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Seventh Session

SPECIAL COMMITTEE ON THE QUESTION OF DEFINING AGGRESSION

SUMMARY RECORDS OF THE ONE HUNDRED AND TENTH TO ONE
HUNDRED AND THIRTEENTH MEETINGS

Held at Headquarters, New York,
from 11 March to 12 April 1974

<u>Chairman:</u>	Mr. BROMS	Finland
<u>Rapporteur:</u>	Mr. SANDERS	Guyana

The list of representatives attending the session appears in the report of the Special Committee to the General Assembly (Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 19 (A/9619), annex II).

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110th meeting

Monday, 11 March 1974,
at 3.30 p.m.

Acting Chairman: Mr. SUY (Under-Secretary-General)

Chairman: Mr. BROMS (Finland)

OPENING OF THE SESSION

The ACTING CHAIRMAN welcomed the participants on behalf of the Secretary-General and transmitted to them the latter's best wishes for the success of the work of the session.

There was reason to hope that the Committee would be able to work out an acceptable definition of aggression in the course of the current session. The abilities and spirit of conciliation of its members and the favourable development of international relations during recent years had already enabled the Committee to make considerable progress since 1968; it remained only to work out a text on which there was full agreement among the members of the Committee for submission to the General Assembly at the forthcoming session, building on the foundations of the consolidated text submitted to the General Assembly at its previous session.

The Committee's success would be a good augury for the other legal tasks which were under way within the framework of the United Nations in areas where viewpoints had seemed very divergent at the start. In such areas no Government could arrive at a text which it considered ideal. It could be that the end product, which would represent the widest possible area of agreement, would leave gaps or contain expressions of a very general character or even of some ambiguity. That was true, for example, of the Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. Nevertheless, legal texts of that kind could be of great help in dealing with concrete situations and, by influencing the practice of States and of the United Nations, could make a major contribution towards international peace and security. Legal definitions could rarely be made to apply automatically because of the infinite variety of situations. But any definition that was generally acceptable to the international community would be of great importance to the extent that it provided a basis for decisions which would have to be made in the future, even if it had not been possible to achieve perfect clarity on all points.

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(The Acting Chairman)

Two other questions were closely linked with the question of defining aggression: the draft code of offences against the peace and security of mankind, and international criminal jurisdiction. The General Assembly had decided in 1968 to suspend consideration of those two questions until further progress had been made in working out a generally agreed definition of aggression. If such a definition was submitted to the General Assembly, a decision would have to be made on the two questions mentioned, and delegations might begin to consider what their positions would be in that respect.

ELECTION OF OFFICERS

The ACTING CHAIRMAN invited the Special Committee to elect its Chairman.

Mr. STEEL (United Kingdom) nominated Mr. Broms (Finland).

Mr. Broms (Finland) was elected Chairman by acclamation.

Mr. Broms (Finland) took the Chair.

The CHAIRMAN thanked the Committee for the confidence which it had shown in him and invited it to elect three Vice-Chairmen.

Mr. ZAHAWIE (Iraq) nominated Mr. Moushoutas (Cyprus).

Mr. TEYMOUR (Egypt) nominated Mr. Rakotosihanaka (Madagascar).

Mr. KOLESNIK (Union of Soviet Socialist Republics) nominated Mr. Azud (Czechoslovakia).

Mr. Moushoutas (Cyprus), Mr. Rakotosihanaka (Madagascar) and Mr. Azud (Czechoslovakia) were elected Vice-Chairmen by acclamation.

The CHAIRMAN invited the Committee to elect the Rapporteur.

Mr. JOB (Yugoslavia) nominated Mr. Sanders (Guyana).

Mr. Sanders (Guyana) was elected Rapporteur by acclamation.

Mr. JOB (Yugoslavia) congratulated the newly elected officers on behalf of the Committee as a whole.

ADOPTION OF THE AGENDA

The agenda was adopted.

ORGANIZATION OF WORK

Mr. KOLESNIK (Union of Soviet Socialist Republics) said that at the two informal meetings which had been held before the opening of the Committee's current session, it had been felt that it would be best to adopt the same methods of work during the current session which had been used at the previous session. There would therefore be a working group open to all delegations and several contact groups to study difficult questions on which there were divergent views. He suggested that the Chairman of the Special Committee should preside ex officio over the work of either the working group or the contact groups, according to his preference.

Mr. WANG (Canada) confirmed the information given by the Soviet representative about the informal meetings held before the session: the decision to be made was whether to keep the structure used at the previous session for the contact groups or to remodel them to serve the requirements of the current session's work. At the informal meetings it had also been agreed that, in considering the consolidated text annexed to the Committee's report, the Committee should start from where the previous session had stopped. It had been felt, in general, that the text helped to focus the discussion on specific points, even though agreement still had to be reached on a form of words. Some members had thought that, while avoiding a general debate, delegations which so wished could make statements of a general nature at the plenary meetings of the Committee. Finally, it had been felt that rapid progress would be made if agreement could be reached on the structure of the contact groups and work could be organized on an informal basis.

Mr. MIGLIUOLO (Italy) suggested that informality in the Committee's future work would certainly help in achieving positive results. The Working Group should therefore be reconstituted in the same form as at the previous session and should be under the chairmanship of the Committee's current Chairman. As to the contact groups, it might be best not to decide too hastily on their structure. It might be advisable for the Working Group to hold two or three meetings first in order to see how matters stood. The consolidated text could, of course, serve as a basis for its work. Delegations which wished to explain their views in the light of the debates

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(Mr. Migliuolo, Italy)

and consultations held at the twenty-eighth session of the General Assembly could do so informally during the meetings of the Working Group, in anticipation of doing so in the Committee if they wanted their views to be reported in the summary record. The structure of the contact groups would be decided only after the preliminary discussions at the meetings of the Working Group. It might be concluded that the structure of the contact groups of the previous session no longer met the requirements of the current session's work, that there was no further need for contact groups or that there should be more of them. In conclusion, the Working Group should be convened as soon as possible and discussions should begin on the basis of the consolidated text, after which the decision on which contact groups were to be set up should be made.

The CHAIRMAN suggested that the Special Committee should set up a working group open to all delegations which would use the consolidated text produced at the previous session as the basis of its work. The Working Group would decide whether contact groups should be set up and how they should be composed. There would be no general debate in the Special Committee, but any member of the Committee who wished to could make a statement. The Working Group would be provided with the same services as the Special Committee, but no summary records would be made of its meetings.

The Chairman's suggestions were adopted.

In reply to a question from Mr. MIGLIUOLO (Italy) and Mr. GUNEEY (Turkey), the CHAIRMAN said that he agreed to act as Chairman of the Working Group.

In reply to a question from Mr. AL-QAYSI (Iraq), the CHAIRMAN confirmed that he would report periodically to the Special Committee on the work of the Working Group, as at the previous session.

The meeting rose at 4.15 p.m.

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111th meeting

Thursday, 21 March 1974,
at 3.30 p.m.

Chairman: Mr. BROMS (Finland)

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (General Assembly resolutions 2330 (XXII), 2420 (XXIII), 2459 (XXIV), 2644 (XXV), 2781 (XXVI), 2967 (XXVII), 3105 (XXVIII))

The CHAIRMAN said that the Working Group established by the Special Committee at its 110th meeting had held five meetings between 12 and 20 March 1974.

The Working Group had decided to begin its work with a first reading of the preamble of the consolidated draft submitted by the Special Committee at the end of its sixth session, which appeared in appendix A of the Committee's report (A/9019). In the course of that first reading, a number of the preambular paragraphs had been accepted without objection, while others had been the subject of amendments, which had been agreed upon. Some members of the Working Group had reserved their position as to the wording of the existing draft.

The first three preambular paragraphs had met with no objection. The fourth had been referred to a drafting group which was to consider, in particular, the possibility of replacing the words "extending or diminishing the provisions" by "affecting the scope of the provisions" and the words "rights and duties" by "functions and powers".

During the consideration of the fifth preambular paragraph it had been proposed that nuclear weapons should be mentioned, but since the inclusion of those words would also depend on the final text of the operative part, the question had been left open.

It had been proposed that the words "territorial integrity" should be inserted in the sixth preambular paragraph, but no decision had been taken pending the result of negotiations on article 5, regarding which a similar proposal had been made.

As far as the seventh preambular paragraph was concerned, it had been proposed that the words "in conformity with the provisions of the Charter" should be inserted after "also that" in the first line and the words "in contravention of the Charter" should be deleted from the last line.

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(The Chairman)

With regard to the eighth preambular paragraph, it had been agreed that the word "would" in the first line should be replaced by "ought to" and the words "a restraining influence on" by the effect of deterring"; it had also been agreed to replace the words "the lawful rights and interests" in the fourth line by "the rights and lawful interests".

In the ninth preambular paragraph, it had been decided to replace the word "appropriate" in the third line by the word "desirable".

Turning to the report of Contact Group I, which had been assigned the task of considering articles 1 and 2 of the consolidated text, he said that the Group had held four meetings and had also established an informal negotiating group to deal with article 2.

With regard to article 1, the Contact Group had decided to retain the bracketed words "however exerted" until the final wording of article 3 (g) was agreed on.

The representative of Romania had submitted two proposals. The first had called for the words "provisions and principles of the" to be inserted between the words "the" and "Charter" in the penultimate line of the first paragraph of article 1; under the second proposal, the text on page 21 of the report (A/9019) would be added to article 1 as a third paragraph. That text was worded as follows: "No consideration of whatever nature, whether political, economic, military or otherwise, relating to the internal or foreign policy of a State, may serve as a justification for aggression as herein defined."

As the Group had been unable to accept the first of those proposals, the representative of Romania had withdrawn it. The second proposal had been considered worth while in principle, but it had been felt that it would be preferable to consider it in conjunction with article 2, a procedure which had been acceptable to the representative of Romania.

The representative of Japan had requested that the Group should reopen consideration of article 1. However, since the Group had already taken a decision on that article, the Chairman had ruled that the question could be reopened only within the Working Group.

Article 2 had been the subject of animated debate, in the course of which a number of proposals had been submitted. The Contact Group had decided to set up a

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(The Chairman)

small informal negotiating group to attempt to reconcile the divergent views. After holding two meetings, the negotiating group had recommended a temporary suspension of its work until other provisions of the consolidated text having a bearing on article 2 had been considered. It was expected that the informal negotiating group and perhaps the Contact Group as a whole would be able to resume their work on Friday, 22 March.

Contact Group II, for its part, had been assigned the task of considering articles 3, 4 and 5 of the consolidated text and had held four meetings.

The members of the Group had agreed that a link should be established between articles 2 and 3 in the introduction to article 3. A number of proposals had been made on this point and had been referred to a small negotiating group.

Article 3 (a) had received broad acceptance, but two delegations had expressed their intention of speaking in the plenary on their understanding of that subparagraph.

