

UNITED



NATIONS

**REPORT OF THE
1956 SPECIAL COMMITTEE
ON THE QUESTION OF
DEFINING AGGRESSION**

8 October—9 November 1956

GENERAL ASSEMBLY

OFFICIAL RECORDS : TWELFTH SESSION

SUPPLEMENT No. 16 (A/3574)

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NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

Note by the Secretary-General

The report of the 1956 Special Committee on the Question of Defining Aggression was circulated in mimeographed form as document A/AC.77/L.13. The General Assembly, at its 577th plenary meeting on 15 November 1956, on the report of the General Committee (A/3350) decided to postpone until the twelfth session its consideration of the question of aggression and of the two related items concerning the draft Code of Offences against the Peace and Security of Mankind and international criminal jurisdiction. The report of the 1956 Special Committee is therefore now reproduced as Supplement No. 16 to the Official Records of the Twelfth Session of the General Assembly.

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I. INTRODUCTION

1. Background of the question of defining aggression

1. Under resolution 378 B (V) of 17 November 1950, the General Assembly decided to refer a proposal of the Union of Soviet Socialist Republics concerning the definition of the notion of aggression (A/C.1/608)^{1/} and all the records of the First Committee dealing with that question to the International Law Commission, so that the latter might take them into consideration and formulate its conclusions as soon as possible.

2. The International Law Commission studied the question at its third session and dealt with it in chapter III of its report on the work of that session.^{2/}

3. At its 341st plenary meeting on 13 November 1951, the General Assembly decided to include the report of the International Law Commission in the agenda of its sixth session. At its 342nd plenary meeting on the same date, the Assembly referred the item to the Sixth Committee for study and report.

4. The Sixth Committee examined the question of defining aggression at its 278th to 295th meetings held from 5 January to 22 January 1952.^{3/}

5. At its 368th plenary meeting on 31 January 1952, the General Assembly adopted resolution 599 (VI), the text of which is as follows:

"The General Assembly,

"Considering that, under resolution 378 B (V) of 17 November 1950, it referred the question of defining aggression, raised in the draft resolution of the Union of Soviet Socialist Republics to the International Law Commission for examination in conjunction with matters which were under consideration by that Commission,

"Considering that the International Law Commission did not in its report furnish an express definition of aggression but merely included aggression among the offences defined in its draft Code of Offences against the Peace and Security of Mankind,

"Considering that the General Assembly, on 13 November 1951, decided not to examine the draft Code at its sixth session but to include it in the provisional agenda of its seventh session,

"Considering that, although the existence of the crime of aggression may be inferred from the circumstances peculiar to each particular case, it is nevertheless possible and desirable, with a view to ensuring international peace and security and to developing international criminal law, to define

aggression by reference to the elements which constitute it,

"Considering further that it would be of definite advantage if directives were formulated for the future guidance of such international bodies as may be called upon to determine the aggressor,

"1. Decides to include in the agenda of its seventh session the question of defining aggression;

"2. Instructs the Secretary General to submit to the General Assembly at its seventh session a report in which the question of defining aggression shall be thoroughly discussed in the light of the views expressed in the Sixth Committee at the sixth session of the General Assembly and which shall duly take into account the draft resolutions and amendments submitted concerning this question;

"3. Requests States Members, when transmitting their observations on the draft Code to the Secretary-General, to give in particular their views on the problem of defining aggression."

6. In conformity with that resolution, the Secretary-General submitted a report (A/2211) to the General Assembly which decided, at its 380th plenary meeting on 16 October 1952, to include in the agenda of its seventh session the following item: "Question of defining aggression: report by the Secretary-General". The question was referred to the Sixth Committee which dealt with it at its 329th to 347th meetings held between 19 November and 11 December 1952.^{4/}

7. At its 408th plenary meeting on 20 December 1952, the General Assembly adopted resolution 688 (VII) reading as follows:

"The General Assembly,

"Having regard to its resolution 599 (VI) of 31 January 1952,

"Considering that the discussion of the question of defining aggression at the sixth and seventh sessions of the General Assembly and in the International Law Commission has revealed the complexity of this question and the need for a detailed study of:

"(a) The various forms of aggression,

"(b) The connexion between a definition of aggression and the maintenance of international peace and security,

"(c) The problems raised by the inclusion of a definition of aggression in the Code of Offences against the Peace and Security of Mankind and

^{1/} Official Records of the General Assembly, Fifth Session, Annexes, agenda item 72, p.4.

^{2/} Ibid., Sixth Session, Supplement No.9 (A/1858).

^{3/} For the report of the Sixth Committee, see Ibid., Annexes, agenda item 49, pp. 15-17, document A/2087.

