only add that in the opinion of his delegation an adequate definition of aggression would give the United Nations, and particularly the Security Council, an effective legal instrument in its struggle against aggression and war and would provide convincing proof that the United Nations was determined to act in accordance with the principles and purposes of the Charter and not to allow the forces of aggression to perpetrate their criminal acts with impunity. The United Nations was morally and politically bound to adopt a definition of aggression, and the Special Committee should spare no efforts to help it to accomplish that duty.

The Bulgarian Government was ready to support any initiative or measure calculated to contribute to the maintenance of international law and order and the establishment of rules for the international conduct of States which would exclude the use of violence and aggression as an instrument of national policy. It could not therefore fail to support the preparation of a single adequate definition of aggression in the mixed form favoured by most members of the Special Committee.

Mr. MARTINEZ COBO (Ecuador) said that the definition of aggression was one of the most urgent requirements for the consolidation of the system of collective security established by the United Nations Charter. His Government considered that a definition of aggression would dissipate much of the uncertainty enveloping the legal concept of aggression and could perhaps serve as a means of moral suasion in cases of real or potential aggression. His country, which had been a victim of unjust aggression, regarded legality as its best defence and had therefore co-operated continuously and wholeheartedly in all discussions of the question of aggression held by the international community.

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(Mr. Martinez Cobo, Ecuador)

It was no harder to define the concept of aggression than it was to define any other legal or scientific concept. In the view of his Government, a definition of aggression not only was legally and technically possible but would be of the utmost value. Since the United Nations system was based on the rejection of aggression and since the preamble to the Charter stated that armed force was not to be used save in the common interest, a definition of aggression was essential for the determination of the principles and rules that would enable the United Nations to fulfil the purpose for which it had been founded.

It might seem strange that in twenty years no definition of aggression had been arrived at. All the definitions proposed by States or groups of States had been more or less defective. The greatest difficulty lay in the subjective approach to the question adopted by many delegations, which linked the concept of aggression to particular international events. Unfortunately, the debate in the Committee had revealed that that attitude still persisted.

His delegation was convinced that it was a mistake to allow political disputes or specific international problems to enter into a purely legal issue such as the definition of aggression. That definition should be reached as a result of serious legal study, so that it could become a rule exercising real influence on the conduct of States and could gain the support of the majority of the General Assembly. It could then provide guidance for the organs of the United Nations and for States, which would be in no doubt about what acts constituted aggression. It would also be a criterion for world public opinion, helping it to judge the action of Governments.

His Government had always held that the definition of aggression should take the form of a General Assembly resolution. An amendment of the Charter would be neither a practical nor a desirable alternative. Nor would a multilateral convention be appropriate, if only because of the long time it would take to bring it into force. The General Assembly was competent to adopt a resolution of that kind. The terms of the preamble and of Articles 31 and 39 showed that the Charter had been intended only to lay the foundations for a more complex legal structure to be set up in time by the organs of the United Nations. The General Assembly resolution should of course reflect universal readiness to accept the definition as a valid principle of international law.

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(Mr. Martinez Cobo, Ecuador)

The definition should take into account the fact that the Security Council, in accordance with the Charter, would continue to be the body competent to decide whether a given act was or was not an act of aggression, and the purpose of the definition should be to facilitate the work of the Council by replacing the present subjective criteria by clearly defined legal rules.

Recent United Nations declarations on the granting of independence to colonial countries and the inadmissability of armed aggression and subversion, as also General Assembly resolution 2160(XXI) on the observance of the prohibition of the threat or the use of force in international relations, provided guidelines for the Committee's work. The London Convention of 1933 and the Nuremberg and Tokyo trials could also be usefully borne in mind.

His Government favoured a mixed type of definition, namely, a statement of the basic elements of the legal concept followed by a list of typical cases of aggression. A purely general definition would not provide the necessary means of maintaining peace and international security, while a purely enumerative list of acts constituting aggression would be both restrictive and incomplete. Previous objections to the mixed type of definition had not been objections to the concept of a mixed definition, but only to draft proposals that had been submitted. A definition to meet the requirements of modern legal science must (i) serve to judge aggression on legal grounds; (ii) be based on the rules and principles of the United Nations Charter; (iii) safeguard the right of self-defence; (iv) authorize the just struggle of peoples against colonialist oppression; (v) not be subordinated to political, economic or military considerations put forward to justify acts of aggression. The definition should cover direct and indirect aggression and include an analysis of the different types of action that could constitute aggression in the widest sense of the word.

Direct armed aggression by military force would undoubtedly be the easiest type of aggression to define, because definitions of it already existed and its definition was more likely to command agreement. The Committee could therefore start with the question of direct aggression and later go on to examine economic, ideological and other forms of indirect aggression. Should there be too little time for the preparation of recommendations relating to indirect aggression, the Committee could at least provide the General Assembly with material for the preparation of a definition.

(Mr. Martinez Cobo, Ecuador)

His Government had no marked preference for any one of the draft definitions proposed at previous meetings held under United Nations auspices; it considered that all those definitions, and the objections made to them, should be carefully examined.

Mr. HARGROVE (United States of America), speaking in exercise of the right of reply, recalled that earlier in the debate it had been suggested that speakers should refrain from referring to specific situations and from indulging in political recrimination. He had listened to the suggestion with interest and with misgiving, for he fully appreciated the important relation between current events and the question under consideration. He had none the less been ready to defer to the wishes of previous speakers. He had therefore been the more surprised to hear the comments on Viet-Nam made by the representatives of Romania and Bulgaria, although he not only recognized but would even stress the relevance of events there and in the whole of South-East Asia to the deliberations of the Committee.

He agreed with the Romanian representative that an act of aggression was being committed in Viet-Nam, but he flatly rejected his imputation of that act to the United States. He would be interested to hear the grounds that had led the Romanian representative to reach that conclusion. Could it be that the principles of non-aggression and the prohibition of the use of force did not apply when force was used by those who were politically or ideologically acceptable to the Governments of Bulgaria and Romania against those who were not?

He would also be interested to hear why Romania and Bulgaria, in view of the remarks of their representatives on the nature and structure of the United Nations Charter, had not insisted that the question of Viet-Nam and South East Asia should be dealt with by the competent United Nations organ and had indeed actively opposed the proposal that the question of Viet-Nam should be brought before the Security Council. He had no need to remind members of the Committee of the repeated efforts made by the United States to bring the question of Viet-Nam before the Council, or of the causes that had prevented the Council from doing its duty.

The Bulgarian delegation appeared to consider itself able to rebut the United States position on the question of defining aggression before the United States representative had stated it. He would ask members of the Committee to be so kind as to wait for information on the United States position until the United States statement in the general debate had been made.

The meeting rose at 4.30 p.m.

SUMMARY RECORD OF THE EIGHTH MEETING

Held on Thursday, 13 June 1968, at 3.15 p.m.

Chairman:	Mr. YASSEEN	(Iraq)
later	Mr. HARIZANOV	(Bulgaria)

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (General Assembly resolution 2330 (XXII)) (agenda item 5) (continued)

Mr. CHIKVADZE (Union of Soviet Socialist Republics) drew attention to the fact that it was the delegation of the Soviet Union which had proposed to the General Assembly that the latter should place on its agenda the item "Need to expedite the drafting of a definition of aggression in the light of the present international situation", and he emphasized the determined opposition of the people and Government of the Soviet Union to any aggression, irrespective of the party which committed it.

Historically, it was only relatively recently that aggression had been condemned by international law. In fact, while the peoples had always denounced aggression, governments and laws had endorsed it and, for centuries, international relations had been based not on equity, but on sayings such as "might is right" or "the defeated are always wrong", and aggressors who launched wars could hope to go unpunished. It was only in October 1917 that a decree of historical importance, drafted by Lenin himself, had branded wars of aggression as "the greatest crime against humanity".

In the period between the two world wars, the USSR, which, contrary to the pessimistic views of some delegations, had considered that efforts to end aggression could be effective only if there was a clear definition of the concept of aggression, had on a number of occasions advocated the consideration of measures aimed at avoiding the threat of war. It was proud to note that many treaties signed in different parts of the world had adopted the formulations originally proposed by the Soviet Union. In 1933 the Soviet Union had suggested the first definition of aggression to the League of Nations; the proposal had come to nothing because of opposition from the Western Powers. After the war, in 1945, and then in 1950, it had again proposed that the United Nations should consider the question. The General Assembly, in resolutions 599 (VI), 688 (VII), 895(IX) and 1181 (XII), had acknowledged the need to define aggression through its constituent factors and had set up special committees in 1953 and 1956. The work of those committees had, however, produced no results. What was the reason for that failure?

(Mr. Chikvadze, USSR)

The question had certainly lost none of its relevance since, in the ten years since the end of the work on the definition of aggression, repeated acts of aggression had taken place: aggression by the imperialist Powers against Egypt; acts of aggression committed by the United States against Cuba in 1961, then in 1963 against the Republic of Panama, and in 1965 against the Dominican Republic. During the same period the Portuguese colonizers had continued their war of aggression against Mozambique, Angola and the peoples fighting for their independence. There were other examples, but it was impossible to refrain from mentioning in that connexion the unjustifiable war waged by the United States against Viet-Nam and the monstrous crimes committed by its armies on Viet-Namese territory. Mention must also be made of the aggression committed by Israel against the United Arab Republic, Syria and Jordan, an act whose consequences were still being felt, in spite of the resolutions adopted by organs of the United Nations.

The fact that the Committee had been unable to complete its work in that international situation was the fault of those who had, in fact, committed the acts of aggression. There was a direct connexion between the aggressive policy of a given country and its attitude to the question of defining aggression. States which committed aggression were not in the least anxious to engage in its definition and sought pretexts for refraining from doing so, citing, for example, the difficulty of such an enterprise. The task, admittedly, was not an easy one, but the same could be said of many questions which had ultimately resulted in the adoption of international instruments. It was sufficient, for example, to mention the Treaty on the Non-Proliferation of Nuclear Weapons and the Declaration, later the Convention, on the Elimination of all Forms of Racial Discrimination. All difficulties could and must be overcome with goodwill and a real concern for the elaboration of a definition of aggression.

It had also been alleged that a precise definition of aggression might hamper the practical work of the Security Council, since that organ played a kind of police role and not a court function. In his view, however, not only would a definition of aggression not hamper the activities of the Security Council, but it might help it to identify aggressors, in the same way as the provisions of a civil code helped a judge in carrying out his functions.

(Mr. Chikvadze, USSR)

Some members of the Committee had also relied solely on legal arguments and had viewed the question in a purely abstract way. He recalled that the question on the agenda of the General Assembly had related to a definition of aggression "in the light of the present international situation". The delegation of the USSR, for its part, considered that only a detailed analysis of the international situation, which took into account current cases of aggression, could make it possible to draw up a valid definition. It was easy, in Geneva, to forget the scenes of aggression, the noise of explosions and the suffering of populations, but it should be borne in mind the Committee bore a responsibility before history and would be harshly judged by posterity if it did not succeed in carrying its work to completion, because of opposition from the imperialist countries.

Conditions were, however, favourable for elaborating a definition of aggression. On the one hand, the socialist and peace-loving countries, and the majority of members of the Committee, were interested in the question. Furthermore, the United Nations Charter contained the basic elements needed for a definition, as did the provisions of various international instruments such as the London Convention on the definition of aggression and the Charter of the Nürnberg International Military Tribunal. Other United Nations documents, including the resolutions of the twentieth and twenty-first sessions of the General Assembly regarding the legitimacy of the struggle of peoples under colonial rule to exercise their right to self-determination, the inadmissibility of intervention in the domestic affairs of States and the protection of their independence and sovereignty, and strict observance of the prohibition of the threat or use of force in international relations, and of the right of peoples to self-determination, could help the Committee in its work. Finally current acts of aggression by the imperialist countries, notably in Viet-Nam and in Israel, provided the necessary data for analysing specific forms of aggression.

(Mr. Chikvadze, USSR)

With regard to the method to be adopted, he shared the view of the Iranian representative that the points of agreement should be identified. For that purpose, it was necessary first to agree on the meaning of the concept of aggression. The concept could be taken in its broad sense, in other words, as including any use of force, or in its narrow sense, in other words, as implying armed aggression in the sense of Article 51 of the Charter. Each interpretation had its attractions. The Soviet Union had submitted in 1952 a draft definition of armed aggression and in 1953-56 a definition dealing not only with armed aggression but with other aspects of aggression. Those, together with proposals which would be submitted during the present session, should be considered by the Committee. There was also another solution which had been proposed by the representative of Cyprus: the Committee could begin by considering armed aggression and then go on to look at other uses of force prohibited by the Charter.

With regard to the form any definition of aggression should take, studies carried out so far had shown that there were three possibilities: (i) a general definition; (ii) an enumeration; (iii) a mixed form of definition. In previous discussion, the delegation of the USSR had favoured the idea of a definition based on an enumeration of concrete facts to illustrating aggression. The mixed formula, however, might have the support of a larger number of members. He emphasized that any definition should, above all, be based on the Charter and correspond exactly with its terminology. The Charter was a universal document accepted by all countries, and a document based upon it would have every chance of being a valid legal instrument. On the question whether the Committee should prepare a convention or a resolution, his delegation believed that it would be preferable to prepare a convention, but it was also willing to consider the idea of a special resolution of the United Nations.

He expressed the hope that the members of the Committee would show a co-operative spirit and pool their efforts in accomplishing a task which was of particular importance for strengthening peace and the security of the peoples, and for the development of modern international law.

Mr. MOTZFELDT (Norway) said that when the General Assembly had adopted resolution 2330 (XXII), the Norwegian delegation had voted against operative paragraph 1, which recognized that there was a widespread conviction of the need to expedite the definition of aggression, but had abstained in the vote on the resolution as a whole. It had not voted against the resolution because it had not wished to oppose the establishment of a special committee where the question of the definition of aggression could be studied in detail. His delegation considered that progress would be achieved if the work of the 1968 Special Committee succeeded in convincing all its members that in substance the problem was not legal, but essentially political, and could not be solved by legal formulas alone.

In that connexion, his delegation noted with surprise that some members of the Committee insisted on defining the concept of aggression, which was more political than legal, although there was an organ - the Security Council - whose task it was to act when it considered that an act of aggression had been committed. It had been surprised to hear the representatives of the same countries at the Conference on the Law of Treaties react strongly against the idea of defining the legal concept of jus cogens while at the same time refusing to establish an organ to decide cases of jus cogens.

The problem of defining aggression had been discussed before, but the proceedings had always ended in failure. The causes of that failure were many, but it was an over-simplification to maintain that States opposed the definition of aggression because they had committed aggression in the past or wished to be free to do so in the future. Political propaganda was of little help to those who were genuinely seeking effective means of maintaining peace and opposing aggression. It also contradicted the historical facts. The reasons why a definition of aggression had not been included in the Charter had been explained by the rapporteur of the relevant committee at the San Fransico Conference; he had pointed out that the progress of the technique of modern warfare rendered very difficult the definition of all cases of aggression, and that a potential aggressor might take advantage of any omission in a definition.

(Mr. Motzfeldt, Norway)

The records of the Sixth Committee and of the Special Committees showed wide disagreement as to the type and object of the definition to be adopted. Was it a question of defining the term "act of aggression" or the term "armed attack" as used in Articles 39 and 51 respectively of the Charter? Should the definition include the threat or use of force, or so-called economic and ideological aggression?

The adoption by the General Assembly of a resolution on the definition of aggression would amount to amending the Charter without regard to the procedure to be followed in such cases. Under those circumstances, a definition could only create doubt and confusion. It was clear that in a given situation, the decisive factor would have to be the relevant articles of the Charter.

He was ready to admit that those difficulties should not necessarily prevent the Committee from continuing its work; but it remained to be seen whether a definition of aggression would really achieve its purpose and whether it might not encourage attempts to restrict the freedom of action of the Security Council. In any case, it would be dangerous to adopt a definition without first settling those questions.

Since a definition of aggression might create confusion, and even be dangerous, it was comforting to realize that it could also be regarded as unnecessary. For it was not difficult to recognize aggression provided the facts were known; the real difficulty lay precisely in ascertaining the facts, since each party tried to conceal or distort what had happened. So, if there was no agreement on the facts, what purpose would even the most perfect definition of aggression serve? Some delegations were more optimistic, or perhaps had less confidence in the Security Council. However, the attempts by the League of Nations and then the United Nations to define aggression had shown that at least for the time being, there was very little possibility of reaching general agreement on such a definition. It might of course be possible to find a majority of the General Assembly in favour of a definition, complete or otherwise. But to serve any useful purpose, a definition of aggression would have to be all but perfect and have the support of all the major Powers and a large majority of the States Members of the United Nations. Without that support, it would not only be unnecessary, and even dangerous, but also completely worthless. His delegation doubted the possibility, under those circumstances, of reaching a generally acceptable definition, but it would participate in the Committee's work with an open mind and goodwill, in the hope that it could accomplish its task.

Mr. Harizanov (Bulgaria) took the Chair.

Mr. FREELAND (United Kingdom) said that the representative of the USSR would not expect him to accept his attributions of the term "aggression" to various events. He noticed, however, that the list given by that representative had not included the Soviet Union's action against Finland, condemned as aggression by the Assembly and Council of the League of Nations in 1939. He did not intend to pursue those matters now, but references which had been made to the situation in Viet-Nam, in particular, obliged him to say at the outset that the view of the United Kingdom Government on where responsibility in that conflict lay was, of course, very different from the views expressed by the delegations of Romania, Bulgaria and the USSR. Nevertheless, his delegation did not believe that to apportion blame on one side or the other would help to bring the conflict to an end - particularly so at a time when meetings were taking place which might lead to the negotiation of a settlement, a result towards which it was the overriding aim of his Government to assist. Nor did his delegation believe that the introduction of polemics augured well for the Committee's work. That work must take account of contemporary realities, but that did not require a departure from objectivity.

Although his delegation had not supported the establishment of the Special Committee, it had agreed to be a member of it and intended to participate fully in discharging the mandate set forth in resolution 2330 (XXII).

Although experience showed that discussions on the interpretation of terms of reference were generally unprofitable, the fact remained that the Committee was instructed to consider all aspects of the question, so that an adequate definition might be prepared, and to submit to the General Assembly a report on the views expressed and the proposals made. No one familiar with the history of the question could fail to realize that a definition of aggression involved important and complex issues. No decision should be taken without the fullest examination of all the implications in the light of current conditions. It was therefore entirely understandable that the General Assembly should have required the Committee to consider all aspects of the question as an essential prerequisite to the preparation of a definition which could be regarded as "adequate". That crucial part of the work had to be done, even if it entailed going over some familiar ground.

Referring to the third preambular paragraph of resolution 2330 (XXII), he said that, in his delegation's opinion, the strengthening of the will of States to respect all obligations under the Charter was at the heart of the matter. It was

(Mr. Freeland, United Kingdom)

not the absence of a definition of aggression which had hampered the organs of the United Nations in their efforts to maintain peace and security. Success or failure had depended on the willingness, or lack of willingness, of States Members to respect their Charter obligations.

He thought it necessary to dispel any misunderstanding regarding the general attitude of the United Kingdom to the question of defining aggression. In the written comments which his Government had submitted in 1954 and 1965, it had clearly indicated that in principle it would not be averse to a definition of aggression. Its attitude had been, and remained, that whether, considered as an abstract proposition, a definition was desirable depended on whether a satisfactory definition was possible. That was doubtless also the thought behind the words "adequate definition" in resolution 2330 (XXII). The desirability of adopting any particular proposal for a definition likewise depended on whether or not it was satisfactory. That attitude was prompted by prudence and reason.

The objections which his Government had raised to the various definitions previously proposed had stemmed not from any lack of sympathy with the desire of many countries to define aggression but from the intrinsic difficulty of the endeavour. His delegation was prepared, in the light of what it considered the appropriate criteria, to consider objectively any proposals submitted to the Committee.

Those criteria were essentially practical. The first test was that for any proposed definition to be regarded as satisfactory, it must demonstrably have more advantages than disadvantages. In particular, the likelihood of its being a deterrent to aggression must be greater than the likelihood of its hampering the prospective victims of aggression in their efforts to resist; and it must be more likely to help than hinder an international organ in determining the existence of aggression or organizing collective resistance. It was relevant to note that the committee which had considered the question at San Francisco had deliberately decided against the inclusion of a definition of aggression in the Charter, mainly owing to the difficulty of finding a definition which would not encourage a future aggressor to twist its meaning or which might not delay action by the Security Council. It had been decided that, in all the circumstances, it should be left to the Council to determine what constituted a threat to peace, a breach of the peace or an act of aggression.

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(Mr. Freeland, United Kingdom)

Another criterion to be applied to any proposed definition was the extent to which it left the decision on what constituted aggression to be taken in the light of all the facts of a case and all its surrounding circumstances. In the last resort, the paramount consideration must be the general impression gained by the organ concerned from all the factors involved. That was not to say that the organ concerned would have difficulty in recognizing aggression when it occurred, but it would be dangerous to rely too much on a priori formulations which could not possibly apply to all cases.

Yet another criterion, and one which several delegations had mentioned, was that any definition which might be adopted should be generally acceptable. There might be disagreement about the utility of even a generally accepted definition, but there could surely be none about the inutility of a definition which was not so accepted.

His delegation also agreed that any definition should be derived from the concept of aggression as used in the Charter, where what was envisaged was clearly the use, in one form or another, of physical or armed force. The first of the four aims set out in the preamble to the Charter was "to save succeeding generations from the scourge of war". Another preambular paragraph said that "armed force shall not be used, save in the common interest". Article 1, paragraph 1, distinguished between "collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace" and "adjustment or settlement of international disputes or situations which might lead to a breach of the peace". A similar distinction appeared in Article 2, paragraph 3 of which dealt with the peaceful settlement of disputes, while paragraph 4 set out the fundamental obligation of Members to refrain in their international relations from the threat or use of force. The distinction was also reflected in Chapters VI and VII, the latter empowering the Security Council to "determine the existence of any threat to the peace, breach of the peace, or act of aggression" and to decide what measures should be taken "to maintain or restore international peace and security". As stated in Article 42, such measures might include the use of "air, sea, or land forces". It could not, surely, have been intended that the Security Council would be authorized to use armed force of that kind otherwise than to counter the use of armed force. Nor was there any doubt that when Article 44 referred to a decision by the Security Council to use "force", that word could only mean "armed force".

(Mr. Freeland, United Kingdom)

His delegation was therefore unable to accept the view that the concept of aggression, as used in the Charter, included so-called ideological aggression or economic aggression, at least unless they involved some element of physical or armed force. The activities described under those headings fell into quite a different category. They might, indeed, involve breaches of international law, depending on the circumstances, but to read them into the concept of aggression as used in the Charter would amount to amending the Charter. His delegation had therefore heard with interest the suggestion by the representative of Cyprus that the Committee should concentrate its attention on what that representative had described as "armed aggression", to the exclusion of so-called ideological or economic aggression. On the other hand, his delegation considered that it would be unrealistic to try to define separately those forms of direct aggression involving the direct use of armed force in violation of territorial integrity, which were in any event the most easily recognizable, while leaving on one side those less obvious, but no less serious, forms of aggression which involved the indirect use of armed force. So to proceed would create a misleading impression of the relationship between the two and of their relative importance and prevalence. However, that did not appear to have been the intention of the representative of Cyprus.

His delegation agreed with those who had drawn attention to the relevance for the task of the 1968 Special Committee of the work done in the United Nations on principles of international law concerning friendly relations and co-operation among States, in particular on the principle that States should refrain in their international relations from the threat or use of force. The results of that work so far might give some valuable guidance to the 1968 Special Committee in finding bases for agreed conclusions.

Mr. Yasseen (Iraq) resumed the Chair.

Mr. SIRRY (United Arab Republic) said that on reviewing the history of the question of the definition of aggression since 1950, when it had first come before the General Assembly, one was struck by the meagreness of the results obtained in relation to the efforts expended. On various pretexts, the question had been allowed to hang fire.

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(Mr. Sirry, United Arab Republic)

However, his delegation did not think that the question was really so complex or that the wrong approach had been adopted. Careful study, in the light of the realities of contemporary world politics, of the arguments advanced against defining aggression showed that they had been invoked not so much to clarify the various aspects of the question as to encourage a subjective attitude towards aggression.

A definition of aggression would undoubtedly not only assist the Security Council in determining whether there was aggression, but above all it would create a unity of thought and a clear understanding of the term as used in multilateral or bilateral diplomatic contacts. But even in the latter type of diplomacy, where a commitment to oppose aggression carried perhaps even greater weight, especially if one of the parties had immense influence and corresponding responsibilities in world affairs, it might subsequently be interpreted in a subjective manner, with tragic consequences.

Thus, before the war of aggression launched against the Arab countries in June 1967, the United Arab Republic had been officially informed on 23 May and on subsequent occasions by a permanent member of the Security Council that its Government and the other Arab Governments could rely on the Government in question to maintain firm opposition towards any form of aggression in the region. In a speech on the same day, the Head of the State in question had assured the Heads of State of the Middle East that his country was firmly committed to the support of the political independence and territorial integrity of all the nations of the region. However, events had taken the course known to all, and not only had the member of the Security Council in question backed down from its commitment, but it had even supplied offensive weapons to an aggressor unlawfully occupying Arab territories.

(Mr. Sirry, United Arab Republic)

In the absence of a definition of aggression, such a subjective attitude to aggression, besides leading to tragedies, cast doubt on the commitments entered upon by some if not all of the major Powers in matters affecting international peace and security.

Several representatives had quite rightly reminded the Committee of the security assurances to be given by three permanent members of the Security Council to the non-nuclear-weapon countries signatories of the Treaty on the Non-proliferation of Nuclear Weapons. Those assurances would take the form of a solemn declaration of intent to the effect that any State committing aggression accompanied by the use of nuclear weapons, or threatening such aggression, must be aware that its actions would be countered effectively by measures taken in accordance with the United Nations Charter to put an end to the aggression or remove the threat of aggression.

Since the word "aggression" was undoubtedly the key word in such a declaration, it was justifiable to ask what was meant by "aggression" in that context.

Since 1957, when the United Nations had interrupted its work on the question of defining aggression, important new considerations had emerged which could not be ignored. The movement for emancipation from colonial rule based on the principle of self-determination had become a fundamental reality of the contemporary world. Yet, at the same time as that movement had been gathering momentum, a growing tendency had been noted to use force in the form of armed intervention or aggression, generally justified by so-called considerations of security and legitimate self-defence. The most striking example of that kind had been the aggression of which the Arab nation had been a victim in 1967. At the very moment when the Security Council had been debating the situation in the Middle East, the Israel forces had suddenly invaded three Arab States, causing the loss of tens of thousands of lives as well as considerable material losses. That deliberate act of aggression, which had been prepared for a decade, had been followed by others.

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(Mr. Sirry, United Arab Republic)

In that connexion, he drew attention to the continued occupation, after more than one year, of Arab territories by Israel forces, in violation of the principle of territorial integrity enunciated in the Charter, to the formal annexation of certain Arab territories such as Jerusalem, in violation of the principle of the inadmissibility of acquisition of territories through war, and to the refusal of Israel to accept and implement the Security Council resolution of November 1967, which had recommended the peaceful settlement of the question.

His delegation was convinced of the need to put an end to the subjective interpretation of the provisions of the Charter. Consequently, it welcomed with satisfactio the Mexican representative's suggestions that the Committee should pay attention to the notion of armed attack referred to in Article 51. It also supported the French representative, who had placed the question in its proper perspective by stating that self-defence could be justified only by illicit recourse to armed force.

His delegation was confident that, since armed aggression was directed against the territorial integrity of a State, it could be easily defined. Even those with the least enthusiasm for defining aggression had allowed that violation of the territorial integrity of a State was an irrefutable criterion for determining armed aggression. In the view of an eminent expert in international law, Professor de Vischer, it was even the only applicable criterion for defining aggression. As for the type of definition to be adopted, his delegation favoured the comprehensive type which, while clarifying the general notion of armed aggression, would comprise a list of acts of aggression which was not meant to be exhaustive. His delegation's position had remained unchanged ever since the United Nations had begun considering the question. As early as 1952, Colombia, Egypt, Mexico and Syria had asked the Special Committee to submit to the General Assembly a draft definition of aggression which should include a general definition of aggression by reference to its constituent elements, a non-exhaustive enumeration of cases of aggression and an enumeration of the reasons which might not be invoked to justify aggression.

(Mr. Sirry, United Arab Republic)

With regard to the form of the definition, his delegation thought that a General Assembly resolution would provide the most effective framework.

It did not consider that there was any conflict between the mandate of the Special Committee and that of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States. On the contrary, it believed that the work of the former could only help to promote the activities of the latter especially with regard to the principle that States should refrain, in their international relations, from the threat or use of force.

The delegation of the United Arab Republic attached great importance to the definition of aggression and sincerely believed that the work of the Committee would contribute to international stability and peace. It welcomed the constructive attitudes so far adopted during the debate and hoped that that state of affairs would continue.

Mr. ALHOLM (Finland) said his delegation believed that there was a direct relationship between strict observance of the principle concerning the prohibition of the threat or use of force in international relations (Article 2, paragraph 4 of the Charter) and the effective functioning of the United Nations. For that reason, his country was strongly opposed to any form of aggression, whether direct or indirect. It was only by adhering, as Finland did, to a policy of peaceful co-existence that countries would be able to work out mutually acceptable relationships and to find solutions to problems of concern to all. His delegation had stated on many occasions that the Members of the United Nations should do all in their power to strengthen the collective security system of the Charter. Since, as the Secretary-General had already pointed out in his report of October 1952 (A/2211), the concept of aggression was closely bound up with the system of collective security, it should be studied in greater detail and formulated in appropriate legal terms.

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(Mr. Alholm, Finland)

As had already been pointed out, numerous efforts had been made at different times, both in the League of Nations and in the United Nations, to formulate a universally acceptable definition of aggression, but so far without result. From that it should not be concluded that the definition of aggression was an impossible undertaking. His delegation was convinced that that was not so, although it realized the complexity of the problems involved. Even those States which were in favour of defining aggression were far from agreed on the type of definition that should be adopted - general, enumerative or mixed. Moreover, some States thought that the primary task should be to define direct aggression, while others favoured as broad a definition as possible, so as to include economic, political and other forms of aggression.

At the present stage of the work, his delegation did not deem it advisable to take a stand on the different types of definition mentioned. However, it wished to stress that, to be really valid, the definition adopted must be acceptable to the majority of States, and to the major Powers responsible for the maintenance of international peace and security. That was all the more true in view of the declared intention of three nuclear Powers to submit in the Security Council a resolution on security assurances, pledging them to take action to counter aggression with nuclear weapons or the threat of such aggression against a non-nuclear State party to the Treaty on the Non-proliferation of Nuclear Weapons.

His delegation fully realized that aggression could not be ended merely by defining it. Only by eliminating the causes of war could there be any hope of eliminating war itself.

To achieve concrete results, the Committee should conduct its work objectively and impartially, setting aside all particular interests and taking due account of the views expressed by the various delegations. His delegation was fully prepared to contribute, in that spirit, to the elaboration of a generally acceptable definition of aggression which would enable the organs of the United Nations to strengthen the collective security system provided for in the Charter.

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Sir Kenneth BAILEY (Australia) pointed out that his delegation had abstained in the vote on General Assembly resolution 2330 (XXII) because it did not share the "widespread conviction of the need to expedite the definition of aggression". It still did not think that a definition of aggression was necessary, or likely to have an important influence on the maintenance of international peace and security. History showed how difficult it was to formulate a generally acceptable definition of aggression. The difficulty was accentuated by the existence of so many conflicts which aroused emotions that impeded the spirit of objectivity with which the Committee, as a group of jurists, should approach its task.

Nevertheless, Australia, which was now a member of the Committee, intended to participate sincerely and energetically in carrying out the mandate entrusted to the Committee by the General Assembly, namely to consider all aspects of the question, so that an adequate definition of aggression might be prepared. It should be noted that the General Assembly neither required, nor forbade the Committee to prepare a definition of aggression.

The first aspect he wished to consider was that the question was not new. It had been under consideration, off and on, for nearly fifty years by various international organizations. On the basis of a systematic examination of the documentation supplied or cited by the Secretary-General concerning the numerous previous attempts by United Nations Committees to solve the problem, it was doubtful whether the five weeks at the Committee's disposal were really sufficient.

It was legitimate to ask - and that might be termed the second aspect of the question - why none of those previous attempts had succeeded. It was important that the Committee should understand the reasons for that failure, in order to be able to prepare an "adequate" definition, namely, a definition equal to the relevant requirements. For a United Nations organ, the relevant purpose was clear: a definition of aggression should supply criteria that would enable the appropriate organ - ordinarily the Security Council - to determine the existence or otherwise of an act of aggression.

But before considering further why previous definitions had failed to supply those criteria, it was necessary - and that might be termed the third aspect of the question - to refer to the Charter.

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(Sir Kenneth Bailey, Australia)

In the Charter, the concept of aggression was clearly connected with the maintenance of international peace and security and, more specifically, with breaches of the peace. One of the purposes of the United Nations (Article 1, paragraph 1) involved the taking of effective collective measures for "the prevention and removal of threats to the peace and for the suppression of acts of aggression or other breaches of the peace". Article 24 conferred on the Security Council "primary responsibility" for taking the effective measures referred to in Article 1. Finally, Article 39 entrusted the Security Council with the task of determining "the existence of any threat to the peace, breach of the peace, or act of aggression".

Nowhere did the Charter contain any elaboration, interpretation or definition of the word "aggression". That omission had been deliberately decided by the San Francisco Conference, which had chosen to leave the matter to the absolute discretion of the Security Council. His delegation was of the opinion that experience had vindicated that decision. The absence of a definition had not been a serious drawback either in the United Nations or in the League of Nations. The Security Council had often chosen to consider the cases submitted to it simply as a threat to the peace or a breach of the peace rather than seek to establish aggression; in so doing, it had acted wisely because its powers were exactly the same in all three cases.

The reason why previous attempts to define aggression had failed was that they had sought to lay down a list of circumstances in which the organ concerned - the Council of the League or the Security Council of the United Nations - would be able, or required, to act automatically whenever those circumstances existed. They had failed because they had paid insufficient attention to the fact that the central element to be determined was not a legal, but a political, question unsuited for prior definition.

The concept of aggression, in the ordinary meaning of the term, was relatively simple and implied "unprovoked attack". But the word "unprovoked" alone was a source of endless controversy. The Charter prohibited, in international relations, the use of force except, inter alia, in the exercise of the inherent right of self-defence. But how long, for instance, could a Government ignore frontier incidents or neighbouring troop movements? How much did that depend on the relative size and strength of the States concerned? By what yardstick could the patience of a

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(Sir Kenneth Bailey, Australia)

Government or the emotional stability of a people be measured? Those were not matters for legal definition, but for political appraisal. Ultimately, to determine the existence of an act of aggression and to identify the aggressor was to determine whether the act in question was one of attack or of defence. In the view of his delegation, that could be achieved by the exercise of discretion in assessing a total situation, but not by the mere process of definition.

He cited a passage from the Secretary-General's report to the General Assembly in 1952 (A/2211), according to which in 1924, the Government of the Soviet Union had expressed the view to the League of Nations, in connexion with the draft Treaty of Mutual Assistance, that in the international situation then prevailing, it was impossible, in most cases, to say which party was the aggressor. But the Soviet Union had subsequently modified its attitude because, some ten years later, in 1933, it had submitted to the General Commission of the Disarmament Conference a proposal based on the principle that, in any conflict, the aggressor was the State which first employed force outside its territory. With some extensions of the concept of aggression in 1956, that priority principle had remained the central feature of the proposals since made by the Soviet Union. The idea underlying those successive proposals was that the element of priority in time, with regard to the use of force, would suffice to solve all the problems of the relationship between the prohibition of the use of force in international relations (Article 2, paragraph 4, of the Charter) on the one hand and, on the other, the exercise of the inherent rights of self-defence, individual or collective, recognized in Article 51. The text proposed by the Soviet Union in 1956 contained no explicit mention of either element. In the view of the Australian delegation, such a definition seemed to deprive States of elements of flexibility in providing for their legitimate defence that the Charter had been careful to preserve. Accordingly, it constituted one of the important precedents to which the General Assembly had expressly instructed the Committee to pay attention. That was the fourth aspect of the question to which he wished to draw the Committee's attention.

His delegation did not think that the principle of priority in time would produce an adequate definition. To isolate that single factor was to over-simplify the question. Such a definition would be a standing invitation to provocation and, in so far as it was taken as a criterion, the Security Council would be compelled to take an abstract view of any breach of the peace that came before it. In his

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(Sir Kenneth Bailey, Australia)

delegation's view, it was essential that the Security Council should be in a position to exercise its discretion and form its judgement on the total situation confronting it, whenever the peace was threatened or violated. It was able to do so, without the need for a definition, thanks to the flexible language of the Charter.

As a non-nuclear-weapon State, Australia had naturally noted with great interest the security guarantees offered in connexion with the Non-Proliferation Treaty by three major nuclear-weapon States permanent members of the Security Council. The proposed guarantees would come into operation in the event of nuclear aggression or the threat of such aggression. In one sense, they would give a new dimension in the Security Council to the concept of aggression. In fact, for the purposes of Article 39, a finding of aggression by the Security Council was not necessary for it to exercise its powers with a view to maintaining or restoring international peace and security. It could act on the basis of a threat to the peace or a breach of the peace without any finding of aggression. The position would be different in relation to the proposed nuclear security guarantees: they would operate only if there had been a finding of aggression or the threat of aggression with nuclear arms. Several delegations had accordingly expressed the view that the proposed guarantees would necessitate a definition of aggression. His delegation did not share that view. In its opinion, the security guarantees made the task of definition neither harder nor easier. The question to be decided by the Security Council, so far as a finding of aggression was concerned, was the same in relation to the security guarantees as it was under Article 39 in general. The decisive question, whether in a given situation a State was the defender or the attacker, whether in effect the attack was really unprovoked, could not be solved by definition.

In the view of his delegation, the nuclear security guarantees only served to emphasize the importance for world peace, of agreement among the nations, and particularly among the three nuclear countries in question. That remark was true generally, and very often the Security Council's inability to act had been due not so much to the lack of a definition of aggression as to a fundamental clash of views between the permanent members of the Council.

His delegation would endeavour - and that was the fifth aspect - to identify the elements which should be included in any definition of aggression.

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(Sir Kenneth Bailey, Australia)

It was generally agreed that the Committee should remain at all stages within the limits of the text of the Charter as it stood. To propose a definition that went beyond those limits or necessitated an amendment of the Charter would be self-stultifying. Moreover, the Charter gave clear guidance as to the general scope of the concept of aggression. It used the term "aggression" twice, each time squarely within the framework of the maintenance or restoration of international peace and security. Prima facie, an act of aggression was or involved a breach of the peace. In the Charter sense, aggression was concerned with the use of armed force. A State might use armed force by committing a classical act of aggression (invasion of the victim's territory, bombardment, naval blockade, etc.); it might also do so by supporting armed bands organized in its own territory for the invasion of another State. However, armed infiltration into the territory of another State for such purposes as terrorism, sabotage, subversion, or the fomenting of civil war seemed to his delegation to fall just as clearly within the concept of aggression as delimited in Article 1, paragraph 1, and in Article 39 of the Charter.

His delegation had tried to avoid referring to direct or indirect acts of aggression, since all members might not be using those expressions to denote the same kinds of acts. In its view, the Charter did not contain anything that could justify an attempt to include in the concept of acts of aggression, non-military forms of pressure, whether political, economic or ideological.

In the Australian view, the Charter made no exception in proscribing the use of force in international relations (Article 2, paragraph 4), so as to permit States to use arms against other States in support of what might be called colonial conflicts. The existence of different views on that point recalled that the whole subject of the interpretation and application of Article 2, paragraph 4, of the Charter was at present under reference to the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States. The Committee might well await the results of those discussions.

He had not mentioned the code of offences against the peace and security of mankind to which previous Committees had referred. In his opinion, that was an entirely separate question because it raised questions of individual liability and jurisdiction, in addition to the definition of acts of aggression committed by a State. It did not appear to have been included in the Committee's mandate and it was currently assigned to a different United Nations organ.

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(Sir Kenneth Bailey, Australia)

If the Committee undertook to discuss specific texts, old or new, with a view to preparing a new definition of aggression, it should never lose sight of the need to arrive at as broad a consensus as possible. However designated, a definition should have something of the quality of an agreed interpretation of the Charter. It could not have legally binding effect but, for what it was worth, could serve as something like a set of guidelines. With reference to Chapter VII of the Charter, interpretation would normally be the responsibility of the Security Council, in the performance of its functions. But whether a definition was attempted initially by the General Assembly or by the Security Council, its influence must depend in the long run on the extent to which it received the collective support of the permanent members of the Security Council which, both by their votes and by their conduct, bore the main responsibility for the maintenance of international peace and security.

Mr. HARGROVE (United States of America) recalled that at the preceding meeting his delegation had declared its willingness to comply with appeals made by many delegations to refrain from any allusions to particular concrete controversies. It had at the same time expressed its misgivings, because it fully recognized the bearing which actual events had on the work of the Committee. The representative of the USSR had, in fact, clearly rejected those appeals, stating that the Committee should proceed in its work by taking account of all relevant events in contemporary life. If the Committee so wished, the United States delegation was prepared to proceed on that basis, as it itself had stressed the importance for the work of the Committee of examining actual cases of aggression.

One of those cases was South-East Asia, including but unfortunately not limited to the tragic case of Viet-Nam. It was true, as the representative of the Soviet Union had asserted, that an act of aggression had been committed in that part of the world, but the United States delegation categorically rejected the conclusion that the aggressor was the United States. The only aggressor was North Viet-Nam, and those in complicity with it. The United States delegation would be interested to hear the reasoning underlying the conclusions of the Soviet representative.

Did he deny that the Hanoi régime, recognized by the Government of the USSR, which maintained diplomatic relations with it, and which had proposed it for membership in the United Nations, was bound by the obligations of international law enunciated in Article 2, paragraph 4, of the United Nations Charter? If so, did he also deny that the Government of North Viet-Nam was bound in the strictest terms

(Mr. Hargrove, United States)

by the Geneva Agreements of 1954 to refrain from using or even from permitting the use of force against the Republic of Viet-Nam? The comments made by the representative of the USSR, in fact, gave the impression that North Viet-Nam had assumed no obligations when it had signed the Geneva Agreements of 1954 on Viet-Nam and 1962 on Laos. The fact was, however, that those international instruments, accepted voluntarily and presumably in good faith by North Viet-Nam, had imposed both obligations and restrictions upon that country. There had been the obligation, contained in article 1 of the 1954 Agreement on cessation of hostilities, to regroup all its armed forces north of the demarcation line along the seventeenth parallel; there had been the obligation, contained in article 19, to ensure that the area to the north of the demarcation line would not be used either for the resumption of hostilities or in the service of an aggressive policy; there had been the obligation, under articles 5 and 6 of the same Agreement, to withdraw all military forces, supplies and equipment from the demilitarized zone established on either side of the demarcation line. There had been an obligation to permit no person, military or civilian, to cross that line unless specifically authorized to do so by the Joint Commission. Finally, there was the obligation, both in the 1954 and 1962 Agreements, for North Viet-Nam to remove its forces from Laos, to respect the sovereignty, independence, unity and territorial integrity of Laos and to refrain from any interference in the internal affairs of Laos.

Those obligations, which had been accepted voluntarily by the Government of North Viet-Nam, were the same in essence as the principles on which the Charter of the United Nations was based and were an early formulation of one of the principles contained in the "Declaration on the Inadmissability of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty" which the General Assembly had unanimously adopted in resolution 2131 (XX). Article 2 of that Declaration addressed itself to the same points covered, as regards relations between North and South Viet-Nam, by the Geneva Agreements. It specified that "no State shall organize, assist, foment, finance, incite or tolerate, subversive, terrorist or armed activities directed towards the violent overthrow of the régime of another State, or interfere in civil strife in another State". It was precisely those obligations and restrictions which North Viet-Nam had refused to abide by in practice in its relations with South Viet-Nam, despite its adherence to the Geneva

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(Mr. Hargrove, United States)

Agreements. It was those obligations which the Hanoi Government had violated with progressively greater intensity since 1954.

If the representative of the Soviet Union did not deny that North Viet-Nam was bound by those obligations, perhaps he denied that North Viet-Nam was in fact using force, in an effort to impose control of North on South Viet-Nam. He would in that case have to refute the political murders, terrorism, massive open and clandestine military operations waged by North Viet-Nam for years with the avowed purpose of changing the Government of the Republic of Viet-Nam and indeed the whole social system of that country. He would have to deny also that the territory of Laos had been turned into an open military staging ground and conduit of supply by the Hanoi régime, as Laotian representatives themselves had repeatedly made clear in the United Nations. Could the representative of the Soviet Union, finally, deny that even since the beginning of the work of the Committee, the aggression which he had defended had manifested itself most abominably in the random murder of the civilian population of Saigon by rockets fired capriciously, with no military purpose whatsoever, for the simple purpose of killing?