Subparagraph (b) had received broad acceptance. One delegation had submitted a proposal and had indicated its intention of submitting it again at a later stage in the Working Group or in the plenary.

Subparagraph (c) had received broad acceptance.

Subparagraph (d) had received broad acceptance, but at least one delegation had indicated its intention of speaking in the plenary on its understanding of that subparagraph.

Subparagraph (e) had received broad acceptance.

Subparagraph (f) had been the subject of some discussion. The opinion had been expressed that the subparagraph should be deleted, but the majority had felt that it should be retained with drafting changes. The subparagraph had also been referred to the small negotiating group.

Subparagraph (g) had also been the subject of discussion and several proposals had been submitted. It, too, had been referred to the small negotiating group, and at least two delegations had expressed their intention of speaking in the plenary on their understanding of the subparagraph.

With regard to article 4, it had been agreed that a reformulation was necessary. One proposal had been accepted and the article had been referred to the small negotiating group.

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(The Chairman)

After fairly extensive discussion, article 5, too, had been referred to the small negotiating group, together with several proposals.

The small negotiating group consisted in principle of the representatives of Egypt, France, Ghana, the United Kingdom and the USSR, but the Contact Group had agreed that any other delegation with a special interest could join the group at the appropriate time.

Contact Group II had suspended its work until such time as it could examine the recommendations on which the small negotiating group felt agreement had been reached.

Mr. POSSO (Ecuador) recalled that his delegation had submitted three amendments, which appeared on page 22 of the report of the Special Committee (A/9019). While he was pressing for consideration of the amendment to article 3, which had been supported by Indonesia and Uruguay, he was prepared to accept any reasonable proposal.

The CHAIRMAN said that the amendment to article 3 proposed by Ecuador would be considered by the recently established Contact Group III, which was to begin its work at once.

Mr. JOEWONO (Indonesia) welcomed the progress achieved during the sixth session and expressed the sincere hope that the Committee would be able to complete its work during the current session. His delegation had already shown its willingness to take a flexible approach during the discussion of a number of questions at the meetings of the Contact Groups. It had stated that it was prepared to withdraw its proposal to delete the words "marine and air fleets" in article 3 (d) on the understanding that that provision would not be applicable if such an attack was made in defence of the lawful rights of the State concerned. It should also be noted that a number of delegations had stated that article 3 (d) applied to marine and air fleets and not to individual ships and aircraft.

Furthermore, his delegation had agreed, as had the representative of Guyana, not to insist on the insertion of the words "supporting and organizing" in article 3 (g) on the understanding that the words "active participation" dealt adequately with the same concept. However, his delegation remained opposed to the word "open" in the phrase "open and active participation", for a reference to open

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(Mr. Joewono, Indonesia)

participation might be taken to imply that clandestine participation, regardless of its extent, did not constitute an act of aggression.

In conclusion, he wished to reiterate that, in insisting on certain elements in connexion with indirect aggression, his delegation was not seeking to restrict the exercise by peoples of their right to self-determination.

The CHAIRMAN said he felt that the Committee could establish a drafting group without further delay. He suggested that the group should have from six to eight members, representing all the working languages.

Mr. LAMPTEY (Ghana) said he felt that it would be premature to establish a drafting group while the deliberations of Contact Group II were still in progress and when those of Contact Group III were about to begin.

The CHAIRMAN emphasized that his suggestion, if adopted, would obviate the need for an additional plenary meeting and that the drafting group could immediately begin its consideration of the preamble.

Mr. STEEL (United Kingdom) said that, although the Committee could in principle set up a drafting group, he shared the view of the representative of Ghana that many substantive questions had not yet been resolved and that it would be premature to refer them to a group. He pointed out that, once the Contact Groups had completed their work, the task of the drafting group would not be difficult and would consist solely of bringing the various texts into line and agreeing on a final wording.

The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished in principle to establish a drafting group.

It was so decided.

The meeting rose at 4 p.m.

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112th meeting

Friday, 12 April 1974,
at 11.20 a.m.Chairman: Mr. BROMS (Finland)

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (General Assembly resolutions 2330 (XXII), 2420 (XXIII), 2549 (XXIV), 2644 (XXV), 2781 (XXVI), 2967 (XXVII) and 3105 (XXVIII); A/AC.134/L.46) (continued)

The CHAIRMAN read out the report of the Working Group established by the Special Committee at its 110th meeting and drew attention to the draft definition of aggression contained therein. If there was no objection he would take it that the Committee wished to adopt the draft definition by consensus and to recommend it to the General Assembly for final adoption.

It was so decided.

Mr. AL-QAYSI (Iraq) suggested that the statements which delegations were about to make explaining their positions and entering reservations, if any, with regard to the draft definition just adopted should be recorded in extenso in the summary records for the benefit of the General Assembly and future generations.

The CHAIRMAN pointed out that delegations would have the opportunity to submit any corrections they saw fit to the provisional summary record and assured the representative of Iraq that every effort would be made to incorporate the full text of such corrections in the official records. He suggested that the Committee might wish to follow the precedent set at its 1972 and preceding sessions and reproduce a full list of participants as an annex to its report. If there was no objection, he would take it that the Committee was agreeable to that suggestion.

It was so decided.

Mr. MIGLIUOLO (Italy) expressed great satisfaction at the Committee's successful accomplishment of its task and congratulated the Chairman and the members. The definition was the result of long and difficult efforts which had begun nearly half a century ago under the auspices of the League of Nations. It was to be hoped that - as indicated in the ninth preambular paragraph - the adoption of a definition of aggression would have the effect of deterring possible

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(Mr. Migliuolo, Italy)

future acts of aggression. It was certain, in any event, that the definition would represent an invaluable point of reference for the Security Council in its deliberations; it also constituted a further step forward towards the codification of general international law. His delegation reserved the right to comment in detail on the specific provisions of the definition during the twenty-ninth session of the General Assembly, by which time his Government would have had an opportunity to scrutinize the text thoroughly from both the legal and political standpoints. That procedure was in keeping with United Nations practice inasmuch as all the work accomplished in the subsidiary bodies of the General Assembly was subject to the approval of Governments and of the Assembly itself. In order to reach a consensus, his delegation, like others, had had to move a long way from its original position. It had done so in a spirit of compromise, believing that it was in the interests of the international community as a whole to seek an accommodation of divergent views and paying particular attention to the positions of Arab and African States. He hoped that the text prepared by the Special Committee would be approved without substantive modifications at the twenty-ninth session of the General Assembly. If, however, amendments were introduced at that time, his delegation reserved the right to do likewise. During the debate in the Sixth Committee his delegation intended to give its interpretation of the nature and scope of the definition as a whole and also comment on specific articles.

Mr. RAKOTOSINANAKA (Madagascar) congratulated the Chairman and all delegations on the result achieved by the Committee, which had taken an entire generation to accomplish. By dint of hard work and patient negotiations, the Committee had overcome many difficulties and reconciled substantial divergences of views. The result was a text formulated with the participation of all, which could be generally acceptable. The Secretariat was also to be commended for its efficient and dedicated contribution to the Committee's work.

Inasmuch as the definition of aggression was subject to final adoption by the General Assembly, his delegation would at the present stage confine itself to taking note of the document and would transmit it to its Government for detailed examination. On the whole, however, it was regrettable that the text had appeared in a somewhat negative form. Of course it was not an easy matter to draft a compromise formulation fully satisfactory to all parties. His delegation was

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(Mr. Rakotosinanaka, Madagascar)

well aware of the concessions that had been made on all sides. With regard to article 1, his delegation was not completely satisfied with the present wording and would have preferred to retain the phrase "in any form"; however, it had agreed to the deletion of those words in a spirit of compromise. Article 2, as now worded, might give rise to some misunderstanding, and his delegation could not unreservedly agree to the inclusion of the phrase "in contravention of the Charter". The Charter provided no justification for a State to use force, except in a certain specific context. Moreover, it should be noted that only the Security Council was able to determine the legitimacy of such a recourse to force. With regard to article 3, it was regrettable that the Working Group had made the introductory part unduly cumbersome and thereby somewhat altered the substance of the article. His delegation was also not satisfied with the expression "qualify as an act of aggression". Article 7, too, was not entirely satisfactory; his delegation would have preferred a clear declaration that the right of oppressed peoples to struggle for their freedom was a sacred right in no way contrary to the purposes of the Charter and indeed in full accordance with article 51 thereof. In his delegation's view, the meaning of article 7 was that such peoples had the right to struggle by all means available to them.

Mr. ALEMAN (Ecuador) said that his delegation wished to reserve its position with regard to the words "marine and air fleets" in article 3 (d) of the draft definition. That expression, as his delegation had maintained on numerous occasions, should be deleted since it was unprecedented in all previous instruments of international law and could give rise to unnecessary disputes in the future. He wished also to take the present opportunity to reiterate his Government's firm position that it was a legitimate exercise of national sovereignty for a country to detain and impose penalties upon any foreign vessel or aircraft engaged in unlawful activities within its territorial waters or airspace. He hoped that the foregoing reservations would be reflected accurately in the Special Committee's report to the General Assembly.

The delegation of Ecuador, which alone was able to interpret the thinking of the Ecuadorian Government, would at the next session of the General Assembly make general observations and state the official position of Ecuador on the whole of the draft definition just adopted by the Committee.

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Mr. IGUCHI (Japan) congratulated the Chairman of the Committee, the Chairman of the Contact Groups and the Drafting Group, and the Rapporteur and members of the Committee on the efforts which had finally led to an acceptable definition of aggression. If that definition was adopted at the twenty-ninth session of the General Assembly, a new chapter would be written in the annals of international law and the dream of many celebrated jurists would be realized. It was to be hoped that the success achieved by the Committee was an omen of better times ahead in the whole field of international relations.

The agreed text on the definition of aggression was the product of extremely delicate compromises, and it would therefore be unrealistic to suppose that the wording of the definition was flawless or that the meaning of each article was so lucid that a different interpretation was inconceivable. However, the definition was fairly simple and well balanced and could serve as a broad guideline for Member States and the Security Council. In interpreting and applying the provisions of the definition, it was essential to have a comprehensive understanding of the definition as a whole, including the preamble and the explanatory notes. All the provisions were interrelated, as was stated in article 8. Furthermore, the definition should be read together with the relevant provisions of the Charter and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. The close interrelationship between those three documents had been rightly stressed.

His delegation had expressed its views on the definition of aggression on a number of occasions. It had repeatedly emphasized the importance of striking a proper balance between the question of priority - the objective element - and the question of intent - the subjective element. However, in a last-minute compromise his delegation had not insisted on explicit reference to the question of intent, on the clear understanding that that was one of the essential factors to be considered by the Security Council in determining whether an act of aggression had been committed. Article 2 was based on a delicate compromise and must be carefully read in order to understand the complex issues involved. Referring to Ecuador's reservation regarding article 3 (d), he said that his delegation had always attached great importance to the provisions concerning an attack on marine and air

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(Mr. Iguchi, Japan)

fleets, since such an attack on his country's fleet would be equivalent to a blockade of Japan's coast. There was no essential difference between the Japanese and the Ecuadorian view. It was his delegation's understanding that the paragraph in question was not intended to cover isolated and minor incidents, but it could not accept a remedial measure taken by a coastal State which contravened international law. All legitimate acts must conform strictly to international law.