^{4/} The report of the Secretary-General (A/2211) as well as the comments received from Governments (A/2162 and Add.1) and the report of the Sixth Committee (A/2322) may be found in Official Records of the General Assembly, Seventh Session, Annexes, agenda item 54.

by its application within the framework of international criminal jurisdiction,

"(d) The effect of a definition of aggression on the exercise of the jurisdiction of the various organs of the United Nations,

"(e) Any other problem which might be raised by a definition of aggression,

"Considering that continued and joint efforts shall be made to formulate a generally acceptable definition of aggression, with a view to promoting international peace and security and to developing international law,

"1. Decides to establish a Special Committee of fifteen members, each representing one of the following Member States: Bolivia, Brazil, China, Dominican Republic, France, Iran, Mexico, Netherlands, Norway, Pakistan, Poland, Syria, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, to meet at the Headquarters of the United Nations in 1953;

"2. Requests the said Special Committee:

"(a) To submit to the General Assembly at its ninth session draft definitions of aggression or draft statements of the notion of aggression;

"(b) To study all the problems referred to above on the assumption of a definition being adopted by a resolution of the General Assembly;

"3. Requests the Secretary-General to communicate the Special Committee's report to Member States for their comments and to place the question on the provisional agenda of the ninth session of the General Assembly."

8. In conformity with that resolution, the 1953 Special Committee on the Question of Defining Aggression met at United Nations Headquarters, New York, from 24 August to 21 September 1953.

9. The Committee prepared a detailed report^{5/} in which were discussed the following questions: (a) the various types of definitions of aggression; (b) the various forms of aggression; (c) the connexion between a definition of aggression and the maintenance of international peace and security; (d) the problems raised by the inclusion of a definition of aggression in the Code of Offences against the Peace and Security of Mankind and by its application within the framework of international criminal jurisdiction; and (e) the effect of a definition of aggression on the exercise of the jurisdiction of the various organs of the United Nations. Several texts of definitions of aggression were submitted to the Committee, which decided, however, unanimously not to put these texts to a vote but to transmit them as they stood to Member

^{5/} Official Records of the General Assembly, Ninth Session, Supplement No. 11 (A/2638).

States and to the General Assembly. The texts were therefore annexed to the Committee's report.

10. The report of the 1953 Special Committee was circulated by the Secretary-General to the Member States for their comments; such comments were received from eleven Governments.^{6/}

11. The question was included in the provisional agenda of the ninth session of the General Assembly, and, at its 477th plenary meeting, on 24 September 1954, the Assembly decided to place the following items on the agenda of the session: "Question of defining aggression: report of the Special Committee on the Question of Defining Aggression". At its 478th plenary meeting on 25 September, the Assembly referred the item to the Sixth Committee.

12. The Sixth Committee studied the item from its 403rd to 420th meetings held between 14 October and 10 November 1954.^{7/}

13. On the proposal of the Sixth Committee, the General Assembly, at its 504th plenary meeting on 4 December 1954, adopted resolution 895 (IX) which reads as follows:

"The General Assembly,

"Recalling its resolutions 599 (VI) of 31 January 1952 and 688 (VII) of 20 December 1952,

"Considering that the discussions to which the question of defining aggression gave rise at the ninth session of the General Assembly have revealed the need to co-ordinate the views expressed by the States Members,

"1. Decides to establish a Special Committee comprising one representative of each of the following States Members: China, Czechoslovakia, Dominican Republic, France, Iraq, Israel, Mexico, Netherlands, Norway, Panama, Paraguay, Peru, Philippines, Poland, Syria, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Yugoslavia, which will meet at United Nations Headquarters in 1956;

"2. Requests the Special Committee to submit to the General Assembly at its eleventh session a detailed report followed by a draft definition of aggression, having regard to the ideas expressed at the ninth session of the General Assembly and to the draft resolutions and amendments submitted;

"3. Decides to place the question on the provisional agenda of the eleventh session of the General Assembly."

^{6/} Ibid., Annexes, agenda item 51, document A/2689 and Corr.1 and Add. 1.

^{7/} For the report of the Sixth Committee (A/2806) and the draft resolutions submitted to that Committee, see Ibid.

2. Organization of the work of the Committee

14. In pursuance of resolution 895 (IX) the 1956 Special Committee on the Question of Defining Aggression met at United Nations Headquarters, New York, and held nineteen meetings between 8 October and 9 November 1956.