The representative of a Government which was not merely a principle apologist of that aggression, but also a major material supplier, might incidentally be asked where the instruments of death employed by North Viet-Nam came from.

The views expressed by the representative of the Soviet Union had demonstrated that it had no willingness to apply the principles of the Charter to the situation in Viet-Nam. They seemed to proceed from the premise that prohibitions on force and aggression could be turned on and off at will according to whether or not force was being used by those politically and ideologically acceptable to the Soviet Union, against those who were not. It also appeared that the inherent right of self-defence as recognized in Article 51 of the Charter could similarly be switched on and off at the discretion of the Soviet Union. It was doubtless for that reason that the Soviet Government had repeatedly opposed and had thwarted efforts to have its views tested against the Charter in that organ charged with responsibility for international peace and security. It was encouraging, however, to note that, in spite of the attitude of the Soviet Government toward seeking solutions in the United Nations, negotiations which could lead to a settlement had opened in Paris.

The United States delegation agreed with the representative of the USSR that the Committee should never lose sight of actual events. It was puzzled, however,

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(Mr. Hargrove, United States)

by his statement that aggressors had always been confident that they would not be judged aggressors, and that indeed no such judgement had ever been made. Members of the Committee had already corrected that historical error. The Soviet Union occupied, in fact, the almost unique position among world Powers of having been formally judged an aggressor by a world body.

It was instructive that the USSR representative seemed to think that history, as well as international law, could be switched off at will. At the twenty-second session of the General Assembly, the representative of the United States had felt it useful to recall some of the definitions of aggression proposed on a number of occasions by the Government of the Soviet Union, comparing them with the actions of a country which should have appeared an examplar of virtue in its own international conduct. He had recalled in chronological order that in 1933 the Soviet Union had incorporated its proposed definition of aggression into non-aggression treaties with Estonia and Lithuania. A dozen years later those States had been forcibly occupied and incorporated into the Soviet Union. Everyone recalled the invasion of Finland in 1939 and the judgement by the League of Nations of aggression by the Soviet Union. A non-aggression treaty had also been signed with Czechoslovakia but, in 1948, the freely chosen Government of that country, under the threat of force, had been subverted with the assistance of agents of Soviet Communism and a pro-Soviet régime had been installed. Czechoslovakia had appealed to the Security Council, but the Soviet Union had paralysed the Council by a double veto. Four years later the Government of the Soviet Union had had the temerity to include in its proposed definition a paragraph calling it aggression to "promote an internal upheaval in another State or a reversal of policy in favour of the aggressor". Another version of the Soviet definition prohibited "invasion by its armed forces, even without a declaration of war, of the territory of another State". When the Communist régime of North Korea had done just that in 1950, the Government of the USSR had acted as accomplice. Everyone was familiar with the judgement of aggression which had been the result of consideration of the matter by the United Nations. In 1956 the Soviet Union had overthrown the free Government set up by Hungarian patriots and had reimposed a Communist régime by slaughtering those opposed to it. The Hungarian people must draw cold comfort from the pious declaration of the Government of the Soviet Union that no State could invade another

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(Mr. Hargrove, United States)

State, retain its armed forces in another State without permission, or use any revolutionary or counter-revolutionary movement, civil war, disorders or strikes to justify an attack upon another. Soviet proposals had also always identified as aggression the "naval blockade of the coasts or ports of another State". A situation had arisen barely a year before in which a State Member of the United Nations had formally complained to the Security Council that just such an act had been committed. The very least that the Council could have done if it was to fulfil its responsibilities was to call on the parties to forgo those actions which threatened peace, to enable it to examine the competing charges. Just such proposals were made. The representative of the Soviet Union in the Security Council, who it had been hoped would show a greater sense of responsibility, had instead taken the position that the forces of imperialism had invented a crisis for their own purposes and that there was no need for the Council to bother doing anything about the situation. The Committee did not need to be reminded of the catastrophic consequences of the Council's inaction at that time.

That sampling of the record had showed that the Soviet Union had repeatedly condemned itself by acting against its own delcarations. The delegation of the United States had cited those matters not by way of comment on the work of the Committee, with which it intended to co-operate actively, but in order to suggest that prudence and commonsense dictated that the attitude of the main apologist for a definition of aggression must be taken into account in relation to its own proposals. As the United States representative had stated at the twenty-second session of the General Assembly, if a definition of aggression was to guarantee the security of all States large and small, it must mean the same thing to everyone, regardless of ideology or power or political interests. For all should have one supreme interest and that was peace.

Mr. CHIKVADZE (Union of Soviet Socialist Republics) said that he intended to reply in detail to the statement of the representative of the United States when he was given an opportunity.

Mr. MARPAUNG (Indonesia) urged members of the Committee strictly to confine themselves in their statements to the tasks assigned to the Committee by the General Assembly, so that the work could proceed normally in a spirit of co-operation, and so that the hope expressed by many delegations at the General

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(Mr. Marpaung, Indonesia)

Assembly could be realized. Understanding and a conciliatory attitude must be shown if the Committee was to submit a report, on the basis of which an adequate definition of aggression could be prepared.

The CHAIRMAN said that he counted on the goodwill of all members of the Committee for the performance of the task entrusted to it.

The meeting rose at 6.15 p.m.

SUMMARY RECORD OF THE NINTH MEETING

Held on Friday, 14 June 1968, at 3.15 p.m.

Chairman: Mr. YASSEEN (Iraq)

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (General Assembly resolution 2330 (XXII)) (agenda item 5) (continued)

Mr. JAHODA (Czechoslovakia), replying to the statement made by the United States representative at the previous meeting, objected to the latter's ill-founded allusion to the events which had taken place in Czechoslovakia in February 1948. He rejected the assertion that those events had been produced by interference from outside. The changes made then had been in accordance with the country's Constitution and were an expression of the sovereign will of the Czechoslovak people. Czechoslovakia was and intended to remain an independent sovereign State.

Mr. CHIKVADZE (Union of Soviet Socialist Republics), also replying to the statement made by the United States representative at the previous meeting, pointed out that the Committee had at no time decided to exclude references to political issues in its deliberations. It would indeed be meaningless to try to define aggression without considering specific instances of aggression.

The most flagrant case of aggression since the Second World War was that of the United States in Viet-Nam, where half a million United States troops were slaughtering a patriotic people trying to defend their country. The United States Government's stock response to accusations in that regard was that it was acting in self-defence, notwithstanding the fact that its own troops had attacked Viet-Nam and not vice versa. Even eminent United States citizens found their Government's position untenable from the standpoint of international law. It had violated the 1954 Geneva Agreements. It was now trying to take the credit for initiating the Paris talks, whereas the credit was due entirely to the efforts of peace-loving forces throughout the world.

He repudiated the United States representative's statement regarding Soviet action in the Baltic States and Hungary. The peoples of the Baltic States had themselves overthrown their bourgeois regimes, which had been prepared to support Hitler, and on the basis of a free referendum had proclaimed socialist republics and had voluntarily joined the USSR with the same rights as the other Republics of the Union. The facts of the counter-revolution staged by reactionary elements in Hungary with the active participation of imperialist Powers were well known. Nevertheless, the United States representative had cited that clear case of United States-inspired

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(Mr. Chikvadze, USSR)

indirect aggression against Hungary as Soviet interference in Hungary's internal affairs. The true position could be seen from the statements of Hungarian representatives on the subject in various United Nations bodies.

He thought it injudicious of the United States representative to have mentioned the subject of naval blockades. The United States Government systematically used its fleets for intimidating small independent countries and imposing its will on them. It would have succeeded in strangling Cuba's economic life if the USSR and other socialist countries had not come to that country's assistance. The United States representative had also distorted the facts about Israel's aggression in the Middle East and United States action in Korea. The USSR was anxious to arrive at a definition of aggression in the light of the actual international situation and would oppose any attempts to falsify history.

He denied that the Soviet Union Government had adopted a negative attitude towards the definition of aggression since 1923, as claimed by the United States representative. The Soviet Union Government's statement in connexion with the draft agreement on mutual assistance in 1923 that it was not possible to establish which country was the aggressor and which the victim in every international conflict could hardly be denied, especially in the context of the present international situation, where covert aggression could take many forms. He reminded the United States representative that the USSR had acceded to the 1933 London Conventions and had applied the provisions of the 1928 Kellogg Pact in its relations with neighbouring countries.

If a clear definition of aggression existed, the United States would not be able to accuse Viet-Namese patriots of aggression because they opposed the United States troops invading their country. It would not be able to label the acts of national liberation movements acts of aggression. The United States was hardly in a position to complain that people were being killed in South Viet-Nam when its own troops were using chemical and biological weapons, gas, napalm and famine to destroy patriotic people defending themselves. Killing seemed to have become the United States way of life, both at home and abroad. There seemed to be a link between the desire of the United States to play the part of a gendarme in international affairs and the widespread gansterism in its own territory.

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The CHAIRMAN appealed to the representative of the USSR to confine his remarks to international problems and not to refer to the internal affairs of member countries.

Mr. CHIKVADZE (Union of Soviet Socialist Republics), concluding his statement, assured the Committee of his country's sincere desire to work with other delegations towards an agreed definition of aggression and to resolve the deadlock in which the question had remained for the past ten years because of the attitude of some of the western Powers. He thought it was useful for members to clarify their individual positions before trying to achieve unity.

Mr. TARAZI (Syria) said that the question of a definition of aggression had been studied at length by the League of Nations and the United Nations. As early as 9 November 1950, at the 389th meeting of the First Committee, the Syrian delegation had proposed that the question should be referred to the International Law Commission. Yet despite the many General Assembly resolutions adopted on the subject, the report of the Secretary-General and the reports of the two committees set up to consider the question, after eighteen years the General Assembly had still not managed to define aggression.

The task entrusted to the Committee in General Assembly resolution 2330 (XXII) was not only to consider the question from the legal point of view but to appraise it in the light of the present world situation. The Committee would accordingly need to consider historic developments before it could make an accurate analysis of contemporary events.

Operative paragraph 1 of the General Assembly resolution made it clear that the Assembly wanted a definition of aggression. He could not share the views of the representative of Italy, who had described the resolution as a compromise leaving the main issue undecided. Nor did he understand how certain delegations could suggest that the Committee should not do its utmost to approve a definition of aggression; the delegations in question were, needless to say, precisely those that objected to any discussion of current events. Some delegations, after voting against the establishment of the Committee, had later agreed to serve on the Committee; they should therefore be prepared to discuss the question on a factual basis.

(Mr. Tarazi, Syria)

Authorities on public international law had never been opposed in principle to defining aggression, as could be seen from the writings of such distinguished jurists as A. de la Pradelle, Charles Chaumont and Ian Brownie. During the inter-war period, the same attitude had been manifested in a number of treaties and in the League of Nations Declaration of November 1927, which had decreed that all wars of aggression were and remained prohibited. The Sixth Pan-American Conference, held at Havana, in 1928, had decided that all aggression should be considered illicit and as such prohibited. At the Disarmament Conference held in London in 1933, a great effort had been made to define aggression, but in vain. The inability of the League of Nations to adopt a definition of aggression had precipitated the Second World War.

During the same period President Roosevelt, in his message on 16 May 1933, had called on Heads of State to sign a solemn non-aggression pact and had asked all Governments to undertake not to send armed forces of any kind across their frontier. Strangely enough, in 1933 the Soviet Union and the United States had agreed to adopt a definition of aggression. Why had their agreement not been maintained following the entry into force of the United Nations Charter, particularly in view of the fact that the stipulations of the Charter were stronger than those of the Covenent of the League of Nations?

Another feature of that period had been the large number of bilateral and multilateral non-aggression pacts, including the London Agreement of July 1933, the Chapultepec Act signed by all the American Republics, the Soviet-Afghanistan Neutrality and Non-Aggression Treaty of 24 June 1931, the Franco-Soviet Non-Aggression Pact of 29 November 1932, the Little Entente agreements and the non-aggression treaty signed by Afghanistan, Iraq, Iran and Turkey at Teheran on 8 July 1937. That last treaty, known as the Saad Abad Pact, had listed the following acts to be considered acts of aggression: the declaration of war; the invasion by the armed forces of a State, even without a declaration of war, of the territory of another State; the attack by a State's land, sea or air forces, even without a declaration of war, on the territory, ships or aircraft of another State; and aid or assistance, either direct or indirect, to an aggressor.

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(Mr. Tarazi, Syria)

Notwithstanding the desire to avoid war reflected in so many documents and treaties, the League of Nations had been unable to prevent the outbreak of the Second World War. Its failure had been due to the superficiality and incoherence of the doctrine of collective security, toleration of violations of the Pact and the inefficacy of the measures envisaged by it. The failure of the United Nations to define aggression was harder to account for. The provisions of the Charter, particularly Article 2 (4) and Article 39, made the need for a definition more than clear.

The United Nations had a far wider horizon than the League of Nations. The United States had never been a member of the latter and the Soviet Union had joined only in 1934. Many of the States that were Members of the United Nations had been represented in the League of Nations only through colonial and mandatory Powers. In the League of Nations, all the Member States, apart from the USSR, had had the same economic and social system, whereas both socialist and capitalist countries had participated in the foundation of the United Nations and had been joined later by the countries of the third world, which had their own peculiar structure and problems. Since the Charter prohibited recourse to force, the three categories of Member States needed peace, and a definition of aggression to help to preserve peace. It was regrettable that the formulation of that essential definition had been held up by the cold war and by the refusal to accept the principle of peaceful co-existence embodied in the Charter. Peaceful co-existence implied refraining from any attempt to intervene in the domestic affairs of other States or to overthrow the social order those States had chosen to adopt. The present situation was the more dangerous owing to the development of atomic weapons, which had led to what was aptly described as the balance of terror.

In the nineteenth century, at the time of the proclamation of the Second Republic in France, which had been violently opposed by the European monarchies of the day, Lamartine, the French Minister for Foreign Affairs in the Provisional Government, had announced that his Government would apply the principle of peaceful co-existence in its relations with other countries. In explaining his policy, he had stated that monarchic and republican governments did not represent absolute principles fighting each other to the death; they were realities which could live side by side mutually respecting each other. At the end of the Second World War the opposing realities had been capitalism and socialism. The countries which did not agree with socialism not only had not wished to define aggression but had even regarded the desire for a definition as a manifestation of communist subversion.

(Mr. Tarazi, Syria)

The fact was that a definition of aggression was essential for the preservation of peace. The balance of nuclear power had prevented the outbreak of a third world war, but it had not been able to stop numerous local wars. The war in Viet-Nam was a striking example; the people of Viet-Nam were defending themselves against imperialist intervention in flagrant violation of the United Nations Charter. Another example was provided by Israel, which, acting for the protection of imperialist interests and financial monopolies, had on 5 June 1967 committed a deliberate act of aggression against three Arab countries, the United Arab Republic, Jordan and Syria, occupying territory belonging to those countries and remaining in occupation regardless of the injunctions of the Security Council. It was not surprising that the Conference on Human Rights held at Teheran had on 7 May 1968 adopted a resolution condemning the Israel occupation.

The reasons for the acts of aggression committed by Israel were to be found in the creation of that State out of a former province of the Ottoman Empire following the Balfour Declaration promising the Jews a national home in Palestine, and in the increase in the Jewish population of Palestine from less than 50,000 in 1917 to the far larger figure attained in 1947, when the General Assembly had decided on the partition of the country. Israel was, in short, a colonialist creation brought into being against the will of the population of the territory as a means of safeguarding British imperial interests. The case was an exact parallel with that of Rhodesia, where a European minority, led by Mr. Ian Smith, was denying the right of the African Zimbabwe population to self-determination.

The four Arab countries affected had nevertheless acted in conformity with the spirit and the letter of the United Nations Charter. In accordance with the decision taken by the Security Council on 16 November 1948, they had signed four armistice agreements with Israel and they had agreed to co-operate with the Conciliation Commission set up by the General Assembly in its resolution of 11 December 1948, which also provided for the return of the Arab refugees and their indemnification. In spite of the fact that Israel had refused to allow the Arab refugees to return and had repeatedly violated the armistice agreements, the Arab countries had consistently sought a just and equitable solution of the Palestine question in accordance with public international law and the principles of the United Nations Charter; their attitude was reflected in the Final Communiqué of the Conference of Afro-Asian countries held at Bandung in April 1955, which called for the implementation of the United Nations resolutions on Palestine and for a peaceful settlement of the Palestine question.

(Mr. Tarazi, Syria)

The Middle East crisis of June 1967 had comprised two types of aggression: direct aggression resulting from the use of force and the occupation of territory, and indirect aggression aimed at bringing influence to bear on the policy of the Governments of Arab States, particularly those of the United Arab Republic and Syria, in the interests of the petroleum trust.

The Middle East crisis and the Viet-Nam war were two outstanding aspects of the international situation which showed the vital importance of formulating a definition of aggression as soon as possible. That definition was necessary in order to prevent local wars prejudicial to the countries of the third world, whose economic and social development were adversely affected by international tension; to give humanity peace and security and preserve it from the danger of nuclear war; and to implement the General Assembly resolutions and the principles of the United Nations.

Doubts had been expressed about the value of a definition. In the view of his delegation, the definition of aggression would have the same juridical value as other declarations made by the United Nations, in particular the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples, and would serve to guide the Security Council in the exercise of its functions. Although the Security Council acted independently of the General Assembly, there was nothing to prevent the Assembly from giving it information on which to base its decisions. General Assembly resolutions had a function in the formation of law; they had a declaratory character, proclaiming the existence of a fact or a state of affairs. A definition of aggression would reflect the conscience of mankind, or, as Professor Manfred Lachs had said, it would be a first step towards the realization of the lex perfecta. It would be neither more nor less than a formulation of the general principles of law recognized by civilized nations, as envisaged in Article 38, paragraph 1 (c), of the Statute of the International Court of Justice.

In his opinion, the work of the Committee should be guided by the following principles. (1) The Committee should first concentrate on the definition of armed aggression; other forms of aggression could be examined later or, if there was not sufficient time, the General Assembly could be asked to make the necessary provision for their definition. (2) The definition should be mixed, comprising the main elements of a general definition together with an enumeration of types of aggression corresponding to the principles adopted. (3) Action taken in self-defence should

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not constitute an act of aggression. (4) Action undertaken by subject or colonized peoples for their national liberation should be considered legitimate in accordance with the terms of the United Nations Charter. (5) Repelling an invader and resisting occupation forces should not be considered acts of aggression.

Mr. TSUKAHARA (Japan) regretted that some members appeared to be regarding the Committee as a forum for determining an aggressor rather than defining aggression. He supported the Indonesian representative's appeal to representatives to refrain from controversial assessment.

His delegation, while considering that it might not be impossible to find common ground for further work through the general debate, thought that the substantial differences of view still found among the delegations must be co-ordinated and that it was essential to proceed with caution and not to make a hasty attempt to produce a single draft definition that might not command sufficient support to make it serviceable. His delegation's intention in taking part in the Committee's work was to give full support to paving the way for formulation of a definition that would be generally acceptable in the broadest sense of the word. The definition should not prejudice the functions of the United Nations in maintaining international peace and security, nor should it be misused for political propaganda. Such a definition would in fact be unworkable if it was not accepted by any of the permanent members of the Security Council. Moreover, untiring efforts should be made to secure unanimous agreement for a possible draft definition. His delegation was indeed surprised that so many delegations had been convinced of the possibility and desirability of a definition of aggression without seeing any draft definition based on a consensus of opinion in the Committee. His delegation wished to reserve its position concerning the desirability and possibility of defining aggression at the present stage while it still had no concrete idea of the kind of definition to be produced.

The delegations that supported the drafting of a definition had not explained how that definition would serve the competent organs of the United Nations in the practical determination of an aggressor. If a definition with two lists of examples of direct and indirect aggression were to be adopted by the General Assembly, the Security Council might have to consider whether acts of aggression were direct or indirect: there would be many borderline cases. Even in the debate in the Committee, which was composed of jurists, a certain confusion had arisen because of differences of interpretation of the words "direct" and "indirect", and that confusion might well be prolonged in the Security Council. At a time when science

(Mr. Tsukahara, Japan)

and technology were developing so rapidly, it was almost impossible to predict all the kinds of aggression that might endanger the security of a nation. Even if the Security Council was provided with a guideline by a perfect definition of aggression, its action might still be delayed because of the right of veto of a permanent member of the Security Council.

For those reasons his delegation considered it of decisive importance to preserve the flexibility of the discretionary power of the Security Council. It was indispensable to include in any definition of aggression an explicit provision to the effect that such a definition should not be construed as affecting in any way the discretionary powers of the Security Council or the provisions of the Charter relevant to the functions of the United Nations to maintain peace and security. His delegation also agreed that any definition should be formulated strictly within the framework and upon the basis of the Charter.

His Government considered that a definition of aggression should be so formulated as to state only what constituted an act of aggression, mentioned in Article 39 of the Charter, as distinct from the more general concept of "a threat to the breach of the peace" in the same Article. His delegation did not subscribe to the idea of expanding the concept of aggression to cover economic or ideological aggression; that would only lead to confusion. No distinction should be made between direct and indirect aggression, for acts classified by some delegations as indirect aggression could be as serious as direct aggression, such as military invasion.

To give direct aid and assistance to those already committing aggression, as mentioned in General Assembly resolution 498 (V), should, for example, constitute an act of aggression.

His delegation was still not in a position to take a clear stand on many points at issue at that stage. It found it hard to understand the assurance regarding the merit of a mixed formula when there were still basic differences of opinion on what was meant by aggression. It also strongly doubted the wisdom of enumerating concrete acts of aggression even in a mixed formula. It was impossible to produce a faultless definition with an enumeration of concrete acts of aggression, for any non-exhaustive enumeration would be open to abuse and would omit examples that could not be predicted. Moreover, automatic application of a definition giving an enumeration might cause serious danger to the security of a nation, unless it were used in conjunction with an appropriate fact-finding system organized by international agreement. There was no assurance that world public opinion might not be influenced by such a definition in such a way as to underestimate acts not enumerated therein.

(Mr. Tsukahara, Japan)

Aggressors might be tempted to concentrate their efforts upon evading the acts that were enumerated and the definition might result in encouraging acts of aggression not enumerated but in fact much more serious.

Mr. CUENCA (Spain) stated that his delegation was convinced that a definition of aggression would be useful and thought that the Committee should do everything in its power to create a set of objective rules to override the arbitrary and subjective criteria at present prevailing. A definition would provide a moral restraint for potential aggressors, help to reinforce the conviction that aggression was an international crime and avoid misunderstanding or false interpretation that might confuse world opinion. Above all, a definition would help to create a system of collective security. The Committee must avoid sterile arguments and try to adopt a single draft definition acceptable to the majority of delegations.

The primary element in any act of aggression was the use of force. However, his delegation considered that the term "force" should be understood to cover not only armed force, but also any other forms of coercion against territorial integrity and political independence of States, including economic and political pressure. The definition should be flexible enough to imply condemnation of any type of military occupation, non-recognition of situations created by the use of force and condemnation of military bases established without the consent of the State concerned and of the violation of national frontiers, air space and territorial waters. Moreover, proclamations of sovereignty over all or part of a State based on the existence of a de facto situation should be considered an act of aggression against territorial integrity.

There was of course a danger that, in so extending the meaning of aggression, the meaning of self-defence as recognized in Article 51 of the Charter would be changed. That was not his delegation's desire. It was clear that only when a country had first been attacked could it exercise its legitimate right of self-defence under Article 51. Any possibility of legalizing preventive war was out of the question.

That restrictive interpretation of Article 51 did not imply, however, that self-defence always involved the use of armed force. If an act of aggression was committed by the use of one type of force, self-defence should be of the same nature. Some diversification of the idea of self-defence should therefore be accepted. As the system of collective security evolved, however, the right to self-defence should gradually be limited. The decision to abandon the use of force

(Mr. Cuenca, Spain)

must be accompanied by the decision to use peaceful means to settle international disputes and by effective collective action for peace. The definition of aggression should not be considered in isolation, but as part of the much wider problem of maintaining peace by collective security.

Although his delegation was in favour of a broad definition of aggression, it considered that the Committee should first deal with the task of defining armed aggression, on which agreement would be easiest. It would be useless to ignore the reality of power, but the Committee must be aware of the false realism of arguments that the present world situation would prevent any agreement at all. Men's thoughts, hopes and aspirations concerning realities were, themselves, realities.

Mr. HARGROVE (United States of America) thanked the representative of the USSR for the implicit tribute he had paid to free speech and press in the United States by drawing attention to the wide range of literature on Viet-Nam available in the United States, which expressed every shade of opinion. He recommended the whole of that literature to the Committee. Such freedom of information constituted the very stuff of democracy, and he hoped for the day when even the great Soviet people could enjoy it.

He recalled that at the previous meeting, as was appropriate for a committee of jurists, he had put some questions concerning the situation in Viet-Nam, the answers to which determined the truth or falsehood of every claim of right or law about Viet-Nam which had been made in the Committee. The United States had given its position on those questions, but they had otherwise received no answers.

He welcomed the expression by the representative of the USSR of its intention to co-operate with other delegations in the work of the Committee.

Mr. EL REEDY (United Arab Republic) recalled the reference made at the previous meeting to events in the Middle East in 1967, when one Member State had complained of a naval blockade against it. He wished to make it clear that there had been no naval blockade by his country or by any other Arab State. In that connexion, he referred to the United States proposal, mentioned in paragraphs 143 and 144 of document A/2211, that naval blockade should be included as an act of aggression, and to the fact that that proposal had later been dropped upon the suggestion of the United States. In his delegation's view, that action represented a retrograde step.

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(Mr. El Reedy, United Arab Republic)

His own country, on the other hand, had always supported the need for a definition of aggression, from the very inception of the United Nations, and he recalled his delegation's attitude on the matter in connexion with the debate on the Caribbean situation on 24 October 1962. His country was still opposed to any use of force on the high seas or in the territorial waters of other States.

The meeting rose at 6.15 p.m.

SUMMARY RECORD OF THE TENTH MEETING

Held on Monday, 17 June 1968, at 10.20 a.m.

Chairman:	Mr. HARIZANOV	(Bulgaria)
later	Mr. YASSEEN	(Iraq)

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (General Assembly resolution 2330(XXII)) (agenda item 5) (continued)

Mr. HAMDANI (Algeria) said that it was distressing to see how some countries which had achieved a high degree of technical civilization were using their power for purposes of aggression and the exploitation of others, rather than in the service of world security, of the struggle against ignorance and hunger, and of the reign of justice.

The Algerian people, who had freed themselves from colonial domination at the cost of incalculable suffering and heavy sacrifice, were sincere lovers of justice and peace. Knowing the price of war, they would do everything in their power to help to end all forms of aggression. They did so, moreover, out of solidarity with the group of young countries to which they were conscious of belonging and many of which had been or still were victims of deliberate aggression. Apartheid in South Africa, the illegal annexation of South West Africa by that country, oppression by a racialist minority in Southern Rhodesia, the continuance of Portugese domination over vast regions of Africa with the help of a number of western Powers, attacks on the unity of the Democratic Republic of the Congo, the violation of the territorial integrity of the United Arab Republic and other Arab States by Israel, and the presence of the United States fleet in the Mediterranean, all constituted acts of aggression against or threats to the security of Africa.

Mention could also be made of aggression by United States forces in Viet-Nam and the blockading of and armed intervention in certain States in Latin America. The Algerian delegation took the opportunity to pay a tribute to the heroic resistance of the peoples under colonial rule or victims of aggression who were fighting for liberation by exercising their right of self-defence. His delegation had seen fit to recall those different cases of aggression, not for purposes of polemic, but in order to show the importance and urgency of a question whose basic elements could only be distinguished by practical experience.

(Mr. Hamdani, Algeria)

If the Committee succeeded in proposing a definition to the General Assembly, even a definition limited to armed aggression, it would have done useful work. In order to achieve that, it should base itself upon the studies and proposals already in existence, without reconsidering the work which had been done earlier. The Algerian delegation did not deny that the question was technically complex, but it was convinced that the obstacles could be overcome if all members of the Committee showed good faith and were determined to reach agreement. It was obvious that those who were opposed to any definition had themselves been guilty of aggression or were not committed to international order and thus made themselves accomplices of aggression.

Although resolution 2330 (XXII) did not oblige the Committee itself to define aggression, the spirit, if not the letter, of the mandate it gave the Committee left no doubt on the question. The General Assembly would certainly not blame the Committee if it accomplished only part of the work undertaken by defining, for example, armed aggression. If the Committee was content simply to submit a report to the Assembly, the latter would not be satisfied and the responsibility of certain countries would be clearly implicated.

The basic principles which should guide the Committee in its work had already been set out in the United Nations Charter and in resolution 2330 (XXII) of the General Assembly: respect for the territorial integrity and political independence of all States, condemnation of apartheid and racialism, and the right of peoples to self-determination. The charter of the Organization of African Unity, to which Algeria had subscribed, firmly emphasized in its objectives the need to protect, defend and strengthen the sovereignty, territorial integrity and independence of all member States.

Armed aggression, however, was not the only danger which threatened the countries of the third world. Many economic and technical pressures were being exerted upon them in order to keep them under imperialist domination. The Algiers charter showed the developing countries the road to follow in order to free themselves from those

(Mr. Hamdani, Algeria)

economic shackles, to improve their trading position and to ensure their sovereignty over their own natural resources. Solidarity among the countries of the third world was the main guarantee of success in their struggle against aggression of that kind.

The views already expressed and the proposals put forward in the earlier work on the subject provided all the elements needed for an adequate definition. The Algerian delegation wished to remind the Committee of the draft put forward by the Soviet Union and the comments made by representatives of Latin American countries and of Spain and by other speakers. In its view, any armed attack by one State against another, either by crossing its territorial frontiers or by armed violation of its air space or territorial waters, should be considered to constitute armed aggression. There could be no justification for that form of aggression. The Algerian delegation reserved the right to return to the question in due course, in more specific terms.

A definition would not, of course, automatically settle all cases of aggression. To achieve that, practical and effective means would have to be put into effect. A definition would, however, have the merit of establishing the primacy of right over might. While awaiting an effective guarantee, the great majority of States would find in such a definition juridical and moral assurance, which would also have the effect of discouraging any possible aggressor. It was to be hoped that, once the Security Council was in possession of an adequate definition, a code of aggression, it would not hesitate to apply it. Even if some of its members were opposed to doing so, international opinion would be unanimous in condemning them.

Mr. Yasseen (Iraq) took the Chair.

Mr. ALCIVAR (Ecuador) emphasized that the main purpose of the definition of aggression was to describe, in a legal rule devoid of all ambiguity, the offence which threatened to shake the foundations of the system of international security established by the United Nations Charter.

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(Mr. Alcivar, Ecuador)

The San Francisco Charter was not the only international instrument which had prohibited the use of force. The Covenant of the League of Nations had included a legal rule to that effect which had subsequently acquired the character of jus cogens. All the efforts made to crystallize the legal rule, such as the Draft Treaty of Mutual Assistance of 1923, the Geneva Protocol of 1924 and the resolution adopted by the Assembly on 24 September 1927, bore historic testimony.

The universality of the Covenant of the League of Nations was based on the concept of an international community consisting exclusively of members of that organization, omitting such countries as the United States of America. Moreover, a large part of the world had at that time been living under a colonial system in the modern sense of the word, namely, a system imposed by the formation of great economic empires by capitalist society, and had lived outside the community as conceived in the Covenant.

The Briand-Kellogg Pact of 27 August 1928 had been the legal complement to the constituent instrument of the League of Nations. Firstly, it had extended the concept of universality and various States which were not members had been incorporated in the system of international security. Secondly, it had transformed the prohibition of recourse to war into a strict rule of international public order which admitted of no exception. In admitting the right of self-defence, a right which had existed prior to the legal rule which sanctioned it, the Preamble had established that signatory States which had recourse to war to serve their national interests would be deprived of the benefits of the treaty. Lastly, the Pact had reserved to the international community the right to use force, for if war was to be abandoned as an instrument of national policy the only way to guarantee the existing system of security was to supplement it by a prohibition of any resort to force. The argument that all signatory States to the Briand-Kellogg Pact were not members of the League of Nations and hence were not subject to the rules of that organization had no legal foundation.

(Mr. Alcivar, Ecuador)

On 8 August 1945 the Agreement establishing the International Tribunal set up to try the second world war criminals had been signed in London. Three categories of crimes were mentioned in article 6, including crimes against peace, or in other words the violation of the legal rule which prohibited war. Either that general rule had existed before the conflict which had started in 1939, or the London Agreement became a lex ex post facto. He himself espoused the first view, which had also been confirmed by the Nüremberg Tribunal and by the United Nations General Assembly in resolutions 95 (I) and 177 (II). Moreoever, the Conference held at Vienna had recently recognized that a treaty was void if its conclusion had been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.

The United Nations Charter was not simply a multilateral treaty like other such treaties. It represented the establishment of a legally organized international community. The expression "The High Contracting Parties", with which all treaties started, had been replaced by "We the peoples of the United Nations". That change had not been made by accident: it expressed a change in the philosophical conception of the international community, which became a community of peoples in the sociological sense of the word, with an unrestricted universal character. That new conception had entailed a reversal of legal standards and a revision of the notion of sovereignty. Above the State, representing the national legal order, stood the international legal order. The notion of sovereignty-power had been replaced by that of sovereignty-competence.

The basic aim of the United Nations was to maintain peace and international security within the limits of justice and international law. That sine qua non deliberately deleted from the Dumbarten Oaks draft, had been introduced at San Francisco by the small nations. To that end the principles of international law had been incorporated in the Charter and transformed into constitutional rules, of mandatory and universal application.

The fundamental principle of the system of international security established by the United Nations Charter was the prohibition of resort to the threat or use of force, as set forth in Article 2 (4). That principle had to be examined as part of the system as a whole. The prohibition was absolute within the framework of the constitutional system of the United Nations. Some people claimed, however, that it allowed of two exceptions: the application of the collective measures set forth in Chapter VII and the exercise of the right of self-defence recognized in Article 51. That interpretation, however, gave a distorted picture of the principle.

(Mr. Alcivar, Ecuador)

The prohibition of the threat or use of force was a rule of jus cogens which admitted of no exception. What was claimed as an exception must therefore be examined from another angle. The centralization of power had had the immediate consequence of placing the monopoly of force in the international legal order, with exactly the same characteristics as in the national legal order. Only the world organization could use force in exercising its authority to maintain international peace and security. A State which improperly used force was committing the offence of aggression, except in the case of self-defence in the circumstances laid down in Article 51 of the Charter. It was clear, therefore, that the so-called exception was the general legal rule, since the use of force was the exclusive prerogative of the competent organs of the United Nations, in so far as it was established in the statutes of the Organization. It was important to point out that regional organizations could not resort to force, unless acting under the authority of the Security Council and within the terms of Article 53 of the Charter. That was the position that Ecuador had always upheld in the United Nations and in the regional organizations of the American continent.

In penal law self-defence was considered an inherent human right which man was obliged to exercise in order to repel aggression when protection was not available from the public authorities. The appearance of that right, prior to the legal principle sanctioning it in international law, went back to 1837. The United Nations Charter had not, therefore, introduced that right, which it described as an "inherent right" and the exercise of which was subject to two conditions. The first was that it could be invoked only in the face of armed aggression. In that connexion he pointed out that the French text of the Charter spoke of "agression armée", whereas the Spanish and English texts spoke of armed attack. It was obviously the intention of the authors to exempt from all responsibility a State which used force to repel an armed attack which it had not provoked.

The second condition was that a State which was the victim of armed aggression could exercise the right of self-defence only until such time as the Security Council had taken the necessary steps to maintain international peace and security.

(Mr. Alcivar, Ecuador)

That brought up the question of who should decide whether the measures adopted by the Security Council were adequate to attain the objective set out in Article 51. Some jurists considered that the decision rested with the Security Council itself; others considered that it was the right of the State which was the victim of aggression. He himself had no specific proposal to offer but he thought that the Special Committee should express a view on the question.

Article 51 did not mention one of the basic factors which, in penal law, conditioned the exercise of the right of self-defence, namely the rational need for the means employed in self-defence. The Committee should bear that factor in mind in its work, especially as the Treaty on the non-proliferation of nuclear weapons provided a relative, but not absolute, guarantee with regard to the possession of those instruments of war.

While it was true, furthermore, that it was the general opinion that preventive self-defence was not recognised in Article 51 of the Charter, it would nevertheless be useful if the definition which was to be drafted made it clear that an act of that kind constituted the offence of aggression.

The Committee would find its task much easier if it began by establishing the precise legal position of the monopoly of the use of force held by the United Nations, for it could then conclude that the use of armed force by a State always constituted armed aggression. The Committee would then recognise the right of self-defence in the face of that kind of aggression, in accordance with the provisions of Article 51 of the Charter. The Committee should also recognise the sacred right of peoples to rise in arms against colonial domination. He recalled, in that connexion, that Ecuador had always played an active part in efforts of the United Nations General Assembly to fight against colonial oppression, opposing on some occasions those who had tried to describe the provisions of Chapter XI of the Charter as simple recommendations, and on others those who had maintained that colonial status came within the domestic jurisdiction of States in the meaning of Article 2 (7).

(Mr. Alcivar, Ecuador)

The definition of direct aggression should comprise a general definition and an enumeration of the most flagrant cases of that offence, an enumeration which could not, of course, be exhaustive. He had in mind, in particular, the use of force in frontier incidents and so-called "protective landing" operations, carried out under the pretext of protecting the lives and interests of foreign nationals or under any other political or economic pretext.

It was obvious that armed aggression was not the only form of aggression. At the recent United Nations Conference on the Law of Treaties, the Ecuadorian delegation had co-sponsored an amendment to article 49 of the draft Convention, proposing that the word "force" should cover economic or political pressure.

The Ecuadorian delegation supported the proposal by the representative of Cyprus that the Committee should first of all define armed aggression, a subject upon which it was easier to reach general agreement, and then define other forms of aggression. It considered that aggression should be defined in a fundamentally legal context, without disregarding the political realities of international society.

Mr. RUIZ VARELA (Colombia) spoke of the efforts that have been made for more than thirty years, first in the League of Nations and later in the United Nations, to find an appropriate and generally acceptable definition of aggression. While the work of the General Assembly, the International Law Commission and the 1953 and 1956 Special Committees had not led to a definition of aggression, it nevertheless showed that no-one any longer denied that aggression could and should be defined and that the drafting of the definition should be expedited.

Under operative paragraph 3 of General Assembly resolution 2330 (XXII) the Committee was instructed to submit to the General Assembly a report which would reflect all the views expressed and the proposals made. It was true that the General Assembly had not specifically instructed the Committee to prepare a single definition, since it was for the General Assembly to take the final decision on the basis of the Committee's report. Nevertheless, in order to make it easier for the General Assembly to reach a final decision, one of the proposals included in the report should be a recommendation for a single definition. The Committee should therefore endeavour, by negotiation and by reconciling divergent views, to arrive at a single definition of aggression which might command the support of virtually all States members of the

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(Mr. Ruiz Vareka, Colombia)

Committee, in which all the geographical regions and the principal legal systems of the world were represented, a fact which should make it possible to reach agreement in the General Assembly itself.

The Colombian delegation considered that the drafting of a definition of aggression was essentially a technical, scientific and objective task, which the members of the Committee should approach as jurists, without passion, without preconceived ideas, and for the sole purpose of arriving at a judicious text which would be valid for the present era and capable of subsequent improvement. At the same time, in preparing that juridical definition the Committee could not and should not disregard, the political factors on which the definition depended, and still less the political consequences which its application would entail.

Ample material for a definition was available in international doctrine and practice. Mention might be made, for example, of President Roosevelt's proposal of 30 May 1933; of the definition of aggression prepared by the Committee on security questions of the 1933 Disarmament Conference, based on the report by Professor Politis, the general idea of which was in essence that the aggressor was the State which first employed force outside its territory; and of the proposal submitted by the Soviet Union delegation to the 1933 Disarmament Conference and submitted again in 1950 and in 1952. With regard to the proposal made by the Soviet Union in 1952, he recalled that Colombia had submitted an amendment to it proposing the addition of a paragraph which stated in substance that aggression was an offence against the peace and the security of mankind and consisted of any recourse to force which, in violation of the provisions of the United Nations Charter, was designed to alter the existing state of positive international law or which resulted in a disturbance of public order.

The Committee should also take into account the various draft definitions of aggression which had been submitted to the 1953 and 1956 Special Committees, those yet to be submitted and various international and regional juridical instruments which might usefully contribute to the definition of aggression.

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(Mr. Ruiz Varela, Colombia)

In international American law, for example, the principle of non-intervention had been established at the conferences of Montevideo in 1933 and Buenos Aires in 1936, in the Inter-American Treaty of Reciprocal Assistance signed at Rio de Janeiro in 1947 and in the 1948 Charter of the Organization of American States.

The Committee should also take account of important decisions adopted by the United Nations in recent years and relating closely and directly to the problem of the definition of aggression, in particular the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples, resolution 1815 (XVII) on consideration of "principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations", resolution 2131 (XX) on the inadmissibility of intervention in the domestic affairs of States and the protection of their independence and sovereignty, and resolution 2160 (XXI) on the strict observance of the prohibition of the threat or use of force in international relations, and of the right of peoples to self-determination. He recalled that at the twenty-first session of the General Assembly the Colombian representative had devoted a major part of his statement to a condemnation of the intervention of any State in the domestic affairs of another State.

With regard to the type of definition which the Committee should adopt, his delegation was prepared to study all the drafts submitted to the Committee with a view to arriving at a balanced formula which might be generally accepted, not only by the majority, but also by the great Powers which were primarily responsible in the Security Council for the maintenance of international peace and security, pursuant to Article 39 of the Charter.

Among the three possible types of definition, Colombia favoured a mixed definition combining the advantages of an abstract definition, general or composite, with those of an analytic definition listing specific cases of acts of aggression. The appropriate formula would thus consist of a statement of the essential elements of aggression and a list which would not be exhaustive but would indicate the most frequent or most characteristic acts of aggression according to the prevailing opinion.

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(Mr. Ruiz Varela, Colombia)

That definition would not be binding on the Security Council, which would retain its autonomy in the discharge of its functions under Articles 39, 41 and 42 of the Charter.

Such a definition would, however, have the immense advantage of serving as a guide for the competent organs of the United Nations, helping in the identification of aggressors and ensuring that decisions designed to preserve world peace were not taken by arbitrary methods. Moreover, the definition would have a great moral influence on international opinion and would constitute a kind of warning for would-be aggressors.

In view of the procedural difficulties inherent in the adoption of a definition of aggression by an amendment of the Charter or by the conclusion of a multilateral convention, his delegation considered that the best course would be for the General Assembly to adopt a resolution based on the powers vested in it by Articles 10, 11, 13 and 14 of the Charter. A definition thus adopted would have considerable weight with the international community and might easily become a general principle of law recognized by civilized nations (Article 38 of the Statute of the International Court of Justice) and thus become an integral part of international law.

In those circumstances, the Security Council could not disregard the existence of such a principle of international law, so that ultimately the definition would contribute to the progressive development of international law, which was precisely one of the functions of the General Assembly under the Charter (Article 13 (1) (a)).

Clearly, such a definition would not have any coercive effect or direct practical result, but it would be of great help in interpreting the Charter and instituting sufficient juridical security in a field which was inevitably governed by political judgment owing to the tensions still prevailing in an international community divided into political blocs and groups with different interests and concepts.

(Mr. Ruiz Varela, Colombia)

The definition would also play an important part in the exercise of the inherent right of individual or collective self-defence if an armed attack occurred against a Member of the United Nations, a right set forth in Article 51 of the Charter, since the use of force authorized by the Charter would be more clearly defined, whether it was ordered by the organs of the United Nations or whether it was in application of the right of self-defence. Such uncertainties would, of course, be avoided by an appropriate definition of "armed aggression", which entitled the State attacked to have recourse to war in its defence and constituted an exception to the principle of the general prohibition of recourse to war, to the threat or use of force laid down in the Charter (Article 2 (3)(4)).

Since the inherent right of individual or collective self-defence was enshrined in the Charter, it was essential that the definition of aggression should stipulate that the aggressor was the State which first committed any of the acts listed as constituting aggression. That chronological criterion was in fact decisive for the identification of the aggressor State or of the nation which was struggling for its independence but was not yet a State and which might be an aggressor or the victim of aggression.

Another essential element of the definition would be a clear statement of the features which must be present if the use of force was to be regarded as aggression; it would also be necessary to ensure that aggression was not and could not be justified by political, strategic, economic or social considerations.