His delegation was pleased to note the improvement in the wording of article 3 (f) and (g) and article 4. The inclusion of indirect acts of aggression in the definition was one of the important landmarks in the Committee's work and would undoubtedly help to promote international peace and security. Appropriate reference was made to the right to self-determination in article 7, it being, of course, understood that the struggle for self-determination by peoples forcibly deprived of that right and the efforts to support their struggle must be in conformity with the principles of the Charter and the Declaration on Friendly Relations. In connexion with the legal consequences of aggression, his delegation had always maintained that an act of aggression which was not part of a war of aggression gave rise only to State responsibility and that the question of individual responsibility for an act of aggression should be left for future study. His delegation welcomed the fact that the provisions of the Charter concerning the legal use of force were not to be affected by the definition.

His delegation felt that the definition as a whole was satisfactory. Personally, he would have been in favour of including a reference to the importance of utilizing the available means of achieving pacific settlement of disputes. A relevant factor in the historical study of aggression seemed to be the full mobilization and massive concentration of combat-ready forces along the borders of a State without provocation. Furthermore, the list of acts of aggression in article 3 might not be extensive enough. All in all, however, the Committee had analysed virtually all aspects of the definition of aggression, and, in his delegation's view, the text of the draft definition deserved the unanimous approval of the Committee. He urged members to co-operate in seeking its adoption by consensus in the Sixth Committee and the plenary General Assembly at its next session.

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Mr. CEAUSU (Romania) congratulated the members of the Committee and the Chairman on the successful outcome of the Committee's work. Those States which were concerned about maintaining peace, extending the application of law in international relations and prohibiting the use or threat of force were particularly interested in defining aggression. Once war had ceased to be regarded as a legal instrument, the need to define aggression had become evident. The anti-social and inhuman aspect of the use of force in international relations had become obvious over the years, and international relations were today acceptable only if they were based on moral and legal principles of the kind embodied in the United Nations Charter.

Like other States, Romania endorsed the total elimination of the use or threat of force and the prevention and suppression of aggression, which was the most dangerous form of the use of force in present times, when any military conflict could easily assume world-wide proportions. His country had always taken a great interest in the definition of aggression and considered it an essential element in the legal framework of system of State security. The adoption of the United Nations Charter had been an event of particularly great importance, since the Charter not only prohibited aggression but also formulated the minimum international legal principles and standards which must be respected if international peace and security were to be maintained. Romania was particularly interested in the definition of aggression because its foreign policy was based on respect for the principles of national independence and sovereignty, equality before the law, non-interference in the internal affairs of other States and avoidance of the threat or use of force.

The draft definition before the Committee was the fruit of seven years' work. Although far from perfect, it represented a generally acceptable compromise. His delegation had been mainly concerned with drafting a definition that was as complete as possible and devoid of any loop-holes which might encourage the use of force or enable aggressors to justify their acts. His delegation was pleased to note that its concerns were reflected in the draft definition. The official position of Romania would be stated when the draft was discussed in the General Assembly. However, he wished to draw attention to certain points which Romania found particularly important.

Regarding article 1, his delegation had been opposed to deletion of the phrase

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(Mr. Ceausu, Romania)

"in any form". Article 2 embodied the principle of priority. Under that text, a State first using armed force against another State was committing an act of aggression. That constituted sufficient evidence of the existence of an act of aggression. The same article provided for the possibility that the Security Council might exculpate the State which had first used armed force. In order to do so, however, the Security Council had to reach a decision, taken in accordance with the rules established by the Charter. If the Council was unable to adopt such a decision, the presumption of aggression remained. The Romanian delegation also had reservations concerning the wording of article 2, particularly the inclusion of the words "in contravention of the Charter", and concerning the phrase "qualify as an act of aggression" in the introductory part of article 3, which had replaced the original phrase "constitute an act of aggression", favoured by his delegation.

Article 5 contained one of the essential provisions for the operation of the definition. Since article 2 provided for the possibility that the State which had first used force might be exculpated in the Security Council, it had been specified in article 5 that "No consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression".

By that provision, a possible aggressor had been forbidden to seek justification for his acts by invoking circumstances relating to the internal or external policy of the victim. Indeed, the Special Committee had specified, in the explanatory note to article 5, that in drafting the paragraph on the inadmissibility of justifications for aggression, it had had in mind the principle that "No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State".

One of the essential aims of the definition of aggression was to help the victim to defend himself against the aggressor. Any act of aggression automatically brought into play the right of self-defence. In that connexion, his delegation was glad to note that the lawful use of force had been reaffirmed in article 6 of the draft definition. Article 7 prevented any interpretation of the definition as affecting the sacred right of all peoples to resist oppression or foreign domination.

The draft definition would be considered, improved where necessary and adopted by the General Assembly and would then serve as a guide to all United Nations organs, including the Security Council, in the maintenance of international peace and security. However, it was also addressed to States, since it concerned their conduct. It was to be hoped that States would maintain friendly relations,

(Mr. Ceausu, Romania)

thus obviating the need to invoke the draft definition. His delegation reiterated its belief that adoption of the definition of aggression would help to strengthen the role of the United Nations in maintaining international peace and security, since it would provide the Organization with a political and legal instrument for preventing and eliminating threats to peace and acts of aggression. At the same time, the definition would be helpful in safeguarding the fundamental rights of States, particularly the legitimate right of self-defence against any attack upon national sovereignty and independence.

Mr. ELIAS (Spain) congratulated the Chairman, the Bureau and members of the Committee on their work and on the spirit of conciliation which showed that the United Nations was on the road leading to the attainment of its three great objectives: peace, co-operation and law. The text of the draft definition just adopted by consensus was not perfect, but it marked a great step forward. If the General Assembly adopted it, particularly by consensus, the Committee would have helped considerably in developing international law on one of the most important aspects of peace and security.

His delegation was not entirely satisfied with article 7, having proposed the inclusion of territorial integrity as an inseparable element of self-determination - an idea which had finally been incorporated into the sixth preambular paragraph. His delegation was aware that article 7 was intended to place the definition of aggression in the context of rights already proclaimed. However, the discussion had shown that there was a tendency to regard territorial integrity only as the right of a State, whereas in his delegation's view, it was the right of peoples and there were documents which embodied that right in international law. Regarding the second paragraph of article 5, it was Spain's understanding that the legal characterization of a war of aggression as a crime in no way prejudged the legal characterization of acts of aggression. Spain also understood that the reference to a war of aggression in article 5 could not be interpreted to mean that that concept had been adequately defined by the definition of aggression. That was one of the most vulnerable points in the draft, and he would like his delegation's views on it reflected in the Committee's report. He reserved his delegation's right to make further comments on the draft definition in the Sixth Committee at the twenty-ninth session of the General Assembly.

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Mr. ABDULDJALIL (Indonesia) said that his delegation's views on the consolidated text of the definition were already known. However, he wished to draw attention to its reservations with regard to article 3 (d) and (g).

His delegation maintained its position that the inclusion of paragraph (d) in the enumeration of acts of aggression did not prevent a State from taking measures to protect its legitimate rights against foreign air and marine forces operating illegally in its territory, including its territorial waters. He also felt that the word "substantial" in article 3 (g) was superfluous, since the concept of substantiality applied to the entire draft definition.

He paid tribute to the Chairman, the Rapporteur and all those involved in the work of the Special Committee.

Mr. SIAGE (Syrian Arab Republic) praised the Chairman and the Bureau for their success in directing the work of the Special Committee.

His delegation had always been anxious to co-operate in the work of the Special Committee and had followed its discussions with great interest, since Syria had recently been the victim of repeated aggression and part of its territory was still occupied by a foreign force as a result of aggression. Its sole aim was to assist in arriving at a fair and judicious definition of aggression which would serve to detect and discourage possible acts of aggression. His delegation was pleased that a consensus had been reached, but it had certain reservations regarding the text which had been produced.

He welcomed the fact that the words "however exerted" in the original version of article 1 had been omitted from the text, for that expression would have been more acceptable if applied to aggression rather than to the use of armed force, which, in certain cases, could be legitimate under the Charter. In addition, the expression did not conform to the distinction laid down in Article 39 of the Charter between a threat to peace, a breach of the peace and an act of aggression. The Charter recognized the victim's inherent right of self-defence (Article 51) only in the case of an act of aggression.

His delegation supported the part of article 2 relating to first use but did not understand why the first use of armed force constituted only prima facie evidence of an act of aggression and not aggression as such. He considered that the first use of armed force in contravention of the Charter always constituted an act
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(Mr. Siage, Syrian Arab Republic)

of aggression. No organ, even the Security Council, could justify the use of armed force in violation of the Charter, although the Security Council, in conformity with the provisions of the Charter, was fully competent to determine whether or not an act of aggression had been committed. He therefore suggested that the words "prima facie evidence of" should be deleted from article 2. His delegation was pleased to note the progress that had been made in the new wording of article 2 in rejecting the justification of an act of aggression on the grounds of the intentions of the aggressor.

His delegation feared that article 3 (d) could lead to the interpretation of a minor incident as an act of aggression. With regard to article 7, he was glad to note that progress had been made in linking it with article 3, although it would have been preferable for it to be linked only with paragraph (g) of the latter article. The original text had mentioned the right of people under military occupation or any other form of foreign domination to resort to the use of force, while the new text only mentioned the right to struggle. He would like to see a reference to the legitimacy of all means, including the use of force. His delegation had difficulty in accepting the text of article 7 and would prefer to see it amended along the lines of the original draft.

With regard to article 5, his delegation was pleased to note that aggression had been termed a crime against international peace. He supported the Egyptian representative's proposal that the word "aggression" in the third paragraph of article 5 should be replaced by the words "the threat or use of force". He would prefer to see the note on that paragraph appear immediately after the article.

Mr. ROSSIDES (Cyprus) said that the Committee had reason to rejoice. It was some 50 years since the first attempts had been made to find a definition of aggression; efforts made at the League of Nations, and later by the International Law Commission and by committees and commissions of the United Nations, had produced no results. He emphasized the importance of the fact that a definition of aggression had been arrived at, regardless of any imperfections it might contain. The Committee had avoided the danger of making a definition that was not a definition of aggression but a definition for aggression. He praised the Chairman and members of the Committee for their work.

In arriving at a definition of aggression, the Committee was opening the way to the adoption of a code of offences against the peace and security of mankind.

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(Mr. Rossides, Cyprus)

The code had been prepared by the International Law Commission many years previously, but the General Assembly had been unable to adopt it because of the absence of a definition of aggression. The elaboration of international criminal jurisdiction also hinged on the existence of a definition of aggression.