15. All the States designated under the said resolution, except Panama, were represented on the Committee. The following is a list of the representatives and alternate representatives of the attending States: China: Mr. Yu-Chi Hsueh; Czechoslovakia: Mr. Karel Petrželka, Mr. Dusan Spáčil; Dominican Republic: Mr. Enrique de Marchena, Mr. Ambrosio Alvarez Aybar; France: Mr. Charles Chaumont; Iraq: Mr. Hassen al Chalabi; Israel: Mr. Jacob Robinson, Mr. Arthur C. Liveran; Mexico: Mr. Rafael de la Colina, Mr. Enrique Bravo Caro; Netherlands: Mr. Bernard V. A. Röling; Norway: Mr. Per Vennemo; Paraguay: Mr. Pacifico Montero de Vargas; Peru: Mr. Manuel F. Mañrúa; Philippines: Mr. Felixberto M. Serrano; Poland: Mr. Jerzy Michalowski; Syria: Mr. Rafik Asha, Mr. Jawdat Mufti; Union of Soviet Socialist Republics: Mr. Platon Dmitrievich Morozov; United Kingdom of Great Britain and Northern Ireland: Mr. Patrick L. Bushe-Fox; United States of America: Mr. William Sanders; Yugoslavia: Mr. Djura Nincic, Mr. Aleksandar Bozovic.

16. The Committee elected the following officers:

Chairman: Mr. Enrique de Marchena (Dominican Republic);
Vice-Chairman: Mr. Karel Petrželka (Czechoslovakia);
Rapporteur: Mr. Bernard V. A. Röling (Netherlands).

17. Three proposals for a working plan were submitted to the Committee. The proposal introduced by the Philippines read as follows:

"The Special Committee;

"Considering that resolution 895 (IX) of the General Assembly has established this Special Committee 'to co-ordinate the views expressed by States Members' and to submit to the eleventh session of the General Assembly: (1) a detailed report; and (2) a draft definition of aggression,

"Considering that, in complying with the aforementioned terms of reference, this Special Committee is enjoined to take regard of 'the views expressed at the ninth session of the General Assembly and the draft resolutions and amendments submitted',

"Decides;

"A. In compliance with the first term of reference,

"1. To request the Rapporteur to prepare the detailed report, bearing in mind the need for co-ordination of;

"(a) The views expressed by States Members at the ninth session of the General Assembly. To this end, and to the extent that they may have any bearing thereto, he may examine: (1) the views expressed in, and the action taken by, the International Law Commission during its third session (A/1858, pp.8-10); (2) the report of the Secretary-General to the seventh session of the General Assembly (A/2211); and (3) the comments of States Members on the report of the fifteen-nation Special Committee (A/2689 and Corr.1 and Add.1);

"(b) The views expressed during the meetings of this Special Committee;

"2. To request the Secretariat to lend its assistance to the Rapporteur; and

"3. To request the Rapporteur to submit to this Special Committee, for its consideration and approval, the draft of the report not later than one week before the closing of the session of the Special Committee;

"B. In compliance with the second term of reference,

"1. To consider a draft definition of aggression taking into account the draft resolutions and amendments submitted and, in particular:

"(a) The views expressed by States Members and views subsequently expressed in elaboration, modification, or revision thereof;

"(b) The point or points of consensus or near consensus of views;

"(c) The point or points of divergence;

"2. To draft a definition of aggression on the basis of the consensus or near consensus of views;

"3. To deal with the controversial points along the following alternatives:

"(a) Exclude from the definition the controversial points for future determination by the General Assembly; or

"(b) Without expressly excluding or including them, formulate a general statement whereby the Security Council or any other competent international body shall decide, in appropriate cases, whether any particular act or acts not falling within the definition, constitute aggression or not; and/or

"(c) Insert a proviso affirming the authority of the Security Council, the definition of aggression notwithstanding, to deal with the cases provided for in Article 39 and other relevant provisions of the Charter".

18. The Netherlands submitted the following proposal:

"The Special Committee,

"Considering that resolution 895 (IX), after having stated that the discussions to which the question of defining aggression gave rise at the ninth session of the General Assembly have revealed the need to co-ordinate the views expressed by the States Members, established this Special Committee to submit a detailed report followed by a draft definition of aggression having regard to the ideas

expressed at the ninth session and to the draft resolutions and amendments submitted,

"Considering that from this resolution it follows that to solve the question of defining aggression the different views of the States Members need to be co-ordinated, and that it is the task of this Committee to explore the possibility of such co-ordination,

"Decides:

"1. To request the Rapporteur to prepare a detailed report about the ideas expressed at the ninth session of the General Assembly, this detailed report to be submitted to this Committee for its convenience as soon as possible;

"2. To discuss the possibility of co-ordinating the views of the States Members as expressed in the discussions at the ninth session, in the draft definitions submitted to the Sixth Committee at that session, and in the discussions of this Special Committee;

"3. To determine whether or not the outcome of these discussions warrants the drafting of a definition of aggression and, in case the answer is in the affirmative, to draft a definition of aggression;

"4. To approve a detailed report about the work of this Committee."