With regard to the method to be adopted for the definition of aggression, it would be desirable to study the question in all its aspects and all its forms, including indirect aggression - a State which encouraged internal strife in another State, armed organized groups for offensive purposes against another State, sent "volunteers" to take part in hostilities against another State, intervened in the domestic or foreign policy of another State, sought to impair the political integrity of a country by subversive action, incited to civil war or maintained a fifth column - economic aggression, referred to in article 16 of the 1948 Charter of the Organization of American States, and ideological or propaganda aggression.

(Mr. Ruiz Varela, Colombia)

The time available to the 1968 Special Committee did not, it was true, allow it to define those indirect forms of aggression precisely, but the Committee might give them some study in order to prepare the ground for subsequent work on the matter.

Mr. HARGROVE (United States of America) said that he would confine himself to those aspects of the question which concerned the Committee at the current stage of its work. The first thing to decide was what concept of aggression it intended to define. The term "aggression" covered various notions, according to the context in which it was employed. The Committee should therefore begin by asking in which context it was going to operate. The representative of Cyprus had been the first to answer that question when he had invited the Committee to adhere to the concept of aggression set forth in the United Nations Charter. The General Assembly had obviously established the Committee to carry out a specific task of juridical drafting relating to the law of the United Nations Charter.

Once that point had been settled, the Committee should ask itself what the utility of such an undertaking would be. A number of speakers had implied that General Assembly resolution 2330 (XXII) did not allow such a question to be asked. Yet many speakers had done so at considerable length and, it would seem, justifiably. In fact, the views expressed about the value of defining aggression since the subject had first been considered had been based essentially on an objective evaluation of the relevant facts of international political and juridical life. Those facts were relevant not only to the question whether it would be useful or desirable for the United Nations to undertake a definition of aggression, but also to the method to be employed for the definition and the substance of the definition. Thus, even if the General Assembly had simply asked the Committee to define aggression, which it had not done, common sense and prudence would have demanded that the Committee should reflect seriously on the reasons why that undertaking had for many years been viewed with doubt by certain States Members of the United Nations and why its advocates had shown such enthusiasm.

(Mr. Hargrove, United States)

The scepticism of the United States Government with regard to the undertaking was due to the conviction that it proceeded upon underlying assumptions concerning the nature of the international order had been unwarranted at the time that the Charter had been adopted and were perhaps still more unwarranted now. That conviction was, of course, partly based on the very fact that the Charter, as drafted, conferred upon the Security Council very wide general powers of discretion, concerning both the conditions in which it could act and the nature of the decisions it could take. The authors of the Charter had well understood that the international juridical order which they had endeavoured to establish presupposed general rules of conduct and of procedure which the international community might apply with common sense and in a common resolve to make the system work. It was quite apparent that they had intended to base the Charter and the United Nations security system on a minimum of rules and a maximum of common commitment - as was appropriate to a great constitutional document.

Their intentions had not always been fully acted upon, but there was no reason to conclude that the defects of the security system were due to the fact that the Security Council's discretionary powers were not more narrowly defined or that the provisions of Chapter VII of the Charter or the elementary rules of conduct for States were not more precise. His delegation was convinced that the essential problem was that referred to in the third preambular paragraph of resolution 2330 (XXII), namely, "the strengthening of the will of States to respect all obligations under the Charter". It had therefore held the view that a definition of aggression would probably do little or nothing to help towards the strengthening of peace and security and that, moreover, by undertaking that definition the United Nations might create the dangerous illusion of having accomplished something, when in reality it had not done so.

His delegation remained sceptical but would help the Committee to discharge its task and would accordingly consider any draft definitions of aggression which might be proposed. He therefore wished to examine some aspects of the question of formulating a definition, relating to the method, scope and content of a definition and its relation to the Charter role of United Nations organs.

Since there could be no question of going against the Charter, or of amending it, any definition of aggression must conform to the Charter, as to both the substance of the concept and its procedural consequences. It followed that the

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(Mr. Hargrove, United States)

Security Council's discretionary powers of deciding whether an act of aggression, a threat to the peace or a breach of the peace had occurred must be fully preserved. In other words, a definition could not be intended to change in any way the role assigned by the Charter to the Security Council and the General Assembly in matters of international peace and security.

Similarly, as most speakers had affirmed, no definition of aggression could be of legal or practical value if it did not represent the consensus of all Members of the United Nations, including the permanent members of the Security Council. From the legal point of view, it was in fact essential that a definition of aggression adopted by the General Assembly should not reflect a fundamental disagreement within the international community on the questions of law to which it applied. From the practical point of view it would be futile to frame a definition whose sole effect would be to reflect a deep divergence of views among Member States with regard to the obligations of the Charter which they must respect.

Although a discussion of the method for the adoption of a definition was premature, the United States delegation considered that the method should take full account of the respective roles of the United Nations organs responsible for the maintenance of peace and security and, in particular, of the primary role assigned by the Charter to the Security Council in deciding that an act of aggression had been committed.

With regard to the scope of the definition, his delegation agreed that acts not involving the use of force within the meaning of the Charter should not be described as aggression; that excluded, for example, mere threats of the use of force, as also economic, political or ideological activities. In fact, whatever consequences such activities might have, there was nothing to indicate that the Charter intended that collective force should be used to put an end to them. Nor did it seem reasonable to affirm that such a course should be adopted. Lastly, even if any act which a definition described as "aggression" should involve the use of force in violation of Article 2 (4), the Charter was so drafted as to require the Security Council to examine the situation afresh before concluding that aggression had been committed or that peace had been threatened or disturbed. The experience of the United Nations confirmed the practical wisdom of that provision of the Charter. Acts of force had been committed and would no doubt be committed in future which, strictly speaking, constituted a violation of Article 2 (4), but whose practical consequences were so

(Mr. Hargrove, United States)

limited that it would be neither wise nor realistic to expect the full powers of the Security Council to be brought into play.

It was not sufficient, however, to define the acts which should be regarded as aggression; it was also necessary to define the political entities which could commit aggression or be its victim. Article 2 (4) applied to Members of the United Nations, but it was generally admitted that the principle of international law that it enunciated was binding on all States. Article 2 (6), moreover, expressly extended the Organization's general authority for the maintenance of international peace and security to States which were not members of the United Nations. No provision of the Charter expressly limited the Security Council's power to determine the existence of an act of aggression to cases involving only Members of the United Nations, or even States. There were at present certain political entities whose status in international law was more or less widely contested or subject to certain reservations, but the essential rights and obligations of international law and of the Charter concerning the use of force applied to them too. Any definition must take account of that fact.

Finally, the concepts of aggression and of the use of force were closely associated in the Charter, but it was important to maintain a clear distinction between them. It was the responsibility of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States to develop the principle of the Charter relating to the prohibition of the use of force. Consequently his delegation did not think that it was within the purview of the Special Committee on the Question of Defining Aggression to examine the details of the conditions in which force might lawfully be employed, whether in the exercise of the right of self-defence or for any other reason. That was not a part of the definition of aggression, which should merely take account in general of the various exceptions to Article 2 (4) of the Charter. For similar reasons, his delegation also had misgivings about including in a definition a list of illegitimate justifications for the use of force.

The general debate had more or less accomplished its purpose, which was to bring out certain aspects which the Committee's report should cover, in order to enable the Committee to decide, in full knowledge of the facts, how to proceed with its work. As soon as the general debate was completed, discussion of the organization of work should be resumed. The question before the Committee not only

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(Mr. Hargrove, United States)

was of vital importance, but in many respects was of great complexity. If the Committee's work was to be usefully pursued, its members would have to display not only great political insight but also exceptional juridical ability. His delegation was fully prepared to try to meet those requirements. It refused, however, to deal with such important and difficult questions in haste or by mere slogans. It would like to hope that all delegations shared that attitude, but it doubted whether that was the case in view of such statements as that of the Algerian representative, who had accused the United States of aggression in Viet-Nam, while at the same time protesting that he wanted to avoid all polemics. The United States delegation had given the Committee a precise statement of the international legal issues raised by such changes. If the representative of Algeria had been genuinely interested in dealing with the question of Viet-Nam in a non-polemical and responsible way, he would have treated those issues on their merits rather than utter epithets. Either one took the Charter and international law seriously, or one did not.

The CHAIRMAN noted that after a long debate, which was nearing its end, few members of the Committee had expressed any doubt about the possibility of defining aggression and still less about the usefulness of that undertaking. Those who had done so had, however, shown their willingness to co-operate with the others to achieve a satisfactory result. The Committee should now start its consideration of the technical problems. He therefore asked delegations to submit their proposals as soon as possible, so that the Committee might continue its work and discharge the task entrusted to it.

The meeting rose at 12.25 p.m.

SUMMARY RECORD OF THE ELEVENTH MEETING

Held on Tuesday, 18 June 1968, at 3.15 p.m.

Chairman: Mr. YASSEEN (Iraq)

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (General Assembly resolution 2330 (XXII)) (agenda item 5) (continued)

Mr. HAMDANI (Algeria), speaking in exercise of the right of reply, said that in his statement of the previous day he had commented on acts of aggression taking place in different parts of the world because the question of aggression could not be studied in the abstract, without reference to concrete cases and without regard to real events, and because his Government always supported just causes, wherever they existed.

The United States representative did not share his views on the subject; that was his right. But to say that another delegation had acted irresponsibly, which is what he had understood the United States representative to say, was a very different matter.

His Government, like all those represented on the Special Committee, was fully responsible. His country had paid the price of its responsibility up to and after the time of obtaining independence. It had sacrificed immediate practical interests in defence of the high principles which, in its opinion, should govern the world.

No State was entitled to pass judgment on the sense of responsibility of other States. His attitude to the questions of Viet-Nam, Southern Rhodesia, Mozambique and Angola had been in conformity with his Government's policy of supporting all just causes, which would indeed be its policy if the United States were ever so unfortunate as to become the victim of aggression.

Mr. FREELAND (United Kingdom) said that in the course of the general debate he had reserved the right to refer later to certain points made by other representatives.

(Mr. Freeland, United Kingdom)

Several speakers had suggested that any definition of aggression should take account of the so-called right of self-defence against colonial domination and of the alleged prohibition of recourse to force against colonial peoples. He recognized that many delegations felt strongly about those matters; and, indeed, he shared their opinion of the importance of the due fulfilment of the Charter provisions concerning self-determination. But he thought it was generally accepted that the Committee should concentrate its work on the elements comprised in the Charter concept of aggression, and, in the view of his delegation, the two closely related concepts to which he had referred had nothing to do with that. The Charter concept of aggression, like the prohibition in Article 2 (4), was concerned with the use of force in international relations. The relationship between a State and the peoples subject to its jurisdiction was not, therefore, a matter to which that concept extended. The Charter did not seek to regulate internal disorders unless, because of surrounding circumstances, the resulting situation could be described as a threat to peace.

As representatives of his country had said in other contexts, any Government, whether in respect of its own territory or in respect of territories whose people had not yet achieved a full measure of self-government, must retain the right to exercise its responsibilities for the maintenance of law and order. The contrary assertion would tend to encourage terrorism, rioting and other breaches of the peace.

His Government stood committed, in accordance with its Charter obligations, to develop self-government, and it certainly intended to promote, on a basis of consultation and consent, the advance towards full self-government, in a peaceful and orderly manner, of the peoples of the few Non-Self-Governing Territories for which it still retained responsibility. It was precisely the pursuit of that aim that made provisions of the kind to which he had referred unacceptable to his Government, for they would merely complicate the task of those administering Powers which were conscientiously seeking to complete the decolonization process.

He agreed with the representative of Australia that the Charter did not admit any right for States to use force, or to supply the means of violent action against other States in support of colonial conflicts; to assert the existence of such a right could only exacerbate relations with States administering Non-Self-Governing

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(Mr. Freeland, United Kingdom)

Territories in accordance with their Charter obligations and would in no way serve the true interests of the peoples concerned.

He had suggested in his previous statement that the results so far of the work on friendly relations and co-operation among States might give some valuable guidance to the Committee in finding bases for agreed conclusions. Those results also showed clearly the existence of issues which, if pursued in the Committee, would greatly increase the difficulty of its task.

Mr. BILGE (Turkey) said that, although a definition of aggression would not itself be enough to maintain peace, it would help to do so. The Committee's new venture was certainly justified and the poor results achieved in the past should not discourage it.

His own country had always taken part in the efforts to establish a system of collective security and to define aggression. In 1933 it had concluded two agreements and a pact on the definition of aggression; he suggested that the Secretariat should reproduce the text of those agreements.

Since then, the United Nations system of collective security had been instituted. Under Article 24 of the Charter, the Security Council had primary responsibility for maintaining international peace and security on behalf of Member States. There was no question of relieving the Security Council of that duty without amending the Charter, and the Committee had agreed that that was undesirable. It must therefore consider how to help the Security Council in discharging its responsibilities.

One way of helping the Security Council would be to provide a definition to guide it in determining the existence of an act of aggression under Article 39. A definition, however, which would be more or less imposed on the Security Council might be considered to be incompatible with the Security Council's authority.

Another method would be to draw up a definition which could serve as a criterion to help the Security Council in determining an act of aggression. There had been much discussion in the past on whether aggression should be defined in relation to the aggressor's aim or merely in relation to the existence of an act of aggression. The Committee could perhaps work out an objective definition and leave the Security Council to judge the subjective aspects in each case.

Even if the Committee could only supply a kind of interpretation of the idea of aggression, that might simplify the Security Council's task.

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(Mr. Bilge, Turkey)

His delegation had no firm preference as between the two kinds of definition and could accept either. It thought that, in view of the opinions expressed by members, the text of the definition should be in the form of a General Assembly resolution.

With regard to the content of the definition, his delegation considered that it was wise to concentrate on a definition of armed aggression, for two reasons. Firstly, since the Charter mentioned armed aggression, the extension of the idea of aggression to other fields would complicate the Committee's task and have repercussions on the economic and social provisions of the Charter. Moreover, Committees of the Economic and Social Council were already dealing with questions that might limit the possibility of economic pressure in the future.

Secondly, the States which favoured extending the idea of aggression had already manifested their intention not to press the point. Article 3 of the 1933 Convention on defining aggression, which laid it down that no political or economic considerations could justify aggression, could perhaps be used to fill in gaps concerning economic or political aggression.

Although the international agreements signed by Turkey had been enumerative, his delegation considered that, since the situation had changed since then, a "mixed" definition would be preferable.

At the previous meeting, the representative of Ecuador had stressed the need to limit the exercise of the right of self-defence laid down in Article 51 of the Charter. At the present stage, before having read the summary record, he would hesitate to agree, for a definition of armed aggression without a definition of exceptions would be inadequate. Since, however, the Committee had agreed to work on the principle that it should not depart from the text and purposes of the Charter, he would, for the moment, merely draw attention to that principle.

His delegation endorsed the hope expressed by others that a definition could be reached that would command unanimous support, for in that case its value would be far greater.

Mr. BEESLEY (Canada) said that a difficulty in arriving at a definition of aggression was that aggression was not an abstract principle but a concrete happening. It had to occur in order to be identified. However, the Canadian position had been stated in the Sixth Committee on 2 December 1952. The Canadian Government was not opposed in principle to having a definition of aggression; it

(Mr. Beesley, Canada)

would support any genuine attempt to arrive at a definition that was likely to be a help and not a hindrance to the appropriate organs of the United Nations in fulfilling the purposes of the Charter. He would explain what was meant by that statement.

As he had said during the discussion on procedure, while the Committee had no specific mandate to draft a definition of aggression, its terms of reference did not exclude the drafting of such a definition.

As to motivation, the Committee must not allow itself to be side-tracked by undue preoccupation with matters of national concern to individual members; the Committee had been entrusted with the representation of the United Nations as a whole on the difficult question of defining aggression. However, there was at least one point at which the several national interests and collective interests coincided: namely, the common concern for the maintenance of international peace and security. That common aim should be the criterion for the appreciation of all statements or proposals made in the Committee.

Any definition of aggression must be a constructive and positive contribution to the United Nations collective security system. To that end, it must be politically acceptable to the majority of the members of the General Assembly and to all the permanent members of the Security Council; it must also be legally adequate, namely, it must be neither so general as to be merely a restatement of Charter principles nor so specific as to give the impression that it was all-embracing.

The definition would have to be generally acceptable if it were to provide an authoritative interpretation of an existing international legal instrument, an instrument that was not only the fundamental law-making Treaty of the post-war world but also, as the representative of Ecuador had said, the constitution of the contemporary world community. If it was to be operative and effective, the definition would have to reflect the will of the world community, both from a legal point of view, since international law relied for its effectiveness upon the will of the community, and from a practical point of view, since the crux of the peace-keeping problem, in Canada's experience, was the existence of a common will to act in support of international peace and security.

While an acceptable definition of aggression would not of itself prevent aggression, nor its absence prevent the Security Council from taking effective action, any definition must be politically acceptable to all the permanent members

(Mr. Beesley, Canada)

of the Security Council if it was not to impede rather than assist the Council in carrying out its functions. The definition would also have to be legally adequate. With regard to the form of the definition, Canada had no strong views and agreed with the representative of Japan that it would be premature to express a definitive opinion on the matter before any definition had been tabled. Experience suggested, however, that there were more disadvantages in the enumerative than in the general approach to the question; a mixed definition might therefore best avoid the dangers in the other two approaches. With regard to the substance of the definition, his delegation considered that it must be such as would help the United Nations and its organs to fulfil the purposes of the Charter, in particular in the implementation of Articles 1 (1), 24 and 39. It must above all safeguard the discretionary authority of the Security Council.

The overriding prohibition of the threat or use of force in Article 2 (4) of the Charter was framed in such a way that the drafting of any definition of aggression would have to take into account the fundamental purpose reflected in the Charter of protecting the territorial integrity or political independence of States. The question of intent was of equal importance to the act itself and the Canadian delegation would like to have the two elements, namely, the illegal act and the unlawful intent, duly stressed in the definition.

The central question of self-defence in relation to aggression raised the temporal problem of the point in time at which the right of self-defence came into being and the qualitative question of determining what kind of action constituted aggression: whether it was sufficient to ask merely who fired the first shot; whether there must be an actual use of force; whether a threat of force could be so serious as to constitute a threat to the peace and, as such, aggression; alternatively, whether aggression was co-intensive with a breach of the peace; and thus whether a country must await the actual use of force before invoking its right of self-defence. The example of a State menacing another by massing troops on its border was a case in point. The Canadian delegation considered that the wisest course would be to indicate general exceptions to the prohibition of force and leave the Security Council to determine whether those exceptions were applicable in any given instance.

As the representative of the United States had said, the Special Committee was not required to define the lawful uses of force under the Charter, nor the

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(Mr. Beesley, Canada)

right of self-defence; but also, as the Mexican representative had pointed out, the Committee's conclusions should accord with the work of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States.

If the Committee was trying to define aggression in the hope that the Security Council would make use of its definition, it might in effect be asking the Security Council to act as judge and jury rather than as policeman and protector of the peace, as hitherto. It might be asking the Security Council not only to prevent the crime of aggression or to arrest it in mid-flight, but to identify and punish the culprit and to do so, according to the wishes of some speakers, virtually automatically. The aim might seem unexceptionable, but it was open to question whether the international community was ready to take such a major step forward in international law enforcement. Many countries still refused to accept compulsory third-party settlement even of strictly legal disputes. If States were willing to take that step in so vital a matter as aggression, a great advance would be made towards a world order based on the rule of law, and towards ensuring that disputes were settled "in conformity with the principles of justice and international law", as provided in the Charter. He feared, however, that the Committee might be asking the Security Council for more than could be expected of it. His delegation could not in any case accept the notion of automaticity; it would prefer to leave any possible definition of aggression as a tool to be used at the discretion of the Council.

The role of the Council in determining a breach of the peace or a threat to the peace and in making a finding of aggression involved a further difficulty. It was easy to discern that a breach of the peace had occurred and only slightly less easy to determine the existence of a threat to the peace, but it was much harder to decide in a given controversy who was the aggressor. Judgement then called for access to the facts, which were not always readily obtainable, and involved the possibility of the subjective interpretation of disputed facts, especially in view of the political tension normal in such situations.

In short, it was advisable to go slowly in the development of jurisprudence on aggression and above all to safeguard the discretionary authority of the Security Council in making its findings.

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Further considerations that should be taken into account in connexion with any possible definition of aggression were (1) the concept of threat of aggression contained in the Non-Proliferation Treaty security guarantees resolution; (2) the difference between direct and indirect aggression, neither of which should be stressed to the exclusion of the other; (3) the question of the entities to which a definition of aggression should be applicable, which in the view of the Canadian delegation should be both States and entities that were not States or were not generally recognized as States; and (4) the status of the definition, which, since it would not be a draft code nor Charter amendment, should presumably at least be adopted by both the General Assembly and the Security Council in order to give it some constitutional status.

The minimum requirements for an adequate definition were therefore that it should (1) in general, safeguard the discretionary authority of the Security Council and in particular permit it to make a finding of aggression in any case of a threat to or breach of the peace; (2) assist rather than impede the organs of the United Nations in their functions; (3) be consistent with and founded on the Charter provisions, therefore recognizing the primary role of the Security Council in the maintenance of international peace and security; (4) include the element of intent; (5) not be so general as to be merely repetitive of the Charter, nor so specific as to suggest that it was exhaustive; (6) be applicable to both direct and indirect aggression; (7) permit the Charter exceptions to the prohibition of force and only those exceptions; (8) be applicable equally to States and to entities that were not generally recognized as States; and (9) be politically acceptable to a majority of the members of the Assembly and to all the permanent members of the Security Council.

It was satisfactory to note the areas of common ground that had emerged in the course of the debate. In procedural matters it was generally agreed that the possibility of defining aggression came within the terms of reference of the Committee, and that the next stage of the Committee's work should be the consideration of forcible aggression. On substantive questions, it appeared to be agreed that any possible definition of aggression must be compatible with the provisions of the Charter and founded upon the Charter, that the primary role of the Security Council in the maintenance of peace and security should be recognized, that any such definition must safeguard the discretionary authority of the Security

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Council, that the only legitimate exceptions to the Charter's prohibition of the use of force were the inherent right of individual or collective self-defence or action taken pursuant to a decision of the Security Council or the General Assembly or a competent regional organization in accordance with the Charter, and finally that the crime of aggression comprised both the forcible act itself and the unlawful intent behind it.

The Canadian delegation would be pleased to co-operate in the continuing work of the Committee.

Mr. MUTUALE (Democratic Republic of the Congo) said he wished to speak on certain general aspects of the matter upon which his delegation had not touched during the discussion in the General Assembly and in the Sixth Committee.

Regarding methods of work, he felt that it was not feasible to try to find a definition of armed aggression by the expedient of defining its various forms. Armed aggression could not be defined without first defining aggression itself, and it was the Committee's task to determine, not the means by which aggression could be committed, but in what aggression consisted. Moreover, the Charter did not use the word "aggression" in several different senses; aggression was a legal concept with only one meaning, but the practical ways and means of carrying it out assumed many forms.

Armed aggression was of course the most visible form of aggression, and in an era of proliferation of nuclear weapons an attempt must be made to define it. The evil of aggression, however, lay not in the existence of arms, but rather in the intent of Governments to impose their will on other Governments or peoples. Aggression could also take the form of economic pressure by the industrialized nations against the poorer, more vulnerable ones, which represented two thirds of the world's population. Nations could die of hunger and poverty as well as in wars.

The delegations that were opposed to a definition which would include economic aggression were afraid that such an idea would be used as an instrument of propaganda by their enemies and that it might bring about a crusade for economic liberation that would be detrimental to international security. He would remind those delegations that Article 51 of the Charter recognized the inherent right of Member States to self-defence in the case of armed attack. The right of self-defence did

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(Mr. Mutuale, Democratic Republic of the Congo)

not, however, imply the right to retaliate by any possible means and there was a limit beyond which self-defence became illegitimate. Self-defence could only be justified when an act of aggression was so imminent that there was no possibility of a peaceful settlement. Nevertheless, even when exercising the right of self-defence, the victim of aggression was obliged to act in accordance with the principle of moderation and of proportionality between the means of defence used and the need to halt the aggression.

Although a definition of aggression would help to prevent war, the mere absence of war was not peace, which could only be brought about by international co-operation. The legitimacy of the right to self-defence was closely related to the peaceful settlement of disputes, which was one method of international co-operation. The methods of aggression used against a State did not automatically give it a legal right to use similar methods against the aggressor, for only necessary and moderate action could constitute legitimate self-defence.

Those arguments should, he thought, serve to reassure the delegations that had expressed apprehension concerning the possible proliferation of "wars of self-defence".

Although his delegation had no firm preference concerning the type of definition, it was inclined to favour a descriptive or general definition of aggression rather than an enumerative one.

The question at issue concerned all the countries of the world, for all had a right to peaceful economic and cultural development. He therefore urged the members of the Committee to set aside the matters that divided them and to unite in the interests of mankind as a whole.

The CHAIRMAN declared the general debate closed.

The meeting rose at 4.35 p.m.

SUMMARY RECORD OF THE TWELFTH MEETING

Held on Wednesday, 19 June 1968, at 3.15 p.m.

Chairman: Mr. YASSEEN (Iraq)

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (General Assembly resolution 2330 (XXII)) (agenda item 5) (continued)

The CHAIRMAN informed the members of the Committee that they now had before them a working paper prepared by the Secretariat (A/AC.134/L.2) which gave the texts of draft definitions of aggression proposed by States Members of the United Nations in the Sixth Committee of the General Assembly and in the 1953 and 1956 Special Committees. The Secretariat was preparing another document which would summarize, in chronological order, the various views expressed concerning the content of a definition of aggression.

The situation still gave cause for concern, for no draft definition had yet been placed before the Committee, which had only thirteen meetings left in which to complete its work. If it decided to set up a working party, that body would be able to meet only once a day, and in that case the Committee itself would not be able to meet. He would therefore be glad if delegations which proposed to submit drafts or working papers would do so as soon as possible, so that the Committee could proceed with its work. He urged the representatives who were already conferring with each other to speed up their consultations so that the results of their talks might be placed before the Committee without delay.

Mr. TARAZI (Syria) fully endorsed the Chairman's observations. Some conclusions had emerged from the general debate. Consultations had already taken place between delegations of one group, as also in other groups, so that all the ideas expressed during the debate had been clarified. Specific texts on which the Committee could work should now be submitted. There should of course be as wide a measure of agreement as possible on those documents, so that the Committee could take the necessary decisions in the light of the terms of reference given to it by the General Assembly.

He therefore proposed that the next day's meeting should be cancelled, so that the consultations could continue, and that the meeting for the day after that should be devoted to the consideration of any texts that might be ready.

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The CHAIRMAN said that the Syrian representative's suggestion would no doubt make it possible for the Committee to start a useful discussion on the basis of the documents submitted.

Mr. CHIKVADZE (Union of Soviet Socialist Republics) observed that the members of the Committee had opted by a heavy majority for the preparation of a definition of aggression. They had not been unaware of the difficulties involved in such an undertaking, but they had stressed that it was necessary to overcome them. His delegation, for its part, was convinced that they could be overcome. A small number of delegations had expressed doubts about the feasibility of producing an agreed text. Others had affirmed in all frankness that a definition was impossible in the present circumstances. Most delegations had, however, undertaken to collaborate in the preparation of a definition.

The Committee was not starting from nothing. Numerous draft definitions were already to hand, that of the USSR, for example, and those submitted by other States at various stages in the consideration of the question by the United Nations. If some delegations or groups were preparing to take fresh initiatives, that could only be a matter for satisfaction. They must be allowed enough time for reflection. As soon as the consultations were completed and the proposals were made known, it would be wise to set up an informal working party, whose composition could be more or less based on that of the Committee. The working party would gather together all the drafts submitted since the beginning and seek to discern any points of agreement. In that way, the Committee would have before it one or more drafts on which a certain measure of agreement had already been achieved. That would help it in its work and make the task of preparing the report to the General Assembly easier.

Mr. ALCIVAR (Ecuador) confirmed that consultations were taking place among several delegations, including his own. It was possible that a joint text might not be produced immediately and the Committee might have before it one or more proposals. The Soviet Union representative had made a useful suggestion: the working method that he had outlined corresponded exactly to that followed by the Sixth Committee of the General Assembly in 1963 during the consideration of principles of international law concerning friendly relations and co-operation among States, when informal consultations among the sponsors of proposals had enabled them to agree on a single text, which had been adopted unanimously. In that connexion, there seemed to be much wisdom in the Syrian representative's suggestion that the next day's meeting should be cancelled and consultations held instead.

The CHAIRMAN said that he saw no objection to cancelling the next day's meeting. He hoped that concrete proposals would be submitted the following day or the day after that, so that members of the Committee could study them at leisure over the weekend.

Mr. HARGROVE (United States of America) said that the first question to be considered was procedural, namely, how the Committee would organize the next stage of its work. It would of course be necessary to wait until the Committee knew what proposals were to be submitted to it before any decision could be taken, for their nature might perhaps influence its decision. The United States delegation did not dispute the value of working parties or other informal arrangements, which had often proved effective, but it considered that before adopting that procedure the Committee should itself have an opportunity to study any specific drafts that might be proposed. From the comments that would be made on that occasion, the proposed informal working party would no doubt be able to gain some useful pointers which would serve, as it were, as guidelines.

The CHAIRMAN said that that suggestion did not conflict with those that had been made previously. The Committee could decide what method it would adopt when it had seen the type of proposals submitted to it and had expressed its views on them. In any case, there was nothing to prevent delegations from holding informal consultations. It was to be hoped that, by adopting that procedure, the Committee would be able to complete its work successfully.

The meeting rose at 3.45 p.m.

SUMMARY RECORD OF THE THIRTEENTH MEETING

Held on Friday, 21 June 1968, at 3.20 p.m.

Chairman: Mr. YASSEEN (Iraq)

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (General Assembly resolution 2330 (XXII) (agenda item 5) (continued)

The CHAIRMAN said that the Committee had completed its general debate but that unfortunately no drafts or working documents had yet been received for it to discuss.

In view of the limited time available he urged members to submit their drafts as soon as possible so that discussion could start at the next meeting.

Mr. GONZALEZ-GALVEZ (Mexico), supported by Mr. EL REEDY (United Arab Republic), explained that delegations had considered it desirable to meet informally in order to prepare their drafts. It was hoped to submit working documents shortly.

The meeting rose at 3.30 p.m.

SUMMARY RECORD OF THE FOURTEENTH MEETING

Held on Tuesday, 25 June 1968, at 3.30 p.m.

Chairman: Mr. YASSEEN (Iraq)

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (General Assembly resolution 2330 (XXII)) (agenda item 5) (continued)

The CHAIRMAN announced that the proposal which the representative of Ghana wished to present on behalf of a number of delegations could be circulated towards the end of the afternoon. He accordingly proposed that the meeting should be suspended until 5 p.m.

Mr. GROS ESPIELL (Uruguay) said that the delegations of Colombia, Mexico and Uruguay had also prepared a draft text on the definition of aggression, which took into account the traditional position of the Latin American countries, the comments of the delegations of those countries during the general debate, and events in the distant and recent past. The sponsors of the draft were not trying to put forward particular points of view but merely to provide a basis for negotiation; they hoped that after the general debate it would be possible for the Special Committee to adopt a draft resolution on the definition of aggression unanimously.

For the time being the draft resolution was being submitted by the delegations of Colombia, Mexico and Uruguay. He hoped that the delegation of Ecuador, which had helped to draft it, would shortly receive instructions from its Government enabling it to be included among the sponsors.

Mr. MARTINEZ COBO (Ecuador) said that, in the absence of an authorization from his Ministry of Foreign Affairs, he regretted that he could not join the three Latin American delegations in submitting the draft resolution. He hoped that Ecuador would shortly become a sponsor.

The PRESIDENT proposed the suspension of the meeting.

It was so decided.

The meeting was suspended at 3.30 p.m. and was resumed at 5.15 p.m.

Mr. LAMPTEY (Ghana), introducing the draft declaration on aggression (A/AC.134/L.3), stated that Indonesia, Madagascar and Yugoslavia had joined the sponsors.

The draft declaration was not, of course, perfect and it did not include all the ideas that some delegations would like to see in a comprehensive definition of aggression. In particular, the Afro-Asian countries considered that the term "force" in the Charter embraced political and economic restraint as well as military force and that aggression ipso facto included economic aggression. Consequently it had not been easy for certain delegations to accept a compromise definition which excluded that notion.

(Mr. Lamptey, Ghana)

Similarly, some of the sponsors who held that such acts as subversion against a State and infiltration by armed groups into a State should be included in the definition had not found it easy to agree that those acts should not be mentioned in the draft declaration. Nevertheless, being realistic, they had realized that efforts to include such ideas in the definition of aggression could at the present stage lead only to deadlock. They therefore urged delegations which had very decided views on such questions to accept the compromise in operative paragraph 2 which had been achieved only with considerable difficulty.

The sponsors of the draft had taken into account all the points of view expressed in the general debate and the text covered, as far as was possible, the points on which agreement had been reached during that debate.

At the eleventh meeting the Canadian representative had set forth the minimum conditions that a definition should fulfil in order to be satisfactory (A/AC.134/SR.11): it should (1) safeguard the discretionary authority of the Security Council; (2) assist rather than impede the organs of the United Nations bodies in their functions; (3) be consistent with and founded on the Charter provisions, therefore recognizing the primary role of the Security Council in the maintenance of international peace and security; (4) include the element of intent; (5) not be so general as to be merely a repetition of the Charter or so specific as to suggest that it was exhaustive; (6) be applicable to both direct and indirect aggression; (7) permit the Charter exceptions to the prohibition of force and only those exceptions; (8) be applicable equally to States and to entities that were not generally recognized as States; and (9) be politically acceptable to all members of the Assembly and to the permanent members of the Security Council. These conditions had been taken into consideration: (1) the second, third and fourth preambular paragraphs fulfilled the first condition; (2) the first, fourth and fifth preambular paragraphs and the operative paragraphs met the second condition; (3) the preambular paragraphs together embodied the idea set forth in the third condition; (4) the notion of intent was included implicitly in the operative part; (5) the fifth condition was fulfilled by the terms of the draft as a whole; (6) for the reasons already given, indirect aggression was not included in the draft; (7) as was apparent from the seventh and eighth preambular paragraphs, the draft permitted only the exceptions provided under the Charter; (8) the sponsors had not mentioned entities not generally recognized as States, but were ready to take into consideration any text formulating that idea that might be proposed; (9) a draft declaration of the kind now submitted was rarely acceptable to all members of the

(Mr. Lamptey, Ghana)

General Assembly; nevertheless, the sponsors had endeavoured to submit a draft which might gain the support of the General Assembly. In any case, a draft declaration of that kind could not be regarded as unacceptable merely because a few members of the General Assembly or permanent members of the Security Council found it so. The sponsors had tried to take into account the conditions specified by the member States in question, in order to enable them to accept the text. Should they fail to accept it, however, the Special Committee should not be discouraged, bearing in mind that the Treaty on the Non-Proliferation of Nuclear Weapons and the guarantees against aggression given by virtue of that Treaty had been adopted by the General Assembly and the Security Council without the active support of all the permanent members.

Mr. CHIKVADZE (Union of Soviet Socialist Republics) congratulated the Afro-Asian countries on presenting a specific proposal which merited careful study by the Special Committee. Seeing, however, that delegations had not yet had time to study the document, and since it would be better to consider it at the same time as the Latin American proposal, he suggested that consideration should be postponed until the latter proposal had been circulated.

The CHAIRMAN agreed that it would be desirable to study the two proposals together.

Mr. GROS ESPIELL (Uruguay) also supported the USSR representative's proposal.

The meeting rose at 5.40 p.m.

SUMMARY RECORD OF THE FIFTEENTH MEETING

Held on Wednesday, 26 June 1968, at 3.20 p.m.

Chairman: Mr. YASSEEN (Iraq)

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (General Assembly resolution 2330 (XXII)) (agenda item 5) (documents A/AC.134/L.3 and Add.1 and Corr.1, A/AC.134/L.4) (continued)

Mr. GONZALEZ GALVEZ (Mexico), introducing the proposal in document A/AC.134/L.4 sponsored by the delegations of Columbia, Mexico and Uruguay, said that the basic idea behind it was that it was impossible to conceive of the principle of the prohibition of the threat or use of force merely as a limitation on a State's activity; it was also necessary to recognize that the competent organs of the United Nations had a virtual monopoly of judgement and decision and of the restraining powers necessary in any international community.

The system of collective security introduced since the establishment of the United Nations provided for the use of force as a means of self-defence, but that exceptional right could not be extended to the field in which the United Nations had full powers to act without the co-operation of its Members, i.e. its responsibility for deciding whether and how force should be used.

Paragraph 4 of the proposal stated that the right of self-defence was justified solely in the case of an armed attack. That sentence should be interpreted strictly, since under the Charter armed attack was the only justification for exercising the right of self-defence. Violation of international treaties or the rights or interests of other States, repudiation of debts, acts of subversion and terrorism, military preparations which did not constitute armed attack, danger to the life or property of foreigners or breaking of diplomatic relations could no longer be considered, as in the past, to justify the use of force in self-defence.

Although the proposal referred exclusively to direct armed aggression it did not overlook the question of the support increasingly being given by Governments to subversive or terrorist activities against the territorial integrity or political independence of other States. Since the right of self-defence under Article 51 of the Charter could not be invoked in such cases, the sponsors had included paragraph 5, which covered the matter.

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(Mr. Gonzales Galvez, Mexico)

Under Article 103 of the Charter all Members of the United Nations had agreed that, in the event of a conflict between their obligations under the Charter and their obligations under any other international agreement, their obligations under the Charter should prevail. There were, however, some conditions established by usage which should be considered to prevail in matters for which the Charter made no provision. He was referring to the requirement that action in self-defence should be in proportion to the illegal act that had made it necessary and should be immediate.

The sponsors hoped that by dealing only with so-called direct armed aggression and leaving the question of indirect armed aggression to a later stage in the Committee's work, they would make it easier to obtain agreement. It was clear that, although the commission of an act of terrorism or subversion by one State against another was basically a violation of the principles of non-intervention, such acts could, in certain circumstances, become acts that infringed the provisions of Article 2 (4) of the Charter.

The draft resolution was not presented as a definitive text but rather as a contribution to the negotiations in progress. The sponsors hoped that it would be possible to arrive at a joint text with delegations that had submitted or intended to submit other proposals. Meanwhile, they wished to make the following few amendments of form to their proposal:

Paragraph 1 should be reworded to read: "The use of force by a State or group of States against another State, other States or another group of States is illegal ..."

Paragraph 3 should be reworded to read: "Consequently, the prohibition on the use of force does not affect the legitimate use of force by a competent organ of the United Nations ...".

Paragraph 5 should be reworded to read: "A State which is the victim of subversive or terroristic acts supported by another State or other States may take reasonable and adequate steps to safeguard its existence and its institutions".

Paragraph 7 should be reworded to read: "The use of force to deprive dependent peoples of the exercise of their inherent right to self-determination, in accordance with General Assembly resolution 1514 (XV), is a violation of the Charter of the United Nations.".

The last three paragraphs should be numbered 8, 9 and 10.

The CHAIRMAN said that a revised version of the proposal would be issued later. He urged representatives to make a careful examination of both proposals (A/AC.134/L.3 and L.4/Rev.1), for full discussion at the next meeting. It was possible that a working group would be set up to examine the texts.

The meeting rose at 3.45 p.m.

SUMMARY RECORD OF THE SIXTEENTH MEETING

Held on Thursday, 27 June 1968, at 3.15 p.m.

Chairman: Mr. YASSEEN (Iraq)

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CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (General Assembly resolution 2330 (XXII)(agenda item 5)(A/AC.134/L.3 and Add.1 and Corr.1, L.4/Rev.1)(continued)

Mr. CUENCA (Spain) expressed his satisfaction that the suggestion made by the Cypriot representative and accepted by most delegations that the Committee should begin by defining armed aggression and defer consideration of other forms of aggression to a later date had borne fruit: the Committee now had before it two proposals (A/AC.134/L.3 and Add.1 and Corr.1, and A/AC.134/L.4/Rev.1), both equally constructive and meeting the general wish that the session should achieve something positive and that the Committee should be able to submit a draft definition to the General Assembly.

The Spanish delegation considered that the two documents followed identical principles and methods, except for the fact that the twelve-Power proposal (A/AC.134/L.3 and Add.1 and Corr.1) was in the form of a draft declaration and was therefore more comprehensive with regard to objectives and more specific in the manner in which it conceived those objectives. The two texts were nevertheless close to one another and in his delegation's view could easily be combined to form a single text.

A comparison of the two proposals showed that the text submitted by Colombia, Mexico and Uruguay (A/AC.134/L.4/Rev.1) was in substance contained in the twelve-Power draft, with the exception of two important points, paragraphs 5 and 6, which introduced new features.

With regard to paragraph 5, relating to subversive or terroristic acts, his delegation recognized the need to condemn such acts and reaffirmed its support for a general definition covering armed aggression, both direct and indirect. It agreed, however, that for the present the Committee should confine itself to a definition of direct armed aggression and it accordingly considered that it would be more convenient not to include cases of indirect aggression in the present definition. Such cases would be studied later and it would then be necessary to add to the examples in paragraph 5 other examples of acts of indirect aggression referred to by many delegations during the general debate.

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(Mr. Cuenca, Spain)

Paragraph 6, relating to the conditions for the use of force by regional agencies, expressed the same idea as paragraph 1 of the twelve-Power proposal and might, in a single text, constitute a special paragraph which would strengthen the provisions of Article 53 of the Charter.

With regard to the twelve-Power proposal, he noted that the first, fourth and fifth preambular paragraphs gave the reasons justifying the Committee's efforts to define aggression. They were also the reasons that were set forth in the General Assembly resolutions and that had been referred to by many delegations, including the Latin American countries, during the general debate in the Committee, and in other United Nations organs. The second and third preambular paragraphs embodied ideas similar to those in the Latin American proposal. It should be pointed out, however, that the Spanish version of the former text used the expression autoridad discrecional (discretionary authority), while the second referred to facultad discrecional (discretionary power), which the Spanish delegation considered more appropriate. The sixth preambular paragraph, relating to the inviolability of territory, was drafted in terms similar to those of article 17 of the Bogota Charter, which had been signed and ratified by all States members of the Organization of American States. The last two preambular paragraphs strengthened the idea upheld by the Latin American delegations that only the United Nations had original competence to use force.

The operative part of the twelve-Power proposal provided an extremely useful feature: a general definition of aggression, followed by a non-exhaustive list of a series of acts which were among the most characteristic examples of armed aggression. There was no contradiction, however, between that definition and the Latin American draft, which was a mixed definition, as advocated by the majority of delegations. The two drafts combined a statement of the principles which made up the general concept of aggression and a list of specific cases, leaving the competent organs of the United Nations the discretionary power to determine the existence of a case of aggression not covered by the definition.

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(Mr. Cuenca, Spain)

The specific cases listed in the two proposals were essentially the same. When the twelve Powers spoke of military occupation and annexation in addition to the invasion of a territory, they merely described a series of acts of different scope, all of which constituted aggression against territorial integrity. Similarly, the reference to the air space or territorial waters merely drew attention to the possibility of acts of aggression against elements which under general international law formed part of the territory of a State and were therefore inviolable.

Operative paragraph 3 corresponded to paragraph 7 of the Latin American proposal, both texts recognizing the need to respect the principles set forth in General Assembly resolution 1514 (XV).

He had merely wanted to show that the two texts were conceived along parallel lines and basically embodied the same ideas. In other words, there was ample ground for achieving the object to which all aspired: a single draft giving a definition of direct armed aggression.

Mr. GROS ESPIELL (Uruguay) said that he endorsed all the explanations which the Mexican representative had given concerning the meaning and scope of the Latin American draft. He would like to deal with certain questions arising from a comparative study of that text and the twelve-Power draft declaration.

Despite some differences, the two texts were in agreement on some basic points. On the one hand, they had both been drawn up as definitions; that meant that in both a preamble or statement of reasons set forth the principles applicable in determining the cases in which the use of force was permissible and those in which it was unlawful, as also the cases in which the inherent right of individual or collective self-defence came into play. Thus the essence of the preambular paragraphs of the twelve-Power draft was matched by paragraphs 1, 2, 4 and 10 of the Latin American draft, while operative paragraphs 2 and 3 of the former proposal corresponded to paragraphs 6 and 7 of the latter.

The two drafts were not, of course, similar in every respect, for even when the principles were basically identical they were differently worded and paragraphs 5 and 6 of the Latin American draft, for example, had no counterpart in the other draft.

He would not go into the reasons for paragraph 5 of the Latin American draft but he would like to point out that paragraph 6 reaffirmed a policy untiringly upheld by his country and based on a juridical criterion arising from Uruguay's doctrine of international law.