He observed that the Charter, in Article 39, stated that the Security Council should determine the existence of any threat to the peace, breach of the peace, or act of aggression. In determining the degree of an offence, the Council could only be guided by Article 2, paragraph 4, of the Charter, which was a general prohibition of the threat or use of force and did not state in what circumstances the use of force constituted an act of aggression. The consolidated text enumerated in article 3 the acts which qualified as acts of aggression and thus provided guidelines for the Security Council. In that connexion, he welcomed the inclusion of the words "armed bands" in article 3 (g).

Article 2 would also provide guidance for the Security Council regarding the first use of force. From the legal standpoint, prima facie evidence of first use of force would conclusively establish aggression unless more conclusive evidence to the contrary would be produced. In such circumstances, the Security Council would have to be satisfied that the additional evidence was important enough to negate the prima facie evidence of aggression. He agreed with other representatives that it was important to exclude the question of intent or purpose in article 2; that would make a mockery of the whole definition.

In other respects, the definition was perhaps a little too prolix, but it was basically sound. In defining the principle of priority (article 2), it followed more or less the lines of the definition prepared, but not finally adopted, by the League of Nations in 1924 (Geneva Protocol) and in 1933 and also the definition proposed at the United Nations by the United States delegation in 1945. The consolidated text, therefore, satisfied all the main requirements for a definition of aggression.

The meeting rose at 12.55 p.m.

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113th meeting

Friday, 12 April 1974,
at 3.25 p.m.

Chairman: Mr. BROMS (Finland)

ADOPTION OF THE REPORT

Mr. SANDERS (Guyana), Rapporteur, said that since it would not be possible for the Special Committee to have before it the full text of its report to the General Assembly, he wished to submit for consideration some proposals with respect to the organization of the report.

The report would consist of three sections: section I (Introduction) had already been circulated as document A/AC.134/L.47. Section II would be entitled "Report of the Working Group and consideration of that report by the Special Committee"; it would contain, first of all, the entire text of the report of the Working Group as it appeared in document A/AC.134/L.46 and, in particular, the four notes contained in paragraph 9 of that document. Section II would conclude with the following three paragraphs:

"At its 112th meeting, on 12 April 1974, the Special Committee had before it the report reproduced above.

"The text of that report of the Working Group was considered by the Special Committee at its 112th and 113th meetings held on 12 April 1974.

"At its 113th meeting, the Special Committee adopted by consensus the draft definition of aggression, the text of which is reproduced under section III below."

Section III would be entitled "Recommendation of the Special Committee". It would read: "The Special Committee recommends to the General Assembly that it adopt the following draft definition:

/Text of the definition accompanied by the foot-note mentioned in paragraph 10 of the report of the Working Group (A/AC.134/L.46)/."

The report would have two annexes. The first would contain the statements appearing in the summary records, as corrected by members of the Special Committee. The second annex would contain the list of representatives.

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Mr. CEAUSU (Romania) said that the report of the Special Committee should contain a separate paragraph showing that the Working Group had taken a decision to include the four notes in paragraph 9 of its report (A/AC.134/L.46) in the Special Committee's report itself. Perhaps that paragraph could say something to the effect that the Special Committee had approved, at the same time as the draft definition, the text of those notes.

Mr. AL-QAYSI (Iraq) supported the suggestion by the representative of Romania. The recommendation of the Working Group should be in a substantive section of the Special Committee's report, not merely in the section reproducing the report of the Working Group. That was most important, because paragraphs 9 and 10 of the Working Group's report (A/AC.134/L.46) were part and parcel of the consensus reached.

Mr. STARCEVIC (Yugoslavia) supported the statements made by the representatives of Romania and Iraq.

Mr. GUNEY (Turkey) supported the representative of Romania, whose suggestion was in keeping with the decisions taken by the Working Group.

Mr. CORREA (Mexico) said it was clear that no one was opposed to the suggestion by the representative of Romania. The report of the Special Committee should reflect the debate and decision of the Working Group.

Mr. ROSENSTOCK (United States of America) said that although the proposed action would not serve any useful purpose, his delegation would not object to it.

The CHAIRMAN said he was certain that the Rapporteur had taken note of the statements by the representatives of Romania, Iraq, Yugoslavia, Turkey, Mexico and the United States and that the report of the Special Committee would be organized accordingly.

If he heard no objection, he would take it that the Committee adopted the report.

It was so decided.

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (General Assembly resolutions 2330 (XXII), 2420 (XXIII), 2549 (XXIV), 2644 (XXV), 2781 (XXVI), 2967 (XXVII) and 3105 (XXVIII)) (concluded)

Mr. SUY (Under-Secretary-General, the Legal Counsel) congratulated the members of the Special Committee on the success they had achieved. It was indeed a historic occasion which boded well for the future of the United Nations and showed that a spirit of détente did exist. He hoped that the definition would prove useful in its day-to-day application, and all should be prepared to work for its success.

Mr. BESSOU (France) considered that agreement by consensus on a draft definition of aggression was a considerable achievement. His Government would formulate its comments on the text during the forthcoming General Assembly session; meanwhile, he would offer some preliminary observations ad referendum. His comments on the articles of the definition were to be understood in the light of his delegation's basic concept of the scope and purpose of the draft definition, the value of which did not reside solely in the fact that it gave guidelines to the Security Council for action under Article 39 of the Charter; the draft went further and clarified in some measure the right of self-defence against armed attack provided by Article 51 of the Charter. Thus, it was, to that extent, also an effective means of frustrating potential aggression. Consequently, he could only regret the absence of any mention of Article 51 of the Charter in the second preambular paragraph of the draft definition.

Article 1 of the text satisfactorily established the framework within which aggression was to be defined: it must entail the use of a degree of armed force.

Article 2, on the other hand, had proved most difficult to prepare. The article seemed to comprise two principles, the first of which was that "the first use of armed force ... in contravention of the Charter shall constitute prima facie evidence of an act of aggression". That gave pride of place to the concept of priority, which his delegation had always supported. The first use of force raised a presumption of aggression, which could only be rebutted through the Security Council, acting in accordance with the second principle of the article. Nevertheless, the expression "in contravention of the Charter" was infelicitous because of the uncertainty which might arise if the provision were invoked. Contravention of the Charter was, indeed, a necessary element of an act of

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(Mr. Bessou, France)

aggression, but it was hardly fitting that the determination whether an act of aggression had been committed should be left to the discretion of the aggressor, who would thus become a judge in his own cause. An aggressor's argument that he was acting within the Charter was fallacious, and there seemed no need to provide such a loop-hole in the definition. The reference to the Charter in the article was addressed solely to the Security Council, and his delegation would interpret the article in that light.

The second principle of article 2 concerned the powers of the Security Council, and, in that it tempered the somewhat peremptory affirmation at the beginning of the article, he welcomed it.

Article 3 (g) referred to the sending of armed bands. Until they had been dispatched, no act of aggression had occurred; the mere fact of organizing or preparing armed bands did not of itself constitute an act of aggression.

He had no comments on article 4 save that it was indeed essential to state clearly that the enumeration in article 3 was not exhaustive.

The French delegation had always believed that the study of the legal consequences of aggression mentioned in article 5 was not a matter for the Committee; it involved questions of international penal law, a concept which was still evolving, and presented pitfalls - for example, the Security Council might find itself in the position of both political tribunal and arbiter. The text which the Committee had finally worked out was, however, acceptable, to the extent that it merely noted the present status of international law without prejudging its development.

Article 6 served a useful purpose in stressing that the Charter was the only legal basis for the draft definition. The latter might acquire the legal status of a General Assembly resolution, but it could not modify the Charter in any way.

Article 7 was a safeguarding clause, essentially political in nature, which was to be found in various forms in many United Nations documents. In the present instance, the clause had not been put in what seemed its most logical form, that of a guarantee that those who supported peoples struggling for their freedom would not be accused of aggression. As drafted, the safeguarding clause seemed in fact somewhat alien to the text of the definition, since it was not concerned with aggression as defined in article 1, i.e. between sovereign States.

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(Mr. Bessou, France)

Finally, he welcomed the Committee's success in achieving a draft definition of aggression; he attributed it in large measure to the patience and sense of compromise of the Chairman, the chairmen and members of the subgroups, and the Committee as a whole.

Mr. ZAHAWIE (Iraq) paid tribute to the spirit of compromise in the Committee which had made it possible to achieve a draft definition of aggression by consensus. The text might not be entirely satisfactory to all, but it represented the maximum degree to which the aggregate of delegations' interests, as expressed in the Committee, could be accommodated. The outcome of the Committee's work was to be evaluated politically and juridically by the United Nations. Consequently, although he accepted the consensus draft definition ad referendum, his Government's position would be further defined during the forthcoming session of the General Assembly.

Mr. ROSENSTOCK (United States of America) acknowledged the patience and spirit of compromise of members of the Committee which had made it possible to achieve a draft definition of aggression. He saw no objection to the draft text going forward to the General Assembly, even though it was by no means perfect. Indeed, even a legally perfect definition might do more harm than good if given too much emphasis. The text that had been produced was a recommendation of the General Assembly for use by the Security Council. The law concerning the use of force was found in the Charter and in the Declaration on Friendly Relations, as was underlined by the preambular reaffirmation. It would, however, misconstrue and frustrate the purposes of Chapter VII of the Charter if the Council were led by the draft definition to delay urgent action under Chapter VII while it debated whether an act of aggression had occurred, if a finding of a threat to the peace or breach of the peace would more effectively activate the collective security mechanism of the Charter.

The second and fourth preambular paragraphs of the draft definition recalled that the term "act of aggression" with which the text dealt was that contained in Article 39 of the Charter and thus reflected a primary responsibility of the Security Council. The third preambular paragraph emphasized the importance of the peaceful settlement of disputes, of negotiation, inquiry and conciliation to avoid the escalation of differences between States. For such methods to be effective,

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(Mr. Rosenstock, United States)

and if the principle of the sovereign equality of States was to be maintained, the possibility of referring disputes to binding third party settlement must be an available option for all States as against every other State.

The fifth preambular paragraph, while recognizing the dangers which would flow from an illegal use of force amounting to aggression, correctly stated the view that not every act of force in violation of the Charter constituted aggression.

The right of all peoples to equal rights and self-determination was stated in the sixth preambular paragraph; the final clause of the paragraph reaffirmed the principle that the right of self-determination did not imply the legitimization of action which would disrupt the territorial integrity of a State which conducts itself in compliance with the principle of equal rights and self-determination and thus possesses a Government representing the people belonging to the territory.

Article 1 contained a general statement which must be understood in the light of the other articles. It properly made no distinction based on the means of armed force used, and the phrase "as set out in this definition" indicated that not all illegal uses of armed force could be denominated acts of aggression.