19. The following proposal was submitted by Iraq:

"The Special Committee,

"Considering that, by its resolution 895 (IX), the General Assembly requested the Special Committee to submit a detailed report followed by a draft definition of aggression at its eleventh session,

"Considering that the Special Committee has not yet adopted a final working plan,

"Decides:

"1. To adopt as a working plan for the first part of its task the proposals contained in part A of the working plan proposed by the Philippine delegation;

"2. To perform the second part of its task in two stages:

"(a) Special discussion of the various draft definitions of aggression submitted to the Committee;

"(b) Co-ordination of the different views expressed during the general debate and the special discussion. For this purpose the Committee decides to establish a sub-committee to co-ordinate the views of the various delegations and, if possible, to draft one or more definitions of aggression within a specified period."

20. The proposals for a working plan were representative of two different trends in the Committee with respect to the interpretation of its terms of reference. One point of view, which found expression in the working plans of the Philippines and Iraq, was that, as the Committee had been requested by the General Assembly to draft a definition of aggression, its primary task was, by co-ordination of

views and elimination of controversial points, to arrive at a definition which, as a common denominator, would be acceptable to a substantial majority of Member States. According to another opinion, which formed the basis of the Netherlands plan of work, the Committee should first examine the possibilities of co-ordinating the views expressed by Member States and thereafter proceed to the drafting of a definition of aggression if this preliminary study indicated that a useful and widely acceptable definition could be achieved.

21. The Committee decided not to vote on the three working plans, but to adopt a proposal submitted by the representative of Poland, to the effect that the Committee, after a general exchange of views, should embark upon a study and discussion of the various draft definitions before it, and thereafter decide on its further procedure.

22. The Committee had at its disposal an extensive documentation on the question of defining aggression, in particular the report of the International Law Commission on its discussion of the problem^{8/}; the report of the Secretary-General and the views of Governments on the question^{9/}; the report of the 1953 Special Committee^{10/}; the observations of Governments on that report^{11/}; the relevant reports of the Sixth Committee at the sixth,^{12/} seventh^{13/} and ninth^{14/} sessions of the General Assembly; and the draft definitions submitted by delegations at the ninth session.^{15/} At the request of the Special Committee, the Secretariat prepared a working paper (A/AC.77/L.6) reproducing a number of draft definitions selected from those contained in this documentation. Since these draft definitions were referred to during the discussions, the working paper is reproduced as annex I to the present report.

23. The USSR and Paraguay reintroduced in the Committee (A/AC.77/L.4 and A/AC.77/L.7 respectively) the draft definitions which they had submitted at the ninth session of the General Assembly (A/C.6/L.332/Rev.1 and A/C.6/L.334/Rev.1 respectively). At the request of the representative of Peru, the draft definition submitted by Iran and Panama at the ninth session (A/C.6/L.335/Rev.1) was also circulated as document A/AC.77/L.9. Mexico presented a working paper (A/AC.77/L.10) which incorporated the Mexican proposal made before the 1953 Special Committee (A/AC.66/L.8). Written drafts were further submitted by Iraq (A/AC.77/L.8/Rev.1)^{16/} and jointly by the Dominican Republic, Mexico, Paraguay and Peru

^{8/} Official Records of the General Assembly, Sixth Session, Supplement No. 9 (A/1858).

^{9/} Ibid., Seventh Session, Annexes, agenda item 54, documents A/2211 and A/2162 and Add.1.

^{10/} Ibid., Ninth Session, Supplement No. 11 (A/2638).

^{11/} Ibid., Annexes, agenda item 51, document A/2689 and Corr.1 and Add.1.

^{12/} Ibid., Sixth Session, Annexes, agenda item 49, document A/2087.

^{13/} Ibid., Seventh Session, Annexes, agenda item 54, document A/2322.

^{14/} Ibid., Ninth Session, Annexes, agenda item 51, document A/2806.

^{15/} Ibid.

^{16/} The revised text, which incorporates changes of form only, was submitted after the discussion of the original draft (A/AC.77/L.8) had been completed.

(A/AC.77/L.11). The texts of these drafts are reproduced in annex II of the present report. In the course of the debate, the representative of the Netherlands also suggested for discussion a tentative formulation which is reproduced below in paragraph 208. It was the understanding of the Committee that besides these documents other draft definitions included in the documentation before the Committee could be taken into consideration.

24. The Committee decided not to vote on the draft definitions before it, but to transmit them with the present report to the General Assembly.

25. The Committee trusts that its work will constitute a useful contribution towards the solution of the problem of defining aggression. Many representatives expressed the hope that the development of friendly international relations would make possible in the future the formulation of a generally acceptable definition. At the last meeting the representative of the

Philippines suggested that, should the General Assembly meet the same difficulties as the Committee in co-ordinating views regarding the definition of aggression, the Assembly might concentrate on drawing up a declaration on aggression.