(Mr. Gros Espiell, Uruguay)

Those few observations and a rapid comparison of the two proposals showed that every effort should be made to amalgamate them in a single text. In view of the points of agreement, there should be no technical difficulty about that; all that was needed was a calm and frank exchange of views in a spirit of conciliation.

He suggested that a working group, informal perhaps, should be set up to draft a new text taking the two drafts into account. Even if full agreement was not possible, the Committee would soon have a single draft on the points of agreement which would enable it to discuss the remaining differences of opinion.

Mr. HARIZANOV (Bulgaria), commenting on the draft submitted by the twelve Powers (A/AC.134/L.3 and Add.1 and Corr.1), noted that the definition in that text was of the mixed type in that it comprised a general formula followed by a list of specific acts of aggression. It should be noted that the list was confined to cases of direct aggression, although the general formula did not specify what factors constituted direct aggression and was conceived in general terms embracing all the forms in which aggression might occur - direct, indirect, economic and ideological aggression. Thus the general formula did not correspond to the list of specific cases of aggression and that contradiction entailed a lack of precision which was inadmissible in a juridical definition such as the definition of aggression should be.

Moreover, the specific acts listed in operative paragraph 2(a), (b), (c), (d) and (e) might, from the military and technical point of view, be either aggression or the exercise of the right of self-defence. The general formula provided no element, no criterion by which the aggressor could be identified or which would help to identify the aggressor. Yet such a criterion existed; it was that of priority in time: the State which first used armed force should be regarded as the aggressor in all cases. That principle was derived from Article 51 of the Charter, since according to that Article armed aggression preceded self-defence. In his delegation's view, the principle of priority in time was fundamental for a definition of aggression. The important thing in the definition was, not to give the fullest possible list of acts of aggression committed in the course of history, but to lay

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(Mr. Harizanov, Bulgaria)

down that the aggressor was the State which had been the first to commit one of those acts. The fact that the definition offered in the draft under consideration did not embody that principle diminished its juridical value and would make it more difficult to apply in practice.

The principle of priority in time was not, of course, applicable in the case of enforcement measures adopted in accordance with the Charter against a State guilty of a breach of the peace or of aggression. It was therefore not necessary to include in a definition of aggression, as was done in the draft, provisions which merely reiterated those of the Charter. The so-called exception clause was completely unnecessary; it merely made the definition of aggression more confused from the juridical point of view and might give rise to controversial interpretations. The same was true of the reference in the definition to the inherent right of self-defence enshrined in Article 51 of the Charter. It was obvious that a definition of aggression would have the effect of identifying the cases in which it was permissible to use force in the exercise of the right of self-defence, but aggression could not be defined, as was done in the draft in question, solely in reference to self-defence. The essential purpose must be to define aggression in such a way that the aggressor could not invoke the right of self-defence. The draft under review did not define acts of aggression but introduced the idea of self-defence, which itself would need to be clearly defined if the definition of aggression was to be of practical value.

The list of acts of direct aggression in the draft was incomplete, since it left out of account acts of aggression perpetrated without a declaration of war, such as the aggression of the United States in Viet-Nam and the aggression of Israel in the Middle East.

In connexion with paragraph 2(b), he pointed out that the invasion of the territory of another State constituted in itself an act of aggression, even without military occupation or annexation of the territory or part of the territory. The reference to space forces in paragraph 2(c) was unnecessary, since those forces were covered by the term "air forces". Similarly, in paragraph 2(e), the reference to "ballistic missiles" should be deleted; it was sufficient to refer to bombardment or the employment of any other means of destruction.

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(Mr. Harizanov, Bulgaria)

In his delegation's view, paragraph 3 concerning the inherent right to self-determination should also be deleted, since that question was dealt with in General Assembly resolution 1514 (XV) and the use for force for the purpose of preventing a dependent people from exercising its inherent right to self-determination did not constitute a special form of aggression; from the juridical point of view, it was therefore not an element in the definition of aggression.

Turning to the Latin American draft (A/AC.134/L.4/Rev.1), he pointed out that the list of acts of aggression in paragraph 8 of the draft concerned only direct aggression, whereas paragraph 5 dealt with an act of indirect aggression, namely, subversion; that impaired the juridical harmony of the definition. Moreover, the list of cases of aggression was not preceded by a general formula setting forth the constituent elements of aggression; in place of such a formula, the various paragraphs set forth certain provisions taken from the Charter or from General Assembly resolutions and dealing with questions not directly related to the constituent elements of aggression. In his delegation's view, a definition which did not include a general introductory clause was devoid of all practical utility.

The remarks he had made with regard to the first draft before the Committee applied also to the second draft, particularly those concerning the criterion of priority and the reference to the right of self-defence and to international enforcement action. Nowhere in the two drafts was there any reference to the fact that aggression was an act recognized in international law as a crime against peace and humanity. Nor did the drafts refer to the responsibility of those who perpetrated acts of aggression. Those were serious omissions which deprived the definition of the necessary juridical precision.

In conclusion, his delegation wished to point out that in accordance with Article 2 (4) of the Charter the term "aggression" comprised not only direct aggression but also the other forms of aggression. The definition of aggression should therefore not be confined to the idea of armed aggression: it should cover indirect, economic and ideological aggression.

The CHAIRMAN invited the members of the Committee to give their views on the Uruguayan representative's suggestion that a working group should be set up.

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Mr. GROS ESPIELL (Uruguay) thought that it would be better to wait until the members of the Committee had expressed their views on the two drafts before setting up the group, for it would be called upon not only to amalgamate the two drafts into a single text but also to take into account the various positive tendencies that had emerged in the course of the debate.

Mr. EL-REEDY (United Arab Republic) agreed that it would be better to defer the establishment of the working group and to allow delegations time to consult each other on the group's terms of reference.

Mr. HARGROVE (United States of America) said that he too thought that it would be premature to set up the working group before all delegations had had time to consider the two drafts and before the drafts had been duly considered at a plenary meeting.

He further pointed out, in connexion with the alleged "aggression of the United States in Viet-Nam" to which the representative of Bulgaria had referred, that the United States from the beginning had addressed itself to the substance and the legal merits of the question of Viet-Nam, and held itself ready to do so now, if the Committee so desired. He deeply regretted the fact that the representative of Bulgaria was apparently unwilling to do so and that for him epithets took the place of argument.

Mr. CHIKVADZE (Union of Soviet Socialist Republics) said that he himself had drawn attention, at an earlier meeting, to the need to set up a working group to combine the various drafts which would be submitted. It was in fact essential to make a digest of the general debate, to specify the components in the definition on which agreement had been reached and to draw attention also to the divergencies of views. That work could be done only by a working group. Of course, the document prepared by the working group would then be considered by the Special Committee in a plenary meeting. The setting up of the working group should not, however, be deferred beyond Monday, 1 July. The proposal to postpone it until a later date was dangerous, for the delay might prevent the Committee from achieving constructive results.

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(Mr. Chkhikvadze, USSR)

It would be useless to try to find in the history of international relations a single case in which the aggressor had openly admitted that he had committed an act of aggression. Even Hitlerite Germany had never made such an admission. Hence the subjective opinion of the aggressor could not be taken into consideration when it was a matter of determining what aggression was and who was the aggressor. That question must be decided by the countries which were the victims of the aggression and the other States of the international community.

The CHAIRMAN said that he agreed with the representatives who considered that it was essential to set up a working group; he pointed out, however, that the working group would have to have all the material necessary for its work. He therefore urged the members of the Committee to make known their views on the drafts which had been submitted as soon as possible and he asked the sponsors of the drafts to consult together with a view to drawing up a joint text.

Mr. MUTUALE (Democratic Republic of the Congo) said that he thought that it was difficult to take a decision on the setting up of a working group before the views of the members of the Committee on the two drafts were known. The question of the composition and terms of reference of a working group generally gave rise to difficulties and to lengthy discussions. The Committee had only seven working days left and some of its meetings would have to be devoted to the consideration of the report that it was to submit to the General Assembly. He therefore hoped that delegations, and particularly the sponsors of the two drafts, would respond to the Chairman's appeal.

Mr. TARAZI (Syria), speaking as a sponsor of the draft declaration on aggression (A/AC.134/L.3 and Add.1 and Corr.1), pointed out that that draft was not definitive. He, for his part, was prepared to take account of the comments of members of the Committee in order to produce a specific definition covering all forms of aggression. Armed attack was admittedly not the only form of aggression, but a complete enumeration of the various forms was impossible. That was why the sponsors of the draft declaration had merely presented a conspectus of the opinions expressed and the situations referred to in the general debate. The Committee should reach a compromise, not on the principle, but on the way in which to put the principle of aggression in concrete form.

(Mr. Tarazi, Syria)

He agreed with the representative of Bulgaria that the draft declaration must mention the principle of priority in time, according to which the State which first resorted to force was the aggressor. Similarly, it would be well to state clearly in the draft that aggression constituted a crime in international law because it was a crime against international peace and security.

Referring to paragraph 2 (e) of the draft, he explained that the words "the employment of ballistic missiles" had been included in order to take into account the wish expressed by certain delegations. In his view, that detail could be retained.

As far as the reference in paragraph 3 to General Assembly resolution 1514 (XV) was concerned, he agreed with the other sponsors of the draft that it was useful, in defining aggression, to go back to the provisions of that resolution, which had helped to speed up the process of decolonization. To mention only one case, despite the intervention of the General Assembly, the Security Council and even the International Court of Justice, South West Africa was still under the rule of South Africa. The reference to resolution 1514 (XV) was necessary, for national liberation movements in territories which were still under the colonialist yoke were entitled to revolt against the colonial Power and the latter was committing an act of aggression by resorting to force against them.

Referring to paragraph 2 (b), he explained that in mentioning military occupation the sponsors had wished to draw attention to the gravity of the consequences of invasion.

In conclusion, he said that he favoured the setting up of a working group, but he thought that the group should include not only the sponsors of the two drafts but all the delegations which were really in favour of defining aggression. To appoint delegations which did not genuinely wish to define aggression to the group would be an act of sabotage.

The meeting rose at 4.40 p.m.

SUMMARY RECORD OF THE SEVENTEENTH MEETING

Held on Friday, 28 June 1968, at 3.20 p.m.

Chairman: Mr. YASSEEN (Iraq)

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (General Assembly resolution 2330 (XXII)) (agenda item 5) (A/AC.134/L.3 and Add.1 and Corr.1, A/AC.134/L.4/Rev.1) (continued)

Mr. MARTINEZ COBO (Ecuador) announced that his delegation wished to associate itself with those of Colombia, Mexico and Uruguay as a sponsor of the proposal appearing in document A/AC.134/L.4/Rev.1.

Mr. RENOUARD (France) said that, despite what previous speakers had said about the similarities between the two drafts before the Committee (A/AC.134/L.3 and L.4/Rev.1), he proposed to comment on them separately because of the fundamental difference between them, both in approach and in structure.

With regard to the draft declaration (A/AC.134/L.3), while his delegation had nothing against the formula employed, it wondered whether an objective definition which was to be legal in character should be preceded by a preamble. If the only purpose of the preamble was to make interpretation of the operative part easier, that interpretation could be better obtained by reference to the preparatory work both of the Special Committee and of the Sixth Committee of the General Assembly. If, on the other hand, the purpose was to introduce new ideas not appearing in the definition or to give the latter a political rather than a legal character, a preamble was neither useful nor desirable.

While it appreciated the efforts of the sponsors to produce a text which would be acceptable to all and their reasons for keeping within the framework of the Charter, his delegation noted that the text applied only to States or groups of States, and not to territories which were not States, and that it reaffirmed the discretionary competence of the Security Council to supervise the maintenance or restoration of international peace and security. He wondered, however, whether the desire to achieve a compromise had not somewhat destroyed the clarity of the text.

His delegation was uncertain whether the word "force" was being used in the strict sense of "armed force" or whether it was being used in the wider sense attributed to it by the spokesman of the sponsors during the general debate. His delegation's attitude to the draft would depend on what meaning was to be given to the word "force". If, as the sponsors had stated, the intention was to deal with the notion of aggression pure and simple, without reference to economic and ideological pressure, the word "force" would mean "armed force", which was his delegation's understanding of the word, and that would have important consequences in so far as

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the significance of certain of the provisions in the draft were concerned. The phrase "the use of force in any form" in operative paragraph 1 would then apply to so-called indirect aggression, in particular to subversive acts by armed forces.

The seventh and eighth paragraphs of the preamble, however, seemed to make a distinction between the two notions of force, the former condemning the use of force outright and the latter referring to the legitimate use of armed force in accordance with Article 51 of the Charter. Similarly, the reference in operative paragraph 1 to the use of force against the people of a State would be pointless since that notion was implicit in the expression "use of force against the territory of a State". If, on the other hand, the sponsors wanted to give the word "force" the wide meaning they had given it in their interpretation of the Charter, then the phrase "the use of force in any form" would apparently include not only indirect forms of aggression but also intervention of an economic and ideological nature. The phrase "the use of force against the people of a State" would also allow of broad and incorrect interpretations since it might cover economic and ideological pressure, appreciation of which was of necessity subjective.

Turning to more specific points, he said that he did not consider the reference to Article 1 of the Charter in the second preambular paragraph completely relevant. It was in any case unnecessary, since that Article did not refer expressly to the competence of the Security Council, with which that paragraph dealt.

Apart from the fundamental question of the meaning of the word "force", there were serious gaps in operative paragraph 1. In that connexion, his delegation agreed to a certain extent with the remarks of the Bulgarian representative. It was absolutely essential that the notion of aggression should be defined by means of a criterion which took into account the nature and the gravity of the act in question. Reference to Article 2 (4) and Article 1 (1) of the Charter, as also to the wording of Article 39, would show that only breaches of the peace, and not minor hostile acts linked, for example, with frontier incidents, came within the framework of the notion of aggression and authorized the taking of the defensive measures provided for in Article 51. Moreover, in cases of legitimate use of armed force between States, there were no material means of distinguishing an aggressive act in self-defence, since self-defence entitled the defending State to take action of the same gravity as that taken by the aggressor. To overcome that difficulty, definition of the second criterion for aggression was necessary. A basis for such a criterion might be "the State which

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first uses armed force against another State, thus provoking a breach of the peace, shall be considered the aggressor". Such a principle, however, gave rise to certain difficulties. Firstly, it would be difficult to prove the facts, although the Security Council would always, whatever happened, have to make a subjective appreciation of the quality of the proof supplied. The second difficulty was that the direct application of the criterion of priority would lead to the condemnation as an aggressor of any State which was shown to have used armed force first against another State, whatever the real circumstances were. It was clear that the adoption of such a criterion would need careful reflection, but there was a risk that without it any definition of aggression would be useless.

His delegation found it equally difficult to take a final position in respect of operative paragraph 2 because of the ambiguity of the phrase "and without prejudice to the declaration of other acts as forms of aggression in the future". To the extent that the phrase might apply to acts which did not involve the use of armed force, it was inacceptable to his delegation. If it applied to acts due to the use of armed force, the acts in question should be listed clearly. The formula should not be used if it referred to purely hypothetical acts. Moreover, the words "invasion" and "attack" were given too wide a meaning.

The type of statement in operative paragraph 3 had no place in a legal definition of aggression. The provisions of Article 2 (4) of the Charter and of Chapter VII governed only the use of force by one State against another and were not relevant in connexion with the matter dealt with in operative paragraph 3. The affirmation of the principle involved, however, would certainly be the subject of study by the Committee on Principles of International Law concerning Friendly Relations and Co-operation among States in connexion with the principle of the equality of rights and of the self-determination of peoples.

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Operative paragraph 4 had no real connexion with the definition of aggression; its inclusion was neither useful nor desirable. It was unwise to suggest in any way whatsoever that situations might arise which justified acts already qualified as aggression. Since aggression was to be condemned, there was no justification for acts of aggression as such. Moreover, the idea expressed in the paragraph was implicit in any definition of aggression.

With regard to the Latin American draft (A/AC.134/L.4/Rev.1), he had some difficulty in discerning what form the sponsors intended their definition to have. His general comments on the substance were similar to those he had made in respect of the substance of the other draft. It was not clear what was meant by "force"; the reference to armed aggression in paragraph 4 gave the impression that the interpretation given to "force" in other paragraphs was very wide. Secondly, no criterion was suggested for determining the difference between the legitimate use of force and aggression.

His delegation did not consider that paragraph 5 was compatible with the notion of aggression. Moreover, that paragraph left it to the States concerned to decide subjectively what a subversive or terrorist act was and what the most appropriate counter-measures were. Further, it seemed to justify resistance to what appeared to be indirect aggression on a basis other than that provided by Article 51 of the Charter. That served to demonstrate the ambiguity of cases covered by the term "indirect aggression" which, more often than not, came under the principle of non-intervention rather than under the notion of aggression. The comments he had made on paragraphs 3 and 4 of the other draft applied equally to paragraphs 7 and 9 of the Latin American draft.

His delegation felt that, once the ambiguity in connexion with the interpretation of the word "force" in both the texts had been cleared up, great progress would have been made. If it became clear that the word was being used in the restricted sense of "armed force", there was no doubt that the two proposals, and particularly that in document A/AC.134/L.3, would provide a basis upon which his delegation could collaborate.

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(Mr. Renouard, France)

It was obvious that the definition being sought could only be the result of collective work if it was to be acceptable to the great majority of States Members of the United Nations, and in particular to those which, by virtue of the Charter, had the main responsibility for setting in motion the powers of action provided for in Chapter VII of the Charter. It was neither possible nor desirable for the Committee to consider a definition acceptable which did not receive the agreement of the permanent members of the Security Council. In that connexion, he wished to stress that the procedure followed for the Treaty on the Non-Proliferation of Nuclear Weapons was neither relevant nor adequate when dealing with the definition of aggression.

Mr. BEESLEY (Canada) associated himself with the reservations expressed by the representative of France concerning the ambiguity of the phrase "force in any form" in operative paragraph 1. He recalled that at the eleventh meeting he had outlined various criteria of adequacy for a draft definition of aggression, the most important of which was the need to safeguard the discretionary authority of the Security Council. As the representative of Ghana had pointed out, the second, third and fourth preambular paragraphs of the draft declaration (A/AC.134/L.3) related to that requirement. The Canadian delegation recognized the inclusion of those references to the role of the Security Council as a genuine attempt to meet a widely recognized need, but wished to point out that it was the total definition which would determine whether or not the Council's role was safeguarded. For reasons relating principally to the question of indirect aggression, he was not satisfied that the draft wholly met that requirement although it did go some way towards so doing.

The sponsors of the draft were to be complimented on recognizing, in the first preambular paragraph, the distinction between the term "aggression" as employed in the Charter and its use as an abstract concept. The use of the phrase "may be enhanced" in that paragraph seemed to reflect an attempt by the sponsors to meet the point of view not only of those who were convinced that a definition of aggression would enhance peace and security but also of those who, while not opposed in principle to the definition, were not convinced of its utility.

The second preambular paragraph contained the necessary references to Article 1 (1) and Chapter VII of the Charter but failed to refer to Article 24, which expressly conferred on the Security Council primary responsibility for the

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maintenance of international peace and security. It might be desirable to transform that paragraph, redrafted to include a reference to Article 24, together, perhaps, with the first preambular paragraph, into an operative paragraph, or, alternatively, to provide for a parallel operative paragraph.

The third preambular paragraph should also be redrafted to include a reference to the fundamentally important Article 24.

In recognizing that the determination of aggression must be made in the circumstances of each particular case, the fourth preambular paragraph went a considerable way towards safeguarding the discretionary authority of the Security Council, always subject to the substantive provisions of the draft as a whole.

The second requirement he had outlined was that any definition must assist rather than impede the organs of the United Nations and their functions. He wished to draw attention to the effect upon the operations of the Security Council of the absence of any reference to indirect aggression and to non-State entities in the draft, coupled with the ambiguities stemming from the phrase "force in any form" and the possible implications of operative paragraph 8, but he was pleased to note, with regard to the second point, the statement by the representative of Ghana that his group was open to suggestion.

Much of what he had said applied also to his third requirement, viz, that any draft should be consistent with and founded on the provisions of the Charter, thereby recognizing the primary role of the Security Council in the maintenance of international peace and security.

He was not satisfied that his fourth requirement, relating to the element of intent, was satisfied in the draft. Admittedly, operative paragraph 1 defined aggression as the use of force against the people or territory of another State or group of States or in any way affecting the territorial integrity, sovereignty and political independence of such other State or States, but, as the representative of Bulgaria had pointed out, the subsequent enumeration of acts of aggression was somewhat neutral in that they could apply either to measures of self-defence or to the commission of aggression. The question of intent was too important to be covered by inference only; it should be stated clearly and emphatically. Moreover, the language of the paragraph did not cover unsuccessful aggression which did not succeed in actually affecting the territorial integrity, sovereignty or political independence of States. That was a dangerous omission.

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With regard to the requirement that a draft definition should not be so general as to be merely repetitive of the Charter or so specific as to suggest that it was exhaustive, he thought that the draft tended to meet the first half of that requirement better than the second, by the inclusion in operative paragraph 2 of the phrase "and without prejudice to the declaration of other acts as forms of aggression in the future". That phrase appeared, however, to be directed more towards possible further declarations by United Nations organs than towards the overriding right of the Security Council to make a finding of aggression when it saw fit to do so, and he therefore shared the misgivings concerning it expressed by the representative of France. Moreover, it might have been preferable to carry over the notion embodied in the first preambular paragraph, namely that the definition should bear upon the term "aggression" as employed in the Charter rather than state flatly that aggression was one thing or another, thereby seeming to encroach upon the Council's prerogatives.

He agreed with the representative of Bulgaria that the wording of operative paragraph 1 suggested that the definition was intended as a comprehensive one, whereas operative paragraph 2 dealt with direct aggression only, and the two were therefore incompatible. It would be most undesirable if the draft were to create the impression that indirect aggression was either outside the terms of a possible definition or of a lower order than direct aggression. It had long been the Canadian position that any definition must be applicable to both direct and indirect aggression, as would be seen by reference to document A/2211, paragraph 427, dated 3 October 1952.

As the representative of Ghana had pointed out, the draft went some way towards meeting the further requirement that only the Charter exceptions to the prohibition of the use of force should be permitted. That was indeed one of the merits of operative paragraph 1 as it stood. As the representative of Bulgaria had pointed out, however, the problem of determining whether the acts enumerated in operative paragraph 2 constituted aggression or self-defence remained unresolved. He agreed with that representative that the enumeration should be prefaced by some wording relating the paragraph to the essential elements of aggression. In the view of the Canadian delegation, a suitable reference to intent would suffice and it would not be necessary to touch upon the contentious question of "first use". Operative paragraph 3 might be more relevant to the studies of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States on the use of force than to a definition of aggression.

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The criterion that the definition should be equally applicable to States and to entities not generally recognized as States was not met by the draft declaration. The importance of that point was obvious, given the number of situations of conflict and potential conflict involving entities not recognized by all parties as States.

It was not yet possible to offer an opinion on the political acceptability of the draft to the majority of the members of the Assembly and to all the permanent members of the Security Council. Clearly, however, the absence of any reference to indirect aggression greatly reduced the chances of the draft being generally acceptable.

He had some further reservations respecting the legal adequacy of the draft. He was not sure that he understood the exact force of the phrase "military occupation" used in the sixth preambular paragraph. He presumed that it meant forceable occupation without the consent of the host country, but it might be taken even to rule out military manoeuvres by an alliance, or, as the French representative had pointed out, to include border incidents within the definition of aggression.

He was not sure how the affirmation as a peremptory norm that only the United Nations had original competence to employ force (seventh preambular paragraph) might affect the concept of the inherent right of individual and collective self-defence as recognized by the Charter. It might be that he misunderstood the affirmation since the word "original" might be taken either in a temporal sense or in the sense of primary competence. He would like the sponsors to enlighten him on that point.

With regard to the eighth preambular paragraph, his delegation would have serious reservations if it was intended to mean that one State or entity might employ a variety of means of indirect aggression against another, such as subversion and armed raids, leaving the other State or entity with no means of defence against that aggression. That problem was the cause of much tension at the present time thoughout the world and great care was needed in dealing with it.

He congratulated the sponsors of the draft on their constructive efforts. He would reserve his comments on the Latin American draft (A/AC.134/L.4/Rev.1) until a later stage in the debate.

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Mr. ALLAF (Syria) said that, while his delegation supported the establishment of a working group, it considered that there should first be an exchange of views on the two drafts, in the course of which it would be salutary to remember that the near-consensus of the Committee had been in favour of a limited or "first-stage" definition of aggression, confined for the time being to direct armed aggression.

The parallels between the two drafts having been pointed out by previous speakers, it would be useful to try to establish the points on which the drafts differed. The first basic difference related to the reference in paragraph 6 of the Latin American draft (A/AC.134/L.4/Rev.1) to the legality of the use of force by regional agencies with the authorization of the Security Council, in accordance with Article 53 of the Charter, and of its use without the authorization of the Security Council in cases of self-defence. Since the use of force in individual or collective self-defence was recognized as a right under Article 51 of the Charter on the sole condition that an armed attack had occurred, there was no need to specify the right of regional agencies in a separate paragraph; their case could be covered in a general clause recalling the terms of Article 51 of the Charter.

The use of force by regional agencies apart from the case of self-defence was a different matter and one which his delegation considered unacceptable - even in the unlikely event of authorization by the Security Council - if it was meant that regional agencies could initiate the use of force. Paragraphs 3 and 6 of the Latin American draft seemed to him to be based on a misinterpretation of Article 53 of the Charter in that they spoke of the "use of force", whereas Article 53 referred to "enforcement action" by which the Security Council, normally after refusal by an aggressor to obey its decisions, decided to utilize a regional arrangement or agency for the execution of an enforcement action under its authority. In other words, Article 53 referred to action by regional agencies as agents of the Security Council, whereas the Latin American draft represented the Security Council as a mere controlling organ which could permit or not permit an action decided on by the regional agency. The case of self-defence did not arise in that context, since Article 53 related to a much later stage of a dispute than that covered by Article 51, viz. the stage at which an act of aggression had been committed, reported to the

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Security Council, considered by it and the Security Council's decision disobeyed by the aggressor; it was at that stage that Article 53 envisaged that the enforcement action to be taken by the Council might be assigned to the regional agency for implementation. For those reasons his delegation considered that enforcement measures taken by regional agencies on behalf and at the request of the Security Council, in accordance with Article 53 of the Charter, had nothing to do with aggression or self-defence and should not be mentioned in the draft definition.

The second basic difference between the two drafts related to the right of a State which was the victim of subversive or terroristic acts supported by another State or other States to take "reasonable and adequate steps" to safeguard its existence and institutions (A/AC.134/L.4/Rev.1, paragraph 5). Apart from the difficulty of defining what steps were reasonable and adequate, even if one State provided material support for subversive and terroristic acts undertaken by the nationals of another State, that did not provide the clear and undisputed elements of an act of aggression, provided that the allegedly supporting State had not sent armed forces into the territory of the victim State. If the theory of proportionality in repulsing aggression were accepted, the launching of an armed attack upon, or the carrying out of a preventive operation against, the supporting State would clearly be excluded. On the other hand, the rejection of that theory would jeopardize international peace and security and allow international tensions to develop into wars and conflicts. If, however, what was envisaged by the reference to "reasonable and adequate steps" was that the victim State should take internal measures against terrorists, such actions had no relation to international law and should not be mentioned in an international definition of aggression.

In the event of the terrorists being nationals of the supporting State, the case would be one of indirect aggression, provided that the terrorists were individuals who did not form part of the armed or para-military forces of the supporting State. Such indirect aggression should not be mentioned at the present stage, since for the time being the Committee was concerned only with direct aggression.

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The draft declaration (A/AC.134/L.3) covered two important points not included in the Latin American draft: in operative paragraph 2 (b) it referred to military occupation or annexation as an act of aggression, and in operative paragraph 4 it included security considerations in the enumeration of those which might not be invoked to justify aggression. It was sometimes said that military occupation was included under invasion; his delegation did not agree, for invasion could be of short duration or even take the form of a rapid raid, whereas occupation might continue for months or years, as was shown by certain current events. Annexation was something different and more serious, involving as it did permanent invasion and occupation, in other words a continuing state of aggression. His delegation considered that such acts were more worthy of mention in the draft definition than the support of subversive acts. The Latin American draft did not include security considerations among those which could not be invoked to justify the use of force; yet those considerations were the very pretext which aggressors most frequently used in trying to disguise the true nature of their acts.

He reaffirmed his delegation's belief that the Committee could succeed in drawing up an acceptable draft definition if the spirit of co-operation which had so far characterized its work was maintained.

Mr. MUTUALE (Democratic Republic of the Congo) asked whether a date could be fixed for the closure of the debate on the two drafts before the Committee. It was important that the Committee should not be obliged to report to the General Assembly that, for lack of time, it had failed to complete the task assigned to it.

The CHAIRMAN pointed out that it was possible that further drafts would be submitted. It might therefore be premature to envisage the closure of the debate on the two drafts, but the Committee might wish to consider closing the list of speakers.

The Committee could hardly claim that it had not had time to complete its work, since few of its meetings had been of the scheduled duration. He recalled that he had made repeated appeals to delegations to express their views on the drafts.

Mr. CHIKVADZE (Union of Soviet Socialist Republics) suggested that the Chairman might wish to inquire whether the silence of some delegations was to be regarded as signifying consent.

The CHAIRMAN asked whether he might take it that those who had not spoken on the drafts accepted the principles set forth in them.

Mr. TSUKAHARA (Japan) said that the sponsors, whose efforts his delegation greatly appreciated, had taken some time to complete work on their drafts. It seemed reasonable to ask that other delegations should be given time to formulate their views on the drafts. Many points of considerable legal importance were involved and the Japanese Foreign Ministry could easily spend several months in studying them. He hoped, therefore, that the debate would not yet be closed and that he would have an opportunity of expressing his delegation's views at an early meeting.

Mr. ISINGOMA (Uganda) asked whether it would be possible for the Secretariat to arrange for additional meetings of the Committee in view of the alarmingly slow rate of progress so far.

The CHAIRMAN recalled that the Secretariat had made it quite clear before the Committee had been convened that it would be limited to one meeting a day. It might, however, be possible for the Secretariat to arrange for one or two extra meetings.

Mr. CHIKVADZE (Union ov Soviet Socialist Republics) said that every effort should be made to ensure a successful outcome of the Committee's work. He was somewhat alarmed by the Japanese representative's reference to possible delays of several months. He was sure that the Japanese delegation enjoyed every facility for frequent consultation with its Government. Moreover, the problems facing the Committee had been familiar to all Governments concerned long before the present session and the delegations included highly qualified experts.

He agreed that the Secretariat should be asked to explore the possibility of arranging additional meetings.

It might be the case that some delegations were trying to hold up discussion so that they could later claim that there had not been time for the Committee to complete its task.

Mr. TSUKAHARA (Japan) pointed out that he had not asked for any postponement of the discussion or expressed formal opposition to the closure of the debate. He had merely asked for the co-operation of the sponsors of the drafts in providing time for the study which the drafts merited and to allow all delegations to receive instructions from their Governments.

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Mr. FREELAND (United Kingdom) said that it had taken the sponsors of the drafts some time to complete their consultations. He did not complain about that, since much effort and skill had clearly gone into the preparation of the two documents. Other delegations owed it to the sponsors to express themselves on the two drafts in terms which took full account of the views of their Governments. There was no basis for the suggestions made by the Soviet Union representative at the preceding and the present meeting that there was some element of deliberate delay of the Committee's work. He, for his part, fully expected to be ready to speak on the drafts at an early meeting.

Mr. BEESLEY (Canada) said that the Chairman had clearly made every effort to accelerate the Committee's work. It had been necessary, however, to await the results of consultations among the sponsors of the two drafts.

He thought it unrealistic to discuss the possibility of additional meetings at a time when the Committee was not making full use of the meetings already scheduled.

The CHAIRMAN renewed his appeal to delegations to inscribe their names on the list of speakers for forthcoming meetings. He was sure that the Secretariat would give sympathetic consideration to the possibility of arranging additional meetings.

The meeting rose at 5 p.m.

SUMMARY RECORD OF THE EIGHTEENTH MEETING

Held on Monday, 1 July 1968, at 10.15 a.m.

Chairman: Mr. YASSEEN (Iraq)

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CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (General Assembly resolution 2330 (XXII) (agenda item 5) (A/AC.134/L.2, L.3 and Add.1 and Corr.1 and 2, L.4/Rev.1 and Add.1) (continued)

Mr. KOLESNIK (Union of Soviet Socialist Republics) said that the Committee had before it not only the two drafts submitted during the current session but also the proposals presented in 1953 and 1956, the texts of which were reproduced in the working paper prepared by the Secretariat (A/AC.134/L.2).

Although sympathetic to the twelve-Power draft (A/AC.134/L.3 and Add.1 and Corr.1 and 2) and that of the Latin-American countries (A/AC.134/L.4/Rev.1 and Add.1), he considered that the proposals put forward by the Soviet Union concerning the definition of armed aggression (1953) and of aggression of any kind (1956) were more complete and took better account of the existing international situation. Those proposals were not, of course dogmatic statements that were incapable of correction or improvement, but their adoption could only strengthen international peace and security. On examining them, a neutral reader would have to recognize that, if they had been accepted, they would have greatly assisted peace-loving peoples struggling against aggression.

He regretted that the two new drafts before the Committee did not take sufficient account of the proposals previously submitted by United Nations Member States.

The drafts contained other gaps. Neither of them mentioned the "first-in-time" principle by which the State which first resorted to armed attack was recognized as the aggressor. That principle, which figured in all the definitions proposed by the Soviet Government, should serve as a basis for any definition of armed aggression. Moreover, the two drafts did not point out that aggression was a very serious international crime against humanity. Any definition of aggression should contain such a statement. Lastly, the two drafts contained no provision concerning the responsibility of the aggressor, whether a State, an organization or an individual, although such a provision would have the effect of deterring possible aggressors.

With respect to the twelve-Power declaration (A/AC.134/L.3 and Add.1 and Corr.1 and 2), he considered that, in the fourth paragraph of the preamble, the words "the competent organs of the United Nations" should be replaced by the words "the Security

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(Mr. Kolesnik, USSR)

Council". In the established order of things, it was not the United Nations General Assembly but the Security Council which was competent in questions of war and peace. That order was a very democratic one, and it did not allow some States to take decisions that were opposed to the interests of others. Even if certain delegations considered that the prerogatives accorded to the Security Council under the United Nations Charter constituted a very strict rule, the Special Committee must take account of positive international law without worrying about the wishes of individual States. The expression "the competent organs of the United Nations" was a dangerous one, since it would enable all United Nations organs from the General Assembly to the International Court of Justice to claim competence to determine whether aggression existed. The Committee should respect the United Nations Charter, which gave that power solely to the Security Council.

Operative paragraph 1 of the draft declaration defined aggression as being the "use of force". In conformity with the expressed wishes of almost all members, the definition should relate solely to armed aggression. It should, therefore, be specified that aggression was the use of armed force. Moreover, it was pointless to refer to a "group of States", an expression which did not, incidentally, appear in the other paragraphs of the draft.

In paragraph 2, he thought it preferable not to list the various forms of aggression. At present, military techniques were developing so rapidly that any list of forms of aggression would very rapidly become out of date.

He fully approved of the provision contained in paragraph 3. It should be brought out that colonial peoples had the right to fight for their independence, even by the use of armed force, if the imperialistic Powers refused to give them their freedom.

The definition of armed aggression should be based on Article 2, paragraph 4, of the United Nations Charter. It should mention the illegal use of force by a State against the territorial integrity or political independence of any State, and the use of force against peoples struggling against colonialism to obtain freedom and exercise their natural right to self-determination. It was also important not to pass over in silence the fact that undeclared war was a form of armed aggression. It was common knowledge that the Second World War and all subsequent wars had never been declared.

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(Mr. Kolesnik, USSR)

With reference to the draft proposal submitted by Colombia, Ecuador, Mexico and Uruguay (A/AC.134/L.4/Rev.1 and Add.1), he noted that there was no preamble. Moreover, paragraph 3 did not specify that the "competent organ of the United Nations" was the Security Council. On the other hand, paragraph 6 recalled that the use of force by regional agencies required the express authorization of the Security Council. That provision was very important, for it should be made clear that it was the Security Council which could use regional agencies in the interests of international peace and not the latter which could make use of the Security Council. Similarly, in paragraph 7, the reference to General Assembly resolution 1514 (XV) was useful and should be retained.

In short, the draft definition should be based on the provisions of the United Nations Charter and should reproduce its terms. It should mention the discretionary power of the Security Council and include a list of the most typical and most dangerous acts of aggression, which, of course, could not be considered as enumerating all possible forms of aggression. The draft should incorporate the principle of self-defence and the "first-in-time" principle. It should also declare that there was no consideration which could justify aggression, and that aggression could take the form of a declared war or of recourse to armed force without a declaration of hostilities. It should also stress the legitimacy of the armed struggle of the national liberation movements of colonial peoples to gain their liberty and independence. Lastly, the draft should state that aggression constituted a serious international crime and that the States, organizations or individuals who were guilty of that crime must bear the full responsibility.

The report on the work of the current session of the Special Committee should contain the text of the various draft definitions, including the proposals submitted by the USSR in 1953 and 1956, together with the views expressed by the various delegations during the general debate. He hoped that it would be possible, on the basis of that report, to draft a single text acceptable to all. That text would then be adopted by the competent United Nations bodies.

Mr. CURTIS (Australia) recalled that, in the general debate, his delegation had set out the views of Australia on the main issues before the Committee, outlined some of the difficulties in preparing an "adequate" definition of aggression and set out certain elements which an "adequate" definition should take fully into account.

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(Mr. Curtis, Australia)

The consultations and negotiations which had taken place during and after the general debate had led to the submission to the Committee of two drafts. He would address himself to both texts simultaneously since, although there were significant differences between them, there were also many common features.

In the first place, he wondered what was the scope of those texts. It might be considered that they were concerned solely with the use of force. But what interpretation should be given to the expression "use of force". Operative paragraph 1 of the draft declaration (A/AC.134/L.3 and Add.1 and Corr.1 and 2) referred, for instance, to the use of force "in any form", an expression that was all the more ambiguous in that operative paragraph 2 contained the words "without prejudice to the declaration of other acts as forms of aggression in the future". In the opinion of his delegation, that was not an academic question but went to the heart of the problem. The Charter used the concrete expression "act of aggression" which was linked with the concepts "threat to the peace" and "breach of the peace". He agreed with the representative of the USSR that a definition of aggression would have to remain within the limits of the text of the Charter. In the sense of the Charter, an act of aggression concerned the use of armed force; his delegation could not accept a definition which failed to make that point clear and could be interpreted to mean that a range of measures beyond the use of armed force could be considered as constituting an act of aggression in the Charter sense and could provide a basis for invoking Chapter VII of the Charter. On that point, neither of the proposed texts could, in its current form, meet the Australian position.

That point also brought up the question of armed infiltration, on which important differences in views had been expressed. Some delegations considered such an action to be "indirect" aggression. His delegation would prefer to avoid attempts to distinguish between "direct" aggression and "indirect" aggression, since it was extremely difficult to give precise meaning to "indirect aggression" and the term was not always used in the same sense.

Any definition, to be adequate, should clearly indicate that an act of aggression covered not only classical acts such as armed invasion but also armed infiltration into the territory of another State for purposes such as subversion or fomenting civil war.

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(Mr. Curtis, Australia)

Neither the draft declaration (A/AC.134/L.3 and Add.1 and Corr.1 and 2) nor the Latin American draft (A/AC.134/L.4/Rev.1 and Add.1) satisfied that condition.

His delegation also attached importance to the fact that the San Francisco Conference had deliberately left the Security Council discretionary powers as to a finding of aggression. The Council, in its wisdom, had often attempted to deal with the situations submitted to it simply as threats to the peace or breaches of the peace rather than involve itself in the technical difficulties of defining aggression. In all three cases, however, the Council's powers were exactly the same. He welcomed the fact that both drafts endeavoured to take account of that point, but believed that it required a clearer and more complete enunciation and that, in addition, it should be clearly affirmed that the Security Council had the primary responsibility for the maintenance of international peace and security under Article 24 of the Charter.

Both drafts referred to the use of force to prevent the exercise of the right to self-determination proclaimed in General Assembly resolution 1514 (XV); his delegation considered that that question was not within the Committee's mandate; it was the concern of other United Nations organs.

Another difficulty for his delegation was the omission in both texts of any reference to "non-State entities". The provisions of the Charter extended, of course, to such entities, but it was important specifically to cover that aspect in a definition of aggression.

In the draft declaration, he could not follow the exact significance of the seventh paragraph of the preamble, and, he found unacceptable the statement in that paragraph purporting to express a peremptory norm of international law. As for operative paragraph 4, which was phrased in sweeping terms, it could be interpreted as imposing unacceptable restrictions on the right of self-defence.

His delegation also questioned whether the draft proposal in A/AC.134/L.3 was properly cast in the form of a "declaration on aggression". In the Australian view, the drawing-up of a draft declaration on aggression - a declaration which in any event made no claim to incorporate a complete definition of aggression - was a different task from that entrusted to the Committee.

There was another question which had been raised by the USSR representative, namely, the possibility of improving the two texts by including in them the "first-in-time" principle. It would be a drastic over-simplification and a standing

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invitation to provocation to follow that approach, and in so far as that suggestion was acted upon it could bind the Security Council to a highly abstract view of any breach of the peace that came before it.

His delegation had found major elements of difficulty with the proposals submitted to the Committee as with other past proposals such as that of the USSR, and it wished to emphasize the fact that no permanent member of the Security Council had, so far, been able to accept those proposals as they stood and that the two permanent members which had commented upon them had expressed major objections to them.

Nevertheless, whatever the fate of those proposals, a report of the Committee which reflected the views expressed and the proposals made would make it clear to the Assembly that the Committee had applied its best endeavours to the fulfilment of its mandate.

Mr. FREELAND (United Kingdom) said he welcomed the recognition in the two drafts - in particular, in paragraph 10 of the Latin American draft and in the second, third and fourth paragraphs of the preamble to the draft declaration - of the need to preserve the Security Council's discretion under the Charter to decide what constituted the existence of a threat to the peace, breach of the peace or act of aggression in the circumstances of each case. Although, for reasons similar to those given by the Canadian representative, he doubted whether those provisions went quite far enough, their inclusion seemed a valuable step in the right direction.

On the other hand, he regretted the concentration, particularly in the draft declaration, on direct uses of armed force, to the exclusion of indirect uses, which, in his view, were just as much a part of the Charter concept of aggression. Paragraph 5 of the Latin American draft did, indeed, recognize the need to take account of indirect as well as direct uses of force. In the view of his delegation, however, that paragraph did not deal adequately either with the culpability of States using those indirect methods or with the position of States which were victims of them. In fact, as his delegation had already pointed out in the general debate, it would be unrealistic to set out to define separately those forms of aggression involving the direct use of armed force, which were in any case the most easily recognizable, while leaving aside those less obvious but no less serious forms involving the indirect use of armed force. To do so would give a misleading impression of the relationship between the two and of their relative importance.

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His delegation had not been alone in arguing that a definition of aggression should cover indirect uses of armed or physical force, such as the organization or support by one State of armed bands for infiltration into the territory of another State in order to foment civil strife. He had therefore been surprised by the Syrian representative's remark at the preceding meeting that there had been a consensus in the Committee in favour of starting with a definition of "direct armed aggression". He had also been surprised by the stress which that representative had put on nationality as a test of whether an indirect use of force could be regarded as aggression. In introducing the draft declaration, the Ghanaian representative had explained that the omission of indirect uses of armed force had been due to the difficulty of reaching agreement on how they should be covered. His delegation recognized that that would indeed be a difficult task; but, in view of the importance of those indirect uses, it did not consider that the existence of the difficulty would be sufficient justification for the absence of an attempt.

Another question was the difficulty of establishing, in each draft, the intended relationship between the various parts. In the draft declaration, for example, the relationship that was intended to exist between certain paragraphs of the preamble, such as that on self-defence, and the operative paragraphs, in particular operative paragraphs 2 and 4, was not entirely clear. Similarly, in the Latin American draft, it was difficult to establish the intended relationship between, for example, paragraph 8 and some of the earlier paragraphs, such as, again, that on self-defence. That might be mainly a matter of drafting, but his delegation considered it to be of some importance, in view of the need to ensure that any definition should not complicate the task of the organ responsible for deciding whether or not an act of aggression had been committed.

In connexion with the twelve-Power draft, he shared the doubts which had been expressed about the appropriateness in the present case of submitting to the General Assembly a draft declaration. Questions had also been raised about the sixth and seventh paragraphs of the preamble to that draft. His delegation doubted the appropriateness of including the subject-matter of the sixth paragraph in a definition of aggression. That paragraph as it stood was couched in very general terms and, if it were to remain, some qualification would surely be necessary; in its present form it might be interpreted as prohibiting even a temporary military occupation of the territory of another State on what would otherwise be legitimate

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grounds of self-defence. A similar comment could also be applied to operative paragraph 2 (b) of the draft. As for the seventh paragraph of the preamble, both its intent and its effect seemed obscure, perhaps partly because it was not clear what was meant by the expression "original competence" of the United Nations.