In article 2, the definition suggested the considerations which the Security Council should bear in mind in determining whether an act of aggression had occurred. The Council would be well advised to take account of which State first used force and to give due weight to all relevant circumstances. It had been agreed that it was unnecessary to make special reference to the intent or purpose (including the proof of animus) of the States involved, that notion being covered by the phrase "other relevant circumstances". He understood the article to mean that the first use of armed force by a State in contravention of the Charter was only prima facie evidence of an act of aggression; the Security Council might or might not in the particular case find that there had actually been an action of aggression. If the Security Council did not make a finding of an act of aggression, the Council must be presumed not to have found the prima facie evidence persuasive. That interpretation accorded with the Council's modus operandi, which was to consider whether a finding under Article 39 of the Charter would be justified - rather than determining that it would not be justified. This definition accordingly could only be reasonably interpreted in the light of the whole history of the Council's method of operation and, of course, in any event could not alter the intent of Article 39 of the Charter.

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(Mr. Rosenstock, United States)

Article 3 of the draft definition gave certain familiar examples of the use of force which the Security Council might reasonably consider, in the manner set forth in article 2, as potential acts of aggression. The scope of the list made it clear that no distinction was made as to the means employed or the directness or otherwise of their use. There was no suggestion that article 3 was intended to be an exhaustive list of all illicit uses of force which might constitute acts of aggression; indeed, article 4 expressly stipulated that article 3 was not exhaustive.

The first paragraph of article 5 said in effect that illicit activities were those for which there was no justification; that was a useful addition to the extent that it represented a further safeguard against misuse of the definition.

The second paragraph of article 5 noted the continued validity of the principles which formed the basis of the trials following the Second World War, enunciated in the Moscow Declaration of 1943, the London Agreement of 1945 and the Charter of the International Military Tribunal for the Far East. The second sentence noted that States were responsible for their wrongful acts.

The third paragraph of the article, while being a formulation of the Stimson Doctrine and of the relevant principles of the Declaration on Friendly Relations, did not alter or extend existing international law with regard to the consequences for States or individuals involved in acts of aggression.

Articles 6 and 7 were classic savings clauses which by their very nature did not function to create rights but merely to provide express assurance with regard to rules not being dealt with. Article 6 merely recalled that the purpose of the definition was to elucidate the means by which certain types of illicit conduct on the part of States might be determined to constitute aggression, rather than to examine cases in which the use of force might be lawful. That was, indeed, already clear from the text of article 2.

Article 7 expressly affirmed that the definition defined aggression and not the right of self-determination. His Government was always ready to support any text which reasonably reaffirmed the right of all peoples to self-determination and it could therefore accept a formulation which did not speak of the use of force but of actions in accordance with the principles of the Charter and the Declaration on Friendly Relations. Thus, the article did not legitimize acts of armed force by a State, which would otherwise constitute aggression. Even if it

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(Mr. Rosenstock, United States)

mentioned the use of force (which it did not), the article would not constitute an assertion that such use by a State in those circumstances was legal. Rather, it would amount to a recommendation to the Security Council, in considering a particular case, to bear in mind the purposes of the States involved, when considering whether a particular illegal activity should be denominated an act of aggression under Article 39 of the Charter.

Article 8 reaffirmed the need to construe each part of the definition in the context of all other relevant parts. That was particularly true in the case of articles 1 to 4, which formed an integrated whole.

Mr. JOB (Yugoslavia) expressed gratification at the Committee's success in achieving a draft definition of aggression by consensus and paid tribute to the spirit of compromise in the Committee which had made that possible. His delegation was convinced that the legal formulation of a concept of aggression would be beneficial for the better functioning of the United Nations system of collective security since it provided a firmer basis for the work of the United Nations organs charged with maintaining international peace and security. It also represented a further step towards the transformation of progressive political principles into legal rules, and it stressed the importance of the United Nations as a centre for the codification and progressive development of international law. The definition would furnish a precedent for other legal documents and would enhance further efforts towards the codification of international responsibility for aggression and the establishment of an international criminal jurisdiction.

Adoption of the definition would strengthen the role of the United Nations in the maintenance and consolidation of international peace and security. Acts of aggression and foreign interference still occurred in international relations, and, as long as such acts were committed, as long as foreign territories were held under occupation, the right to self-determination was denied and colonial and neo-colonial dependence was maintained, there was a need for the international organization to exert all efforts to remedy those situations and provide for the peaceful settlement of disputes. The definition of aggression was designed to promote these efforts. The Security Council as the organ primarily responsible for the maintenance of international peace and security should use the definition as a guidance to fulfil more effectively its duties. The adoption of the definition should, as its preamble stated, deter potential aggressors and facilitate

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(Mr. Job, Yugoslavia)

the protection of the rights and lawful interests of the small and developing countries, which were the principal victims of aggression. When adopted by the General Assembly, the definition would take its place alongside the Declaration on the Strengthening of International Security and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, as an example of the growing awareness in the international community that the use of force in international relations was to be condemned and prevented.

The text was not perfect in all its parts and contained formulations which his delegation would have preferred to see expressed differently. Nevertheless, it reflected the current stage of development of international relations. Its main significance lay in the fact that it was possible, for the first time, for a United Nations body to produce a text that might be acceptable to all Member States. That was why it had to be regarded as a success in spite of possible short-comings. His comments on individual articles were based on two premises: that his Government would be able to state its views when the draft was considered by the General Assembly and that, because of the need to achieve a definition by consensus, the wording of some articles could give rise to different interpretations. It was to those articles that his observations particularly referred.

Article 2 accorded with his delegation's view that the first use of force was the most important element in determining an act of aggression. He could nevertheless wish that the text had gone beyond the statement that the first use of armed force, even in contravention of the Charter, was only prima facie evidence of an act of aggression. He failed to see why the first use of force should not be specifically designated an act of aggression, since the article expressly reserved the right of the Security Council to conclude, in the light of other relevant circumstances, that a determination that an act of aggression had been committed would not be justified. The use of the words "in contravention of the Charter" in that connexion was undesirable in view of some of the underlying concepts which those words had been inserted to safeguard. The only cases in which force might be used first were those in which there was an explicit authorization by United Nations organs. He rejected any interpretation which would give States

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(Mr. Job, Yugoslavia)

or regional organizations the right to use force without such authorization, and any such use of force was to be regarded as an act of aggression. Nor did he regard the words "other relevant circumstances" as covering the purposes which the States involved had had in mind, since no purposes could justify the commission of aggression.

He regretted that it had not been possible to state clearly in article 5 that aggression constituted a crime against international peace giving rise to responsibility under international law. Many international legal precedents - the Nuremberg principles and General Assembly resolutions among them - showed that aggression was an international crime; yet, some delegations, and particularly those whose countries had been most active in establishing the Nuremberg principles, had argued that the term "crime" should be used only in respect of wars of aggression. The latter concept had not been specifically defined; its insertion thus did not contribute to the clarity of the article. To draw a distinction between "aggression" and "war of aggression" was a theoretical exercise having possibly undesired implications, and to maintain that the use of the word "crime" in respect of aggression was not justified was unfounded and arbitrary. The provision, as now formulated, would permit the absurd interpretation that aggression might not be a crime against international peace and that a war of aggression might not give rise to international responsibility.

He welcomed the inclusion of important principles in the first and third paragraphs of article 5. He shared the view that the third paragraph could not be interpreted in a manner contrary to the established principles of international law, especially the relevant provisions of the Declaration on Principles of International Law concerning Friendly Relations.

With regard to article 6, he considered that the only cases in which use of force was not prohibited under the Charter were cases of individual or collective self-defence under Article 51 of the Charter and the cases in which it was authorized by the relevant United Nations organs. He would have been happier if that had been spelt out since less room would have been left for misconstructions. His comments on article 2 of the draft definition were equally applicable to that aspect of article 6.

Article 7 contained a principle to which his country, in common with the vast majority of countries of the world, especially those which had had to struggle

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(Mr. Job, Yugoslavia)

for independence, attached great importance. The right of peoples under colonial and racist régimes or other forms of alien domination to fight for their self-determination, freedom and independence could never be regarded as aggression, and the formulation of the article was an explicit reaffirmation of that principle, although he would have preferred the omission of the word "forcibly" on the ground that peoples deprived of their rights by subtle rather than forcible means were equally entitled to fight for them. Finally, he regarded the word "struggle" as used in the article as implying "struggle by all means at their disposal".

Mr. CAICEDO (Colombia) said that, in his Government's view, the international community could not continue to do without a clear definition of what had always been described as the greatest violation of international law, because collective security machinery was meaningless and ineffectual without such a definition. To complement the principle of compulsory use of methods of peaceful settlement of international disputes, there still did not yet exist a clear and definitive prohibition of the use of force; for that reason, the provisions of the text agreed on by the Special Committee on the Question of Defining Aggression were of vital importance and represented a step forward towards a final definition of the use of force.

In that context, the Colombian delegation considered that the definition which the Special Committee would submit to the General Assembly, in accordance with its mandate, represented a reasonable advance in international law which confirmed the existence of a primary, but shared, responsibility of the United Nations in that regard.

The definition of aggression formulated by the Special Committee represented a reasonable advance in international law, firstly, because it struck the right balance between existing theories, permitting the emergence of a universal consensus, and, secondly, because it reflected the spirit of co-operation and flexibility which had led participating delegations to accept that compromise. Article 1, by defining aggression as the use of armed force, covered the most obvious cases of aggression and filled one of the most important gaps in the United Nations legal structure relating to the maintenance of international peace and security. Article 2 of the definition made a start in a new process of progressive codification of international law relating to first use of armed force

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(Mr. Caicedo, Colombia)

by a State. Article 3 achieved what had seemed completely impossible some years previously, and article 4 left open the possibility that additions might subsequently be made to the enumeration in article 3. The provisions of article 7 linked to the definition the extremely important right to self-determination, freedom and independence of peoples, and more specifically confirmed the right of peoples under colonial and racist régimes to struggle in order to obtain their national independence and respect for the totality of their human rights. Those provisions undoubtedly represented very positive progress in the codification of international law.

His delegation considered that the definition was reasonable also because the agreed text left aside those problems which would have delayed for several more years the drafting of a definition of aggression: economic aggression which did not involve the use of armed force was not covered by the text; nor did the text deal with the question - basic to international collective security - whether the existing provisions of the United Nations Charter were sufficiently effective to maintain international peace and security, and whether it would not be advisable to work more actively on a revision of those provisions, as the Colombian delegation had advocated on several occasions. The fact that the definition of aggression did not provide a solution to those problems, on which its effectiveness depended, strengthened the conviction of the Colombian Government that it was necessary and essential to raise them again in the competent organs of the United Nations.

The definition of aggression formulated by the Special Committee confirmed the existence of a primary, but shared, responsibility of the United Nations with regard to the maintenance of international peace and security.