26. In accordance with its terms of reference, the Committee in the course of its work took into consideration primarily the ideas expressed at the ninth session of the General Assembly. A survey of these ideas is made in section II of the present report.

27. The views expressed during the discussions in the present Special Committee are set forth in section III below. In the first part of the section are summarized the opinions expressed in the Committee regarding some of the general problems connected with the formulation of a definition of aggression, while the second part contains the observations made by the representatives concerning the various draft definitions before the Committee.

II. SURVEY OF IDEAS EXPRESSED AT THE NINTH SESSION OF THE GENERAL ASSEMBLY

A. Points of view: possibility and desirability of a definition

28. In the course of the meetings of the Sixth Committee during the ninth session of the General Assembly, some eight representatives expressed the opinion that a definition of aggression was impossible and/or undesirable. Other representatives, numbering about six, doubted the possibility and/or desirability of a definition, while a third group, about twenty-six in number, considered a definition both possible and desirable. Classification of the several standpoints taken during the discussions is not easy, for reservations were often made and specific conditions presupposed. Some representatives classified in this third group declared that they supported the adoption of a generally acceptable definition ("generally acceptable" meaning acceptable to all Members, to most Members, or to a two-thirds majority including all or most of the permanent members of the Security Council); others, classified in the first or second group, declared that they opposed the adoption of a definition for the very reason that, in their opinion, a generally acceptable definition could not be found at the present time.

29. The third group of delegations which were in favour of a definition was not a homogeneous group. The delegations constituting the group differed in opinion as to the function, the content and the form of a definition, as will appear in the following sections.

30. Representatives of Member States in the first group presented the following general arguments in

favour of their negative opinion: the international situation was not sufficiently propitious to reach a generally acceptable formula; acceptance by the permanent members of the Security Council was essential, but not assured; a definition might be misused against a State entitled to use force in self-defense; a would-be aggressor could distort a definition and take advantage of loopholes; discussion of a definition in the Security Council or the General Assembly on critical occasions might cause delay; no definition would be binding on the Security Council or Member States; a definition might be applied in an automatic fashion without due regard to circumstances; a general definition would leave important concepts like self-defense unelaborated; a list of examples, on the other hand, would single out certain kinds of aggression for special emphasis.

31. Some representatives who took a positive stand as to the possibility and desirability of a definition founded their opinion on General Assembly resolution 599 (VI)^{17/} by which, in their view, the question had already been settled. A distinction was made by some delegations between the legal and the political possibility of a definition: the legal possibility had been decided upon by the Assembly, whereas the political possibility still had to be demonstrated.

32. Other arguments presented in favour of a definition will be found in the following sections.

^{17/} See para 5, above.

B. Functions of a definition

(a) Guidance for United Nations organs

33. One of the benefits to be derived from a definition of aggression was, in the opinion of a number of representatives, the guidance it would provide to United Nations organs in the interpretation and application of the Charter. That guidance, in their view, would, in

particular, consist in facilitating the identification of an aggressor and in avoiding arbitrariness in decisions designed to carry out the Organization's task of safeguarding international peace.

34. Some representatives emphasized that a definition would give mere guidance and lack any binding

force; others stressed, however, the great persuasive authority of a definition adopted by a large majority of the General Assembly.

35. Some representatives dismissed the idea of actual guidance of United Nations organs by a definition of aggression. They considered a definition useless to that end and recalled the Security Council's freedom of decision, which a recommendation of the Assembly could not impair.

36. The question of determining which organs were to be guided by a definition gave rise to some observations. Some criticized a USSR proposal (A/C.6/L.352/Rev.1)^{18/} to recognize only the Security Council as the competent organ to deal with aggression, whereas under resolutions 377 A (V) the Assembly was also competent in cases where the Council was unable to act. Others thought that, under the Charter, the Council was the only organ whose right and duty it was to determine the aggressor, and that to attribute to any other organ the power to determine the aggressor was to violate the Charter.

37. Many representatives held the opinion that a definition of aggression would facilitate the tasks of the United Nations of maintaining international peace and security and of preventing or deterring aggression.

38. It was emphasized that a definition of aggression would contribute to the consolidation of the United Nations security system, even if the definition should contain a special provision recognizing the freedom of the competent United Nations organs to determine that acts not mentioned in the definition constituted aggression. Some representatives maintained that the need for such a provision showed the small significance which a definition of aggression would have as a guide for United Nations organs.