He also shared the concern which had been expressed about the last paragraph of the preamble. His delegation had in the past pointed to the paradox that would be created if the interpretation of Article 51 of the Charter which seemed implicit in that paragraph were to be accepted. The users of armed bands and other indirect methods of force would be in a position to carry out their activities secure in the knowledge that any forcible reaction against them would seriously risk being characterized as aggression. His delegation had also in the past pointed out that it was even more difficult to define legitimate self-defence than aggression. It would therefore be preferable to seek a formula which put no gloss on Article 51.

With reference to operative paragraph 1 of the draft declaration, he shared the misgivings expressed by several representatives concerning the effect of the words "force in any form". He was also not sure what exactly was meant by the references to the use of force against "the people", as distinct from the territory, of another State. As to operative paragraph 2, he agreed with the French representative that the words "without prejudice to the declaration of other acts as forms of aggression in the future" carried an ambiguity which might give rise to difficulty similar to that created by the expression "force in any form". Furthermore, the fact that sub-paragraph (a) of operative paragraph 2 referred to a declaration of war "in violation of the Charter", whereas the other sub-paragraphs contained no comparable qualification, tended to emphasize what previous speakers had referred to as the "neutrality" of the acts listed in sub-paragraphs (b) to (e). Those acts might, or might not, in practice constitute acts of aggression. In the circumstances of some cases they might be acts of legitimate self-defence; or they might be taken by or under the authority of the Security Council. As for criteria which might be introduced to indicate whether such acts were in any given case to be regarded as aggression or not, his delegation considered that the test of purpose or intent would be more useful than the test of who had acted first.

His delegation had already explained its reasons for seeing difficulty in any provision such as operative paragraph 3. Quite apart from details of formulation, it agreed with several other delegations that such a provision was out of place in

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a definition of aggression, which, as a Charter concept, was concerned with the use of force in international relations.

With reference to the proposal made by the Latin American countries, he had already noted that the intended relationship between the different parts of that draft was difficult to establish as it was in the case of the draft declaration. Considerations similar to those which he had outlined in relation to the seventh and eighth preambular paragraphs and to operative paragraphs 2 and 3 of the draft declaration applied equally to the corresponding parts of the Latin American draft. So far as concerned operative paragraph 9 of the latter draft, he too had doubts as to the desirability of including in a definition of aggression a provision such as that one, or such as operative paragraph 4 of the draft declaration, which might imply that there could be unstated considerations justifying aggression, or might indirectly encourage provocative actions of the kind described.

His delegation had been impressed by the arguments put forward in favour of including by an appropriately framed provision acts committed by or against entities which were not generally recognized as States. It was glad to know that the sponsors of the draft declaration were not opposed in principle to that idea.

The elaboration of the two drafts had been a constructive step, as was also the process of detailed examination now being carried out in the Committee. Replying to the USSR representative, who had expressed uncertainty about the reasons why the proposals submitted by the USSR in past years had not been discussed during the present session, he pointed out that those texts had been fully discussed and criticized in the past, and there was no need, in his opinion, to repeat views on them which had already been expressed and which stood in the record. It was not as if those proposals, still less any variant of them, had been formally submitted to the Committee.

Mr. ZAFIRA (Madagascar) said that his delegation supported the proposal made by several members of the Committee that a working group should be set up to compare the two drafts and elaborate a single text, having regard to the observations made during the debates. His delegation hoped that the group would be set up as quickly as possible, as the Committee had only a short time left in which to complete its task.

As one of the sponsors of the twelve-Power draft declaration, his delegation wished to explain that that draft could not be considered as anything more than a working document, to be used as a basis for general discussion. It recognized that

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some of the preambular paragraphs, particularly the fifth, sixth, seventh and eighth, stated principles that were already contained in the Charter and were also reproduced in the body of the definition. It therefore regarded them as useless repetitions, which should be deleted.

His delegation endorsed the remarks made by the French and Canadian representatives in connexion with operative paragraph 2 of the draft declaration, and it also supported the Bulgarian representative's proposal that the draft should include a wording to the effect that aggression was an international crime against the peace and security of mankind, thus repeating, moreover, the condemnation that had been included in the draft code of offences against the peace and security of mankind prepared by the International Law Commission.

Mr. CAPOTORTI (Italy) thanked the authors of the draft declaration (A/AC.134/L.3 and Add.1) and those of the second draft (A/AC.134/L.4/Rev.1 and Add.1) for the help they had given the Special Committee in the task entrusted to it by the General Assembly.

The two texts had some points in common, but there were also notable differences between them. The representative of Syria, for example, had stressed the fact that the questions dealt with in paragraphs 5 and 6 of the Latin American countries' draft (A/AC.134/Rev.1 and Add.1) were not mentioned in the draft declaration, and that the questions of military occupation and annexation referred to in the sixth preambular paragraph and in operative paragraph 2 (b) of the draft declaration were not taken into account in the other draft.

The Italian delegation wished to add two other basic differences. The twelve-Power draft (A/AC.134/L.3 and Add.1), being in the form of a draft declaration, seemed more rigid in structure, whereas that of the Latin American countries left it to the General Assembly to decide what form the final document should have and to add a preamble. From the point of view of substance, moreover, the draft declaration defined aggression in a general way as the use of force "in any form" and provided a limited list of some examples of direct aggression, while the other draft started with the notion of the use of force, without establishing whether or not it was identified with the idea of aggression, and then gave some examples of direct aggression. Lastly, the acts of direct aggression listed in paragraph 8 (f) of the second draft were not mentioned in the draft declaration.

Some members had wanted the two groups of authors to try to agree on a common text, but it was for the Committee to decide between the two ways of tackling the problem. The Italian delegation preferred the draft of the Latin American countries,

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which referred to the notion of the use of force as it appeared in the Charter, and which confined itself to providing the necessary elements for the General Assembly, with which the final responsibility for defining aggression lay.

Turning to the details of the draft declaration, he expressed, with reference to the responsibilities of the Security Council concerning aggression, the view that the second paragraph of the preamble should not only refer to Article 24, paragraph 1, and Articles 53 and 54 of Chapter VII of the Charter, but also, perhaps, reproduce the relevant provisions of the Charter.

The phrase "and in choosing what measures should be recommended or decided on for maintaining or restoring international peace and security" might usefully be added to the third paragraph of the preamble.

He also agreed with the representative of the United Kingdom that, because of their importance, the contents of those two preambular paragraphs should be re-stated in the operative part.

His delegation likewise considered that, logically, the eighth paragraph of the preamble should come immediately before the sixth and seventh paragraphs, for the inviolability of the territory of a State and the competence of the United Nations to employ force in the fulfilment of its functions to maintain international peace and security could be proclaimed only after the natural right of States to self-defence, recognized in Article 51 of the Charter, had been reaffirmed.

As to the sixth preambular paragraph, if it was recognized that the territory of a State was inviolable, there was no need to mention specifically military occupation, or even bombardment (operative paragraph 2(e)), both of which came within the general category of measures of force which were prohibited no matter what the motives were. The principle of condemning territorial acquisitions obtained by force was very just, but was beyond the competence of the Committee and outside the framework of the definition of aggression.

The expression "original competence" in the seventh preambular paragraph had very little meaning. It was not used in, and did not add anything to, the Charter. In any case, the competence of the United Nations in the matter was limited by recognition of the natural right of self-defence.

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So far as concerned the operative part, his delegation saw no need to say in paragraph 1 that aggression was the use of force "in any form". No such qualification appeared in the Charter, which should be followed as closely as possible. Nor did his delegation see any need to include in the definition of aggression separate references to the use of force against the people of a State and against the territory of a State. Two solutions were possible. The first, which was the better one, would be to follow Article 2, paragraph 4, of the Charter, which spoke only of the use of force. The employment of the disjunctive "or" in the expression "the people or the territory" showed that it was obviously the intention to go beyond the provisions of Article 2, paragraph 4, of the Charter. The second solution would be to speak openly of "armed force", since both direct and indirect aggression consisted of the use of armed force. That wording would not prejudice the position of delegations which wished to mention such forms of aggression as recourse to biological or atomic weapons.

He agreed with the USRR representative that the words "or group of States" should be deleted from operative paragraph 1. If resort to force by one country was condemned, resort to force by a group of States would be condemned a fortiori.

In operative paragraph 2, it should be clearly indicated that the acts listed were acts of aggression, unless committed in the exercise of the right of self-defence or with the authority of the Security Council. Moreover, the list as it stood was incomplete and did not mention cases of indirect aggression, which had nevertheless been covered by the drafts submitted by the USSR in 1953 and 1956, the relevant passages of which he read out, and by the draft submitted by the Latin-American countries in 1956. There was no reason why reference should not be made to indirect aggression in the texts at present before the Committee.

Since a territory could not be occupied unless it had been invaded, there was no need to speak of occupation in paragraph 2(b). As for the question of territorial annexation, it would be wiser to specify that what was involved was annexation by force and not, for example, annexation which took place under the terms of a treaty with the consent of the interested States.

As to paragraph 2(c), it was conceivable, for example, that the naval forces of one State should be attacked outside the State's territorial waters. Cases of

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that type had been covered by the drafts placed before the Committee in 1956; they might well be included in the text under consideration.

He also wondered whether the authors' omission to speak of acts against the people in sub-paragraph (c), whereas they had been spoken of in sub-paragraph (e), was intentional. He would like to know whether that discrepancy arose from a problem of substance, or whether it was merely a question of drafting.

The principle contained in paragraph 3 was acceptable to the Italian delegation, which wondered, however, whether it was in place in a definition of aggression. There was no question of justifying the use of force in a given State to prevent the people from exercising their right to self-determination, but it was desirable to say whether such use of force constituted an international or an internal conflict.

Paragraph 4 was too prolix. Moreover, it should, as did the Charter, provide for the possibility of settling disputes by peaceful means, that might avoid resort to force by States in the belief that they had no other way out.

Turning to the Latin-American countries' draft, he pointed out that the functions of the United Nations did not consist solely of maintaining international peace and security, which was the impression given by paragraph 2 as at present drafted. Moreover, as the USSR representative had said, it was the Security Council, and not the United Nations in general, whose prerogative it was to make use of force in application of the provisions of the Charter. Furthermore, the text would be better balanced if the exercise of the right to self-defence were mentioned immediately after the competence of the Security Council. His delegation therefore proposed that paragraph 4 should come immediately after paragraph 2.

So far as concerned paragraph 3, it had already been pointed out that regional agencies were not competent to decide to resort to force, and that they could take no such action except on the instructions of the Security Council. Actually, that point was made in paragraph 6, which referred to Article 53 of the Charter in that connexion. His delegation considered that paragraphs 3 and 6 should be more satisfactorily linked, or at least that Article 53 of the Charter should be mentioned in paragraph 3.

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Paragraph 5 as it stood gave the impression of dealing solely with the internal measures which a State could take to fight against subversion and terrorism; and, taken in that light, it had no place in a definition of aggression. What should be envisaged was not subversive acts as such, but the support given them from outside by another State or States. The steps to which reference should be made were thus international steps. That was a serious problem, and a much clearer text must be established.

The present paragraph 5 had the merit of showing that it was not possible to speak only of direct armed aggression, and that the problem of indirect aggression always cropped up. The question must therefore be considered in all its implications, and paragraph 5 should be completely revised so as to deal properly with the support given by some States to internal subversive movements in other States.

Paragraph 6 should be more closely linked with paragraph 3, but there was nothing to be gained by mixing the question of self-defence with that of regional agencies.

Paragraphs 8 and 9 closely resembled the corresponding paragraphs in the draft declaration, about which he had already stated his views.

In conclusion, he said he wished to stress three basic principles: (1) it was essential to respect the letter and the spirit of the Charter and, to that end, to eliminate from the proposed text all wordings which diverged from the text of the latter; (2) it was necessary to define all the forms of armed aggression; and (3) it should not be forgotten that the problem of aggression could not be dissociated from other problems arising from the obligation to respect the independence and sovereignty of States, to avoid interfering in their internal affairs and to settle disputes peacefully. The attention of the General Assembly should be drawn to those relationships, so that the Assembly could establish appropriate links between the competent agencies and fit all the material submitted to it into a coherent whole.

It was his understanding that the draft definition of aggression previously submitted by the USSR was to be considered on the same basis as the two drafts submitted at the current session. In other words, the Committee had at present three drafts before it. His delegation reserved the right to return to the question, since it was very important that the General Assembly should be able to take into account not only the USSR draft, but also the comments that had been made on it in the Committee.

Mr. MUTUALE (Democratic Republic of the Congo) pointed out that the draft declaration was only a working document and should not give rise to undue apprehension. There was no question of imposing the definition of aggression contained therein on the competent bodies or body. It was simply a declaration, which would be placed in the hands of the Security Council, and not a directive which would deny the competence of the United Nations. That competence would remain discretionary, which did not mean arbitrary.

The least that could be done was to gather together a number of ideas and principles and place them in the Security Council's hands. The working documents before the Committee must not inspire mistrust, and certainly not that of the delegations from countries which had the privilege of being permanent members of the Security Council, and which would therefore always be able to decide whether or not to make use of the future declaration on the definition of aggression. It was, on the contrary, from States which were not members of the Security Council that serious reservations might be expected.

So far as the definition of aggression was concerned, the last word would belong both legally and in practice to the competent organs of the United Nations, so much so that the reservations of some concerning this or that principle or notion should not prevent their co-operating in the adoption of a text on the definition of aggression.

It had been said that the notion of force was ambiguous and that "force" in the sense in which it was used in the Charter must be understood as meaning armed force. That was a very controversial question. His delegation had already stated during the general debate that the term should be taken to mean force in all its manifestations

Moreover, it was really debatable whether the Charter referred only to armed force. There was, in fact, no provision in it to that effect. Under Article 1, paragraph 1, for example, a "breach" of the peace merely allowed the use of armed force to be considered. It was not only the armed forces of a State, however, which could cause a breach of the peace. For example, public order was not disturbed by national armed forces; on the contrary, it was frequently disturbed by national unarmed forces whose pugnacity resulted from dissatisfaction with living conditions.

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Peace and security were affected not only by arms, but also by economic problems; they were jeopardized by the ever-increasing gap between the developed and developing countries.

Moreover, the Charter was based on tolerance, as well as on the principle of equal rights of peoples and on the principle of self-determination, which implied disapproval of all forms of hegemony of one people over another or of one State over another. Economic pressure was thus a form of aggression which should merit more than disapproval by the United Nations, whereas the only justification for the exercise of the right of self-defence was at present armed aggression.

During the general debate, his delegation had spoken of the principle of proportionality as a factor to be borne in mind in considering legitimate self-defence. The representative of Syria did not seem to approve of that principle, which from the point of view of the Charter was nevertheless well founded and just. It was intended as a means of determining what acts of violence were permissible and lawful in the exercise of the right of self-defence, and it concerned the nature or allowable limits of measures of violence applied on the grounds of self-defence. The principle followed from the Charter, which was the conventional law of peaceful procedures par excellence and which placed on all Members of the United Nations a general obligation to settle disputes peacefully. Hence, resort to violence, which was prohibited as a general rule, could not be absolutely permissible and lawful when used as a means of self-defence. From the point of view of Chapter VI of the Charter, self-defence was no more than a lawful, but exceptional, use of force.

The aggressor was blameworthy, but it would be unjust to blacken him in the name of a principle whilst whitewashing the victim a priori and indiscriminately, whatever attitude the latter himself decided to adopt towards the aggressor. It was characteristic that, in establishing a rule of law, the jurist should weigh against one another the legal situations involved. The victim, too, therefore, had obligations in respect of the maintenance of international peace and security, and that was why Article 51 of the Charter laid down that self-defence was permissible "until the Security Council has taken measures necessary ...".

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But even if the Charter had not placed Members of the United Nations under the obligation to try and settle disputes by peaceful means, the principle of proportionality would still be just from the points of view of equity and common sense. Whether considered from the internal or from the international point of view, a principle based on equity and common sense could not be just and valid in one system and inopportune or negligible in the other.

In that context, self-defence was the recognized right of any victim of violence to take, in the absence of the competent authority, such measures as might be necessary to protect his legitimate interests by stopping aggression. It was not, then, a right that was given to the victim of aggression to usurp the authority of the competent United Nations organs and take the law into his own hands. It only enabled the victim to counter aggression by resorting to force, and, as soon as such resistance had succeeded in stopping the aggression, self-defence had achieved its purpose.

From the point of view of common sense, the principle of proportionality meant that the measures taken must be proportionate to the recognized aim, but that, beyond that point, the motive was the desire to achieve, no longer the recognized aim, but an aim that was not disclosed. If the action taken was to be proportionate to the aim, the party entitled to the right must stop as soon as the aim was achieved. The disproportion of means to ends was the cause of wars of retaliation, which no member of the Committee meant to encourage. The best way of protecting the interests of States, and particularly those of the weaker States, was to introduce more justice, more equity and more good will into international public law.

Lastly, at the practical level, the principle of proportionality strengthened the protection to which the victim of aggression was entitled, for the obvious reason that the more powerful the aggression was, the more powerful the acts required to stop it would normally be, it being understood that the sole aim of such acts must be to stop the aggression pending intervention by United Nations organs. They must not go further than that, for otherwise they would tend to impose a solution of force and a settlement of the dispute by violence, which would run counter to the obligation laid down by the Charter to seek a peaceful settlement of disputes. In other words, self-defence must stop the aggressor, and all acts necessary and sufficient for achieving that purpose would therefore be lawful. If the victim went beyond that, he would be committing the same offence as the aggressor.

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(Mr. Mutuale, Democratic Republic of the Congo)

To sum up, from whatever angle it was considered, the principle of proportionality was well founded, and it was conducive to the development of international law and the maintenance of peace.

His delegation might revert to other points that had been raised when it had studied, in the summary records, the ideas and arguments that had been put forward.

The meeting rose at 12.55 p.m.

SUMMARY RECORD OF THE NINETEENTH MEETING

Held on Tuesday, 2 July 1968, at 3.15 p.m.

Chairman: Mr. YASSEEN (Iraq)

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (General Assembly resolution 2330 (XXII)) (agenda item 5) (A/AC.134/L.3 and Add.1 and Corr.1, A/AC.134/L.4/Rev.1) (continued)

Mr. HARGROVE (United States of America) said that the announcement by the President of the United States of America that the United States and USSR Governments had expressed their willingness to discuss the limitation or reduction of strategic nuclear delivery vehicles and anti-ballistic missiles gave reason for optimism about the ability of the United Nations and the world community to deal with all questions relating to the maintenance of international peace and security.

With regard to the proposals submitted to various bodies in past years by representatives of the USSR, the statement by the USSR representative at the previous meeting had left him uncertain about their exact status in the proceedings of the Committee. Two of them appeared in document A/AC.134/L.2, but neither had been submitted to the Committee. Although the Committee had not yet considered whether any or all of the proposals in that document should be included in its report, the proposals could, of course, be discussed. It was only because he was not clear how seriously the USSR delegation wished to press its proposals that he did not intend to discuss them in detail on the present occasion.

For the moment he proposed to comment on some of the major issues arising out of the two proposals before the Committee and the discussion on them, reserving the right to deal later with a number of other issues calling for comment. The thought that had obviously been given to the two proposals was welcome evidence of the responsible attitude to the Committee's difficult task on the part of Governments traditionally sympathetic to the idea of a definition.

In his statement at the tenth meeting (A/AC.134/SR.10) one of the criteria he had suggested for assessing the legal adequacy of definitions was that a definition of aggression should define aggression and not some other concept or principle of the Charter. He might also have said that it should be a genuine definition and not, for example, a mere enumeration of instances. The Latin American draft (A/AC.134/L.4/Rev.1) seemed to raise questions on both those counts. Its first seven paragraphs, with the

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possible exception of paragraph 5, seemed to deal exclusively with the scope of the principle of non-use of force rather than with the concept of aggression and to be logically independent of the rest of the draft. Although the prohibition of force and the notion of aggression were closely related in the Charter, they were quite distinct. While, therefore, an adequate definition of aggression must make their relationship clear - which the Latin American draft failed to do - it was not the purpose of such a definition to define in detail the scope and conditions of application of the principle of non-use of force embodied in Article 2 (4) of the Charter - which the bulk of the Latin American proposal was trying to do. The latter was true also of the twelve-Power draft (A/AC.134/L.3 and Add.1 and Corr.1), particularly in the last three preambular paragraphs and in operative paragraph 3, which seemed to deal exclusively with an elaboration of the principle of the non-use of force. In certain important respects, moreover, his delegation could not accept the legal accuracy of the sections of the two drafts to which he had referred, since they appeared to be at variance with the Charter.

In so far as it dealt with aggression, the Latin American draft was only an enumeration of instances. It offered no criterion for deciding why the enumerated acts were acts of aggression or for recognizing as aggression acts which were not enumerated but with which the Security Council, for example, might be faced in the future. He did not wish to quibble over whether a simple enumeration amounted to a definition, or to rule out the possibility of leaving the concept of aggression essentially undefined, with the criteria governing its application left exclusively to the discretion of the appropriate organs of the United Nations - as was, in substance, the case with the Latin American draft. The point he wished to make was that, once the United Nations went so far as to draw up a text for a definition enumerating instances of aggression, there were additional elements which must be added before the definition was adequate. The method of simple enumeration had a fatal defect: it could not be stated in an enumeration of instances of aggression that a particular act of force in itself constituted aggression: such an act of force had to be one which violated the prohibition under the Charter. Hence a text which enumerated instances of aggression must also state the relationship between aggression and the principle of non-use of force. The most economical way of stating

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that relationship was by a general provision identifying inconsistency with Article 2 (4) of the Charter as the principal criterion of aggression. For that purpose, he would support a paragraph of the form of operative paragraph 1 of the twelve-Power proposal as a starting point for defining aggression, although he reserved his delegation's position on the scope and the precise wording of the text.

Considering the two drafts from the point of view of the kinds of activity characterized as aggression, his delegation had already pointed out that a definition of the concept of aggression in the Charter could not properly describe as aggression any act not involving the use of force, although it must extend to all acts of force of sufficient consequence to amount to aggression regardless of the method of perpetration. In that respect both proposals had serious shortcomings. Both, in their enumerative sections, extended to acts not necessarily involving the use of force, such as the declaration of war, blockade and annexation of territory. The first two would presumably always involve a threat of force and might thus violate Article 2 (4) of the Charter, but the annexation, or purported annexation, of the territory of another State might not even involve the threat of force: it might amount to nothing more than an internal legislative act falsely purporting to have international legal effect. As to declaration of war, moreover, it might be arguable that under the Charter it in itself had no legal effect at all on the fundamental rights and obligations of States with respect to the use of force, except to the extent that a declaration of war might be one of several circumstances jointly constituting a threat to peace and thus justifying action by the Security Council. Thus, by this view, the Charter had eliminated a system of law whereby a State, simply by declaring war, assumed a certain licence to use force, and similarly the notion that a declaration of war was of itself a licence to use retaliatory force. In other words, it might with reason be said that the Charter rendered the act of declaring war irrelevant to the determination of the rights and obligations of States with respect to the use of force in international relations.

A declaration of war, a blockade or the annexation of territory might be accompanied by the use of force - which was covered in the enumerative parts of both proposals - but they might not involve actual force; they should not therefore be included in the enumerative section of a definition of aggression.

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(Mr. Hargrove, United States)

In both proposals, on the other hand, the enumerative section did not cover even the range of acts of force constituting aggression which the world community had suffered since the drawing up of the Charter. They omitted, for example, the organizing, supporting or directing of armed bands or irregular or volunteer forces that made incursions or infiltrated into the territory of another State, of violent civil strife or acts of terrorism in any other State, or of subversive activities aimed at the violent overthrow of another State's government. If adopted in their present form the proposals would be incomplete and hopelessly anachronistic. It was obvious from earlier statements that some of the sponsors of the proposals were aware of that fact and that the proposals were so drafted because of differences of opinion in the Committee. The draft definitions proposed by the USSR and by Iran and some of the proposals sponsored by certain Latin American countries all recognized the need to cover acts of the type he had mentioned. Any definition which did not deal in a legally adequate way with activities of that kind would be worse than no definition at all.

The Latin American draft acknowledged its incompleteness in that respect by stating that the acts enumerated in paragraph 8 were regarded as "acts of direct aggression". His delegation was not aware of any legally relevant distinction between "direct" and "indirect" aggression or of any useful purpose to be served by drawing such a distinction in a definition of aggression. It was certainly not a distinction drawn by the Charter. It might be useful for a definition to acknowledge the fact that there was a wide variety of methods of using force, both direct and indirect, but that in no way implied that the Charter distinguished between "direct" and "indirect" aggression. Such acknowledgement would, on the contrary, make it clear that if an act of force amounted to aggression it was irrelevant whether it was direct or indirect, covert or overt, impulsive or premeditated, or how it was executed. He assumed that that was the intention and the effect of the expression "force in any form" in operative paragraph 1 of the twelve-Power proposal.

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(Mr. Hargrove, United States)

He was not clear about the meaning of the provision concerning acts of subversion and terrorism in paragraph 5 of the Latin American draft. If such acts involved the use of force, they were violations of Article 2 (4) of the Charter and the "reasonable and adequate" steps which might be taken for protection against them might be an exercise of the inherent right of self-defence recognised in Article 51. The paragraph in question did not, however, make that clear. If they did not involve the use of force, he was not clear to what extent paragraph 5 stated a proposition of international law at all, except as a statement of the prerogative of a sovereign State to exercise authority and maintain control and order in its own territory.

There was a further point on which the two proposals did not appear to be adequate. His delegation had stated earlier that the experience of the United Nations strongly suggested, and the scheme of the Charter itself indicated, that not every case of the use of force which was technically in violation of the Charter could properly be regarded as "aggression". A definition of aggression which invited future claims that Chapter VII of the Charter envisaged the use of collective measures to suppress cases that were, in a global perspective, trivial would debase the authority of the Security Council. Hence any definition should make adequate provision for the exclusion of de minimis cases even when they involved the use of force in international relations. One way of doing so was to take account of the element of intention on the part of a State which was necessary to constitute an act of aggression. For example, an act of force in a border incident or on the high seas might be attributable to simple and excusable error. In the enumerations in the two drafts however, the only cases involving an element of intention were those which did not necessarily involve the use of force and which should therefore not be included at all. Another method of eliminating de minimis cases was to make it clear in the definition that the concept of aggression , even in cases which might technically fall within the enumerated categories, was to be applied by the Security Council when appropriate in the exercise of its responsibilities under the Charter for determining acts of aggression and threats to or breaches of the peace. Neither proposal seemed entirely adequate in that respect.

(Mr. Hargove, United States)

The preservation of the roles of the Security Council and the General Assembly had frequently been emphasized by the United States and other delegations. The sponsors of the twelve-Power draft were to be commended on their efforts to deal with that matter but they had not done so in the operative paragraphs and consequently no statement of the procedural context in which the concept of aggression to be applied appeared as an integral part of the definition itself. The Latin American draft dealt with that matter in operative paragraph 10 but only by means of an inadequate general savings clause.

An adequate definition should take full account of the existence of political entities whose claims to statehood might not be universally recognized, or which might not even make an unqualified claim to that status, but to which the fundamental obligations of the Charter respecting the use of force nevertheless applied. It should be made clear, for example, that a rebellious dependent Territory might become an aggressor against its neighbours even though its claims to statehood were not universally recognized or were even universally denied. The fact that a political entity consisted of a part of a country divided by international agreement did not absolve it from its fundamental obligations or deprive it of its rights under international law regarding the use of force, and a definition must adequately take that into account. An early effort to deal with part of the problem had been made in the USSR proposal submitted to the Sixth Committee at the twelfth session of the General Assembly, which had stated that an act of aggression could not be justified by "the affirmation that the State attacked lacks the dintinguishing marks of statehood".

Other issues raised by the two drafts included the appropriateness or desirability of including a list of illicit pretexts for aggression, the legal accuracy of the provisions giving such lists in the two drafts, and the need for the enumerative sections to include the priority principle. As to the priority principle, for a number of reasons it was an inadequate and dangerous solution to the problem it was intended to solve. The enumeration of acts in the draft proposals was not, and did not purport to be, exhaustive. Consequently the priority principle created the obviously unacceptable possibility that a State which was the victim of an unenumerated but illicit use of force would itself become the aggressor when defending itself by one of the methods in the enumeration. It would also create the equally unacceptable possibility that a State which was the

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(Mr. Hargrove, United States)

victim of aggression through the commission of one of the enumerated acts, but which responded by a similar act of force far exceeding what was necessary or proportionate to the danger confronting it, would be relieved of responsibility for its own aggression by virtue of not being the first to use force. That was a particularly dangerous consequence of the priority principle, since the prohibition of force would be undermined to the point of ineffectuality if it were not recognized that a retaliatory use of force might itself be aggression if it exceeded the limits of necessity and proportionality. On that point of principle he agreed with the representative of the Democratic Republic of the Congo, although his delegation had not believed that that and other points of detail concerning the conditions of the lawful use of force were part of the definition of aggression.

Those problems could easily be solved if the priority principle was abandoned and it was made clear in the definition that any act of aggression, including the enumerated ones, must be a violation of the principle of non-use of force, and hence that acts of force in self-defence or pursuant to the authority of competent international organs could not be aggression. In other words, the relationship between the concept of aggression and the principle of non-use of force in the Charter must be clearly established in the definition, and in that process any such statement as "the aggressor is that State which first commits one of the following acts" would have to be replaced by a provision identifying as the aggressor the State which committed a specified act of force inconsistent with Article 2 (4) and not in self-defence or otherwise justified under the Charter.

The priority principle was superficially attractive because it seemed to promise an automatic technique for determining aggression, circumventing the application of the definition in the procedural and substantive context of the United Nations Charter. In fact, however, it would not work.

Mr. JAHODA (Czechoslovakia) said that the two drafts were basically similar but differed in form and in methods used. He agreed with the USSR representative that both should have a provision defining aggression as an international crime against peace and humanity and stressing the political and material responsibility of States committing aggression. The idea of material and political responsibility was in accordance with article 6 (a) of the Charter of the Nuremburg Tribunal and with articles 5 and 6 of the Charter of the International Military Tribunal of the Far East, which were generally accepted in international law and had been confirmed by General Assembly resolution 95 (I).

(Mr. Jahoda, Czechoslovakia)

In the general debate his delegation had expressed the opinion that the definition of aggression would be an important guide for the Security Council in the exercise of its exclusive right to determine the act of aggression as defined in Article 39 of the Charter. The Charter provided that the Security Council was the only organ having the right and the duty to determine the aggressor. His delegation considered that only the Security Council was empowered to authorize the use of force and that that should be specified in the definition.

Any definition of agression should be based on objective criteria. His delegation attached importance to the principle that the State which first resorted to armed force should be declared the aggressor. That criterion, which was recognized in international law, was the only objective factor making it possible to distinguish between acts of aggression and acts of self-defence. Neither of the draft proposals included the priority principle, which was deeply rooted in the Charter. Article 1 (1) and Article 2 (4) drew a clear distinction between the threat and the use of force: Aggression was always the outcome of the use of force. Article 51 provided for the excercise of the right of self-defence only in face of armed attack. Thus the Charter, in accordance with existing international law did not allow what was described as defensive war merely because it upheld the principle of priority in aggression. It admitted self-defence only on the assumption of actual war and not merely a threat of aggression. The priority principle was both realistic and logical; it should be the basis of any definition of aggression because it identified the aggressor in all circumstances and thus made it possible to define aggression.

With regard to the 12-Power Proposal, he suggested that the second preambular paragraph should be broadened by the inclusion of a reference to Article 24 of the Charter, which placed on the Security Council the main responsibility for the maintenance of international peace and security. He agreed with the suggestion that operative paragraph 1 should concentrate on the definition of armed attack. His delegation would support operative paragraph 3, based on the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV)), which condemned any armed action or repressive measures directed against people exercizing their right to self-determination. That paragraph corresponded to Article 2 (4) of the Charter prohibiting the use of armed force not only against States but also in international relations; it thus applied to colonial Powers seeking to suppress communities fighting for their freedom and

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independence. If the colonial Powers committed armed aggression against countries and peoples under their domination, it was only natural that those people should exercise their right of self-defence. The rights of the colonial peoples in that respect had been recognized in a number of Articles of the Charter and an overwhelming majority of the Member States of the United Nations. In operative paragraph 10 of resolution 2105 (XX) the General Assembly had recognized the legitimacy of the struggle of peoples under colonial rule to exercise their right to self-determination and independence.

With regard to the Latin American draft (A/AC.134/L.4/Rev.1), he agreed with the Syrian representative the pragraphe 5 related rather to the principle of non-interventio In connexion with paragraph 6, he considered that only the first sentence of paragraph 1 of Article 53 of the Charter referred to in that paragraph, was relevant; paragraph 2 and the second sentence of paragraph 1 were concerned with a completely different question. It would therefore be better for paragraph 6 to refer to Article 53, paragraph 1, first sentence. Moreover, that sentence referred not to the use of force by regional agencies, as implied in paragraph 6 of the Latin American proposal, but to the use of regional arrangements or agencies by the Security Council for enforcement action under its authority. The term "regional agencies" had been broadly used in the literature and practice of international law mainly in the sense of a regional organization whose security system was based on Article 51 of the Charter, namely on collective self-defence. Consequently paragraph 3 of the Latin American proposal was open to differing interpretations. Some international law experts considered that a "regional agency" which would be in strict conformity with Chapter VIII of the Charter and would base its security system exclusively on the first sentence of Article 53 as envisaged by the authors of the Charter did not exist. In that connexion he quoted from the Repertory of Practice of the United Nations Organs, volume II, Articles 23 to 54 of the Charter, page 443, which stated that with reference to resolutions 253 (III) and 477 (V) the General Assembly had refrained from making any pronouncement on whether the Organization of American States or the League of Arab States fell within the purview of Article 52(1). Consequently his delegation would find it difficult to accept paragraph 6 of the Latin American proposal.

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Mr. GROS ESPIELL (Uruguay) said that his delegation regarded the Latin American draft as a contribution towards the completion of the Committee's task and not as a definitive text. It could and should be improved. In that spirit his delegation had on the previous day joined the other sponsors of the Latin American draft in initiating conversations with the sponsors of the twelve-Power draft.

Comparing the two drafts, he said that the extensive preamble to the twelve-Power draft was without parallel in the drafts relating to the definition of aggression prepared since 1951. The Latin American draft had no preamble, although its first three paragraphs laid down the criteria for fixing and limiting the general concept of aggression, but his delegation would not oppose the adoption of a preamble provided that it was confined to references to the successive General Assembly resolutions on the subject and to an affirmation of the objectives and basic principles underlying the provisions of the operative part.

Both drafts adopted the mixed definition approach: the twelve-Power draft expressed the general concept in operative paragraph 1 and enumerated typical cases of aggression in operative paragraph 2; the Latin American draft set forth the bases for a general definition in its first three paragraphs, and then, in paragraph 8, enumerated certain acts deemed "in particular" to be acts of aggression. The use of the phrase "in particular" made it quite clear that the enumeration was not exhaustive.

Furthermore, both drafts provided criteria supplementary to the definition and enumeration. Operative paragraphs 3 and 4 of the twelve-Power draft corresponded to paragraphs 7 and 9 respectively of the Latin American draft, and the third and fourth preambular paragraphs of the former to paragraph 10 of the latter.

With regard to substance, the Latin American draft, and, he thought, the twelve-Power draft too, dealt only with direct, i.e. armed, aggression. He did not wish to imply that he interpreted the word "force" in Article 2 (4) of the Charter as referring only to armed force; on the contrary, he took it in a wide sense as including all illegal forms of constraint in so far as they were directed against the territorial integrity or political dependence of any State or were in any other way incompatible with the purposes of the United Nations. Nevertheless, his delegation had accepted that for the time being the Committee should confine itself to the definition of

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(Mr. Gros Espiell, Uruguay)

direct aggression. Once that had been achieved, efforts would have to be continued to define the other forms of aggression, beginning with indirect aggression, the gravity of which was clear in the present-day international situation. His delegation would not therefore oppose any amendment of the Latin American draft to make it clear that the reference was to armed force only.

With regard to the general definition of aggression, he considered that operative paragraph 1 of the twelve-Power draft was not sufficiently clear and precise. He suggested that an amended version of that paragraph might advantageously be combined with the first three paragraphs of the Latin American draft, the latter possibly taking the form of sub-paragraphs illustrating the general definition.

He had pointed out, in an earlier statement, that a national community not legally established as a State could be the object of aggression by a State or group of States. He therefore agreed with the delegations which considered that that contingency should be covered by the definition.

Neither of the drafts expressly included the criterion of priority for the determination of aggression. In his view, that criterion, which had been included in the Soviet Union drafts of 1951-1952 in the Sixth Committee, and of 1953 and 1956 in the Special Committee, as also in the amendments by Egypt and Colombia to the Soviet Union draft of 1951-1952, was necessary in order to characterize aggression and distinguish it from self-defence. A reference to the principle should therefore be included in the general definition and, where relevant, under each particular instance.

He considered the phrase "without prejudice to the declaration of other acts as forms of aggression in the future" in operative paragraph 2 of the twelve-Power draft to be both unnecessary and potentially dangerous. Any draft definition should certainly not affect the Security Council's right to determine the existence of acts of aggression under Article 39 of the Charter, as was recognized in paragraph 10 of the Latin American draft and the second and third preambular paragraphs of the twelve-Power draft. The phrase he had quoted, however, opened the way to such vague and unrestricted possibilities that it would deprive the draft definition of all significance. For that reason he preferred the wording of paragraph 2 of the Latin American draft.

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(Mr. Gros Espiell, Uruguay)

Operative paragraph 2 (a) of the twelve-Power draft was practically identical with paragraph 8 (a) of the Latin American draft and raised no difficulties.

In operative paragraph 2 (b) the twelve-Power draft expressly mentioned military occupation or annexation as acts of aggression, whereas the Latin American draft referred only to invasion. He agreed with the Spanish representative that there was no basic discrepancy between the two drafts before the Committee. Occupation and annexation were consequences of invasion; if invasion was branded as aggression, the two others would necessarily be included. The draft might be improved by including a reference to invasion even without a declaration of war. The meaning was the same but it made for greater clarity and would avoid doubts in any future interpretation. Operative paragraph 2 (c) and (d) of the twelve-Power draft and paragraph 8 (c) and (d) respectively of the Latin American draft were almost identical, except that in the second case the Latin American draft was more specific. The same applied to sub-paragraph (e) of the same paragraphs of the two drafts.

His delegation considered that the reference in paragraph 8 (f) of the Latin American draft to the use of atomic, bacteriological or chemical weapons of mass destruction, which did not appear in the twelve-Power draft, was useful and had acquired special relevance by the recent adoption by the Security Council of the resolution relating to the non-proliferation of nuclear weapons, but in view of the difficult legal problems involved the matter should perhaps be studied separately.

His delegation preferred paragraph 9 of the Latin American draft to operative paragraph 4 of the twelve-Power draft, which, in attempting to specify more cases had forfeited clarity and weakened the very principle it sought to affirm.

Paragraph 10 of the Latin American draft should be retained as an operative paragraph and not included in a preamble as in the twelve-Power draft. He had already discussed the means by which the prerogatives of the Security Council under Article 39 of the Charter could be reconciled with a definition of aggression by the General Assembly. He agreed with the delegations which had advocated the inclusion of a specific reference to the Security Council and its primary responsibility for the maintenance of peace in accordance with Article 24 (1) of the Charter.

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(Mr. Gros Espiell, Uruguay)

Paragraph 7 of the Latin American draft and operative paragraph 3 of the twelve-Power draft were in agreement. The inclusion of those paragraphs had been criticized on the ground that the problem concerned was irrelevant to the definition of aggression. He did not share that view; on the contrary he felt that those paragraphs were necessary now that the use of force to deprive dependent peoples of the exercise of their inherent right to self-determination had been declared a violation of the Charter in accordance with General Assembly resolution 1514 (XV). As a consequence, it had been established that the use of armed force by a people to achieve independence in the exercise of its right to self-determination did not constitute an act of aggression, provided that it was carried out within the limits laid down by that resolution. The paragraph was therefore of great importance in relation to present or foreseeable situations.

The form given to paragraph 6 of the Latin American draft corresponded to a long-standing interpretation of the question which had been accepted not only by the sponsors of the draft but by Argentina, Chile, Venezuela and Guatemala in the Committee on Principles of International Law concerning Friendly Relations and Co-operation among States. The reason for its inclusion was to point out contrario sensu that, if the use of force by regional agencies occurred without satisfying one or both of the two specified prerequisites - self-defence or authorization of the Security Council - it would constitute an act of aggression. His delegation was interested in including in the definition the idea that aggression might be originated not only by one State, but by a group of States and even a regional body in circumstances other than those in which the use of force was authorized by Articles 51 and 53 of the Charter. He would be willing to accept the suggestion made at the preceding meeting that a reference to Article 54 should also be included.

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The purpose of paragraph 5 of the Latin American draft was not to include a form of indirect aggression in the definition but, in pursuance of the ideas expressed in paragraph 4, to specify the limits to the measures which a State might adopt when it was the victim of subversive or terroristic acts supported from outside. If the principle was established that only reasonable and adequate steps could be taken, that was tantamount to affirming that, taking into account Article 51 (4) of the Charter, it was not permissible to react to that type of aggression by the use of armed force since the self-defence authorizing such use was admissible only in face of an armed attack, i.e. in one of the cases of direct aggression established by the definition. He would not pursue that point for the moment, since efforts were being made in conversations to meet the views of other delegations on the question.

He was glad to accept the suggestion that the draft definition should describe aggression as a crime against peace, as the Committee on Principles of International Law concerning Friendly Relations and Co-operation among States had done in 1967.

Mr. ROSSIDES (Democratic Republic of Cyprus), speaking on a point of order, wondered whether the Committee's work might not be expedited if delegations which had sponsored one or other of the two drafts refrained from further discussion of them until the informal conversations between the two groups of sponsors had been completed.

The CHAIRMAN pointed out that it was always possible that no new text might emerge from the conversations. In view of the short time remaining to the Committee to complete its work, he thought it might be unwise to limit the present discussion in any way.

Mr. TUDOR (Romania) said that the two drafts before the Committee had a number of points in common. Both of them adopted a mixed definition, which concorded with the majority view expressed in the general debate, and both were limited to the definition of direct, i.e. armed, aggression. While his delegation believed that the major interests of international peace and security would be best served by a comprehensive definition, it had decided, in a spirit of co-operation, to accept that approach.

(Mr. Tudor, Romania)

Another aspect of particular concern to his delegation was the right of dependent peoples to self-determination and the legitimacy of their struggle for freedom from colonial domination in accordance with the provisions of the Charter and with General Assembly resolution 1514 (XV). He welcomed the fact that the sponsors had included that inalienable right in their drafts, but thought that it would be preferable to state that the struggle of colonial peoples for national independence could never be considered an act of aggression.

His delegation had already expressed the view that any definition must take account of the right of individual or collective self-defence against armed aggression as recognized in article 51 of the Charter. There was undoubtedly a direct link between Article 2 (4), proscribing in general the use of force, Article 39, which gave the Security Council the right to make recommendations or decide what measures should be taken to maintain or restore international peace and security, and Article 51, which guaranteed the right of self-defence against armed attack. A precise and complete definition should reflect the close relationship between the provisions of those Articles and should not depart from the provisions and the purposes of the Charter. His delegation noted with satisfaction that that point was reflected in the two drafts.

He agreed with the delegations which had expressed the view that a condemnation of aggression as a crime against international peace and security should be included in a draft definition.

Mr. BILGE (Turkey) said that his delegation's basic concern was to arrive at a definition of aggression in accordance with the provisions of the Charter. Such a definition might not reflect the particular concerns of a given State or be sufficiently extensive to cover all future acts of aggression. It might be merely a common interpretation of certain acts of aggression which, in the present state of international relations, could win the support of the great majority of States. In the view of his delegation, if the Committee achieved only a minimum definition, it would have fulfilled the task entrusted to it, at least as a step towards a more general agreement. That was the point of view from which his delegation would make its observations.

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(Mr. Bilge, Turkey)

He did not propose to go into the question of acts of aggression involving the use of non-conventional weapons, because his delegation considered that such types of aggression should be prohibited by a more formal agreement.