On the basis of the assumption that one of the purposes of the United Nations was to maintain international peace and security and to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, the definition confirmed that the Organization had basic responsibilities and functions in that regard. That was established in the second preambular paragraph and in article 2. That affirmation was balanced by the stipulation in the fourth preambular paragraph to the effect that nothing in the definition should be

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(Mr. Caicedo, Colombia)

interpreted as in any way affecting the scope of the provisions of the Charter with respect to the functions and powers of the organs of the United Nations. In the opinion of the Colombian delegation, that competence could not be exclusive and it should be considered that the power to determine the existence of an act of aggression was shared by the United Nations with the other international organizations competent in the matter of the maintenance of international peace and security.

His delegation considered that the cases in which the use of force was lawful, which were mentioned in article 6 of the definition, should include cases deriving from the application of Articles 51 and 53 of the United Nations Charter. In other words, the provisions of the Charter did not prevent regional collective security agencies from being competent also to determine the existence of an act of aggression. For example, in the inter-American system, according to the provisions of chapter VI of the Charter of the Organization of American States and the provisions of the Inter-American Treaty of Reciprocal Assistance, the Organ of Consultation, consisting of the Meeting of Consultation of Ministers of Foreign Affairs, could decide to characterize an act as aggression and agree on whatever measures it considered appropriate to restore peace in America. The Colombian delegation considered that the use of force by a regional collective security agency did not in that case constitute an act of aggression under the Charter of the United Nations or the definition of aggression as it appeared in the text agreed on by the Special Committee.

His delegation was grateful to the Special Committee for having taken into account its repeated observations on the procedure for the interpretation of the provisions of the definition. Since the provisions were interrelated, each provision should be construed in the context of the other provisions.

With regard to the question of the scope of the definition, once it had been adopted by the General Assembly, his delegation would consider it as a peremptory norm of general international law, in accordance with the definition given in article 53 of the Vienna Convention on the Law of Treaties.

His delegation reserved the right to make further comments during the discussion to be held in the United Nations General Assembly.

Mr. BOJILOV (Bulgaria) said that six years after the General Assembly,

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(Mr. Bojilov, Bulgaria)

through the efforts of the Soviet Union, had established the Special Committee, his delegation was pleased to note that the latter had been successful in arriving at a consensus. The political significance of the definition was that the international community wished to curb aggressors by accepted legal norms and to exclude the possible use of armed force in violation of the principles of the Charter. The definition was a positive contribution to détente, international peace and security and the development of international law. It should also be realized that the Committee's success was due to the improvement in the international climate and to the fact that the third world countries also wanted a definition of aggression. While the text was not ideal, it reflected a consensus based on compromise and mutual respect.

His delegation supported the text of the preamble and believed that the Special Committee was correct in deleting the phrase "however exerted" from article 1, since it would have no meaning in the light of the other provisions.

Article 2 was the nucleus of the definition. While his delegation would have preferred some improvement in the text, it had agreed to the compromise final version, but it reserved the right to explain its interpretation of that article in the Sixth Committee of the General Assembly.

Article 3 (f) was not quite in harmony with the other provisions of that article. The Special Committee had worked out a definition of basic principles as guidance for the Security Council, which must, under the Charter, decide which State, in a given conflict, was the aggressor and should therefore bear the international legal consequences. The element of "double aggression" introduced by article 3 (f) might be used to complicate the process of identifying and condemning an aggressor.

Article 5 was the Achilles' heel of the definition. It would be difficult for members of the General Assembly to understand just what the first paragraph of that article had to do with the legal consequences of aggression. Perhaps it should have been in the preamble, since it was declaratory in nature. Besides, his delegation was not sure that the Special Committee had been correct in not stating that aggression was a crime against international peace. Having accepted the principle that a "war of aggression" was a "crime against international peace", the Special Committee should perhaps have pursued it to its logical conclusion: the findings of the Nuremberg Tribunal.

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(Mr. Bojilov, Bulgaria)

Bulgaria had always supported the right to self-determination, freedom and independence of the peoples suffering under the colonial yoke and racist régimes and from other forms of alien domination. His delegation was therefore not entirely satisfied with the text of article 7; it had never felt that the Charter and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States were the only documents which should be quoted with respect to those rights. Since, however, that was the only generally accepted text, his delegation supported it.

Compromise was needed in order to give effect to the definition, and his delegation believed that the General Assembly should be aware of that fact and adopt the text by consensus. His delegation would do its utmost to obtain its Government's support of the text.

Mr. LAMPTEY (Ghana) said that his delegation had already expressed its views on the subject of defining aggression at the session of the Special Committee in Geneva in 1973. To a remarkable degree, the present definition maintained the integrity of the Geneva compromise proposals, and his delegation would commit itself to the maintenance of the principles of that skilfully negotiated and highly sensitive consensus during its consideration by the General Assembly. The Special Committee's success was due to the great effort made by every delegation to complete a task of historic proportions, and his delegation wished to thank all for a truly commendable achievement.

Mr. GÜNEY (Turkey) said that his country, as a member of the Special Committee since its establishment, had always sought the formulation of a generally acceptable definition of aggression that would conform to the Charter and strengthen the organs responsible for the maintenance of international peace and security.

His delegation welcomed the adoption of the draft definition as a historic event in the codification and progressive development of international law. While its adoption by consensus was the outcome of mutual concessions, all delegations had demonstrated a spirit of understanding, co-operation and objectivity. His delegation, which warmly welcomed the consensus, accepted the draft definition ad referendum.

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(Mr. Güney, Turkey)

Turning to the text of the draft definition, he said he would confine himself to a few preliminary comments, while reserving his Government's right to state its final views at the twenty-ninth session of the General Assembly. While the definition was far from perfect, it was simple and well balanced. The preamble reaffirmed the basic provisions of the Charter as well as the provisions of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, one of the principles of which was that States should fulfil in good faith their obligations under the Charter, the generally recognized principles and rules of international law and international agreements.

With regard to article 1, his delegation would have preferred retention of the words "however exerted". A reference in those terms in that article to indirect aggression would have been desirable but, in view of the inclusion of paragraph (g) in article 3, his delegation, in a spirit of compromise, had not insisted on that point. Article 2, which was a very delicately balanced compromise between anteriority and aggressive intent, lay at the heart of the definition. With regard to article 3, it was particularly important to establish a complete definition dealing not only with direct aggression but also with indirect aggression, which was currently attaining an almost equally serious level; paragraph (g) of article 3 met that need. Article 4 established a mixed definition by stating that the acts enumerated in the preceding article were not exhaustive and preserving the power of the Security Council to determine that other acts constituted aggression under the provisions of the Charter. Article 6, which safeguarded the scope of the Charter, thus making it possible to overcome considerable difficulties, was a source of satisfaction to his delegation. In article 7, the reference to article 3 as a whole rather than to a specific paragraph of that article was, in his view, quite justified, while the text of article 7 as a whole was the result of compromise and long negotiation. His country had been one of the first to support the sacred right of self-determination. Article 8, taken from the Declaration on Friendly Relations, would facilitate future interpretation, application and comprehension of the definition.

In conclusion, he paid a warm tribute to the Chairman of the Special Committee and of the Contact Groups, as well as to the Director and staff of the Codification

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(Mr. Güney, Turkey)

Division. His delegation hoped that the adoption of the definition by the General Assembly would discourage any future aggressor and would facilitate the determination of acts of aggression and the implementation of measures against them.

Mr. STEEL (United Kingdom) expressed his delegation's pleasure and relief at the successful conclusion of a task begun some 50 years earlier. While his delegation would state its considered view of the draft definition at the twenty-ninth session of the General Assembly, he wished to comment briefly on his delegation's attitude to the exercise on which the Committee had been engaged, on the function expected of the draft definition and on a few of its provisions.

To a certain extent, his delegation still entertained some scepticism and apprehension with regard to the formulation of a formal definition of aggression. If the definition was not used and interpreted in good faith, and with fairness, common sense and realism, it might do more harm than good. However, the fact that those qualities had manifested themselves more and more during the recent sessions of the Committee inspired the necessary confidence that the definition would indeed serve the international community in good stead.

It was always necessary to remember just what the definition was. It was not the international equivalent of a piece of domestic legislation having binding force on all competent organs. Under the Charter, the Security Council was the competent organ to determine whether a threat to the peace, a breach of the peace or an act of aggression had been committed, or to refrain from making any such determination, and its discretion in that matter remained absolutely unfettered. Nothing in the definition could, or purported to, qualify that discretion which the Charter conferred. His delegation therefore viewed the definition as constituting valuable guidance to the Security Council - no less and no more - in performing its functions under Article 39 of the Charter.

Certain paragraphs of the preamble, for example the fourth, were of importance and should especially be borne in mind when considering the substantive provisions of the definition. His delegation also welcomed the insertion of the eighth preambular paragraph relating to the Declaration on Friendly Relations. There were some areas in which the contents of the draft definition overlapped with the contents of that Declaration, and the definition quite rightly made it clear that there was no intention to detract from or qualify the carefully formulated

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(Mr. Steel, United Kingdom)

provisions of the Declaration. This applied to a number of provisions in the definition including, for example, the sixth and seventh paragraphs of the preamble itself.

Article 1, which required little comment, was based substantially on Article 2, paragraph 4, of the Charter. The general agreement reached with regard to the deletion of the words "however exerted" was due to the fact that, though they were not wrong, they were, in the light of other provisions on indirect aggression, no longer required.

The way in which article 2 was formulated reflected the way in which the Security Council was required to carry out - and in fact carried out - its functions under Article 39 of the Charter. In other words, the Council took into account all the factors of the situation - of which the first use of armed force was an important piece of evidence, but by no means the sole or determinative one - before determining whether an act of aggression had indeed been committed. His delegation had been able to agree to the deletion from article 2 of the specific reference to "purposes" on the understanding that the reference to "other relevant circumstances" necessarily covered a reference to "purposes".

As to article 3, his delegation interpreted the opening words of the article, the text of which was at last reasonably satisfactory, to mean that the acts enumerated were merely typical examples of ways in which aggression could be committed, and could be considered as acts of aggression only if the Security Council so determined. With regard to subparagraph (a), it should be made clear that the reference to military occupation was intended to relate to such occupation resulting from an invasion or attack which itself constituted an act of aggression. As to subparagraph (b), his delegation did not object to the inclusion of the explanation of that paragraph in the report at the request of another delegation, though it perhaps stated the obvious. Subparagraph (d) gave rise to no problems, so far as his delegation was concerned, and the same was substantially true of the remaining paragraphs of the article, although it might wish to elaborate its views on some of them at the twenty-ninth session. His delegation could state that it regarded some of them as being no more than a partial illustration of matters dealt with more fully and more precisely in the Declaration on Friendly Relations.

Article 4 was unexceptionable. So too was article 5 the fact that the first

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paragraph was perhaps only a truism did not make it objectionable. The first sentence of the second paragraph adequately reflected the principles embodied in the Nuremberg Charter and repeated in the Declaration on Friendly Relations. That was as far as international law had gone in dealing with criminal liability in the field of aggression, and it was therefore right not to attempt a wider formulation. The second sentence of the second paragraph stated a proposition, not in the context of criminal law, with which all members could agree. The third paragraph of article 5 embodied a well-recognized principle of international law, and his delegation fully subscribed to it, as it had always done.