(b) Function of the definition in relation with Article 51 of the Charter

39. Some delegations held that a definition of armed attack, as the term is used in Article 51 of the Charter, would contribute to the maintenance of peace and security. They considered that such a definition was essential for the proper regulation of the use of force permitted under the Charter. Different opinions existed as to the scope of the right of self-defence, and a definition should make it clear in what cases a State had the right to go to war in self-defence. Moreover, in view of the fact that the usual pretext of an aggressor was a claim to act in self-defence, a definition of "armed attack", as the term is used in Article 51, might clarify the issue and make it more difficult to pursue an aggressive policy on such a pretext.

(c) Relation with the regulation of the use of atomic weapons

40. During the discussion of the definition of aggression, attention was drawn to the proposal made on 11 June 1954 by France and the United Kingdom at the session in London of the Sub-Committee of the United

Nations Disarmament Commission.^{19/} According to this proposal the States concerned would undertake to renounce the use of nuclear weapons except in self-defence against aggression.

41. Some delegations, in view of this proposal, considered it wise at least to postpone deliberations on a definition of aggression until the results of the disarmament discussions were known. A definition might have unforeseen and unfortunate repercussions on the disarmament negotiations. Others held the view that a definition was all the more needed since the concept of aggression appeared to be connected with the prevention of atomic warfare. Some considered that the disarmament proposal in question had no relation with the concept of armed attack as this term is used in Article 51, for the Charter forbade any use of force except in self-defence against armed attack. Consequently, the use of a specific kind of force (atomic weapons) could only be justified in defence against a specific kind of armed attack.

(d) Relation with the draft Code of Offences against the Peace and Security of Mankind

42. Part of the discussions in the Sixth Committee centred on the relation of a definition of aggression with the draft Code of Offences against the Peace and Security of Mankind prepared by the International Law Commission.^{20/} Some representatives were convinced that the adoption by the General Assembly of a definition of aggression would be of great use for the development of international criminal law. They particularly referred to the principle *nullum crimen sine lege*. Moreover, in the absence of a definition, it would be State practice and the decision of the Security Council, a political organ, which would decide whether or not a certain act constituted the criminal offence of aggression; this was a bad procedure in their view.

43. Some representatives discussed the similarity and differences between a formula defining the word "aggression" in the Charter on the one hand, and a provision for insertion in the draft Code on the other. According to one group, the two definitions served different purposes, but a contradiction between them would be unthinkable. Some representatives, following the same line of thought, pointed out that no individual should under the Code be held responsible for acts which States under the Charter would be allowed to perform unpunished.

44. Others emphasized the differences between the two kinds of definition. They stressed that the definition to be drafted by the Committee related to States, whereas a rule of international criminal law would apply to individuals. The sanctions in the two cases would be very different, and the subjects, although closely related, did not really belong in the same province. In their opinion, a definition for the purposes

^{19/} See annex 9 to the report of the Sub-Committee (DC/53) in the Official Records of the Disarmament Commission, Supplement for April, May and June 1954.

^{20/} See the report of the International Law Commission on its sixth session, Official Record of the General Assembly, Ninth Session, Supplement No.9, A/2693, chapter III.

^{18/} See below annex I, 15; annex II, 1.

of the Code would be much simpler to arrive at, because national interests would not conflict to the same degree.

45. Other representatives apparently saw a possibility of drafting a single definition susceptible of subsequent incorporation in the Code.

C. Kinds of activity covered by a definition

(a) Use of military force

47. Throughout the discussions there was considerable disagreement concerning the kinds of activity to be covered by a definition of aggression. Some wanted to limit its scope to the use of force only; others wished to include the threat, or certain threats, of force; while still others thought of extending the concept of aggression to indirect, economic and ideological aggression.

48. Many representatives held that the word "aggression" in the Charter exclusively referred to armed aggression. Article 39, in their opinion, listed, in order of seriousness, threats to the peace, breaches of the peace, and acts of aggression, so that the incorporation into the concept of aggression of such activities as economic or ideological aggression would render them more serious than even breaches of the peace. They therefore favoured a limitation of the definition of aggression to the use of force.

49. Others, though in favour of a provisional limitation of a definition to armed aggression, thought that other forms of aggression might be defined later.

50. A limitation to armed aggression "or any analogous act" was advocated by some delegations, who argued that other forms of aggression should be defined in the draft Code of Offences against the Peace and Security of Mankind.

51. Since certain degrees could be said to exist in the use of force and not all of them were serious enough to be described as aggression, it was argued by some that the use of force had to be sufficiently serious to constitute aggression. In particular, frontier incidents would have to be ruled out as possible forms of aggression. In their view, when the Charter mentioned the use of force against the political independence or territorial integrity of any State, it meant warlike action.