He noted that the twelve-Power draft was headed "Draft Declaration on Aggression". It had been pointed out that a definition of aggression might take the form of either a resolution or a declaration, but as those forms would have different effects on the discretionary powers of the Security Council and as the majority of delegations had spoken against any restriction of those powers, it seemed preferable to cast the draft in the form of a resolution. Furthermore, in United Nations practice, declarations generally bore on new subjects and represented the first stage towards the conclusion of a formal agreement. As the draft under discussion was only a concerted interpretation of existing provisions of the Charter, his delegation was in favour of the form of a resolution. That was not a formal proposal but merely a suggestion to the sponsors of the draft. It might also be desirable to give it a more specific title, such as "Draft resolution on the definition of armed aggression".

His delegation accepted the first preambular paragraph of the twelve-Power draft.

In the second preambular paragraph, reference was made to Article 1 (1) of the Charter. It was true that that paragraph specified the suppression of acts of aggression as one of the purposes of the United Nations, but since the paragraph of the draft referred to the responsibilities of the Security Council, it seemed more appropriate to refer to Article 24 (1) of the Charter.

The third preambular paragraph of the twelve-Power draft and paragraph 10 of the Latin American draft had the same object. His delegation could accept either of them.

His delegation approved of the approach to the definition of aggression in the fourth preambular paragraph of the twleve-Power draft, although it had a few reservations about the wording. If the primary responsibility and discretionary power of the Security Council were accepted, his delegation thought that the words "for the guidance of the competent organs of the United Nations" should be replaced by the words "in order to facilitate the task of the competent organs of the United Nations". Indeed, for greater precision, it would be preferable to replace the words "competent organs" by the words "Security Council".

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(Mr. Bilge, Turkey)

The sixth preambular paragraph reaffirmed the principle that the results of an act of aggression should not be recognized. He agreed with that principle, which was the basis of the traditional policy of his country.

The seventh preambular paragraph of the twelve-Power draft and the first three paragraphs of the Latin American draft had the same aim. In the English version the two drafts corresponded, the words "original competence" being used in both cases, but in the French version the words "compétence inhérente" were used in the twelve-Power draft and "la prérogative" in the Latin American draft. The texts of the two drafts differed in style, too. The twelve-Power draft created difficulties for his delegation by the use of such expressions as "peremptory norm", "original competence", and "contemporary international law". His delegation preferred the form of words used in the Latin American draft, which it considered to be in closer conformity with the Charter. Apart from those observations on drafting points, he thought that it would be useful to reaffirm the principle underlying the system of collective security. He would suggest that the seventh and eighth preambular paragraphs of the twelve-Power draft should be placed at the beginning of the preamble, since they established the framework of a definition of aggression.

The eighth preambular paragraph of the twelve-Power draft and paragraph 4 of the Latin American draft embodied the same principle, namely, the exercise of the right of individual or collective self-defence. His delegation maintained that reference should be made to that right in a definition of aggression. He further wondered whether it was not possible to bring the French and English versions - agression armée and armed attack of Article 51 of the Charter into line, since that difference in wording was a source of misunderstanding.

Operative paragraph 1 of the twelve-Power draft gave a general definition of armed aggression. His delegation thought that the sponsors had done well to consolidate in it the views expressed by various delegations during the general debate. It was difficult at that stage to try to define aggression other than armed aggression, but he wondered whether it was not desirable to qualify the expression "use of force" by the adjective "armed", since those who had not attended the Committee's meetings might place differing constructions on the words "in any form".

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(Mr. Bilge, Turkey)

Doubts had been expressed about the wisdom of defining aggression by invoking the conept of self-defence, a concept which itself required definition; there was also the question whether an act of self-defence could never constitute an act of aggression. His delegation considered that the paragraph in question did not define aggression by reference to self-defence but mentioned the exceptions to the illegitimate use of armed force. Thus interpreted, the paragraph had the support of his delegation.

Operative paragraph 2 of the twelve-Power draft listed certain flagrant acts of aggression and paragraph 8 of the Latin American draft followed that enumeration closely. The paragraph raised the difficult problem of whether acts of aggression were to be defined according to a subjective or an objective criterion. Would the principle of priority be strictly applied, thus automatically branding certain acts as aggression, or would a certain intent, an animus agressionis, be required? In addition to the discussion of those two criteria, another concern mentioned by several delegations was to maintain the discretionary authority of the Security Council. It might be asked whether the imposition of the principle of priority in the definition of aggression was compatible with the discretionary authority of the Security Council and what would be the value of the definition if the Security Council was not told which acts constituted aggression. It was difficult to give a satisfactory answer to those complex questions. His delegation thought that it was impossible to impose upon the Security Council a definition of aggression which would limit its discretionary authority. All that could be done was to facilitate the Council's task by giving an agreed opinion on certain acts which, after verification in each specific case, might constitute aggression. Such verification would include chronological research but that would not be the only type of research and it could not be the determining factor unless it was confirmed by the other circumstances in each case. It remained to be considered whether the principle of priority, without being the sole determining factor, might be mentioned in the paragraph as an evaluatory factor. His delegation had no objection to its inclusion in the sense he had outlined.

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(Mr. Bilge, Turkey)

He also thought that, despite the existence of the third preambular paragraph, the wording of operative paragraph 2 should refer explicitly to the discretionary authority of the Security Council in each specific case. The words "other acts" should also be replaced by "other armed acts". Apart from that comment, his delegation was in general agreement with the list in operative paragraph 2, with one exception: sub-paragraph (c) did not mention armed attack against the armed forces of a State which were outside their own territory. His delegation therefore thought that sub-paragraph (c) should be amended to read "Armed attack against the territory, territorial waters, airspace or armed forces of a State by the armed forces of another State".

His delegation had no objection to the inclusion of operative paragraph 3 of the twelve-Power draft or paragraph 7 of the Latin American draft in the definition, but if it was decided to retain that paragraph it would be preferable for it to become the final preambular paragraph.

During the general debate he had stated that it might be useful to complete the definition of aggression by a paragraph stating that no political, economic or other considerations could be invoked to justify acts of aggression. He therefore agreed with paragraph 9 of the Latin American draft. The text of operative paragraph 4 of the twelve-Power draft was defective in that respect; in his delegation's view the final phrase "and in particular the internal situation in a State or any legislative acts by it affecting international treaties may not be so invoked" was vague and incomplete. While it was true that definitions of aggression proposed so far had referred to the internal situation in a State, they had always specified what was understood by the internal situation in a State, for example, its political, economic and social structure, alleged shortcomings of its administration, disturbances arising from any revolutionary or counter-revolutionary movement, civil war, disorders or strikes. Moreover, it had been added that such a clause could never serve as a legitimate pretext for violations of international law. Unless operative paragraph 4 of the twelve-Power draft was amended, the Committee would be adopting a text which, instead of prohibiting aggression, invited States to commit so to speak legal acts of aggression. Hence his delegation could not accept operative paragraph 4 without amendment.

(Mr. Bilge, Turkey)

Paragraph 5 of the Latin American draft did not state that subversive or terroristic acts supported by another State might constitute an act of aggression. Only by implication, by authorizing a State to take steps to safeguard its existence, did it refer to aggression. The scope of that paragraph was vague; it was not clear whether it referred to action which a State might take within its territory against subversive or terroristic acts or whether it also covered defensive measures taken outside its territory. His delegation had no objection to the definition of aggression including the indirect use of armed force showing complicity by a foreign State with the intention of attacking the territorial integrity or political independence of another State, but it could not support the paragraph as drafted without some explanation from the sponsors. On the other hand, his delegation could accept paragraph 6 of the Latin American draft provided its phrasing and its place in the text were in accordance with the principle governing the system of collective security.

He would comment on the draft resolutions proposed by the Soviet Union when he knew whether they had been submitted as official working documents.

Mr. CASTANEDA (Mexico) said that at that stage in the debate he would comment only on certain points of difference and similarity between the two drafts before the Committee, placing special emphasis on the points of similarity.

The Syrian representative, speaking on behalf of the sponsors of the twelve-Power draft (A/AC.134/L.3), had said that it was not necessary to make specific mention of the right of regional agencies to avail themselves of the right of self-defence. He agreed that that right was not peculiar to regional agencies but was shared by them with other groups and it was therefore not necessary to mention it in the paragraph on regional agencies. He thought, however, that the concept of prohibition of the use of force by regional agencies, as in paragraph 6 of the Latin American draft (A/AC.134/L.4/Rev.1), should be maintained. As the Uruguayan representative had said, the Latin American States were particularly desirous of prohibiting the use of force by any group, including regional agencies. He considered it necessary therefore to refer not only to cases of enforcement action, in which groups of States might make lawful use of force, but also to the use of force which would not be considered lawful.

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(Mr. Castaneda, Mexico)

So far as subversive or terroristic acts were concerned, he conceded that that was a difficult principle to enunciate, but difficulties of formulation did not constitute a valid reason for not including a desirable principle. Subversive or terroristic acts did not precisely imply rebellion by the nationals of a country with moral support from outside the country; that, as the Syrian representative had said, was not exactly action imputable to a foreign State, and support or encouragement from abroad obviously did not constitute aggression. Neither, however, was it a case of the opposite extreme, namely invasion by armed bands or the commission of the acts listed in paragraph 8. In considering subversive or terroristic acts, his delegation was not considering either of the two cases he had outlined, but situations similar to those envisaged in the Havana Convention on the Rights and Duties of States. He referred particularly to the duty of every State to ensure that within its territory no armed bands were organized to invade other States. The type of activities he had in mind involved a certain use of force but one which did not exactly constitute aggression. He therefore believed that a suitable way of covering such cases was not to include them in paragraph 8, which would make them equivalent to absolute aggression, but to take a different approach by recognizing the right of States victims of such activities to take reasonable and adequate steps to safeguard their existence and institutions. He agreed that those were somewhat vague terms but in documents such as the Committee was trying to draft it was often necessary to use words which had no very precise connotation but might constitute a useful guide for such bodies as the Security Council. It was for that reason that paragraph 5 had been included in the Latin American draft.

The sponsors of the twelve-Power draft had pointed out that the Latin American draft omitted the concept of security considerations among those which did not justify the commission of acts of aggression. He agreed that that was one of the rights recognized by international law which had been most often abused and used as a pretext for the commission of acts of aggression and he therefore agreed that it was desirable to include it in the list of considerations which could not justify acts of aggression. He accepted the USSR representative's criticism that the list in the Latin American draft was unduly detailed; the proposal would be redrafted bearing that in mind. He further agreed with the Bulgarian and other representatives that the Latin American draft should indicate that aggression should be

(Mr. Castaneda, Mexico)

considered a crime against peace. It might moreover be stated that the commission of an act of aggression involved international liability on the part of the State committing it, even including criminal liability on the part of those perpetrating aggression.

Mr.EL-OBAIDI (Iraq) said that he proposed to speak on the approach and the principles embodied in the two drafts before the Committee, reserving his delegation's right to make further comments at a later stage. Many of the principles embodied in the drafts were largely acceptable to his delegation. Both proposals approached the question by giving a general formula for the definition of aggression accompanied by an illustrative non-exhaustive list of the most dangerous cases of armed aggression. That type of flexible and pragmatic definition was, in his delegation's view, more acceptable than a general type of definition. A further reason for his support of both draft proposals was that the definition of armed aggression could be followed at a later stage by an attempt to define indirect economic aggression.

While agreeing in general with the drafts before the Committee, he had serious reservations in respect of paragraph 5 of the Latin American draft, which he felt could be more appropriately dealt with in the context of indirect aggression.

His delegation strongly supported operative paragraph 3 of the twelve-Power draft. The struggle of oppressed and colonized people was a just and honourable cause and it should be emphasized that the use of armed force to suppress liberation movements was an illegal act depriving people of the exercise of their inalienable right of self-determination.

He associated his delegation with the views expressed by the USSR, Bulgarian, Czechoslovak and other delegations on the use of the principle of priority in determining the aggressor. He supported the inclusion of that principle, believing it to be in accordance with Article 51 of the Charter.

In conclusion, he expressed the fervent hope that the negotiations to be undertaken by the sponsors of the two drafts would result in the production of an agreed joint version which would enable the Committee to complete its important task.

Mr. POLLARD (Guyana) said that his delegation had heard with interest the useful and constructive criticism expressed by the United States representative, who had insisted that any definition of the concept of aggression should be strictly in accordance with the Charter sense of the term. There appeared, however, to be some contradiction in the United States representative's position in as much as he asserted that any definition of aggression should also take account of political entities which were not States. The Guyana delegation would welcome some clarification of that point.

Regarding the contents of the twelve-Power draft (A/AC.134/L.3), his delegation wished it to be placed on record that his Government interpreted General Assembly resolution 1514 (XV) strictly and hoped that that strict interpretation would operate if the reference to that resolution was maintained. Secondly, his delegation did not share the view that the priority principle was not sufficiently recognized in the twelve-Power draft, since operative paragraph 1 expressly recognized the legality of the use of force in accordance with Article 51 of the Charter. Lastly, his delegation understood that the concept of aggression included the notion of economic aggression and it hoped that that aspect would be given full articulation at some future date.

Mr. ALLAF (Syria) wished to make it clear that in his intervention he had not been speaking on behalf of the other sponsors of the twelve-Power draft proposal, as the Mexican representative had suggested. He would reply to other comments made on his statement at a later stage.

The meeting rose at 5.55 p.m.

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SUMMARY RECORD OF THE TWENTIETH MEETING

Held on Wednesday, 3 July 1968, at 3.40 p.m.

Chairman: Mr. YASSEEN (Iraq)

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTION 2330 (XXII)) (Agenda item 5) (A/AC.134/L.2, L.3, and Add.1, L.4/Rev.1 and Add.1, L.6) (continued)

Mr. ALHOLM (Finland) said that the sponsors of both the texts before the Committee had opted for a mixed definition, but in neither case was the general part satisfactory. For example, the expressions "the use of force in any form" in operative paragraph 1 of the draft declaration (A/AC.134/L.3 and Add.1) and "the use of force" in paragraph 1 of the Latin American draft (A/AC.134/L.4/Rev.1 and Add.1) were not sufficiently clear.

Although the list of acts which, in the words of operative paragraph 2 of the draft declaration (A/AC.134/L.3 and Add.1), "in particular constitute acts of aggression" differed in form from the list drawn up by the Committee on Security Questions of the Disarmament Conference in 1932-1933, the only thing that was new was "the employment of ballistic missiles" in paragraph (e). Nor did the draft declaration include the provision regarding armed bands.

Operative paragraph 3 of the draft declaration also included an innovation by stressing the right of dependent peoples to self-determination. Although that provision deserved full support, the Finnish delegation saw no reason for including it in a definition of aggression. Also, the final paragraph of the operative part of the draft declaration was close to the draft proposal prepared by the aforementioned Committee on Security Questions in 1933.

Turning to the Latin American draft (A/AC.134/L.4/Rev.1 and Add.1), he found paragraph 6, dealing with "regional agencies", unnecessary, despite the argument to the contrary put forward by some delegations the day before. Paragraph 8 followed fairly closely the list established in 1933 by the Committee on Security Questions, but a new element was introduced by the reference to "the use of atomic, bacteriological or chemical weapons" in sub-paragraph (f). It should likewise be noted that paragraph 5 mentioned a form of indirect aggression, namely "subversive or terrorist acts", and that paragraph 9 took up once more a fundamental idea adopted thirty-five years previously. Paragraph 10, referring to the discretionary power of competent organs of the United Nations, required clarification; it might, moreover, perhaps be placed earlier in the draft.

(Mr. Alholm, Finland)

The two drafts had no doubt done a great service to the Committee, but the Finnish delegation did not consider that either they or the suggested combination of the two would solve the problem of defining aggression at the present stage. On the basis of what had been said during the general debate, it seemed to be more or less understood that the Committee would limit itself to defining armed aggression alone, which seemed quite proper in the light of Articles 39 and 51 of the Charter. The preamble to the definition should stress that the Security Council was the organ which had the discretionary power of interpretation in respect of any case of aggression. The definition should under no circumstances be drafted in such a way as to admit of interpretation as an effort to bypass the authority of the Security Council. Moreover, it must give due recognition to the natural exceptions constituted by measures taken on the initiative of the United Nations in virtue of Chapter VII of the Charter, as well as to the right of individual or collective self-defence in accordance with Article 51.

For a future definition, the mixed formula recommended by several delegations might by itself be acceptable. The value of such a definition, however, depended entirely on its contents. The general clause should therefore be as precise as possible, and its wording should be based on the legal terminology of the Charter, since it was in the light of the Charter that the Committee was trying to interpret aggression. The specific individual acts mentioned in the two drafts were certainly flagrant examples of aggression. Very careful consideration should, nevertheless, be given to the possibility of extending the list to cover some of the more complicated and perhaps more modern forms of aggression as well. Those forms of armed aggression seemed to require more attention and research. At all events, it was only by listing cases of aggression other than the most obvious ones that the Committee could hope to provide the Security Council with any real help.

The Finnish delegation sincerely hoped that the results achieved by the Committee would provide the General Assembly with an ample basis for future work and research, which would lead to the defining of aggression. It was worth emphasizing, nevertheless, that the Committee was now dealing with difficult legal drafting; the definition it was trying to draft deserved more than a hastily prepared compromise text. It would be far better to go rather slowly so as to give Governments sufficient time to study the matter carefully; that would be the best guarantee that aggression would be satisfactorily defined.

Mr. TSUKAHARA (Japan) said that the two drafts submitted to the Committee provided a starting-point for an attempt to establish an adequate definition of aggression which would be generally acceptable. The Japanese delegation had tried to see what points the drafts had in common with its own views, but still found it difficult to give its opinion because it approached the problem in a way fundamentally different from that adopted by the two groups of sponsors. Without repeating the detailed comments already made at the ninth meeting, which of course applied to the two drafts, his delegation wanted to make it quite clear that despite the support given by many delegations to the use of a mixed definition, it was not convinced that lists of concrete acts of aggression, like those proposed, did not involve a risk of curbing the discretionary power conferred on the Security Council by the Charter. It was not impossible that some countries would take advantage of such criteria to try, for political reasons, to have them mechanically or automatically applied in individual cases.

The Japanese delegation thought it better that any definition of aggression should be in the form of a resolution rather than a declaration, since the Security Council must not be bound by the definition. In any case, the General Assembly was in a better position to decide what form the instrument to be adopted should take.

With regard to the texts under consideration, the Japanese delegation associated itself with the emphasis placed on the need for closely following, wherever possible, the terminology of the United Nations Charter. On the other hand, the General Assembly would be in a better position to express the ideas contained in the first and fifth preambular paragraphs of the draft declaration (A/AC.134/L.3 and Add.1) more succinctly after the report of the Special Committee had been studied, as it would be, by the majority of the Members of the United Nations.

It was essential to stress, in the instrument that would perhaps be adopted, the need for a system of investigation set up by international agreement, so that the definition of aggression could serve effectively as guidance for the competent organs of the United Nations in identifying a possible aggressor.

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(Mr. Tsukahara, Japan)

To be adopted by the General Assembly, any instrument containing a possible definition of aggression should include an operative part which reflected the general view of the Special Committee that while the definition would serve as guidance for the competent organs of the United Nations in identifying an aggressor, it must not be considered as curtailing the discretionary power of the Security Council to determine the existence of any threat to the peace, breach of the peace or act of aggression as specified in Article 39, nor as modifying in any way the provisions of the Charter relating to the role of the United Nations in the maintenance or restoration of international peace and security.

A sentence specifying that the competent organs of the United Nations should identify the aggressor in the light of the circumstances of each case should be added.

The Japanese delegation hoped to be able to make a further contribution to the deliberations when the debate had made it possible to bring the various views on the important questions raised in the two drafts closer together.

The CHAIRMAN informed the Committee that the preparation of a combined draft would soon be completed. He proposed to suspend the meeting until the sponsors were in a position to submit a final text.

The meeting was suspended at 4 p.m. and resumed at 5.35 p.m.

The CHAIRMAN said that the United States representative desired to revert to certain questions raised in connexion with the two draft resolutions already before the Committee.

Mr. HARGROVE (United States of America), replying to a question raised by the representative of Guyana, pointed out that in his statement of 17 June 1968 (A/AC.134/SR.10), he had not used the expression "non-State entities" since he had not been concerned with political entities universally acknowledged as not being States. He seemed to recall, however, that other delegations had referred to the possibility of an international organization - which was certainly a political entity and certainly also universally acknowledged as not being a State - becoming a victim of aggression or even committing aggression. He himself had had in mind certain political entities whose status in international law was in dispute, but which claimed statehood, with or without qualification, their claim being either supported or not supported by one or more other States. It certainly followed that to the extent to which they claimed statehood, such entities were held under international law to observe the basic obligations of statehood, which meant that they were

(Mr. Hargrove, United States)

obligated to refrain from the use of force, in accordance with the United Nations Charter, and that they were answerable to the international community in those matters.

Certain political entities whose status in international law was disputed but which controlled territory might be in fact in a position to use force against a territory which under international law was situated outside their frontiers and was not under their authority. Clearly, a judgement of aggression would not require prior resolution of the dispute as to the legal status of the aggressor. It should be added that in that case if the entity against which force was used was by law subject to the authority of the State using force, it was self-evident that use had merely been made of internal force.

Correspondingly, a State could not lawfully arrogate to itself the right to resort to force by merely declaring that the entity against which it was using force, although not under its authority, was not a State in international law. That was the point covered by the Soviet draft of 1957, to which the United States representative had referred at a previous meeting.

The only case of a breach of international peace in which the competent United Nations organ had determined that acts of aggression had been committed presented precisely the features which he had described. Those features of the concept of aggression were among the few formally recognized by a United Nations organ in the discharge of the functions vested in it by the Charter.

Any global legal order not embodying the principles referred to above would not be a system of order but of anarchy. For example, it would be easy to affirm that the entity against which force was to be used did not have the international status which entitled it to the protection of international law; such an affirmation had already been made even against Members of the United Nations.

Reverting to his remarks at the previous meeting concerning paragraph 6 of the Latin American four-Power draft resolution (A/AC.134/L.4/Rev.1), he said that the paragraph did not in all respects conform to the provisions of the Charter. Article 53 of the Charter did not refer to the "use of force" but to "enforcement action", an expression with a precise and restricted meaning differing from that of the term "use of force". If it was desired to alter the expression chosen by the authors of the Charter, that instrument would have to be amended in conformity with the procedure laid down in Article 108. Similarly, the term "express

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(Mr. Hargrove, United States)

authorization" did not occur in Article 53 of the Charter and was not consistent with the general practice of the Security Council with respect to Articles 52 and 53 of the Charter. Lastly, the paragraph seemed to disregard Article 52 (1) of the Charter, according to which nothing in the Charter precluded the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as were appropriate for regional action, provided that such arrangements or agencies and their activities were consistent with the Purposes and Principles of the United Nations.

The Committee should respect the spirit and the letter of the Charter, and it was dangerous to paraphrase its provisions. That applied not only to paragraph 6, but also to paragraph 4 of the Latin American four-Power text.

With regard to the suggestion that the draft definition should indicate that aggression must be regarded as a crime against international peace and security, he did not think that such an affirmation constituted a substantial element in the definition of aggression; rather, it expressed an indirect juridical consequence of the definition.

Mr. ROSSIDES (Cyprus), introducing the new draft proposal (A/AC.134/L.6), said that the text reflected almost all the observations made by the members of the Committee; paragraph 2 of the preamble, for example, explained why the Committee was defining armed aggression. In order to reflect the fact that some delegations considered that the Security Council alone was competent to decide whether aggression had occurred, whereas others took the view that in certain cases the decision could be taken by the General Assembly, paragraph 5 of the preamble did not specify the United Nations body for which the principles set forth could serve as guidance. In any event, it was not for the Special Committee to decide that question.

(Mr. Rossides, Cyprus)

In operative paragraph 1, the words "irrespective of the effect upon the territorial integrity" covered the case where a State which used force tried to justify its action by stating that it did not intend to violate territorial integrity. The words "enforcement action" had been inserted in operative paragraph 4 in order to reproduce the terms of Article 53 of the Charter. In operative paragraph 5, the words "in particular" indicated that the list of acts of armed aggression given in that paragraph was not exhaustive. In operative paragraph 6, the list of considerations that could not be used to justify the use of force had been replaced by the words "no considerations of whatever nature". The principle of proportionality was embodied by implication in operative paragraph 7; and operative paragraph 8 referred to armed bands. Operative paragraph 9 stated that armed aggression and the acts enumerated in the previous paragraphs constituted crimes against international peace, because that aspect of the question, although within the competence of the International Law Commission, should be covered by the draft definition. The Commission had in fact been obliged, for want of a definition of aggression, to interrupt its work on the draft code of offences against the peace and security of mankind.

He explained that the list of countries sponsoring the draft was not complete, since some delegations had not yet received instructions from their Governments.

Mr. GROS ESPIELL (Uruguay), also speaking in introduction of the new draft proposal, said he was gratified by the spirit of collaboration displayed during its preparation and the positive results achieved through the co-operation of the twelve sponsors of the draft declaration (A/AC.134/L.3 and Add.1) and three of the sponsors of the draft submitted by the Latin American countries (A/AC.134/L.4/Rev.1 and Add.1), plus the Spanish delegation.

The text was naturally the outcome of rather difficult negotiations, since the sponsors had been anxious to take account of all the observations made during the discussion. Hence his delegation did not regard it as a finished draft but as a working document to be discussed, criticized and improved.

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(Mr. Gros Espiell, Uruguay)

The draft had been drawn up in the form of a mixed definition. Operative paragraph 1 contained a general definition so drafted as to embrace all the comments made, and to embody an express reference to armed force. Operative paragraph 5 then listed concrete examples of aggression.

The draft reflected the attitude of the Latin American countries, and operative paragraph 4, dealing with the use of force by regional agencies, reproduced more or less the wording of operative paragraph 6 of the draft submitted by the Latin American countries. However, the new text covered only the use of armed force and enforcement action by regional agencies and omitted any reference to self-defence - a distinct legal concept with which the Committee was not competent to deal.

He had listened with great interest to the United States representative's statement, and if the occasion arose he would indicate in greater detail his delegation's views on the interpretation of Article 53 of the Charter.

Operative paragraph 6 of the new draft reproduced the essentials of paragraph 9 of the draft submitted by the Latin American countries, but in an improved and expanded form, since it referred to the duty to settle disputes by pacific methods.

Similarly, paragraph 8 of the new draft reproduced the main ideas contained in paragraph 5 of the Latin American draft.

The four countries which had sponsored document A/AC.134/L.4/Rev.1 and Add.1 had taken part in the preparation of the new draft, and were prepared to collaborate further. Three of the countries - Colombia, Ecuador and Uruguay - were already in a position to state that they would sponsor the new draft while the Mexican delegation was awaiting instructions from its Government.

Mr. HAMDANI (Algeria) said that his delegation in consultation with its Government, was studying the new text and could not yet say whether it would become a sponsor.

Mr. BEESLEY (Canada) said that although he did not wish to start a discussion on the new draft he would appreciate clarification on a point he was not sure he had understood when the text was introduced by the representatives of Cyprus and Uruguay, namely, whether operative paragraphs 3 and 8 precluded the exercise of the inherent right of self-defence in the event of indirect aggression.

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Mr. ROSSIDES (Cyprus) thought that, since the two paragraphs had been taken from the draft submitted by the Latin American countries, it might be useful if one of those countries were to clarify the point.

Mr. ALCIVAR (Ecuador), in reply, said that the Canadian representative's interpretation of operative paragraph 8 was correct. The Latin American countries considered that the inherent right of self-defence could not be invoked in the event of indirect aggression.

Mr. ALLAF (Syria) pointed out that not all the twelve sponsors of the initial draft declaration (A/AC.134/L.3 and Add.1) were sponsors of the new draft. As the representative of one of those countries, he reserved the right, if the circumstances warranted it, to request that the first draft should remain valid and not be replaced by the new draft unless all the sponsors of the first draft gave their consent. Otherwise, the sponsors of the first draft might request that their text be put to the vote on the same basis as the other drafts and be referred to the General Assembly for consideration along with the other documents relating to the Committee's work.

Mr. GONZALEZ GALVEZ (Mexico) said that the draft submitted by the Latin American countries would not be withdrawn either unless the co-sponsors so decided.

The CHAIRMAN confirmed that a text could be withdrawn only with the consent of all its sponsors. Even if only one of them opposed its withdrawal, the text would officially remain before the Committee.

Mr. CAPOTORTI (Italy) said he hoped that, at the beginning of the next meeting, the Committee would be told exactly how many drafts were before it; he was thinking not only of the initial draft declaration and the draft submitted by the Latin American countries, but also of the draft submitted by the Soviet Union in 1956 and seemingly re-submitted at a previous meeting by the USSR representative.

Mr. RENOUARD (France) said that his delegation would examine the new draft with all due attention but would find it difficult to take a stand on it before it had seen the written text.

The meeting rose at 6.45 p.m.

SUMMARY RECORD OF THE TWENTY-FIRST MEETING

Held on Thursday, 4 July 1968, at 3.30 p.m.

Chairman: Mr. YASSEEN (Iraq)

ADOPTION OF THE REPORT (A/AC.134/L.5)

After some procedural discussion, the CHAIRMAN invited the Committee to consider the first part of its draft report (A/AC.134/L.5) paragraph by paragraph.

Paragraphs 1 to 4

Paragraphs 1 to 4 were approved.

Paragraph 5

Mr. CHIKVADZE (Union of Soviet Socialist Republics) said that while he appreciated the Chairman's desire to hasten the Committee's work, on principle he could not express his views on the first section of the report until he had seen the remainder. He did not think that the form of the draft report entirely reflected the organization of work within the Committee, since it gave the impression that after the opening of the session and election of officers the Committee had immediately begun to discuss the draft proposals submitted to it, whereas there had first been a general discussion.

Mr. HARGROVE (United States of America) agreed with the USSR representative. Since the remainder of the draft report was not yet available, it should be made clear that approval of the first section was contingent on approval of the rest of the report.

The CHAIRMAN said that all decisions now being taken were merely provisional; the draft report would be considered as a whole at the end of the session.

Subject to the comments made, paragraph 5 was approved.

Paragraph 6

Mr. TSUKAHARA (Japan), making the same reservation concerning the adoption of the first section of the report, suggested that it be noted in the report, that in order to allow time for informal consultations, the Committee had not met on certain days.

Mr. CURTIS (Australia) said that the report should also indicate at which meetings the draft proposals had been introduced.

Subject to the comments made, paragraph 6 was approved.

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (General Assembly resolution 2330) (XXII) (Agenda item 5) (A/AC.134/L.3 and Add.1 and Corr.1, A/AC.134/L.4/Rev.1, and A/AC.134/L.6) (continued)

Mr. TSUKAHARA (Japan) welcomed the new draft proposal (A/AC.134/L.6), though in the absence of adequate instructions from his Government it was difficult to embark on a detailed analysis at the present stage. The comments he had made at the previous

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(Mr. Tsukahara, Japan)

meeting on the draft proposals in documents A/AC.134/L.3 and A/AC.134/L.4/Rev.1 held good for the corresponding points in the new draft proposal. In particular, his delegation believed that any instrument containing a definition of aggression to be adopted by the General Assembly should contain a provision in its operative part to the effect that although the definition might serve as a guideline for the competent organs of the United Nations in determining an aggressor, it should not be construed as prejudicing the discretionary power of the Security Council to determine the existence of any threat to the peace, breach of the peace or act of aggression under Article 39 of the Charter, nor as affecting in any way the provisions of the Charter relating to the functions of the United Nations in maintaining and restoring international peace and security.

Mr. CURTIS (Australia) said his Government had not had time to consider the new draft and, in particular, how far it met the major difficulties Australia had found with the earlier draft proposals. The new text represented a genuine effort by its sponsors to bridge their differences. His general impression was, however, that the joint text had been achieved by omitting or blurring a number of critical points of difference. That was a dangerous procedure since it might give an illusion of agreement where none in fact existed. The scope of the new text was now more clearly confined to armed force, but the first operative paragraph referred to armed force, direct or indirect. Did "indirect" in that connexion cover infiltration by armed bands for purposes of subversion, and if so how was it related to operative paragraph 8 of the new text? If it did not, what precisely did it cover? He would like further clarification on that point, which was of cardinal importance to his delegation.

The same uncertainty appeared to exist in respect of operative paragraph 10 of the new draft. It was his delegation's view that aggression, in the Charter sense, involved the use of armed force. Operative paragraph 10 seemed to imply that the Security Council could make a finding of aggression in virtually any circumstances, whether involving armed force or not. The paragraph was vague and misleading. His delegation also had some difficulty with regard to operative paragraph 4. In that connexion he agreed with many of the observations made recently by the United States representative on the use of force by regional agencies.

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(Mr. Curtis, Australia)

The new text continued to omit any reference to the question of non-State entities. Another difficulty was the imprecise and unacceptable treatment in the new draft of the concept of self-defence embodied in Article 51. The right of self-defence was an inherent right, which could not be eroded and should not be regarded simply as an "excuse" for the use of force.

The new draft proposal was inadequate, in the Australian view, and an inadequate definition would be worse than no definition at all. He hoped that the Committee would agree to conclude its substantive discussion soon, so that there would be adequate time to consider its report, which was an important document and should contain a balanced account of all the views expressed during the discussions.

The CHAIRMAN announced that Mexico had joined the sponsors of the draft resolution (A/AC.134/L.6).

Mr. ROSSIDIES (Cyprus), referring to the Australian representative's comments on direct and indirect aggression and on paragraph 10 of the draft proposal, said that an argument frequently raised in other committees by those opposing the definition of aggression was that they did not wish to restrict the Security Council's authority to determine aggression. In the present case, when it was clearly shown that there was no intention of in any way restricting the Security Council's authority to determine aggression, objections were still raised.

The Australian representative had said that there was no need to be over-hasty. The problem, however, had been under discussion for more than ten years, and many definitions, possibly better than the one now proposed, had been rejected. The General Assembly had instructed the Committee to produce a definition as soon as possible. He urged the Committee to view the matter on more practical lines and not to produce a definition on which it would be too difficult to secure general agreement.

Mr. MOTZFELDT (Norway) reiterated his Government's doubts as to the usefulness of defining the term "aggression" as used in the Charter and the possibility of reaching general agreement on such a definition, at least for the time being. A cursory look at the draft proposal had left him with serious misgivings concerning parts of it and he would need to study it with his Government. He recognized, however, that the sponsors had done their utmost to meet some of the difficulties connected with the two earlier proposals.

Mr. HARGROVE (United States of America) said that pending instructions from his Government on the new draft proposal, he would like to give his delegation's general assessment of the proposal for inclusion in the Committee's report.

The efforts of the sponsors of the two earlier draft proposals had in some important respects resulted in improvements which made the text more generally acceptable. For example, the new proposal excluded the potentially contentious issue in paragraph 3 of the Latin American draft proposal and paragraph 7 of the twelve-Power draft relating to the use of force to deprive peoples of their right to self-determination. Moreover, the inclusion of the words "direct or indirect" after "force" in operative paragraph 1 was a genuine effort to meet the views of his own and other delegations which could not accept a definition that did not deal adequately with indirect uses of force. One of the most serious difficulties in the new draft proposal, however, was concerned with that very issue: the inclusion of the words "direct and indirect" in operative paragraph 1 was more than nullified by operative paragraph 8, which was seriously at variance with the Charter. The effect of paragraph 8 would be that, so far as the rights and obligations of the Charter regarding the use of force were concerned, the question whether it was permissible for one State to use force in international relations to destroy the population, change the Government or inflict physical damage on the people or territory of another State, would depend simply on the techniques of force selected. There could be no doubt that what were called in paragraph 8 "subversive and/or terrorist acts" might involve the use of force in international relations. That was confirmed in the records of legal deliberations in the United Nations and in legal texts endorsed by some of the sponsors of the present draft proposal. Any possibility of an acceptable interpretation of the paragraph in the Latin American draft proposal referring to "subversive or terrorist acts" was removed by operative paragraph 8 of the present draft proposal, which specified that it was referring to the activities of "armed bands" organized by one State and operating on the territory of another.

(Mr. Hargrove, United States)

Moreover, the new draft failed to contain in its enumerative section any instances of the indirect use of force which operative paragraph 1 envisaged as included by reason of the use of the expression "direct or indirect". The fact that operative paragraph 1 enlarged the scope of aggression to include every act involving the use of force in international relations, thus expressly going beyond the wording of Article 2 (4) of the Charter, was in his delegation's view a defect, because it clearly embraced de minimis cases, on which he had already explained his delegation's position. The wording of operative paragraph 1 clearly extended to such uses of force in international relations as were subsumed under operative paragraph 8, which referred to subversive or terrorist acts carried out by armed bands organized on the territory of one State against another State on the latter State's territory. The result was a definition which made every case of international use of force an aggression, but declared that the Charter permitted no self-defence against a large - and perhaps the most dangerous - class of aggressions.

Operative paragraph 4 eliminated a requirement of express authorization by the Security Council for action by regional agencies under Chapter VIII. But the paragraph still extended well beyond the wording of the Charter, to include the "use of force" by regional agencies rather than "enforcement action". That kind of amendment to the Charter required recourse to the amendment procedures provided therein. The paragraph was particularly difficult for his delegation to accept because it went so far as to debar the use of force by regional agencies in the exercise of the right of collective self-defence under Article 51 of the Charter. Similar comments could be made regarding the operative paragraph relating to the right of self-defence.

Paragraph 2 introduced in the draft for the first time the claim that there were other forms of aggression than acts of force, which were proper for definition at a later stage. It was a move away from rather than towards general agreement to introduce into the draft proposal an express decision on a contentious issue on which agreement was unlikely at the present stage.

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(Mr. Hargrove, United States)

Furthermore, the draft proposal explicitly decided a highly contentious question - namely, which United Nations organs might use or authorize force under the Charter - the wrong way and inconsistently with the Charter, which he understood to envisage the authorization of force by the General Assembly under certain circumstances. That was the inescapable inference, since operative paragraph 1 envisaged exceptions to the prohibition on the use of force only with or under the authority of the Security Council or in the inherent right of self-defence, despite the Cyprus representative's contention that preambular paragraph 3 and operative paragraph 2 were neutral on that issue.

Mr. ROSSIDES (Cyprus) said that Article 2 (4) of the Charter did not imply that a Member State could use force as long as it was clear that it did not intend to threaten the territorial integrity or political independence of another State. When the question had arisen at the San Francisco Conference it had been stated that the words "against the territorial integrity and political independence of another State" were not meant to limit the prohibition on the use of force: they had been included to satisfy the smaller States that they would be safeguarded against any threat or use of force. He believed that any use of force against the territory of another State, no matter what the intention was, was a violation of the territorial integrity and political independence of that State.

Mr. HARGROVE (United States of America) said that this delegation was not asserting that Article 2 (4) permitted the use of force in international relations as long as it was clear that there was no intention to impair the political independence and territorial integrity of the State against which force was used. He had drawn attention to the discrepancy between operative paragraph 1 of the draft proposal and Article 2 (4) of the Charter in order to make a point which the representative of Cyprus confirmed, namely, that the effect of operative paragraph 1 was to embrace all use of force in international relations and make it aggression in every case. That was a point which had caused his delegation difficulty, because it was the scope of the concept of aggression that the Committee was supposed to be defining.

Mr. ROSSIDES (Cyprus) said he would have been entirely in agreement with the United States representative if he had referred to "armed force", because the word "armed" appeared in the draft proposal.

Mr. EL-REEDY (United Arab Republic) said that his delegation had taken part in the consultations between the Latin American and the Asian and African groups and found the results encouraging. The new draft proposal contained the basic concepts from the two earlier draft proposals which were regarded as essential by both groups of States. The emphasis on "armed aggression" was important because, that weapon had been used against the territorial integrity political independence and sovereignty of small States in both groups. The draft proposal also took into account such points as preserving the Security Council's discretionary powers and not undermining its authority in determining acts of aggression.

There were, however, two defects, which he hoped could be corrected so as to help his country to become one of the sponsors. In the first place, he did not agree with the statement in operative paragraph 1 that armed aggression could be direct or indirect. In the past decade the idea of indirect aggression had often been used in international relations to describe what was really direct aggression. Since the proposed definition was clearly confined to armed aggression the emphasis should be on the direct use of armed force which threatened or restricted the territorial integrity of States.

Secondly, the proposal contained no clear statement on the safeguarding of the rights of peoples entitled to self-determination, and subjected to the use of armed force, to resist and defend themselves.

Mr. ALCIVAR (Ecuador) said that he hoped to make a substantive statement on the draft proposal at the next session of the General Assembly. He noted, however, that the draft proposal embodied an important principle, namely, the centralization of force in the United Nations. All the other provisions derived from that principle. It was logical that the smaller States, especially those which had been victims of aggression, should want the definition of aggression to take into account the idea of self-defence.

Mr. GROS ESPIELL (Uruguay) said that the new joint draft, of which his delegation was a sponsor, was the outcome of an effort to reconcile the two earlier drafts and to take account of observations made during the debate on them; as such, it did not reflect all his delegation's views. Moreover, some of its provisions were open to various interpretations. His delegation therefore judged it necessary to make its standpoint on some essential matters clear.

(Mr. Gros Espiell, Uruguay)

One of the points in which the new draft represented a considerable improvement over its predecessors was that it stated explicitly, in operative paragraph 1, that the draft definition for the time being covered only the use of armed force, thus excluding aggression constituted by the use of other kinds of force. On the other hand, the inclusion of the words "direct or indirect" clearly indicated that all forms of aggression resulting from the use of armed force were included in the definition. The enumeration in operative paragraph 5 merely gave examples of the direct use of armed force, and hence did not conflict with the general definition.

Indirect forms of aggression were of extreme importance for the Latin American region in particular. Hence they must be referred to specifically in the definition, just as they would later have to be included when forms of aggression not involving the use of armed force came to be defined. Operative paragraph 8, referring to the right of States to take all reasonable and adequate steps to safeguard their existence and institutions against subversive and/or terrorist acts, recognized the fundamental importance of indirect aggression. It was true that the paragraph went on to exclude recourse to the right of individual or collective self-defence against another State in accordance with Article 51 of the Charter. That was because in the case of subversion or terrorist acts Article 51, which was concerned with the rights of States suffering armed attack by another State, did not apply.

Operative paragraph 10 of the new joint draft had been criticized on the grounds that it might be interpreted as allowing the Security Council to name as acts of aggression acts other than those involving armed force, thereby violating Article 2 (4) of the Charter. He did not accept that view. Operative paragraph 10 must be interpreted within the context of the draft as a whole and in particular in relation to preambular paragraph 4. The purpose of operative paragraph 10 was to safeguard the discretionary right of the Security Council under Article 39 of the Charter to determine acts of aggression.

The new draft also took account of the fact that, although the Security Council enjoyed discretionary powers under Article 39 of the Charter, it was not only the Security Council but the United Nations as a whole which had responsibility for the maintenance of international peace and security, without prejudice to the primary responsibility of the Security Council referred to in Article 24 (1) of the Charter.

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(Mr. Gros Espiell, Uruguay)

Preambular paragraph 3 accordingly took account of the responsibilities both of the General Assembly and of the Security Council. During the preparation of the draft, the Latin American delegations had had Article 11 (2) and (3) of the Charter particularly in mind.

In the view of his delegation, operative paragraph 4 of the new draft, referring to enforcement action or any use of armed force by regional agencies, was in strict conformity with Article 53 of the Charter. Referring to the relationship between that Article and certain problems arising in connexion with the Organization of American States, he explained that when article 8 of the Inter-American Treaty on Reciprocal Assistance had recently been invoked by the Consultative Committee of OAS in breaking off diplomatic relations with a certain American State, Uruguay had taken the view that the Committee was entitled so to act without the authorization of the Security Council, inasmuch as a coercive act was not involved.

The CHAIRMAN observed that, since all four sponsors of the draft proposal contained in document A/AC.134/L.4/Rev.1 had sponsored the new joint draft (A/AC.134/L.6) the former document was no longer before the Committee. Incidentally, the delegation of Iran had indicated its decision to become a sponsor of the new draft.

Mr. CHIKVADZE (Union of Soviet Socialist Republics) said that in some respects the new draft was an improvement on its two predecessors, but in others it appeared to be somewhat weaker. One advantage was that it contained a clearly formulated preamble, though parts of the preamble were open to criticism: for example, preambular paragraph 5 said that the question whether aggression had occurred must be determined in the circumstances of each particular case but did not state who was to be responsible for determining them. The Charter made it absolutely clear that that right belonged to the Security Council. His delegation failed to understand why the sponsors had refrained from stating that vitally important and fundamental principle.

Preambular paragraph 7 reaffirmed the inviolability of the territorial integrity of a State, but said nothing of sovereignty and political independence. Unless those points were also mentioned, the implication might be that they could be violated provided that territorial integrity remained unaffected. All three points should be mentioned, or none at all.