Article 6 spoke for itself, but its importance in the definition in emphasizing the overriding nature of the provisions of the Charter must never be underrated. Article 7 represented a fair compromise reached after a great deal of discussion. While his delegation still had some doubts about the relevance of such a provision in a definition of aggression, which ex hypothesi dealt with acts committed by one State against another, it did not wish to resist a reaffirmation in proper terms of the right of peoples to self-determination, freedom and independence, as derived from the Charter. His delegation interpreted the article as doing no more than emphasizing the propriety of the legitimate exercise of that right and of action taken by peoples forcibly deprived of it to resist such forcible deprivation and, in so doing, to seek and receive support from others.

Article 8, based on a corresponding provision in the Declaration on Friendly Relations, was a useful and valuable addition to the draft.

In conclusion, he wished to pay tribute to the Chairmen of the Special Committee and the Contact Groups for their patience, negotiating skill, legal acumen and, above all, their fine sense of what was both fair and possible, as well as to Ambassador Rossides of Cyprus, Ambassador Yasseen of Iraq (whose work had been so effectively carried forward by Mr. Al-Qaysi) and the late Ambassador Alcivar of Ecuador for the outstanding part they had played in the past work of the Special Committee.

Mr. Azud (Czechoslovakia) took the chair.

Mr. LA (Sudan) said that his delegation reserved the right to state its views in the General Assembly at its twenty-ninth session, at which time it would pay tribute to the Chairman and other members of the Committee.

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Sir Laurence McINTYRE (Australia) expressed his delegation's satisfaction and relief that the Special Committee had finally been able to reach by consensus an agreed definition of aggression. Since the Committee's inception in 1967, his delegation had been guided by the need for balance and precision on the one hand - especially having in mind the paramount responsibilities and functions of the Security Council - and for reasonable flexibility on the other if the United Nations was to reach agreement on a definition that would command the acceptance and respect of all its Members.

His delegation had always attached the greatest importance to the need for adoption of any definition of aggression by consensus; anything less than consensus would undermine its value. His delegation therefore hoped that the draft definition would be accepted unanimously by the General Assembly at its twenty-ninth session. Australia regarded the adoption of the definition as an important part of the process of orderly evolution of the principles of international law. It had sought a balanced definition which would be consistent with the Charter and which would at the same time take account of political realities. His delegation had been concerned, among other things, that on the crucial question of the right of peoples to self-determination there should not emerge an unbalanced definition which could be construed as exculpating States which committed acts of aggression by fomenting armed civil strife or by organizing or supporting armed bands or other forces in the territory of other States. His delegation had also been anxious that any reference to criminal responsibility should not be construed as implying individual responsibility. While the agreed definition was not ideal in every respect, there had necessarily been compromise all round in order to achieve a solution that had eluded the efforts of the international community for many decades.

His delegation had been gratified by the conduct of the work throughout the Special Committee's final session, at which there had been continuing evidence of widespread determination to reach an agreed definition. In that respect, he wished to pay particular tribute to the Chairman and the Rapporteur, and to acknowledge the extremely helpful role played by Mr. Lamprey of Ghana as mediator among differing approaches. His delegation was extremely gratified to have been involved in such an achievement after a history of frustration and failure extending over a period of some 50 years.

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Mr. MORKVED (Norway), associating himself with the tributes paid to the Chairman by earlier speakers, recalled the scepticism of several delegations during earlier years as to the utility of the Committee's work. He was pleased to note that in the draft definition adopted, the basic positions of all delegations had been met. The draft definition appeared to be as balanced and complete as possible, and his delegation hoped that it would command the support of the great majority of States, including the permanent members of the Security Council.

The outcome of the session was a new manifestation of the improved relations among States. It was to be hoped that the favourable international climate would also influence efforts relating to the codification of international law in other fields. His delegation reserved the right to present further comments and interpretations of the draft definition at the twenty-ninth session of the General Assembly.

Mr. WANG (Canada), expressing his delegation's satisfaction at the positive outcome of the Special Committee's work, said he wished to pay particular tribute to the Chairman and the Rapporteur for their efforts. It was not difficult to understand why a consensus had eluded the international community for over 50 years. The question of legal prohibitions regarding the use of force by States had been one of the most important and at the same time most controversial problems of international law, touching upon the vital interests of States and the foundations of international peace and security. The achievement of a consensus was due above all to a sense of realism in the Committee as to what could be demanded of a definition and the purposes that it might serve. The definition adopted, reflecting as it did compromise on all sides, inevitably opened the door to differing interpretations.

In past years, there had been an understandable tendency for delegations to seek formulations which would seem to place in a favourable or unfavourable light one or other of the sides in recent or current conflicts. The underlying approach had often been to seek a definition which was as restrictive as possible with regard to the use of force by certain States whose cause was not favoured, and yet as permissive as possible with regard to the use of force by other States whose cause was favoured. In the changing pattern of international relations over the years, there had been changes in the way in which States perceived particular

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(Mr. Wang, Canada)

threats or acts of force which were judged condemnable or laudable. Those changes were reflected in some of the changes of emphasis in various formulations submitted during the past 50 years.

The ambiguities in the present definition were therefore an inevitable reflection of the complexity of the real world of international relations and a reflection of a realistic desire to develop guidelines which would be generally acceptable and widely applied to future conflicts. As indicated in the preamble, the definition should be regarded as a formulation of basic principles as guidance for a determination as to whether an act of aggression had been committed in the light of all the circumstances of each particular case. It was clear from article 2 and other articles that nothing in the definition could prejudice the Security Council's ultimate discretion in the exercise of its responsibilities under the Charter for the maintenance of international peace and security.

The 29-year history of the United Nations had demonstrated that the Security Council had approached the question of such a determination with great care and great caution. In fact the Council had not hitherto arrived at a determination of aggression, although it had in one somewhat exceptional instance determined that an armed attack constituted a breach of the peace.

The Security Council, in the exercise of its discretion and in fulfilling its responsibility, had in practice adopted more the role of peace-maker than the role of judge pronouncing on guilt or innocence, legality or illegality. In conflict situations with deep historical roots and complex interactions between the parties, the Council had often, quite properly, avoided judgements which might be harmful to the task of terminating hostilities, restoring peace and promoting just and peaceful reconciliation. Nothing in the draft definition could be said to limit that important discretionary power.

While his delegation would reserve its detailed comments for the twenty-ninth session of the General Assembly, he wished to make a few preliminary comments on certain provisions. His delegation noted with satisfaction that article 3 (g), relating to armed bands, reflected acceptance of the thesis that the distinction between direct and indirect aggression was artificial. The determining criterion had been and was whether or not a sufficient degree of armed force had been used to amount to an act of aggression by the State to which such acts could be attributed.

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As to article 7, relating to self-determination, his delegation shared the view that nothing in the definition should result in any inference that its application could impede the right of peoples under colonial rule to self-determination in accordance with the Charter. He wished to reiterate, however, that his Government did not support the use of violence as a means of settling political conflicts or differences. His country supported the efforts of those engaged in the struggle for self-determination and human dignity. Accordingly, his Government interpreted the reference to struggle in article 7 as being struggle by peaceful means, and did not regard the formulation as condoning the use of force in situations other than in self-defence or other than in accordance with the Charter.

In general, his delegation considered that the definition was adequate, if not ideal. It safeguarded the discretionary authority of the Security Council, and provided the latter with flexibility rather than rigidity. It was in no way inconsistent with the Charter, and was in fact founded upon the Charter. It recognized the primary role of the Security Council in the maintenance of international peace and security. The definition did not prejudice the ability of the Security Council to make a finding of aggression or a threat to the peace or a breach of the peace, or to refrain from making such a finding. The definition enabled the Council to take account of all the relevant circumstances in any particular instance, including the intentions of the States concerned. The definition avoided being so general as merely to repeat the Charter, and yet avoided being so specific as to suggest that it was exhaustive. It was applicable to both direct and indirect uses of force, and embraced the prohibition under the Charter of the use of force, as well as the exceptions encompassed by the Charter. His delegation hoped that the definition would be found acceptable by the General Assembly and the permanent members of the Security Council.

Finally, his delegation attached great importance to the fact that the Committee's recommendations had been adopted by consensus. In matters of such importance, it would be meaningless to have a definition which did not reflect the consensus of the international community and which could be brushed aside because of its unacceptability to one or more of the permanent members of the Council or to a significant segment of the international community. His delegation therefore hoped that the definition would be looked upon in the same spirit in the forthcoming

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session of the General Assembly. If after seven years of debate and negotiation, amendments were introduced which could upset the fundamental balance of the definition, other delegations, including his own, might see no alternative but to propose other amendments, thus upsetting the carefully-devised and hard-won balance and consensus which would enable the definition to become a useful contribution to international law and to the maintenance of international peace and security.

Mr. KOLESNIK (Union of Soviet Socialist Republics) expressed satisfaction with the results of the Special Committee's work; the draft definition of aggression was generally regarded as an acceptable compromise, and its adoption by the General Assembly would represent a victory for diplomacy of peace and all the forces of peace. The definition would help the Security Council in its difficult task of determining the existence of acts of aggression and taking appropriate action under the Charter. Like all compromises, the draft definition did not completely satisfy certain delegations. During the seven years of work by the Special Committee, the Soviet delegation, actively participating in the formulation of a definition of aggression, had consistently upheld the United Nations Charter and had constantly sought to insert wording consistent with the Charter. His delegation reserved the right to present its definitive views at the twenty-ninth session of the General Assembly; in the meantime he would offer a preliminary evaluation of the definition, basing himself on the Charter.

The preamble of the draft definition reflected a political will to see an end to wars of aggression and the unlawful use of force. Without wishing to minimize the importance of the other provisions of the preamble, he stressed the paramount importance of the sixth, seventh and ninth paragraphs.

Article 1 was a concise version of the Charter provisions regarding the illegal use of armed force. In a spirit of compromise, his delegation had agreed to the use of the word "sovereignty" in the text, on the understanding that, in the context of the article, violation of the sovereignty of a State meant the use of armed force against territorial integrity and political independence.