52. In this connexion, it was observed that support of invading armed bands, though not included in the concept of aggression, was serious enough to be placed on the same footing as armed aggression.

53. The inclusion of a threat of the use of force in the definition of aggression was opposed by many. They expressed the fear that a would-be aggressor would seize a threat of the use of force as a pretext to commit an aggressive act himself under the cloak of self-defence. A threat of the use of force would in most cases constitute a threat to the peace with which the Security Council would be able to deal under Article 39 of the Charter. Whether a threat of the use of force might exceptionally be equivalent to the use of force was, in the opinion of some delegations, a matter for the competent organs of the United Nations to decide.

46. It was also contended that, although a definition of aggression would promote the development of international criminal law, such a definition would not be a conditio sine qua non for the adoption of a code of offences against the peace and security of mankind or for the creation of an international criminal jurisdiction.

54. Some delegations found themselves unable to agree with the complete exclusion of the idea of a threat of the use of force from the definition of aggressor. In their opinion, though not all such threats could be called acts of aggression, this certainly was so when the survival of the threatened State was at stake. Threats of the use of force could be termed aggression only if the requirement of a certain magnitude was met. The threat had in particular to be directed against the territorial integrity or political independence of another State or against the territorial integrity or political status of a territory under an international régime.

55. In this connexion, the example was quoted of the entry of the troops of one State into another "on request" of the latter, after the former State had threatened to attack. This would be aggression.

56. Reference was made also to the first report of the Atomic Energy Commission^{21/} dealing with the regulation of atomic weapons by means of a treaty; that report stated "that a violation [of the proposed treaty] might be of so grave a character as to give rise to the inherent right of self-defence recognized in Article 51 of the Charter of the United Nations". This recommendation, adopted by General Assembly resolution 191 (III) of 4 November 1948, presupposed that a threat might in exceptional circumstances be included in the concept of "armed attack" as the term was used in Article 51.

57. Some representatives were of the view that a definition of aggression should take into account the aggressive intent that they believed to be a characteristic of aggression. Others held a contrary view. They pointed out that no subjective elements could be taken into account in determining whether or not any given act could be considered as an act of aggression. Some considered that acts enumerated in the USSR draft could not be committed except with aggressive intent where they were first committed by a State against another State. In the opinion of some members, any provision that might give the impression that the absence of aggressive intent would exclude the existence of aggression would constitute an invitation to the use of subjective arguments by possible aggressors.

58. Finally, some delegations considered that the best course was to leave the question of aggressive intent entirely to the competent organs of the United Nations.

^{21/} Official Records of the Atomic Energy Commission, 1946, Special Supplement, Report to the Security Council, part III, Recommendations, pp. 17-19.

(b) Indirect aggression

59. Some delegations maintained that a definition of aggression should include indirect aggression. The concept of indirect aggression gave rise to a good deal of discussion in the Sixth Committee. Sabotage and terrorism were mentioned as examples, as was the support of armed bands of one State against another. Certain delegations were of the opinion that a definition of aggression, which did not take into account the idea of subversion would not be complete. They considered subversion, the most typical form of indirect aggression, as dangerous as war. Any State that encouraged and assisted groups of the people of another State to take up arms against its own Government was no less guilty than if it had itself taken part in an armed attack.

60. Indirect aggression, in its form of fomenting civil strife in foreign countries through assistance to armed bands, was mentioned in the draft definitions of Paraguay (A/C.6/L.334/Rev.1) and of Iran and Panama (A/C.6/L.335/Rev.1). Indirect aggression in its form of subversion was mentioned in the draft definition submitted by China (A/C.6/L.336/Rev.2). The most elaborate references were those given in the USSR draft (A/C.6/L.332/Rev.1), where the support of invading armed bands was listed as direct aggression, and three types of subversive activity were listed under indirect aggression.^{22/}

61. Many representatives spoke against the specific inclusion of indirect aggression in the definition. According to some, the concept of aggression would be unduly stretched by such inclusion; others thought more especially that a reference in the definition to subversion would harm its practical applicability. Again others, referring to General Assembly resolution 380 (V) on "Peace through deeds", took the view that the use of force mentioned in the definition would include

^{22/} For the texts of the draft definitions mentioned in this paragraph, see annexes I and II the present report.

the hidden use of force and, consequently, would cover the cases of indirect aggression and subversive activity as far as force had been used by the foreign Power. To give special mention to subversive activity in its different aspects would, in their view, have the danger of including in the definition subversive activity without the use of force. Consequently, they held that specifically to mention subversive activity would be dangerous and not in conformity with the Charter provisions.

(c) Economic and ideological aggression

62. Some delegations wished to include in the definition specific economic or ideological activities under the description of economic or ideological aggression. They maintained that by such means the same ends might be achieved as by armed force, and that at the present time the economic and ideological means of aggression were especially important.