(Mr. Chikvadze, USSR)

In view of the fact that it had been the consensus of the Committee that for the time being the draft definition should deal only with direct, or armed, aggression, he found it difficult to understand why the words "direct or indirect" were used in operative paragraph 1 of the new draft. There were many possible forms of indirect aggression, some involving the use of armed force and others, as for example economic aggression, not involving armed force, and it was logical that all of them should be left until the task of defining indirect aggression was taken up.

The reference to the United Nations should be deleted from operative paragraph 2 and reference made to the Security Council only, for the reasons which his delegation had stated at earlier meetings.

His delegation did not understand the reference to enforcement action in operative paragraph 4. A new concept seemed to have been introduced which was of doubtful relevance to a definition of armed aggression. If the term were to be used at all it should be adequately explained.

He appreciated the fact that the sponsors had taken into account his delegation's observations in regard to operative paragraph 5(ii) on aggression without declaration of war. But they had failed to take account of a number of other points. The description of armed aggression in operative paragraph 9, for example, as a crime against international peace giving rise to international liability and responsibility, was too vague and indefinite. What was required was a clear and emphatic declaration that such acts were major crimes against peace and humanity. The draft also failed to include a clear and specific affirmation of the legality of the use of force by peoples under colonial domination in their struggle for freedom and independence. Nor was there any reference to the important principle of anteriority or "first use" as a criterion for identifying an aggressor, which his delegation had several times urged should be included in the draft definition. He hoped the sponsors would find it possible to modify the new draft on the lines he had indicated.

Mr. ROSSIDES (Cyprus) said he was confident that the sponsors would do their utmost to take those views into account. With regard to the Soviet representative's criticisms of preambular paragraph 5, the Committee's task was to define aggression, not to state who was responsible for determining whether it had occurred in particular cases. In any event, the Soviet representative had said that there was no doubt about the body responsible for such decisions. That being so, the need to specify was not apparent.

He agreed that in preambular paragraph 7 reference should be made to sovereignty and political independence as well as to territorial integrity; and he noted the suggestion for inclusion of a reference to the right of self-determination.

As to the use of the term "enforcement action", in operative paragraph 4, those were the words used in Article 53 of the Charter in connexion with the utilization of regional arrangements or agencies. The reason why the words "or any use of armed force" had been included in the operative paragraph was clear from the structure of Chapter VII of the Charter, which dealt with enforcement action by the Security Council. Two types of measures were envisaged - those not involving the use of armed force (Article 41 of the Charter) and those involving it (Article 42). It was obvious that if enforcement action of the first type required the authorization of the Security Council, enforcement action of the second type must do so a fortiori. Operative paragraph 4 had therefore been very carefully drafted to correspond precisely to the provisions of the Charter relating to enforcement action by regional agencies.

With regard to the Soviet representative's criticism of operative paragraph 9, he wished to point out that it was not for the Committee to draft a code of offences against peace and humanity.

Mr. HAMDANI (Algeria) regretted that his delegation had not been able to co-sponsor the new joint draft, the basic reason being its concern above all for a definition which protected small nations and oppressed peoples, as being those most liable to suffer from aggression. The principal weakness of the new draft as compared with the twelve-Power draft (A/AC.134/L.3), was that it made no reference to the right of colonial peoples to self-determination; indeed operative paragraph 8 could be interpreted as providing an arm against them. As a member of the Organization of African Unity, one of whose basic aims was to promote the liberation of all colonial territories, his country was bound to view that paragraph with concern. He realized that it was intended to meet the legitimate needs of certain countries, but he did not

(Mr. Hamdani, Algeria)

believe that it would in fact do so. The difficulty was that the paragraph would be interpreted by certain colonial Powers - as establishing a juridical basis for repressive policies directed against liberation movements. His delegation therefore considered it absolutely essential that operative paragraph 8 be either deleted or so redrafted as to guarantee the rights of subject peoples in their struggle for independence.

Mr. ALCIVAR (Ecuador), referring to the observations of the Soviet Union representative on operative paragraph 2 of the new joint draft, said that his delegation regarded it as a matter of principle that the reference to the function of the United Nations to maintain international peace and security should be included. It was, however, understood that the United Nations could decide which of its constituent organs should be entrusted with the use of force, and his delegation had therefore agreed to the inclusion of a reference to the primary responsibility of the Security Council conferred on it by Article 24 of the Charter. The basic principle for his country continued to be that the use of force should be centred on the United Nations.

With regard to the position taken by the representative of Algeria, he said that as an ardent defender of the rights of colonial peoples to independence, his country could not accept the view that the inclusion of operative paragraph 8 in the new joint draft was against the interests of movements for the liberation of colonial peoples. His delegation had been willing to consider including in the draft definition a paragraph on the lines of operative paragraph 3 of the twelve-Power draft (A/AC.134/L.3), but before that could be done there must be a clear understanding of what precisely constituted a national liberation movement. Ecuador, like the other countries of Latin America, had been obliged long ago to engage in armed struggle for its own independence; but the phrase "liberation movement" was often used in a very vague and loose way which made it unsuitable for inclusion in a legal text such as the draft definition of aggression, unless it was adequately clarified.

Mr. HAMDANI (Algeria) said he had merely wished to point out that operative paragraph 8 of the new joint draft could be so interpreted by colonial Powers as to become a weapon in their hands against the legitimate aspirations of colonial peoples. His delegation recognized the position of the Latin American countries and, at the time of its own struggle for national independence, had recalled the example of those States in their fight for independence. The Organization of African Unity made a clear distinction between movements of opposition, outside aid to which would constitute interference in the internal affairs of States, and movements of national liberation, which could and should be supported from outside.

Mr. ALHOLM (Finland) said that his delegation was not in a position to discuss the new joint draft in detail at the present stage, but would like to put on record its serious misgivings about certain aspects of the draft.

The meeting rose at 6 p.m.

SUMMARY RECORD OF THE TWENTY-SECOND MEETING

Held on Friday, 5 July 1968, at 3.30 p.m.

Chairman: Mr. YASSEEN (Iraq)

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTION 2330 (XXII)) (agenda item 5) (A/AC.134/L.2, L.3 and Add.1, L.4/Rev.1 and Add.1, L.6 and Add.1 and 2, L.7) (continued)

Mr. CHIKVADZE (Union of Soviet Socialist Republics) noted with satisfaction that the Special Committee had made progress in its work and that the great majority of delegations not only recognized the need to define aggression but were ready to collaborate in doing so, as was proved by the drafts before the Committee. Pessimistic or sceptical judgements had not been lacking, but it was interesting to see that even the sceptics, while not abandoning their viewpoint, had concluded that an attempt should be made to define aggression.

The Soviet Union delegation considered that present conditions were favourable for producing an acceptable formula. In that connexion, he was grateful to the delegations which had made critical comments on the draft definition submitted by his country at an earlier stage of the work of defining aggression.

Co-operation between delegations had now enabled a single draft (A/AC.134/L.6 and Add.1 and 2) to be prepared, a consolidated text which though by no means flawless was a positive step forward. Together with the drafts already before the Committee, it constituted a starting-point from which a definition of aggression should be possible which could gain general acceptance. Unfortunately, the lack of time remaining to the Committee prevented it from carrying out a detailed examination of the new text.

In view of the fruitful results already obtained, and to supplement the work already done, the Soviet delegation had approached its Government and had been authorized to submit to the Committee a draft resolution whereby the General Assembly would instruct the Special Committee to resume its work before the end of 1968 so as to complete its formulation of a definition of aggression and to submit a single draft definition to the General Assembly before the end of its twenty-third session. He then read out the draft resolution (A/AC.134/L.7).

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Mr. JELIĆ (Yugoslavia) said that, unlike the other United Nations bodies which had been instructed to define aggression, the Special Committee had achieved results, modest no doubt, but most encouraging.

Some delegations had expressed doubts as to the usefulness of defining aggression or fears that it would not be possible to produce a definition, but not one of them had failed to co-operate in preparing a joint text. That was an almost certain guarantee of success.

All delegations had recognized that any definition that might be produced must not deprive United Nations organs of their competence under the Charter to determine aggression and identify the aggressor. That was a very serious obstacle which the Committee had succeeded in overcoming.

Another positive factor was the agreement whereby the Committee would, for the time being, prepare a definition of armed aggression only, leaving the question of other forms of aggression until later. That would greatly facilitate its work.

Another positive factor was that delegations had agreed to recognize that certain acts of aggression, such as the invasion or bombing of the territory of a State by another State, should in all cases be covered by the definition of aggression.

It was encouraging that large groups of delegations had attempted to prepare joint drafts, with the encouragement and active assistance of other delegations. Those significant facts were evidence of the firm intention of the Committee members to achieve real results as soon as possible. The importance of all the progress made should be brought out in the Committee's report.

Needless to say, there were still a number of questions to which it had not been possible to find a common solution, but his delegation firmly believed that the difficulty was not insuperable. In the first place, it had to be decided whether the Committee should immediately define all forms of armed aggression, both direct and indirect, or leave until later such acts as supporting armed bands and other acts of indirect aggression. That question should not be too difficult to resolve, since Committee members were agreed that sooner or later indirect armed aggression would also have to be defined.

With regard to the question whether declaration of war should be quoted in the definition among acts of aggression, that was a minor controversy which could be settled with a modicum of good will.

(Mr. Jelić, Yugoslavia)

With respect to naval blockade, he hoped that delegations which were currently opposed to its inclusion in the definition would ultimately be able to agree to it as they had already done at earlier stages in the preparation of the definition.

The question whether the definition should be based on the principle that the aggressor was the first party to commit an act of aggression was not a matter for controversy. According to the Charter itself, any party which used armed force, except to repel an armed attack, was an aggressor. All that remained to be done was to express that idea without giving rise to incorrect interpretations.

The list of questions to be resolved was nevertheless far from complete. But despite the serious difficulties still outstanding, the progress made to date gave reason to hope for ultimate success and fully justified continuing the work of defining aggression. He hoped that the fact would be mentioned in the report and that the Committee would soon be in a position to resume its work. He was unable to take up an immediate position on the USSR draft resolution but he could say at once that he favoured the idea behind it.

Mr. ALLAF (Syria) considered that lack of time had prevented the Committee from carrying out its duties effectively, but while fewer meetings had been held than might have been possible, many delegations had taken the opportunity to do constructive work, as was shown by the drafts submitted to the Committee.

His delegation would in due course submit two amendments to the consolidated text (A/AC.134/L.6 and Add.1 and 2). In addition, it fully supported the Soviet Union's draft resolution (A/AC.134/L.7) but would have preferred it to refer to "direct armed aggression" and not simply to "armed aggression".

Mr. JAHODA (Czechoslovakia) thanked the sponsors of the joint draft (A/AC.134/L.6) for their endeavours to produce a combined text, which he considered to be of primary importance.

His delegation considered that any definition of aggression should be based on objective criteria. In particular, it was convinced that the first State to have recourse to armed force should be declared the aggressor. That criterion, recognized in international law, was decisive and was the only one which made it possible to distinguish between acts of aggression and acts carried out in exercise of the right of self-defence. Unfortunately, it was not to be found in any of the provisions of the

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(Mr. Jelić, Yugoslavia)

joint draft. In that connexion, his delegation supported the idea expressed in operative paragraph 3 of the draft declaration on aggression (A/AC.134/L.3) that any use of force to prevent a dependent people from exercising its right to self-determination in accordance with General Assembly resolution 1514 (XV) was a violation of the Charter. There could be no true peace among nations until all policies derogating from the natural right of peoples to determine their own future had been abandoned. Several recent international conflicts could, incidentally, be attributed to the use of force against dependent peoples, and the United Nations had had to take cognizance of situations resulting from the adoption by colonial Powers of repressive measures which endangered international peace and security.

His delegation supported the joint draft in principle, but felt that it should be studied in much greater detail. Since the Committee had not had sufficient time, his delegation would support the Soviet draft resolution designed to enable the Committee to finish its work before the end of 1968.

Mr. HARIZANOV (Bulgaria) said that his delegation fully endorsed the views expressed by the USSR representative. His delegation supported the Soviet draft resolution aimed at enabling the Committee to finish its work before the end of 1968. It deserved the support of all Committee members who wished to see a definition of armed aggression prepared as soon as possible.

Mr. RENOUARD (France) said he was not in a position to comment in detail on the joint draft (A/AC.134/L.6) since he had not received it early enough. He acknowledged and approved the efforts made by the delegations which had helped to prepare the document and would study it with care. The text called for numerous comments, as to both substance and form.

There had been a certain delay in distributing the summary records in French. For example, the summary record of the seventeenth meeting, held on 28 June, had not yet appeared in French which was all the more surprising in that two of the three statements it contained had been delivered in French. The summary record of the nineteenth meeting had likewise not been issued in French. That was hampering the Committee's work. Similarly, the documents containing the various parts of the draft report had only been distributed that day in the late morning.

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(Mr. Renouard, France)

With regard to the Soviet draft resolution, his delegation was not in a position to take a stand on the subject. It would like to know when the official text would be distributed.

Mr. MOVCHAN (Secretary of the Committee) said that the Secretariat always made a special point of distributing all documents in all the official languages. In the case of the draft report, the English French and Spanish versions had been prepared and distributed simultaneously. There had been some translation delays in preparing the Russian text, but the Secretariat had done everything possible to supply Russian-speaking delegations with any information they required concerning the production of the texts in question. Since the end of the session was approaching, it had seemed advisable to the Secretariat to distribute the text of the draft report in three of the official languages only. At the moment, only the Russian version of document A/AC.134/L.5/Add.2 had not yet appeared, and it would be distributed before the end of the meeting.

In the case of the summary records, owing to the alternation of teams, either the French version or the English version came out first according to whether the précis-writers covering the meeting belonged to the French or the English section. Committee members naturally wanted as rapid a service as possible, but technical problems made it impossible to distribute the summary records in all languages at the same time.

Mr. RENOUARD (France) noted the Secretariat's reply but could not say that it entirely satisfied him.

Mr. BEESLEY (Canada) said that he too was still awaiting the summary record of the meeting of 28 June. Distribution must have been held up, since the summary record for the 2 July meeting had already appeared.

The CHAIRMAN said that the summary record of the eighteenth meeting had appeared in French and Spanish but not in English; that that of the nineteenth meeting had already been distributed in English, but had not yet appeared either in French or in Spanish. Thus there was no discrimination.

Mr. ASTANTE (Ghana) found that the Committee had made notable progress, though owing to lack of time it would not be able to complete its task. The Ghanaian delegation would have liked the Committee to be able to put a final draft definition of aggression before the General Assembly at its twenty-third session. It was therefore ready to support the USSR draft resolution, although it had not yet received the official text. If the General Assembly extended the Committee's terms of reference, it would certainly be in a position to submit a specific proposal before the end of the twenty-third session.

Mr. HAMDANI (Algeria) said that the members of the Committee had co-operated to achieve something tangible and a large majority had been in favour of starting with a definition of direct armed aggression.

The proposal by the USSR representative to request the General Assembly to extend the Committee's mandate was sensible, since it would enable the Committee to finish what it had started. Opinions remained divided on some points and, in certain respects, the texts put before the Committee called for rectification. For instance, his delegation would like the draft submitted to the General Assembly to take a definite stand with regard to the interests of peoples under foreign domination, so as to form part of the drive towards the emancipation of oppressed peoples. In the texts before the Committee that problem, when not omitted altogether, was insufficiently stressed.

Mr. EL-REEDY (United Arab Republic) said he was satisfied with the progress achieved by the Committee in endeavouring to define aggression, a goal whose importance was recognized by the vast majority of States, including the permanent members of the Security Council. Some delegations had cast doubts on the possibility and utility of such a definition, but not a single delegation had been opposed to formulating it.

The United Arab Republic had already made its position clear at the eighth meeting: being itself at present the victim of armed aggression, it knew by experience that the deliberate abuse of the terminology employed in international affairs had contributed to the definite deterioration in international relations over the past ten years or more. Such abuse should be stopped once and for all by a definition of aggression, and Article 51 of the Charter, concerning armed aggression, should be borne in mind. It was with a clear understanding of the obligations imposed by the Charter, limiting resort to force, that the twelve countries stated in paragraph 4 of their draft declaration (A/AC.134/L.3) that "no political, economic, strategic, security, social or ideological considerations, nor any other considerations" could be invoked to justify an act of aggression, proclaiming the present legal position, which definitely condemned the theory of preventive war.

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(Mr. El-Reedy, United Arab Republic)

Since under Article 51 of the Charter resort to force in the exercise of the right of self-defence pre-supposed an act of armed aggression, his delegation was opposed to the inclusion of indirect aggression in a general description of armed aggression. The introduction of such a vague and controversial notion in the definition of armed aggression or attack would serve only to open the way to subjective interpretation and to the distortion of Article 51. That did not mean, however, that it would be impossible subsequently to contemplate a definition of indirect aggression, armed or otherwise.

The relationship between armed aggression and the principle of non-resort to force was extremely delicate. It was true that the use of force was clearly prohibited in Article 2(4) of the Charter, but it was not for the Committee to formulate the principle involved, which was the task of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States. The Committee was attempting to arrive at a definition of the term "aggression" within the meaning of the Charter. Since armed aggression presupposed resort to force in the form of armed attack, it would be impossible to avoid invoking the principle of non-resort to force.

In that respect, his delegation was among those which believed the prohibition of armed aggression to be a universal principle valid for Member and non-member States alike. Generally speaking, the principle should be equally valid for entities not recognized as States. However, they should also benefit from the exception provided in Article 51. When a people was deprived by force of its territory or its natural right to self-determination, it could not be asked to waive its right of self-defence. In that sense, his delegation attached historic importance to General Assembly resolution 1514 (XV), which defined the Charter obligations in relation to peoples and territories under foreign domination, whether recognized as States or not.

(Mr. El-Reedy, United Arab Republic)

Finally, it should be remembered that the Charter prohibited not only armed aggression, in other words armed attack against territories, territorial waters or a country's air space, but also the use of force in any other way incompatible with the purposes of the United Nations. It followed that the use of force at sea against another State or against its ships was also forbidden, and the representative of the United States had said that naval blockade was permissible if it did not involve the use of force. The same applied to annexation. The very term "annexation" presupposed that a State imposed its will on another State by force, and that term could not apply to the merger of two States. As far as the concept of blockade was concerned, it was of course only conceivable in cases where the warships of one State used force to prevent access to the coast of an enemy territory, whether on the high seas or in the territorial waters of the State blockaded. Such an action must not be confused with measures adopted by a State in its own territorial waters or to close its frontiers.

With regard to the joint draft resolution (A/AC.134/L.6), he was glad that the sponsoring States belonged to three continents - Europe, Africa and Latin America. However, two criticisms could be levelled at the draft: in the first place, operative paragraph 1 defined aggression as "the use of armed force, direct or indirect"; but as he had already pointed out, the concept of indirect aggression was vague and could lead to misinterpretation of Article 51 of the Charter. Consequently, his delegation could not accept the draft unless the reference to indirect aggression was dropped. Furthermore, the draft did not provide adequate protection to peoples under colonial domination who should have the right to defend themselves against the unlawful use of force.

The draft resolution submitted by the Soviet Union was dictated mainly by lack of time and by the need to pursue the efforts of the Committee to adopt a definition of armed aggression, with due regard to the very definite progress already made. He shared that view and supported the draft resolution in principle, pending an opportunity to examine the written text.

Mr. MARPAUNG (Indonesia) approved in principle the USSR draft resolution, which rightly stressed that if the Committee had not been able to complete its work the reason had not been lack of co-operation but lack of time. The Committee had already achieved positive results, which were encouraging.

His country had always supported the right of colonial peoples to struggle for their independence, for example on the occasion of the adoption of resolution 2230(XXI) concerning Equatorial Guinea, and it had itself applied that principle.

(Mr. Marpaung, Indonesia)

His delegation considered that only a majority including all the permanent members of the Security Council could ensure that the Committee would achieve the goal it had set itself.

Mr. ALCIVAR (Ecuador) said that the USSR draft resolution was acceptable, since it would ensure that the Committee had the time it needed to carry on its work, whose results were encouraging. He would prefer, however, that the next meeting of the Committee should be held in New York rather than Geneva, since some delegations might have difficulty in being represented at the General Assembly and at Geneva simultaneously.

Mr. CHIKVADZE (Union of Soviet Socialist Republics) pointed out that it was the General Assembly and not the Committee which would decide the place of meeting.

Mr. ROSSIDES (Cyprus) expressed his satisfaction with the constructive discussions of the Committee and the progress which it had achieved. There was no doubt that the climate had been different from that of the previous Committees.

In another direction, he was glad that negotiations were now proceeding between the United States and the USSR on the limitation of nuclear armaments. However, a joint draft declaration still had to be worked out and consultations would have to be held at government level. The main point for the Committee was the definition of direct armed aggression, which represented the most serious form of violation of the Charter, to the exclusion of all other aspects.

In view of the little time at the Committee's disposal, he favoured the USSR draft resolution.

Mr. BADESCU (Romania) said that the joint draft resolution (A/AC.134/L.6) could constitute a useful basis for a definition of aggression, but the text still left room for improvement. Furthermore, it had been submitted too late for thorough examination. The Romanian delegation reaffirmed that it was vital for a definition of aggression to take account of the need to liberate peoples under colonial domination and of the inalienable right of peoples to self-determination.

His delegation supported the USSR draft resolution.

Mr. GROS ESPIELL (Uruguay) said he was gratified by the results achieved by the Committee and the spirit of collaboration shown by its members. Lack of time had prevented them from completing their work. Moreover, the joint draft resolution (A/AC.134/L.6) called for improvement, in view of the comments made by delegations and the need to reconcile their viewpoints. Efforts should therefore be continued with a view to producing a text which would muster an adequate majority and could be submitted to the General Assembly. In the circumstances, he approved the USSR draft resolution, at the same time supporting the remark of the Ecuador representative concerning the advisability of holding the next meeting at Headquarters on practical grounds.

Mr. SULIMAN (Sudan) endorsed the observations made at the current and the previous meeting by the representative of the United Arab Republic concerning operative paragraph 1 of the joint draft (A/AC.134/L.6). By listing the indirect use of armed force among acts of aggression, the authors appeared to imply that, in such cases, the State which was the victim of aggression was justified in invoking Article 51 of the Charter, which enunciated the inherent right of individual or collective self-defence. Operative paragraph 1 could hardly be interpreted in any other way, and hence it was unacceptable to his delegation.

The juxtaposition of the direct use and indirect use of armed force gave an impression which was quite different from that stated expressly in Article 51 by the authors of the Charter.

Nor did he quite understand what was meant by the indirect use of armed force. The examples given in operative paragraph 5 related exclusively to the direct use of armed force, and nothing in the rest of the draft explained the meaning of the word "indirect" in paragraph 1. If what was meant was acts of subversion, they were covered, though imperfectly, in operative paragraph 8, which categorically denied, and rightly so, the right of self-defence to the victim State. Thus there was a puzzling contradiction between the provisions of paragraph 8 and the only possible interpretation of paragraph 1.

With respect to the use of armed force against dependent peoples, he had been gratified to hear the representative of Cyprus say, at the previous meeting, that the sponsors of the draft had taken note of the suggestion that reference should be made to the right of self-determination.

Lastly, his delegation wholeheartedly supported the draft resolution submitted by the Soviet Union with a view to extending the Committee's terms of reference. If the General Assembly endorsed the draft resolution, his delegation hoped that members of the Committee would come to the meeting with full instructions from their respective Governments so that last-minute consultations could be avoided.

Mr. MOTZFELDT (Norway) did not altogether agree with the USSR representative's view that the Committee should meet once again because it had not had sufficient time to agree on a draft declaration. Progress had certainly been made, but much still remained to be done, and it was for the General Assembly to decide whether the Committee's terms of reference should be extended. The Soviet Union's proposal might be included in the report as a reflection of its opinion.

Mr. CHIKVADZE (Union of Soviet Socialist Republics) said that the present deliberations had shown that the area of agreement had been broadened and that only lack of time prevented the Committee from completing its work. That was why he considered that the Committee's terms of reference should be renewed.

Mr. HARGROVE (United States of America) said that owing to the late date on which the Soviet Union had submitted its proposal he had not had sufficient time to receive instructions from his Government and could only make some interim observations. There were a number of aspects of the question of extending the Committee's terms of reference, as well as some secondary questions about the nature of the mandate, which would require careful examination. For that reason, the Norwegian representative's suggestion that the USSR proposal should be included in the Committee's report together with the other proposals made during the session seemed to be sound. That procedure would not result in greater delay than if the proposal were presented in the form of a recommendation, because in any event the final decision in the matter would have to be reached by the General Assembly. While he could not commit his delegation in advance, he had no reason to believe that its response to the Soviet Union's proposal would be automatically negative in the General Assembly.

Referring to the observations by the representative of the United Arab Republic, he explained that the United States delegation had not said that naval blockade was lawful in international relations. His view was that blockade measures did not necessarily involve the actual use of force, but did so only if the implicit threat to use force was carried out. Similarly, annexation or attempted annexation might be merely an internal legislative act which was null and void in international law in the absence of consent by one of the parties concerned.

Mr. ROSSIDES (Cyprus) suggested adjournment of the meeting so that delegations could consult together on the submission of a number of recommendations to the General Assembly; the Committee should not simply transmit a large batch of proposals for the General Assembly to choose from.

Mr. FREELAND (United Kingdom) said that references had been made to lack of time; but what was quite clear was that there would be ample time between the closure of the Committee's session and the next session of the General Assembly for due consideration of the issues raised by the USSR proposal. The question for the Committee was really whether it should make a recommendation now on issues which

(Mr. Freeland, United Kingdom)

would in any event be considered subsequently, at a time when Governments had had a full opportunity to study them and were ready to state their positions. His delegation would, of course, examine the proposal in detail when it was available in written form, but its submission at that late stage raised obvious difficulties over consultations with Governments. At first hearing, the proposal seemed to involve not merely a procedural issue, and one which should in any event be decided by the General Assembly. It also raised, by its references to "armed aggression", an issue of substance, namely, whether the concept of aggression as used in the Charter extended beyond activities involving the use of armed force.

The best procedure to be followed so as not to compromise the degree of agreement reached so far would be to transmit the USSR proposal to the General Assembly in the Committee's report. It could not be said that any draft would be shelved by that procedure; on the contrary, it was fully in keeping with the Committee's terms of reference, which required it to submit a report indicating all the opinions expressed.

His delegation was concerned about the short time available to the Committee for the completion of its work, in particular work on its report, and requested the Chairman to allocate it as best he could among the various matters under consideration.

Mr. ASANTE (Ghana) said that, as some delegations might find it difficult to accept or reject the USSR draft, he supported the suggestion made by the representative of Cyprus.

His delegation accepted the USSR draft resolution, whose main purpose was to extend the Committee's terms of reference. The time factor should not be the Committee's only concern. The Committee's discussions had certainly taken place in a cordial atmosphere and progress had been made. However, by rejecting a proposal enabling it to continue its work, the Committee would merely add to the volume of documentation already available on the question.

Mr. CURTIS (Australia) said he would confine himself to a few preliminary observations on the USSR proposal; he might revert to it when the written text was available.

The Australian delegation had not received any instructions from its Government and could not do so before the closure of the session. It seemed to him preferable to leave the matter to the General Assembly, as the Committee had carried out its

(Mr. Curtis, Australia)

task, which was to provide the General Assembly with information and to enable it to take a decision with a full knowledge of the facts. It was now for Member States to study the Committee's report which contained the information needed to guide them in making their decision. The USSR proposal was premature because it sought to deal with a question which the General Assembly alone was able to decide, since all Member States were represented on it. Moreover, from a procedural point of view, the proposal had been submitted at an unsuitable time, when the Special Committee's main concern should be its report.

Mr. HARGROVE (United States of America) pointed out further that, in any case, the Government of the United States would not wish to give instructions to its delegation before it had received the information which the Secretariat had to provide, under rule 154 of the rules of procedure of the General Assembly, on the financial implications of the USSR proposal.

Mr. CHIKVADZE (Union of Soviet Socialist Republics) was surprised to see that his proposal was causing difficulties for some delegations, particularly those of the United States, the United Kingdom and Australia. Had it been a question of setting up a new committee, he would understand their hesitation. But the Committee already existed and it was only a matter of giving it the necessary time to complete a task it had begun well.

The representative of Australia had raised a question of principle in stating that the Committee had carried out its mandate. He did not share that view: the Committee's task would only be completed when it had accomplished what the General Assembly expected of it, in other words when it had submitted definitive conclusions on the question under consideration. The Committee was now at the point where it needed a little more time to complete its work. If it sincerely wished to do so, there was no alternative to an extension of its terms of reference. He did not understand why some members of the Committee complicated the issue, and he hoped that his draft resolution would be put to the vote.

Mr. ALLAF (Syria) was surprised at the sudden change which had taken place in the atmosphere in the Committee. Since the only remaining obstacle to the success of the Committee's work was lack of time, it seemed a pity to abandon what had been achieved, and would like to renew his support for the draft resolution submitted by the Soviet Union.

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The CHAIRMAN, summing up, said that the Soviet draft resolution recommending the General Assembly to extend the Committee's terms of reference, had been commented upon by a number of delegations which had considered it sufficiently clear, even though the written text had not yet been circulated. A number of members of the Committee had supported the draft resolution; others had expressed doubts, sometimes of a serious nature, on its timeliness, being of the opinion that the Committee's task would be completed with the adoption of its report.

With regard to the question raised by the United States representative concerning the financial implications of the proposal made by the Soviet Union and the application of rule 154 of the rules of procedure, the Secretariat would probably be able to give some information on that subject within twenty-four hours.

There were thus two remaining items on the Committee's agenda: consideration of the Soviet draft resolution and the adoption of the report. He proposed that the Committee should hold a night meeting to continue its consideration of the draft report.

It was so decided.

The meeting rose at 6.10 p.m.

SUMMARY RECORD OF THE TWENTY-THIRD MEETING

Held on Friday, 5 July 1968, at 8.50 p.m.

Chairman: Mr. YASSEEN (Iraq)

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ADOPTION OF THE REPORT (agenda item 6) (A/AC.134/L.5, Add.1, Add.1/Corr.1, Add.2 and Add.3) (continued)

Document A/AC.134/L.5 (continued)

Paragraph 6

Mr. CURTIS (Australia) suggested that the report should indicate the meetings at which the resolutions referred to had been introduced.

It was so agreed.

Paragraph 6 was approved on that understanding.

Paragraphs 7 and 8

Paragraphs 7 and 8 were approved.

Document A/AC.134/L.5/Add.1

Paragraph 1

Paragraph 1 was approved.

Paragraph 2

Paragraph 2 was approved subject to a minor editorial change.

Paragraph 3

Mr. RENOUARD (France) proposed that paragraph 3, like paragraph 2, should be drafted in indirect form, beginning "La question avait été examinée ...".

Mr. HARGROVE (United States of America) endorsed the proposal in respect of the English text, which would begin "The question had been considered ...".

It was so agreed.

Mr. MOTZFELDT (Norway) suggested that the word "respectively" be inserted after "1956" in the fourth line.

It was so agreed.

Mr. BEESLEY (Canada), supported by Mr. CHKHIKVADZE (Union of Soviet Socialist Republics), suggested that the word "satisfactory" in the fifth and sixth lines be deleted.

It was so agreed.

Mr. EL-REEDY (United Arab Republic) suggested that the words "no satisfactory definition met with the approval of a majority" in the fifth and sixth lines be replaced by the words "no definition was approved".

It was so agreed.

Paragraph 3, as amended, was approved.

Paragraph 4

Paragraph 4 was approved.

Paragraph 5

Mr. CHIKVÂDZE (Union of Soviet Socialist Republics) suggested that the word "adequate" (достаточно) should be deleted from seventh and last lines, since it did not appear in operative paragraph 3 of General Assembly resolution 2330 (XXII).

Mr. MOVCHAN (Secretary of the Committee) confirmed that the word had been omitted from the Russian version of the resolution, although the other versions referred to "an adequate definition".

The USSR amendment was approved.

Mr. TENA (Spain), supported by Mr. BEESLEY (Canada) suggested that the words "the elaboration of" be inserted before "a definition" in the eleventh line in order to refer more correctly to the Committee's terms of reference.

It was so agreed.

Paragraph 5, as amended, was approved.

Paragraph 6

Mr. FREELAND (United Kingdom) suggested that the comma after the word "debate" in the fourth line from the end should be replaced by a semicolon.

It was so agreed.

Mr. CHIKVADZE (Union of Soviet Socialist Republics) proposed that the first sentence should end with the words "General Assembly", the rest of the sentence being deleted.

Mr. HARGROVE (United States of America), supported by Mr. LAMPTEY (Ghana), Rapporteur, pointed out that, although they did not relate to an important point, the words were an accurate account of the discussion.

Mr. ROSSIDES (Cyprus) suggested that, to avoid confusion in the report, the words "the Committee" should be used for the Special Committee and that any other committee should be referred to by its full name.

It was so agreed.

Mr. CHIKVADZE (Union of Soviet Socialist Republics) said that the last eight words of the paragraph did not accurately describe the Committee's task, which according to operative paragraph 3 of General Assembly resolution 2330 (XXII) was to submit a report reflecting all the views expressed and all the proposals tabled.

After a short discussion, the CHAIRMAN suggested that the words be replaced by the relevant wording from the General Assembly resolution as being closer to the Committee's terms of reference and similar in substance.

It was so agreed.

Mr. ASANTE (Ghana), supported by Mr. BEESLEY (Canada), proposed that the words "had explicitly instructed the Special Committee" in the second sentence be replaced by the words "had proposed that a special committee be explicitly instructed".

It was so decided.

Paragraph 6, as amended, was approved.

Paragraph 7

Mr. BEESLEY (Canada) proposed that the words "to establish" in the second sentence be replaced by "to determine", the word used in article 39 of the Charter.

It was so agreed.

Mr. FREELAND (United Kingdom) proposed the deletion of the word "general" in the same sentence.

It was so agreed.

Paragraph 7, as amended, was approved.

A/AC.134/L.5/Add.1/Corr.1

Mr. HARGROVE (United States of America), supported by Mr. CHKHIKVADZE (Union of Soviet Socialist Republics), proposed that consideration of the document be deferred until informal consultations on its content were completed.

Mr. EL-REEDY (United Arab Republic), Mr. HAMDANI (Algeria)and Mr. JAHODA (Czechoslovakia) said they would prefer to make statements on certain points in the document forthwith.

Mr. HARGROVE (United States of America) and Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) withdrew their proposal.

Mr. ROSSIDES (Cyprus) expressed the hope that the Committee would make only very brief mention in its report of matters not directly related to the drafting of a definition of aggression, in order to give greater emphasis to legal than to political matters.

Mr. HARGROVE (United States of America) said that his delegation had indicated its willingness to accept that course. If, however, it was not acceptable to other delegations his delegation reserved the right to ask for full coverage of the matters concerned.

Mr. CHIKVADZE (Union of Soviet Socialist Republics) regretted that his delegation could not accept the suggestion by the representative of Cyprus. It was necessary to identify the aggressor and to bring out clearly the standpoint of delegations.

Paragraph 7a

After some discussion Mr. TSUKAHARA (Japan) proposed the adoption of an amendment by which the first sentence would be replaced by two sentences reading as follows: "Some representatives stated that legal considerations should predominate in the elaboration of a definition of aggression. Others, while agreeing with that view, stated that it was no less true that that definition must be based on real events in international life, in particular those of the last three decades, since it was only from the examination of those events that the constituent elements of the phenomenon of aggression could be determined."

Mr. TARAZI (Syria) proposed that the second sentence be further amended to read: "Others stated that that definition must be based on real events in international life, in particular those of the last three decades, since it was only from the examination of those events that the constituent elements of the phenomenon of aggression could be determined."

The amendment, as thus modified, was approved.

Mr. CHIKVADZE (Union of Soviet Socialist Republics) said that, although he recognized the major part of the paragraph as his own work, he did not remember having made any specific reference to "the last three decades".

Mr. HARGROVE (United States of America) said that statements made to the Committee by his delegation had been responsible for the inclusion of the phrase.

Mr. CHIKVADZE (Union of Soviet Socialist Republics) said that since the United States representative claimed responsibility for the inclusion of that reference, he might at the same time signify his approval of the rest of the paragraph, or indeed take over the authorship of the whole paragraph.

Mr. HARGROVE (United States of America) said that his delegation was particularly anxious to maintain the reference to three decades and not only agreed with but would wish to insist upon the retention of the sentence of which it was a part; but that did not warrant any inference as to his delegation's attitude to the remainder of the paragraph.

The CHAIRMAN said that everybody seemed to be in agreement that the definition of aggression should be based on real events in international life. Surely the reference to a specific period encompassing such events merely raised a peripheral question and could be omitted.

Mr. ROSSIDES (Cyprus) thought the confusion had arisen because a single paragraph contained a variety of views without specific attribution to the delegations which had expressed them.

Mr. ASANTE (Ghana) supported by Mr. BEESLEY (Canada) said that there appeared to be no objection to the sentence as it stood, and so far nobody had suggested any amendment.

The CHAIRMAN suggested that the reference to three decades might be maintained, but in another context. That would safeguard the formal integrity of the statement by the USSR representative and at the same time meet the insistence of the United States representative that the reference be included in the report.

Mr. HARGROVE (United States of America) said it was surely irregular to insist that a final report, which was after all intended to constitute a synthesis of the views expressed in the course of a conference, contain specific attributions with regard to the authorship of every opinion expressed therein. If the purpose of the report was to make clear that one particular delegation had uttered the words in question, the paragraph could hardly start with the words: "Some representatives stated".

Mr. EHSASSI (Iran) proposed that the reference to three decades be removed from paragraph 7a and inserted in paragraph 7f.

It was so decided.

Paragraph 7b

Mr. EL-REEDY (United Arab Republic) said that the wording of paragraph 7b with regard to Israel's aggression was much weaker than the statements on other events. For the same of balance, therefore, the first sentence of that paragraph

(Mr. El-Reedy, United Arab Republic)

should now read: "Some representatives stated that at the very time the Security Council was debating the situation in the Middle East, Israel launched a war of aggression on June 5, 1967 against three Arab States and that this aggression continued in the form of a military occupation of parts of the territories of these States."

Mr. HAMDANI (Algeria) agreed, and proposed that the second sentence should read: "Portugal was said to have launched a war of aggression against Mozambique, Angola and other territories under Portuguese colonial oppression."

It was so decided.

Paragraph 7b, as amended, was approved.

Paragraph 7c

Mr. FREELAND (United Kingdom) said that the paragraph should begin: "The illegal régime in Southern Rhodesia and the Government of South Africa...".

Mr. HAMDANI (Algeria) endorsed that amendment, and said further that the expression "native populations of Zimbabwe and Namibia" should be replaced by "peoples of Zimbabwe and Namibia".

It was so decided.

Paragraph 7c, as amended, was adopted.

Paragraph 7d

Mr. HAMDANI (Algeria) said that, although his delegation had joined with the others in condemning United States aggression in Viet-Nam, it had not associated itself with the reference to Hitlerite aggression.

The succeeding paragraph (7e) gave excessive space to the reply by the United States delegation to those charges. Lengthy formulations of that kind were contained normally in the summary records and there was no reason for granting such indulgence to one particular delegation in the final report. Otherwise the Algerian delegation would insist that its own detailed statement on United States aggression in Viet-Nam be included in the report in order to counterbalance the reply by the United States delegation.

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Mr. LAMPTEY (Ghana), Rapporteur, said he would prefer to see document A/AC.134/L.5/Add.1/Corr.1 temporarily withdrawn to give the countries concerned the opportunity of redrafting the controversial sections. Those countries had originally been unwilling that the document should be discussed in its present form, and the Committee would have been spared the polemics had some delegations not insisted on dealing with the document immediately. Agreement in regard to the Algerian proposal would make the report much too long and unwieldy.

Mr. ALLAF (Syria) said that his country should be included in the list of States condemning United States aggression in Viet-Nam.

Mr. CHIKVADZE (Union of Soviet Socialist Republics) said that the present wording did not reflect his delegation's position accurately; its condemnation of United States aggression had not been confined to Viet-Nam, but had included Cuba, Panama and the Dominican Republic, all of which should be included in paragraph 7d.

Mr. MOTZFELDT (Norway) referring to the Cyprus representative's plea, said it would save time if political considerations were de-emphasized. It would be more useful to concentrate on the legal and more abstract aspects of the definition of aggression.

Mr. ASANTE (Ghana) proposed that the delegations most closely concerned should get together to re-write the relevant parts of document A/AC.134/L.5/Add.1/Corr.1.

It was so decided.

The meeting rose at 11.36 p.m.

SUMMARY RECORD OF THE TWENTY-FOURTH MEETING

Held on Saturday, 6 July 1968, at 10.15 a.m.

Chairman: Mr. YASSEEN (Iraq)

ADOPTION OF THE REPORT (agenda item 6) (A/AC.134/L.5/Add.1 and Corr.1 and Add.2 and Add.3) (continued)

Document A/AC.134/L.5/Add.1/Corr.1 (continued)

Paragraphs 7d and 7e

Mr. FREELAND (United Kingdom) proposed that the words "Certain other representatives did not accept this attribution of responsibility for events in Viet-Nam" should be inserted at the beginning of paragraph 7e, which would be followed by the words: "The United States representative in particular rejected the imputation ... etc.". The United Kingdom delegation, for instance, had clearly indicated that it did not accept the opinion expressed in paragraph 7d.

Mr. CHIKVADZE (Union of Soviet Socialist Republics) saw no reason why the countries that had shared the United States view should not be named.

Mr. CURTIS (Australia) said that although his delegation had not taken part in the debate, it was one of those which did not accept the opinion summed up in paragraph 7d.

Mr. CHIKVADZE (Union of Soviet Socialist Republics) said that there was nothing surprising about the Australian attitude, since Australia was also participating in the action undertaken in Vietnam.

Mr. ASANTE (Ghana) suggested that the difficulty could be overcome by using a more impersonal expression such as "some delegations".

Mr. BEESLEY (Canada) asked whether opinions not actually expressed during the debate were to be recorded in the report. In principle, it was always preferable not to cite delegations by name in a report, since that greatly expanded the text.

Mr. ROSSIDES (Cyprus) agreed with the Canadian representative that the usual practice was not to mention countries that had taken part in the discussion by name. Since, however, it was a question of an accusation brought by one State against another, it was difficult to avoid mentioning the accuser and the accused. The entire discussion had in fact been outside the scope of the debate on the definition of aggression and had not therefore come within the Special Committee's terms of reference.

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Mr. CHIKVADZE (Union of Soviet Socialist Republics) said it was not a question of what certain delegations now thought, but of what had actually been said at the meeting. He himself had raised the question of Viet-Nam; the United States representative had then made a statement, followed by several other speakers. Those were the facts that should be mentioned in the report, and he did not favour impersonal expressions. There was no need to be afraid of taking up a position in the matter.

Mr. ASANTE (Ghana) said that while it was undoubtedly important to have an accurate record of the Committee's proceedings, representatives did not usually all take the floor to restate views clearly expressed by another delegation with which they were in agreement. There was no reason why such delegations should not now ask for their names to appear in the report, but if the Committee followed that procedure it would run into serious difficulties. That was why the Ghanaian delegation had proposed that all the representatives concerned should meet to draft the text of the controversial paragraphs. The Committee should bear in mind that it had to complete the examination of its draft report and also had before it a draft resolution to which Ghana attached great importance.

Mr. ROSSIDES (Cyprus) said he also thought that the Committee should examine the draft resolution submitted by the USSR (A/AC.134/L.7). Once that problem had been settled, the adoption of the report would perhaps prove easier.

Mr. CHIKVADZE (Union of Soviet Socialist Republics) said he considered that his draft resolution should have priority over the draft report. The Soviet delegation would then be ready to examine the controversial paragraphs of the draft report in a conciliatory spirit.

Mr. EHSASSI (Iran) said he supported those delegations which held that the USSR draft resolution should be examined forthwith.

The CHAIRMAN said that in view of the grave difficulties raised by paragraphs 7d and e, direct contacts between the delegations concerned were necessary. To allow time for reflexion, he suggested that the Committee should suspend its examination of the draft report and take up the draft resolution submitted by the USSR (A/AC.134/L.7).

It was so decided.

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CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (General Assembly resolution 2330 (XXII)) (agenda item 5) (concluded)

Consideration of the draft resolution submitted by the Union of Soviet Socialist Republics (A/AC.134/L.7)

Mr. EL REEDY (United Arab Republic) said his delegation had already indicated its support for the general idea of the draft resolution. In its view, adoption of the draft resolution would consolidate the progress already achieved by the Committee and make it possible to complete the definition of armed aggression.

He would, however, like to draw the Soviet delegation's attention to two points. Firstly, the adverb "unanimously" in the last line of the second preambular paragraph appeared to him to pre-judge the way in which the definition would be adopted; although the definition must admittedly be accepted by most States, particularly by the permanent members of the Security Council, unanimity was not a recognized principle in the General Assembly. Secondly, the draft resolution should take account of the fact that the Committee had had before it at least two or three proposals, which had received substantial support.