Article 2 was a key provision which had given rise to wide disagreement. There had been much discussion whether to include the phrase "in contravention of the Charter", and his delegation had maintained that unless those words were included, State acts committed in strict conformity with the Charter of the United

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(Mr. Kolesnik, USSR)

Nations could be regarded as acts of aggression within the meaning of the article. There must be no room for misunderstandings in such an important document as the definition of aggression, and the opposing views put forward by some delegations were unconvincing. The Charter definitely sanctioned the use of force in well-known specific cases, and any disregard of its provisions would not help the cause of peace. The Security Council was the only United Nations organ empowered to determine the existence of acts of aggression. His delegation was pleased that that fact had been brought out in the definition. It had also wanted to ensure that the wording of the definition should not leave open the possibility of branding an innocent party as an aggressor. That was the idea underlying the statement in article 2 that the Security Council might in conformity with the Charter conclude that a determination that an act of aggression had been committed would not be justified in the light of other circumstances which might be taken into account by the Security Council. Aggression was a grave international crime, and in investigating any armed conflict, the Security Council must carefully analyse all the circumstances, including their nature and the seriousness of their consequences for the course of peace. His delegation attached great importance to the intentions of the States parties to a conflict. Some delegations had not wished to see the question of intent dealt with in article 2, but his delegation felt that the Security Council, if it was to adopt correct decisions, must analyse the intentions of the States involved, since a careful study of intentions would make it easier for the Council to identify the true aggressor.

With regard to article 3, he stressed that nothing in the wording of paragraph (g) could be construed as casting doubt on the legitimacy of national liberation struggles, guerrilla warfare or resistance movements. There was a certain connexion between that paragraph and article 7. His delegation attached great weight to the fact that not a single delegation, during the drafting of the definition, had expressed opposition to the right of peoples to self-determination. But it was no longer sufficient to recognize that right without also recognizing the elements comprised in it: the right of peoples to take up arms against the colonialists. Peoples engaged in that struggle had a right to seek and receive political and material aid; not only was the armed struggle of colonial peoples and peoples under the domination of racist régimes legitimate, but the aid which they received from many States was equally so.

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(Mr. Kolesnik, USSR)

One of the important elements of the draft definition concerned the question of responsibility for aggression. His delegation had agreed as a compromise that article 5 should be reworded to take account of the provisions of article 6 of the consolidated text; nevertheless, he felt that there were no solid grounds for the distinction made between "a war of aggression" and "aggression" in article 5. Not only a war of aggression but any other act of aggression was a crime against international peace. Any act of aggression must engage international responsibility. His delegation's concept of responsibility for aggression was based in particular on the charter of the Nuremberg Military Tribunal; there was no difference between "international responsibility and "responsibility under international law", since the former presupposed the latter, i.e. responsibility for acts designated as crimes in relevant international legal instruments.

With regard to article 5, he agreed that no consideration of whatever nature could serve as a justification for aggression. The Special Committee had not intended to extend the concept of aggression, much less replace it by the concept of interference by a State in the domestic affairs of another State. Such interference was certainly prohibited under contemporary international law, but it could not be placed on the same footing as aggression.

The international legal doctrine followed by the USSR was based on the fact that the United Nations Charter was a code of conduct for sovereign States. Strict compliance with the Charter was necessary if the aims of the Organization, namely, the establishment and maintenance of international peace, were to be achieved, and it was for that reason that his Government regarded article 6 as being of such significance.

The definition of aggression was the culmination of unceasing efforts by the Government of the USSR. Lenin, the founder of the Soviet State, had proclaimed as the Soviet ideal an end to war, peace between peoples and the cessation of pillage and violence. The Soviet Government had put forward a definition of aggression in 1933, and since that time relations between peoples had become more friendly through the application of the principle of peaceful coexistence, but the structure of peace was not yet complete. In conclusion, he praised the part played by the third world countries in the preparation of the draft definition of aggression and paid tribute to the Chairman and officers of the Special Committee.

Mr. Broms (Finland) resumed the Chair.

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Mr. NAGGAGA (Uganda) congratulated the Chairman and officers of the Special Committee and the Secretariat staff who had assisted its work. He accepted the definition of aggression in principle, while stating that his Government's views would be fully developed at the twenty-ninth session of the General Assembly.

Mr. AZUD (Czechoslovakia), recalling that Czechoslovakia had participated since 1953 in the task of defining aggression, welcomed the positive results which had been achieved. He thanked the Chairman of the Special Committee and its officers, the Chairmen of the Contact Groups and the Secretariat staff. His delegation would make its views known at the twenty-ninth session of the General Assembly, where he hoped that the draft definition would be adopted by consensus.

Mr. MESLOUB (Algeria) was gratified that owing to the spirit of co-operation shown by its members, the Special Committee had been able to arrive at a definition of aggression; the text represented a compromise which naturally did not fully reflect the views and hopes of all, but his delegation had accepted it while reserving the right to set forth its Government's definitive views at the twenty-ninth session of the General Assembly.

With respect to article 7 in particular, it should be noted that the exercise of the right to self-determination must be placed on the same footing as self-defence and included not only the right of peoples subject to any form of alien domination to resort to armed force, but also the right and the duty of all States Members of the United Nations to assist those peoples.

Articles 2, 5 and 7 raised some doubts, and his delegation considered that it had accepted the definition ad referendum because it had not been able to consult its Government on the matter.

However, it was to be hoped that the definition worked out by the Special Committee would be adopted by the General Assembly, for it was a worthy contribution even though it would serve only as a safeguard when used by the competent organs of the United Nations.

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Mr. CORREA (Mexico) was pleased that the Special Committee had been able to carry out the difficult task which had been entrusted to it. The definition represented a delicate compromise between the three drafts which had served as the basis for the Special Committee's work. While it was too early to make an exhaustive analysis of the text, his delegation reserved the right to do so at the twenty-ninth session of the General Assembly.

Some remarks could, however, be made on the Mexican delegation's interpretation of some of the basic provisions. The difficult negotiations conducted for so many years on article 2, and particularly at the present session, had left no doubt that the words "although" in English, "aunque" in Spanish and "bien que" in French separated two quite distinct questions, one of principle and the other of procedure. The first part of article 2 established a presumption that could be overthrown only by a negative decision of the Security Council, and that presumption would prevail if the Council could not establish whether or not an act of aggression had been committed. If that presumption had been made subject to a decision of the Security Council, as would have been the case if the words "provided that" in English, "siempre y cuando" in Spanish and "étant entendu que" in French had been used, the balance between two opposing positions would have been altered and the principle of anteriority would virtually have been rendered void. In addition, he welcomed the fact that all mention of the intent of States employing armed force in violation of the Charter had been deleted. The intentions of States had no juridical relevance within the context of the definition, which did not authorize the Security Council to invoke the intention of a State in order to overthrow the presumption established by the first part of article 2. The expression "other relevant circumstances" could not be interpreted as enlarging the competence of the Security Council under Article 39 of the Charter, for the notion of intent was totally foreign to the Charter and contrary to the system of collective security which it established.

Article 3 (g) could under no circumstances be interpreted as adding to the number of situations in which the right of self-defence in accordance with the Charter could be invoked. It would be counterproductive if a State could use that provision to invoke the right of self-defence if it used armed force against another State when acts of subversion or terrorism took place in its territory.

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(Mr. Correa, Mexico)

The definition of aggression, instead of discouraging the use of armed force, would then serve to legitimize it. The acts contemplated in article 3 (g) could be characterized as acts of aggression only if their gravity was such as to make them equivalent to the other acts enumerated in that article and if the participation of another State was fully established. It was for that reason that the words "o de su parte" in the final version of the Spanish text had been replaced by the words "o en su nombre" so as to bring it more into line with the English text.

In connexion with article 5, there was no legal distinction between a war of aggression and an act of aggression. The term "war" was a military and not a juridical term. The fact that the text did not expressly say that aggression was a crime against peace could not be construed as authorizing a contrario interpretation. The negotiations made it clear that, although it was not possible to deny that the commission of an act of aggression gave rise to individual responsibility under international law, it was not possible to establish the exact scope of that responsibility.

His delegation was pleased that the Special Committee had accomplished the task entrusted to it. He recognized, however, that further problems would arise in the General Assembly, since the text represented a compromise and was therefore completely satisfactory neither to his own nor to other delegations.

Mr. HASSOUNA (Egypt) said he wished to express his satisfaction and to recall that his delegation had always attached great importance to the question of defining aggression. In 1967, when that question had once again been brought to the forefront of international discussion, his delegation had strongly supported the idea of formulating a definition, not only because Egypt strictly adhered to the principles of the Charter which prohibit the use of force against the territorial integrity or political independence of States but also because the situation in the Middle East was a living example of the subject-matter and a concrete application of the legal principles formulated in the definition.

While welcoming the adoption of a definition in the preparation of which his delegation had participated, he reserved the right of his Government to state its definitive position at the twenty-ninth session of the General Assembly and wished now to reaffirm certain positions of principle.

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(Mr. Hassouna, Egypt)

Firstly, the fact that the definition included the acts enumerated in article 3 (g) could in no way prejudice the right of peoples to fight for their right of self-determination, freedom and independence or the right of other States to assist those peoples in their just struggle.

Secondly, article 7 should have expressly stated that the peoples under colonial or racist régimes or other forms of alien domination had the right to fight for their freedom by all the means at their disposal, including the use of force, as the United Nations had recognized in several resolutions.

Thirdly, article 5, instead of providing that no territorial acquisition or special advantage resulting from aggression was or should be recognized as lawful, should have reaffirmed the fundamental legal principle that there could be no such territorial acquisition or special advantage as a result of the mere threat or use of force. That would have been in accordance with the Charter, the Declaration on Friendly Relations and the Declaration on the Strengthening of International Security and would have prevented potential aggressors from taking advantage of the use of force, even if that had not been defined as an act of aggression.

He hoped that the adoption by the General Assembly of the final text of a definition of aggression would open the way for the codification of other areas of international law and would strengthen the role of the United Nations in maintaining international peace and security and protecting the sovereignty, territorial integrity and political independence of Member States.

Mr. CHARLES (Haiti) was gratified that, despite difficulties which had sometimes seemed insurmountable, the Special Committee had arrived at a compromise formula, even if it was not completely satisfactory to all. While endorsing the text which had been adopted, he reserved the right of his Government to analyse it in greater detail - in the light of any amendments which might be submitted - at the twenty-ninth session of the General Assembly.

Mr. SANDERS (Guyana), Rapporteur, expressed his gratitude to the members of the Committee, whose spirit of co-operation had made possible a compromise that had seemed virtually unattainable.

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The CHAIRMAN, speaking as the representative of Finland, said that his delegation regarded the definition of aggression adopted by the Special Committee as acceptable. Finland, as a small neutral country, was particularly concerned with the development of a more rational and peaceful international order and believed that the result achieved would greatly contribute towards this end.

The successful work of the Committee had been possible mainly due to the present international situation and it reflected the spirit of true détente which took duly into account not only the interests of the big Powers but also those of the medium and small countries. The achievement also was a proof of existence of conditions for a dialogue between the developing and developed world.

Speaking as Chairman and on behalf of the Bureau, he thanked all those who had participated in the work of the Special Committee and said that the very difficulty of the task had inspired them to give of their best as experts.

CLOSURE OF THE SESSION

The CHAIRMAN declared the seventh session of the Special Committee on the Question of Defining Aggression closed.

The meeting rose at 7.15 p.m.