Mr. ALLAF (Syria) said that he supported the draft resolution, although he shared the opinion of the representative of the United Arab Republic with regard to the adverb "unanimously". He also thought it would be better to use the phrase "direct armed aggression" instead of "armed aggression (attack)". Finally, operative paragraph 1 stated that the Committee should resume its work "before the end of 1968"; his delegation would prefer not to fix so precise a date and proposed that the text should read: "as soon as possible and preferably before the end of 1968".

Mr. RUIZ VARELA (Colombia) said that his delegation, on taking its seat in the Committee, had been ready to co-operate very closely with other delegations in order to avoid as far as possible the disagreements that were inseparable from so complex a question as that of the definition of aggression; it was in that spirit that it had taken part in the delicate negotiations leading up to the submission of the joint draft resolution (A/AC.134/L.6), which had incorporated the basic ideas contained in the two earlier proposals (A/AC.134/L.3 and L.4/Rev.1) and had taken full account of the comments made by various delegations. Judging by the results already obtained, the Committee had come very close to success and lack of time alone had prevented it from fulfilling its difficult task.

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(Mr. Ruiz Varela, Colombia)

His delegation therefore wholeheartedly supported the USSR draft resolution proposing that the Committee's mandate should be extended to enable it to prepare a single text of a definition. It associated itself with the other Latin American delegations which had suggested that, for practical reasons, the Committee's second session should be held in New York.

Mr. BILGE (Turkey) said he was afraid that, because of the General Assembly session, it would be impossible for the Committee to meet before the end of 1968.

From the procedural point of view, the USSR proposal could undoubtedly be adopted as a separate resolution, but it would perhaps be possible to reproduce its substance in a paragraph of the report; the result would be the same and the difficulties which its acceptance presented for certain delegations would be avoided.

Mr. ASANTE (Ghana) said his delegation could accept the amendment proposed by the Syrian representative that the date for the resumption of the Committee's work should not be specified. It would, however, like to retain the adverb "unanimously" in the second preambular paragraph; there would be little point in adopting a definition that had not been unanimously accepted, for such a definition would be likely to meet with even stronger opposition in the General Assembly. That was not to say that the Committee should renounce its responsibilities, but the majority must respect the opinion of those who believed that the time was not yet ripe for a definition of aggression or that that definition involved certain difficulties, and must attempt to convince them in order to achieve results. Only when it was clear that certain delegations were strongly opposed to any definition of aggression should the majority bring the full weight of its conviction and numbers to bear in order to overcome that obstacle.

Mr. MOTZFELDT (Norway) supported the Ghanaian delegation's request for the retention of the adverb "unanimously".

He also wished to ask the representative of the Soviet Union whether the words "definition of armed aggression (attack)" in operative paragraph 1 meant that the Committee, when it resumed its work, would be given new terms of reference by the General Assembly, since its current terms of reference were to consider all aspects of aggression.

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Mr. HARGROVE (United States of America) said that his delegation had already protested at the preceding meeting against the procedure of submitting to the Committee at the last moment a draft resolution of which it had had no advance notice and which presented some delegations with the same difficulties as had a decision on the Committee's establishment. The United States delegation had received no instructions that would enable it to take a position on the proposal.

Furthermore, at the tenth meeting (A/AC.134/SR.10), the United States delegation had emphasized that members of the Committee must display political insight and exceptional juridical ability if a task of such complexity as the Committee's was to be accomplished, and had said that it refused to deal with so important and difficult a question in haste. To ask the Committee to vote on a text which had been put before it only minutes before the scheduled closure of the session would merely create a needless division that would be prejudicial to the Committee's future work and would certainly not serve to speed it up. Putting the proposal for a further meeting into effect would require the approval of the General Assembly, which could not act with any greater dispatch with a formal recommendation from the Committee than without one.

Another important point about the USSR draft resolution was that, in referring in the second preambular paragraph to a definition of "armed aggression (attack)", it prejudged certain basic issues involved in the definition of aggression. Several delegations, including that of the United States, had refused to accept any such distinction, for it implied the existence of other forms of aggression than acts of force, which would presumably be examined later by the General Assembly. The Committee's mandate was to define aggression in general and the USSR proposal was tantamount to a recommendation that it should be given an entirely new mandate.

He therefore noted with regret that the proponent of the draft resolution seemed intent on pressing it to a vote and creating division within the Committee. If the proposal were put to the vote, the United States delegation would vote against it in its present form; if the text were amended so as to eliminate the prejudicial feature he had just mentioned, it would abstain, since it had received no instructions from its Government. It was, however, ready to accept a compromise solution not involving a vote such as had been proposed by other delegations.

Mr. CHKHVADZE (Union of Soviet Socialist Republics), replying to the representative of Norway, explained that the purpose of operative paragraph 1 of the draft resolution (A/AC.134/L.7) was solely to obtain the extra time the Committee

(Mr. Chikvadze, USSR)

needed to finish its work, and not to request terms of reference other than those it had received from the General Assembly.

The United States representative had said that he had no instructions from his Government, but had then expressed opposition to the substance of the proposal. The Soviet delegation did not see how he could logically do so in the absence of instructions.

The United States representative had said that the draft resolution referred to the definition of armed aggression, whereas the General Assembly had asked the Committee to prepare a draft definition of aggression in general. The Soviet delegation had mentioned only armed aggression in its text in order to take account of the opinion of the majority of the Committee, which had thought it preferable for the Committee to confine itself for the time being to the preparation of a definition of armed aggression. If, however, the United States representative's instructions were such that he could accept the Soviet draft resolution only if it dealt with the definition of aggression in general, he would be prepared to reconsider the question.

The representative of the United Arab Republic, supported by the representative of Syria, had asked for the deletion of the word "unanimously" in the second preambular paragraph of the draft resolution. In point of fact, the Russian text differed from the English and French versions in that the word used, which had no direct equivalent in the other two languages, meant that all participants without exception had voted, but not necessarily that there had been unanimity. The word "unanimously" would either have to be deleted or some way would have to be found of rendering the exact meaning of the Russian text in French and in English.

With regard to the date when the Committee could resume its work if the draft resolution were adopted by the General Assembly, it had to be remembered that the Committee's current mandate expired at the end of the twenty-third session of the General Assembly. That being so, he asked the representative of Syria whether he could accept the following wording for the end of operative paragraph 1: "... and submit its proposals to the General Assembly as rapidly as possible, and in any case not later than the end of 1968". That wording would take into account the relationship between the work of the Committee and that of the General Assembly.

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(Mr. Chikvadze, USSR)

The representative of Turkey had asked whether the draft resolution would be adopted as a separate resolution or would be added to the report, of which it would then form an integral part, as a text adopted by the majority of the Committee. His delegation was inclined to favour the second course, provided the report gave the results of the vote and the position taken by the different delegations. The latter point was of great importance from the standpoint of the resumption of the Committee's work, for the position adopted by the different countries would coincide with their position on the question of the definition of aggression. The same procedure had been followed on other occasions and was in conformity with the Committee's mandate.

He wished to re-emphasize that his delegation was asking only for a resumption of the Committee's work and not for a new mandate, since the current mandate had not expired and it was to the General Assembly at its twenty-third session that the Committee's proposal for a definition of aggression had to be submitted. Hence the importance of the Committee being able to continue and complete its work before the end of 1968.

Mr. EL REEDY (United Arab Republic) said he wished to explain for the benefit of the representative of Ghana that his sole purpose in requesting the deletion of the word "unanimously" from the second preambular paragraph of the draft resolution had been to avoid creating a dangerous precedent. The Committee on the Peaceful Uses of Outer Space was the only General Assembly body that took its decisions unanimously, although even in its case that procedure was not laid down in any resolution. The retention of the word "unanimously" might lead to a modification of the established procedure which might be prejudicial to the Committee's work.

Moreover, from the practical point of view, if the Committee were to adopt a draft definition of aggression, it must be possible to submit that definition to the General Assembly even if it had not been adopted unanimously.

Mr. ROSSIDES (Cyprus) said he also favoured the deletion of the adverb "unanimously" because it introduced extraneous matter into the text.

(Mr. Rossides, Cyprus)

With regard to the date for the resumption of the Committee's work, it would perhaps be better to be less rigid and use some such words as "submit its proposals during or soon after the twenty-third session of the General Assembly".

Mr. ASANTE (Ghana) said that in view of the explanation given by the representative of the United Arab Republic, he would not press for the retention of the word "unanimously".

He proposed, however, that the words "definition of aggression" in the second preambular paragraph and in operative paragraph 1 should be preceded by the word "draft" and that the word "armed" should be deleted.

He proposed that the third preambular paragraph should be replaced by the following text: "Noting the progress made by the Committee and the fact that there was not enough time in which to complete this important work".

Finally, he proposed that operative paragraph 1 should read as follows: "1. that the Special Committee on the Question of Defining Aggression shall resume its work as soon as possible, before the end of 1968, in New York or Geneva, so that it can complete its work by submitting a report containing a generally accepted draft definition of aggression, if possible, to the twenty-third session of the General Assembly;".

Mr. CHIKVADZE (Union of Soviet Socialist Republics) said his delegation wished it to be clearly stated in operative paragraph 1 that the draft definition was to be submitted to the General Assembly before the end of its twenty-third session, but that apart from that, it accepted the amendments proposed by the representative of Ghana.

The Soviet delegation would also be willing to reproduce in its draft resolution the text of operative paragraph 3 of General Assembly resolution 2330 (XXII), which defined the Committee's terms of reference.

Mr. ASANTE (Ghana) said that he agreed to the clarification the Soviet delegation wished to make in the text he himself had just proposed for objective paragraph 1, but that he would like to retain the words "if possible" before the words "to the twenty-third session".

Mr. ALLAF (Syria) said that he approved the new text accepted by the Soviet delegation and withdraw his proposal for the deletion of the words "before the end of 1968".

Mr. RENOUARD (France) pointed out that the draft resolution appeared to raise substantive issues as well as to create procedural difficulties. It would be unfortunate if, in adopting it, the Committee were to appear more divided than it actually was. The French delegation therefore supported the Turkish representative's suggestion that the proposals which had been generally accepted should be added to the report.

If that solution were not adopted, the French delegation would be obliged, for procedural reasons, to abstain from voting on the draft resolution.

Mr. BEESLEY (Canada) said that while the Soviet delegation was to be congratulated on the initiative it had taken, it had acted so late that it had been impossible for some delegations, including that of Canada, to obtain instructions on the matter.

The amendments proposed by the Ghanaian delegation improved the original text, but the Turkish representative's suggestion, supported by the French representative, would undoubtedly provide the best solution, because it would avoid any suggestion of differences within the Committee. The Committee could include the Soviet proposal at the end of its report, stating that, in its opinion, it should be examined as a matter of priority by the General Assembly.

Mr. ROSSIDES (Cyprus) said that he, too, thought it would be better to ask for an extension of the Committee's mandate and to indicate at the end of the report the consensus of opinion that had emerged from the debate, but not to take a vote which would divide the Committee.

Mr. CHIKVADZE (Union of Soviet Socialist Republics) said he would accept that solution, provided the report reproduced not only the Soviet draft resolution, but the amendments made to it and the position of the different delegations on the subject. It was particularly important that the position of members of the Committee on the substance of the problem should be clearly stated in the final document.

Mr. EHSASSI (Iran) said that his delegation was ready to support the draft resolution as amended by the representative of Ghana. He thought, however, that it would be preferable to leave the General Assembly completely free to decide the date and place of the Committee's next session.

Mr. EL REEDY (United Arab Republic) said that, generally speaking, he supported the amendments to the draft resolution, but was uneasy at the idea of deleting the reference to "armed" aggression. The representative of Cyrus had contended since the beginning of the debate that the committees which had so far attempted to define aggression had failed because they had tried to define all its aspects simultaneously. He had therefore expressed the view that, on the present occasion, the Committee should begin by defining armed aggression and then go on to other types of aggression. That point of view had been reiterated both in the Committee's discussions and in the texts that had been submitted to it. The work of the General Assembly would hardly be furthered if, in extending the Committee's mandate, it had to ask the Committee to re-examine all aspects of aggression.

Mr. ROSSIDES (Cyprus) suggested that the word "resume" in operative paragraph 1 should be replaced by the word "continue". Since the Committee had so far been concerned solely with armed aggression, there would be no further doubt about the purpose of extending its mandate.

Mr. BEESLEY (Canada) said he supported the solution advocated by the representatives of Turkey, France and Cyprus. If there was no objection to their proposal, the Committee could add the following paragraph to its report: "It was the consensus of the Committee that the General Assembly should consider, as a matter of priority, the extension of the mandate of the Committee so as to enable it actively to pursue its work on the question of defining aggression".

The Canadian delegation was willing to accept amendments to its proposal, which would have the advantage of avoiding a vote.

Mr. TSUKAHARA (Japan) thought that, in view of the divergencies of opinion which had become apparent with regard both to the substance and the form of the draft resolution, the best solution would be to leave a decision on the Committee's future work to the General Assembly. The draft resolution and the proposals made during the debate would, of course, be included in the Committee's report.

If the draft resolution were put to the vote, the Japanese delegation would be obliged to abstain. Certain aspects of the document, on which he could not elaborate for want of time, had substantive implications for the question of defining aggression.

In any event, the Japanese delegation's position on the draft resolution in no way implied opposition to extending the Committee's mandate.

Mr. CHIKVADZE (Union of Soviet Socialist Republics) said he thought that the discussion had gone on long enough. Some delegations wanted the Committee to resume its work; others did not. The question had to be settled and the only means of doing so was to put the draft resolution to the vote.

Mr. FREELAND (United Kingdom) said that after having examined the written text of the draft resolution, he wished to reiterate the objections he had made the previous day with regard to its contents and late submission. The amendments proposed by the representative of Ghana would be helpful, but would not remove all the difficulties. His delegation's attitude to the draft resolution should not be taken to imply opposition on the part of the United Kingdom Government to a prolongation of the Committee's work, which was not at present the point at issue. The most appropriate suggestion seemed to be that made by the representatives of France,

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(Mr. Freeland, United Kingdom)

Turkey and Canada that the proposal should be included in the report. It was to be hoped that the representative of the Soviet Union would concur in that solution since, whatever the Committee's decision on his proposal, the final word would lie with the General Assembly.

Mr. ASANTE (Ghana) thought that since not all delegations were ready to approve the draft resolution, although they did not oppose an extension of the Committee's mandate, a generally acceptable compromise formula should be found. He therefore suggested that the amended draft resolution should be included in the report with an indication of the number and names of the countries that had supported it and that it should be followed by the Canadian proposal.

Mr. HARGROVE (United States of America) said that he had no objection to the proposal made by the representatives of Canada and several other countries, nor to that made by Ghana. The paragraph proposed by the representative of Canada should be reproduced in extenso in the report.

Mr. KHALED (Algeria) said that while he appreciated the Canadian proposal, the Soviet draft resolution was particularly useful because it took account of the progress already made and would enable the Committee to continue its discussions. Moreover, as was shown by the various drafts submitted to the Committee, the majority view was that the Committee should confine itself to submitting a draft definition of direct armed aggression.

In his view the Soviet draft resolution should be put to the vote.

Mr. ROSSIDES (Cyprus) considered that the draft resolution might be included in the report together with the text suggested by the representative of Canada, and that the time limit given might be the end of 1968 or early in 1969.

He pointed out that the phrase "as soon as possible before the end of 1968" in the Ghanaian amendment to operative paragraph 1 was redundant, since the meaning was conveyed by the words "if possible" before the words "to the twenty-third session of the General Assembly" a few lines below.

Mr. ALLAF (Syria) proposed that the words "if possible" should be deleted.

Mr. ASANTE (Ghana) said that, with the agreement of the representative of the Soviet Union he would delete those words.

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Mr. BEESLEY (Canada) said that he could accept the compromise suggested by the representative of Ghana. Furthermore, in accordance with the suggestion made by the representative of Cyprus, he would insert the words "before the end of 1968 or early in 1969" between the words "its work" and "on the question of defining aggression", in the text of his own proposal, which would become the last paragraph of the report.

The CHAIRMAN asked the Secretary of the Committee for information on the financial implications of an extension of the Special Committee's mandate, as requested by the United States representative at the previous meeting.

Mr. MOVCHAN (Secretary of the Committee) said that, under operative paragraph 9 of General Assembly resolution 2239 (XXI), all proposals involving new meetings were subject to examination by the Committee on Conferences, which made recommendations on the matter. Only when that stage had been reached would the Secretariat be able to prepare estimates in accordance with rule 154 of the General Assembly's rules of procedure in the light of all the necessary data (date and place of the session, number of meetings, etc.).

By way of guidance, the Committee's current session at Geneva had involved supplementary expenditure in the amount of $40,000. If the Committee held its next session at Headquarters, the supplementary expenditure would be less and possibly non-existent.

Mr. BEESLEY (Canada), supported by Mr. ROSSIDES (Cyprus), said he thought that the Ghanaian representative's suggestion would make it unnecessary to put the draft resolution to the vote, since the names of the countries supporting it would appear in the report.

Mr. CHIKVADZE (Union of Soviet Socialist Republics) requested a roll-call vote on his delegation's draft resolution.

Mr. HARGROVE (United States of America) said that, for the reasons he had already stated, the United States delegation would accordingly abstain, although no conclusions should be drawn from its abstention with regard to the position it would take on the question in the General Assembly.

Mr. BEESLEY (Canada) said that he would not take part in the vote, because he considered it superfluous.

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Mr. CURTIS (Australia) said he regretted the need for a vote on a controversial text, which had been inadequately prepared and was open to question from the procedural point of view. The Australian delegation's vote would in no way prejudge its position in the General Assembly.

Mr. RENOUARD (France) said he would abstain from voting, not because he considered it pointless for the Committee to continue its work, but because the Committee should confine itself to the task it had been set by General Assembly 2330 (XXII), which was to submit a report on all aspects of the question, leaving it to the General Assembly to take steps to reach a generally acceptable definition. The French delegation deplored the need for a vote, which would have the effect of dividing the Committee and would point to disappointing results.

At the request of the representative of the Soviet Union, the vote was taken by roll-call.

Algeria, having been drawn by lot by the Chairman, was called upon to vote first.

In favour:	Algeria, Bulgaria, Cyprus, Czechoslovakia, Ecuador, Finland, Ghana, Indonesia, Iran, Iraq, Mexico, Romania, Spain, Sudan, Syria, Union of Soviet Socialist Republics, United Arab Republic, Yugoslavia.
Against:	None.
Abstaining:	Australia, France, Italy, Japan, Norway, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America.

The draft resolution submitted by the Union of Soviet Socialist Republics (A/AC.134/L.7), as amended, was adopted by 18 votes to none, with 8 abstentions.

Mr. EL REEDY (United Arab Republic) thought that the Canadian proposal was not incompatible with the draft resolution which the Committee had just adopted and could also be adopted, subject to the deleting of the words "early in 1969", which conflicted with the draft resolution.

The CHAIRMAN suggested that the words "as soon as possible" should be used without specifying any date.

Mr. BEESLEY (Canada) said he could accept that solution but wished to know whether his proposal was acceptable to the Committee.

Mr. ROSSIDES (Cyprus) thought that no reference need be made to a time limit if the end of the Canadian proposal were amended to read: "in order to enable it actively and urgently to pursue its work".

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Mr. CHIKVADZE (Union of Soviet Socialist Republics) said that he saw no point in reverting to the Canadian proposal, which was drafted in very general terms and gave no specific date for the resumption of the Committee's work. Moreover, the Committee's debates had revealed fundamental differences between the views of the Soviet Union and Canada. The Soviet Union maintained that a definition of aggression was necessary, while Canada had opposed such a definition. There were now two alternatives: Canada could either press for a vote on its proposal or could withdraw it, and reference would be made to it in the summary record.

The CHAIRMAN drew the Committee's attention to the fact that, under rule 93 of the rules of procedure of the General Assembly, the Committee could decide after a vote whether to vote on the next proposal. The Canadian proposal was not perhaps entirely compatible with the draft resolution the Committee had adopted, but it stated an idea which had the support of all members, namely, that the Committee's work should be continued. It would be possible to vote on the Canadian proposal, provided that any reference to dates incompatible with the draft resolution was eliminated.

Mr. BEESLEY (Canada) said he repudiated the motives imputed to him by the representative of the Soviet Union, whose attitude had made him decide to withdraw his proposal.

Mr. BILGE (Turkey), supported by Mr. MOTZFELDT (Norway), said he hoped that the Canadian proposal would be fully reproduced in the report, together with the discussion to which it had given rise.

Mr. CHIKVADZE (Union of Soviet Socialist Republics) said he would also like the summary records and the report to give a detailed account of the discussion at the current meeting not only of the Canadian proposal but also of the draft resolution submitted by the Soviet Union.

Mr. HARGROVE (United States of America) explained that the United States delegation had been prepared to vote for the Canadian proposal, which had been supported by several delegations as a compromise between the different points of view and in lieu of the Soviet proposal. The Soviet representative's attitude had, however, made that course impossible. The United States delegation therefore reserved the right to adopt in the General Assembly whatever position it deemed appropriate with regard to the question of a further meeting of the Committee.

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ADOPTION OF THE REPORT (concluded)
Document A/AC.134/L.5/Add.1/Corr.1 (continued)
Paragraphs 7d to 7f (continued)

The CHAIRMAN after pointing out that paragraphs 7d to 7f had already been examined, and that their inclusion in the report was not essential, appealed to the States directly concerned to agree to their deletion in order to speed up the Committee's work.

Mr. HARGROVE (United States of America) said that the solution suggested by the Chairman had from the outset been acceptable to his delegation. If, however, it was thought necessary for the report to deal with those matters at all, they ought to be dealt with fully and in complete accordance with the summary record.

Mr. CHIKVADZE (Union of Soviet Socialist Republics) said that he, for his part, considered that the report should objectively reflect what had occurred. The Soviet delegation could not endorse the dishonest practices of certain delegations, which were deliberately endeavouring to complicate and frustrate the Committee's work. It was understandable that those delegations should be unwilling to establish a definition of aggression, since their countries, the United States, for example, were themselves aggressors whose armies were continuing to massacre innocent populations. It was known that those countries had opposed the establishment of the Special Committee; they had similarly abstained from voting on the draft resolution and would invariably adopt the same negative attitude towards the definition of aggression. The Soviet delegation could not consent to a compromise on a question of capital importance.

Mr. CURTIS (Australia), recalling that the Soviet representative had previously accused Australia and the other Viet-Nam allies of aggression in Viet-Nam, said he wished to reply to that accusation. The Australian delegation deplored the fact that the representative of the Soviet Union had been unable to refrain from raising controversial political issues and bringing unsubstantiated charges against other delegations. It categorically rejected the allegations that Australia's aid to Viet-Nam constituted aggression or an illegal act or was in any way contrary to the United Nations Charter. In the view of the Australian Government, the Republic of Viet-Nam was the victim of aggression directed, inspired and supported from outside South Viet-Nam with the aim of imposing on the South Viet-Namese by force a totalitarian régime. Australia, like many other countries, was assisting Viet-Nam

(Mr. Curtis, Australia)

in response to the request made by that country in the exercise of its right of self-defence.

Mr. HARGROVE (United States of America), referring to the remarks of the Soviet representative, said that the question of Viet-Nam had already been fully discussed and that the statements made by the United States delegation on that subject had remained unanswered. His delegation agreed to the inclusion of paragraphs 7d to 7f in the report.

Mr. CHIKVADZE (Union of Soviet Socialist Republics) said he had criticized the acts of aggression committed by the United States not only in Viet-Nam but even earlier in Cuba, the Dominican Republic and Panama, and would like those statements included in the report. Other delegations, including those of Algeria, Bulgaria, Romania and Syria, had also requested that their statements on Viet-Nam should be recorded in the report.

Mr. HARGROVE (United States of America) said he saw no objection to that procedure, provided that the United States delegation's reply was also recorded in detail in the report, and its arguments reproduced in extenso in paragraphs 7e and 7f, as was the case with the Soviet delegation's arguments in paragraphs 7g and 7h. The latter paragraphs had been taken verbatim from the summary records.

It was so decided.

Mr. FREELAND (United Kingdom) reminded the Committee of his proposal at the opening of the meeting for the insertion of a phrase at the beginning of paragraph 7e.

The CHAIRMAN said that consideration of that proposal had been suspended, because the representative of the Soviet Union had proposed that the countries which supported the United States view should be mentioned by name.

Mr. FREELAND (United Kingdom) said that, as other representatives had pointed out, it was customary for United Nations reports to be couched in general terms without attributing the views expressed in the discussions to particular delegations by name. Since, however, the representative of the Soviet Union appeared to attach special importance to the matter, he had no objection to the United Kingdom being mentioned by name.

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Mr. CURTIS (Australia) said he also agreed to his country being mentioned in the report.

Mr. FREELAND (United Kingdom) proposed that the text might be worded to say that the representatives of Australia, the United Kingdom, the United States and any other delegations who might be named "did not accept this attribution of responsibility for events in Viet-Nam. The United States representative, in particular...".

Mr. CHIKVADZE (Union of Soviet Socialist Republics) said he did not think that any delegations other than those of Australia and the United Kingdom had supported the United States point of view.

Mr. JAHODA (Czechoslovakia) requested that the report should include the text of the statement his delegation had made at the ninth meeting on the subject of the events in Czechoslovakia in 1948.

Mr. EL REEDY (United Arab Republic) said that he would like the following summary of the statement he had made at the ninth meeting to be included at the end of paragraph 7f:

"The representative of the United Arab Republic stated that the allegation made by Israel after it had committed its war of aggression that a naval blockade prior to 5 June 1967 took place was merely made by the aggressor in a vain attempt to justify its war of aggression. The representative of the United Arab Republic asserted that neither his country nor any Arab country had proclaimed or resorted to a naval blockade. He also expressed his country's opposition to the policy of naval blockade in the Security Council on 24 October 1962, when the crisis in the Caribbean was considered. He reaffirmed his country's opposition to any use of force on the high seas or in the territorial waters of other States."

Mr. FREELAND (United Kingdom) said he saw no need to give the position of each delegation in detail, since that information was already contained in the summary records. It would be preferable to use more general wording and annex the summary records to the report.

The CHAIRMAN said that he thought the Committee could treat that part of the report more fully and deal with the other parts differently.

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Paragraphs 7g and 7h

Mr. CHIKVADZE (Union of Soviet Socialist Republics) pointed out that the two paragraphs could be combined, since both expressed the opinion of the Soviet Union.

Document A/AC.134/L.5/Add.1/Corr.1, as amended, was adopted.

Document A/AC.134/L.5/Add.1 (continued)

Paragraphs 8-11 (Value of a definition of aggression)

Paragraphs 8-11 were adopted.

Paragraphs 12-14 (Type of definition)

Paragraphs 12-14 were adopted.

Paragraphs 15-18 (Form to be given to the instrument embodying a definition)

Paragraphs 15-18 were adopted.

Paragraphs 19 and 20 (Relations between the definition and the Charter)

Paragraphs 19 and 20 were adopted.

Paragraphs 21 and 22 (Meaning of the concept of aggression)

Mr. CURTIS (Australia) proposed that the complete text of Article 2 (4) of the Charter should be reproduced in paragraph 22, because it was a question of a principle of international law binding on all States.

It was so decided.

Paragraph 21 and paragraph 22, as amended, were adopted.

Paragraphs 23 to 27 (Activities proposed for inclusion in the concept of aggression)

Mr. ALLAF (Syria) thought it would be more accurate for paragraph 23 to begin with the words "A large number of the representatives".

The Syrian representative's suggestion was adopted.

Paragraphs 23 to 27, as amended, were adopted.

Mr. CURTIS (Australia) proposed that the following new paragraph should be inserted after paragraph 27; "The view was expressed that the classification of acts of aggression as 'direct' or 'indirect' should be avoided, and that all representatives were not using those expressions to denote the same kinds of acts".

The new paragraph was adopted

Paragraphs 28 and 29 (Economic and ideological aggression)

Paragraphs 28 and 29 were adopted.

Mr. HARGROVE (United States of America) proposed the insertion of the following new paragraph after paragraph 29:

"Activities involving the use of force, direct or indirect, overt or covert.

"Some representatives did not accept the distinction among various forms of aggression set forth in the foregoing paragraphs, since that distinction was foreign to the Charter. They were of the view that the definition must be concerned simply with aggression, which would extend to all methods of the use of physical or armed force, whether direct or indirect, overt or covert".

Mr. ALLAF (Syria) pointed out that very few delegations had expressed the views set out in the United States representative's proposal. He would therefore prefer their names to be included in the text.

After an exchange of views in which Mr. HARGROVE (United States of America), Mr. ALLAF (Syria) and Mr. ASANTE (Ghana) took part, the CHAIRMAN suggested that the words "Some representatives" should be retained, as had been done on a previous occasion.

The new paragraph proposed by the United States representative was adopted.

Paragraphs 30 to 32 (The principle of priority)

Paragraphs 30 to 32 were adopted.

Paragraphs 33 to 35 (Aggression and self-defence)

Mr. GONZALEZ GALVEZ (Mexico) proposed that the word "solo" should be inserted immediately before the word "podría" in the last sentence of the Spanish text of paragraph 34.

Mr. EL REEDY (United Arab Republic), speaking on behalf of the representative of Algeria who had had to leave, suggested that the words "social or ideological" in the first sentence of paragraph 34 should be replaced by the words "social, ideological, or security". It should be made clear in the second sentence that the "reasonable and adequate steps" to be envisaged did not come within the scope of Article 51 of the Charter, provided that that corresponded to the position

(Mr. El Reedy, United Arab Republic)

of the delegations whose views were summarized in the sentence. If those delegations did not agree with that suggestion, the second sentence could remain as it stood, but the following third sentence should be added to the paragraph: "Others thought that this should not give rise to Article 51 of the Charter".

The first and third suggestions were adopted.

Mr. HARGROVE (United States of America) proposed the addition of the following new sentence at the end of the amended paragraph 34: "Some delegations took the view that when such acts involve a use of force, they may give rise to the right of self-defence laid down in Article 51".

The United States proposal was adopted.

Paragraph 34, as amended, was adopted.

Paragraphs 33 and 35 were adopted.

Paragraphs 36 to 38 (Acts considered as not constituting acts of aggression)

Mr. FREELAND (United Kingdom) thought that the connexion between paragraphs 36 and 37 was not very clear. In his opinion, it would be preferable to replace paragraph 37 by the following text: "These views were opposed by other representatives, who considered that provisions on this question were not appropriate for inclusion in a definition of aggression".

The new paragraph 37 was adopted.

Paragraphs 36 and 38 were adopted.

Paragraph 39 (Relationship between a definition of aggression and the question of friendly relations)

Mr. HARGROVE (United States of America) proposed the addition of the following sentence to the end of the paragraph: "Some delegations pointed out that a definition of aggression should therefore not deal with the details of the conditions of lawful use of force".

Mr. GONZALEZ GALVEZ (Mexico) proposed that the sentence "Others, however, held the contrary opinion" should be added to the United States amendment.

Mr. CHIKVADZE (Union of Soviet Socialist Republics) said he did not quite understand the connexion between the United States proposal and paragraph 39, which dealt only with the question of friendly relations. The proposed text could perhaps be inserted in another part of the report.

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Mr. HARGROVE (United States of America) said his amendment reflected the fact that his delegation, supported by others, had stressed in its first statement in the Committee the inadvisability of the Committee dealing with questions already being discussed by the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States.

The United States amendment, as modified by the representative of Mexico, was adopted.

Paragraph 39, as amended, was adopted.

Paragraph 40 (Connexion between a definition of aggression and the Draft Code of Offences against the Peace and Security of Mankind and the question of an international criminal jurisdiction).

Paragraph 40 was adopted.

Document A/AC.134/L5/Add.1, as amended, was adopted.

Document A/AC.134/L.5/Add.2

Paragraphs 1 to 5 (Debate on draft proposals)

Mr. HARGROVE (United States of America) said that since the report did not adequately reflect the criticisms of the draft declaration on aggression (A/AC.134/L.3) and of the draft proposal by the Latin American countries (A/AC.134/L.4/Rev.1), he proposed that the following new paragraph should be inserted between paragraphs 4 and 5:

"Some delegations stressed that both drafts failed in a variety of fundamental ways to satisfy the criteria of an adequate definition. It was said that both drafts went beyond the concept of aggression in attempting to define various aspects of the lawful use of force, such as the inherent right of self-defence or the use of force by regional organizations, and, in addition, deviated from the Charter in their treatment of these other concepts. Both drafts were criticized for failure adequately to preserve and reflect the Charter system in which the term 'aggression' was to be applied, particularly in respect of the discretionary power of the Security Council. Further, it was pointed out that both drafts failed to apply to certain political entities which might not be generally recognized as States, but which were nevertheless subject to the prohibitions of international law regarding force and aggression. Some stressed, as a major fault of both drafts, their failure to apply to use of force by one State against

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(Mr. Hargrove, United States)

another, directly or indirectly, through such means as infiltration of armed bands, terrorism, or subversion. In the view of these delegations, no definition would be acceptable which did not deal adequately with such cases of aggression. Some noted that both drafts failed to exclude trivial or de minimis violations of the prohibition on the use of force, a failure which debased the meaning of the term 'aggression' and was not appropriate to its role in the Charter system".

Mr. GONZALEZ GALVEZ (Mexico) thought that the United States amendment did not accurately reflect the debate and that the point of view of many other delegations which had not accepted the statements contained in that amendment should also be mentioned.

Mr. ALLAF (Syria) said he agreed with the representative of Mexico. The United States proposal was not in keeping with the spirit in which the discussion of the three draft proposals had taken place. If the delegations that had in fact supported the views expressed in the amendment were not specified, he would have many objections to the amendment. Since those delegations were so few, he thought that it would, in fact, be preferable to mention them by name.

Mr. ROSSIDES (Cyprus) said that the part of the draft report now under consideration did not give a true picture of what had occurred; for example, it contained no reference to the arguments put forward in support of the draft proposals before the Committee and did not show that any progress had been made. The text ought to be redrafted from start to finish to make it more balanced.

Mr. LAMPTEY (Ghana), Rapporteur, said that the representative of Cyprus was being over-optimistic. There had not really been as much progress as he would like to suggest and the report was not as unbalanced as he maintained.

Mr. ROSSIDES (Cyprus) said that he was not criticizing the authors of the report, who had had to work under very difficult conditions. But the fact remained that, during the debate, replies had been given to all the arguments reproduced in the United States amendment. Those replies should appear in the report to avoid giving the impression that the Committee had rejected the proposals submitted to it. If there had really been no progress, it was pointless to ask the Assembly to prolong the Committee's mandate.

The CHAIRMAN drew the Committee's attention to the fact that if it disputed the basic text prepared by the Rapporteur, it would find it difficult to continue its work.

Mr. ROSSIDES (Cyprus) thought that, given enough time, the Committee could put the defects of the draft report right. In the circumstances, he would not oppose the proposed text so as not to hamper the Committee's work, but he would not be true to himself if he did not state his point of view. He wished to have his comments included in the summary record so that the same error should not recur.

Mr. CUENCA (Spain) said that the insertion in the draft report of a paragraph of the kind proposed by the United States representative would give the General Assembly an erroneous impression of the Committee's reaction to the draft proposals and would make the report unbalanced, unless the opinion of delegations which had spoken in favour of the drafts was also included.

Mr. HARGROVE (United States of America) pointed out that reference to the summary records would be enough to show that the views set out in the United States amendment had indeed been expressed. There was, however, no reference to them in the draft report.

Mr. BEESLEY (Canada) said that in view of the difficult conditions under which the authors of the draft report had had to work, they had not been able adequately to reflect the discussion in the part of the text under consideration. That was why delegations whose views had not been included should be given a chance of filling the gaps.

Furthermore, the degree of consensus obtained on the draft definitions proposed to the Committee was not an adequate measure of the progress of the Committee's work. Many delegations, the Canadian delegation among them, had been glad to see that the authors of those drafts had taken account of the views they had expressed. The same delegations had also criticized certain points in the texts before the Committee. For example, the Canadian delegation had tried to specify the elements that should be included in a definition of aggression. The USSR representative had done the same, although he had sometimes adopted different criteria. Yet there was no reference to those two important statements in the draft report, which ought therefore to be amplified on that subject.

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Mr. CHIKVADZE (Union of Soviet Socialist Republics) said that members of the Committee would be able to give their own version of events in the reports they made to their respective Governments, but the Special Committee's report, while not repeating everything that had been said during the debate, should be a balanced document, as the Spanish representative had emphasized. If it were not counter-balanced, the long text proposed by the United States representative would give undue prominence to certain arguments put forward in the course of the discussion. Moreover, as the representative of Cyprus had said, it would not be normal practice for the report to reproduce only criticisms of the draft proposals that had been examined and it would not be in the Committee's interests to give such a distorted picture of its work. The Soviet Union, for example, had spoken of positive features of the draft proposals before the Committee, particularly of the joint draft proposal (A/AC.134/L.6). Progress had certainly been made, as many delegations had observed during the debate, and the nature of that progress should be explained in the report.

Mr. FREELAND (United Kingdom) said he could not refrain from pointing out that there was some inconsistency in the attitude of the Soviet representative; when it was a question of accusations made against another State that representative insisted on those accusations being reproduced in extenso in the report, but he adopted a rather different attitude when what was involved were serious legal considerations relating to a draft definition.

The United Kingdom delegation, which was satisfied that the text proposed by the United States was an accurate record, would have no objection to delegations which thought it necessary to stress certain other aspects proposing a text for the purpose, if they considered it indispensable for the balance of the report.

Mr. CUENCA (Spain) proposed the addition of the following text to the new paragraph submitted by the United States: "However, most delegations emphasized the many constructive and positive features of the two draft proposals. They nevertheless recognized the need to modify certain points in order to obtain a single draft which would facilitate the Committee's task of defining aggression."

Mr. EL REEDY (United Arab Republic) said he was prepared to accept the new paragraph proposed by the United States, but would like to make the following insertion after the word "subversion": "although other delegations expressed the thesis that these acts are not acts of aggression and do not call for the application of Article 51 of the Charter".

The new paragraph proposed by the United States, as amended, was adopted.

Paragraphs 6 - 18 (Debate on the twelve-Power draft definition)

Mr. CURTIS (Australia) proposed that paragraph 6 should begin with the words: "Some representatives were opposed to the fomulation of the proposal as a draft declaration on aggression".

It was so decided.

Mr. FREELAND (United Kingdom) proposed that, in paragraph 13, a full stop should be placed after the words "self defence" and that the following sentence should begin with the words: "Some of them considered that this was because the definition did not take into account ...". The text would thus give a more accurate account of the arguments which had been put forward on the subject.

It was so decided.

Mr. EL REEDY (United Arab Republic) said that he could not see the reason for including the words "on the other hand" in paragraph 15. The paragraph did not seem to him to reflect the opinions generally expressed and needed redrafting. He had not heard any representative object to the statement that military occupation should be regarded as aggression. The Bulgarian representative had indeed said that the invasion of a territory constituted an act of aggression even if there was no annexation of that territory.

Mr. HARGROVE (United States of America) supported the representative of the United Arab Republic. He proposed that the words "military occupation" should be deleted and that the sentence should begin: "Some representatives, on the other hand, held the view that it was unnecessary to list declaration of war, blockade or annexation ...".

Mr. EL REEDY (United Arab Republic) proposed that the Rapporteur should be left to redraft the paragraph on those lines.

It was so decided.

Paragraphs 6 to 18, as amended, were adopted

Paragraphs 19 to 25 (Debate on the four-Power draft resolution)

Mr. FREELAND (United Kingdom) said he feared that the use of the word "consensus" in the second sentence of paragraph 21 might be misleading.

Mr. HARGROVE (United States of America) suggested a new sentence after the words "direct armed aggression", as follows: "Other delegations rejected the distinction between 'direct' and 'indirect' aggression in a definition, maintaining that both direct and indirect uses of force should be covered."

It was so decided.

Mr. HARGROVE (United States of America) proposed the addition of the following text at the end of paragraph 22: "Other representatives pointed out that paragraph 5 was inappropriate since, in so far as the reasonable and necessary measures it permitted were internal, the paragraph had no bearing on international law, and since terrorism and subversion as well as armed bands could be uses of force by one State against another, constituting aggression. In any event, these acts gave rise to a right of self-defence against that other State, as recognized in Article 51, irrespective of the nationality of the agents, terrorists or infiltrators used."

Mr. ALLAF (Syria) drew attention to the fact that the last sentence of paragraph 22 dealt with indirect aggression, and proposed the addition of the following words: "and since the Committee had confined itself for the time being to a definition of direct armed aggression, it would not be proper to take that possibility into account now".

It was so decided.

Mr. HARGROVE (United States of America) proposed that the following text should be added to the end of paragraph 23: "Other representatives questioned the relevance and legal accuracy of this paragraph. To them, it seemed to be at variance with the Charter, since Article 53 spoke neither of 'express' authorization nor of 'use of force' and the paragraph failed to take into account Article 52."

Mr. EL REEDY (United Arab Republic) said that he could agree to the inclusion of that opinion in the report on condition that the contrary view was also mentioned.

Mr. HARGROVE (United States of America) said he could accept that condition, for he considered that the report should fully reflect all the opinions expressed.

The proposal by the United States representative was adopted.

Paragraphs 19 to 25, as amended, were adopted.

Document A/AC.134/L.5/Add.2, as amended, was adopted.

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Document A/AC.134/L.5/Add.3

Paragraphs 1 to 9 (Debate on the Thirteen-Power draft proposal)

Mr. EL REEDY (United Arab Republic) said that his delegation and that of Sudan had decided to submit an amendment (A/AC.134/L.8) to the Thirteen-Power draft proposal (A/AC.134/L.6 and Add.1 and 2). He would like to have that amendment included in the report immediately after the draft proposal in question.

Mr. FREELAND (United Kingdom) said that he hoped the report would indicate that the amendment could not be fully examined because of the stage at which it had been submitted.

Mr. EL REEDY (United Arab Republic) pointed out that the two ideas contained in his amendment had been clearly expressed by his and other delegations at the beginning of the discussion on the joint draft proposal (A/AC.134/L.6).

Mr. FREELAND (United Kingdom) reminded the Committee that his delegation had made it clear during the debate that provisions on the lines of those contained in the amendment the United Arab Republic was submitting would increase the difficulties which the United Kingdom saw in the joint draft proposal (A/AC.134/L.6).

It was decided to include the amendment submitted by the United Arab Republic and Sudan in the draft report, after the Thirteen-Power draft proposal.

Mr. HARGROVE (United States of America) proposed that the following text should be added to the end of paragraph 2: "Other representatives stated that a number of their basic criticisms had apparently still not been met."

He also proposed that the following sentence should be added to paragraph 4: "Other representatives, however, pointed out that the inclusion of 'indirect' use of force was a step in the right direction, albeit one regrettably not carried out elsewhere in the draft."

It was so decided.

Mr. EL REEDY (United Arab Republic) said that in his view paragraph 5 did not accurately reflect what had been said by several delegations, including his own. He proposed that the words following "clear statement" should be replaced by: "safeguarding the right of peoples who are forcibly denied from exercising the right to self-determination, to secure to them the right to exercise it."

It was so decided.

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Mr. HARGROVE (United States of America) proposed that in paragraph 6 the words "or not legally sound" be inserted at the end of the second sentence.

It was so decided.

Mr. ALLAF (Syria) proposed that the second sentence of paragraph 8 should be replaced by the following: "Other representatives objected to paragraph 8 because it related merely to internal affairs of States, except in its prohibition of the resort to self-defence (Article 51 of the Charter) in reprisal for acts of subversion."

It was so decided.

Mr. ROSSIDES (Cyprus) said he thought that paragraph 9 referred to an exchange of views which was summarized in paragraph 40 of document A/AC.134/L.5/Add.1 and in which he had taken part (A/AC.134/SR.6). He had pointed out that, in 1957, the General Assembly had decided in its resolution 1186 (XII) to defer consideration of the question of a draft Code of Offences against the Peace and Security of Mankind until the question of defining aggression had been settled and, in its resolution 1187 (XII), had taken the same decision with regard to consideration of the question of an international criminal jurisdiction, thus demonstrating the urgent need to define aggression. He hoped that his statement would be reflected in the report.

Paragraphs 1-9, as amended, were adopted.

Document A/AC.134/L.5/Add.3, as amended, was adopted.

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

CLOSURE OF THE SESSION

The CHAIRMAN said that, in view of the late hour, the Special Committee should forego the customary expressions of congratulation and thanks. He wished, however, to convey his sincere thanks to the members of the Committee and to pay a tribute to the devoted work done by members of the Secretariat.

He declared the session of the 1968 Special Committee on the Question of Defining Aggression closed.

The meeting rose at 3.45 p.m.