63. Many delegations, however, were against the inclusion of any form of economic or ideological aggression. Though some acknowledged the danger of economic or ideological measures taken for aggressive purposes, they were of the opinion that in special cases the United Nations organs could deal with such events under the concept of threat to the peace. Some maintained that in the Charter "acts of aggression" were mentioned as more dangerous events than "threats to the peace" and "breaches of the peace". Many delegations agreed that inclusion in the definition of aggression might suggest the right to go to war in self-defence against acts of economic or ideological aggression, and the inclusion of such acts would thus endanger rather than promote the peace.

64. Economic and ideological aggression were specifically mentioned in the USSR draft definition (A/C.6/L.332/Rev.1). But, in the view of many, including the sponsor, it appeared from the text that economic or ideological aggression did not entitle individual States to the same defensive action as did armed attack.

D. Various types of definition

65. With regard to the type of definition to be adopted, most delegations favouring a definition of aggression recommended a mixed definition, that is, one in which a flexible description, couched in general terms, would precede and govern a list of definite acts of aggression, which would be included merely to illustrate and not to restrict the general description. It was said that a definition of that type would combine the advantages and avoid the defects of the two other types of definition, the general and the enumerative. It would accord with the opinion that a definition should be neither limitative nor rigid. The definition should not be limitative, not only for the practical reason that all possibilities in such a complex matter could not be foreseen, but also because any limitation would be contrary to the wide powers of judgement conferred upon the Security Council by Articles 24 and 39 of the Charter. It should not be rigid, in the sense that it must

not take the form of an order binding on States and on the competent organs of the United Nations.

66. Some delegations criticized a definition of that type as combining the defects of the other two types. In fact, it was suggested that a mixed definition would be in itself contradictory because, if it started with the statement, for example, that aggression was the use of armed force for purposes other than self-defence or action undertaken in conformity with the Charter, it would not be possible to proceed further by giving examples in illustration of that concept. The act given as an example either would, or would not, according to the circumstances of the case, be covered by the general formula stated at the beginning. The opinion was also expressed that there would be no point in attaching a list of examples to the general statement. Thus, the most familiar types of military aggression

would be too standard to need enumeration, and a list might give the impression, on the one hand, that they could be isolated from the peculiar circumstances in which they occurred, and, on the other hand, that all other forms of armed aggression were of only secondary importance.

67. Other delegations declared themselves in favour of a general definition, namely one that, instead of giving a list of acts of aggression, would contain a general formula covering all the cases to be designated. International organs would be left with the responsibility of establishing the scope of the formula in specific cases brought before them. Some of these delegations pointed out that a definition of that kind, covering in general terms all the elements that constituted aggression, would render any enumeration of definite acts of aggression superfluous. Others suggested that the general definition should be based on the Charter, which was said to contain all the elements of a definition of aggression. It should incorporate the principles of Article 2, paragraph 4, and Article 51 of the Charter. Such a definition would have the double advantage of covering all cases conceivable by the most fertile imagination and allowing the competent organ or organs of the United Nations full freedom of judgement.

68. That type of definition was, however, criticized by some delegations as being a mere repetition, in one form or another, of elementary truths; it could therefore be of no value. A general definition would be less dangerous than an enumerative definition, but would be

of little value because it would inevitably be drafted in terms that would themselves call for definition. Furthermore, a general definition the basic elements of which could be found in the Charter would not be enough; it was just because the Charter confined itself to dealing with the question in general terms that the General Assembly had thought it necessary to define aggression by reference to the elements that constituted it. Emphasis was laid upon the inevitable vagueness of a general definition, which would render it rather impractical. Furthermore, it was held that many exceptions to the general formula would have to be provided for. Another objection was that the burden of proof, in case such a definition were adopted, would rest on the victim.

69. Some delegations criticized purely enumerative definitions. That kind of definition, which would be limitative and rigid and would deprive States and the organs of the United Nations of freedom of judgement would, in their opinion, not be in conformity with the Charter. The inflexibility of a merely enumerative definition was contrary to the Charter system and was dangerous. Furthermore, such a definition would necessarily be incomplete and would leave loopholes for possible aggressors. Enumeration of the acts of aggression could, moreover, lessen the importance of acts not mentioned. Furthermore, it was held that the acts specifically mentioned would themselves need definition. Also, it might well be that the acts listed would, in specific cases, not constitute acts of aggression.

E. Essential elements in the proposed definition

(a) The principle of priority

70. The draft resolution submitted by the USSR (A/C.6/L.332/Rev.1) contained a proposal to the effect that, in an international conflict, that State should be declared the attacker "which first commits" one of a series of acts subsequently enumerated. In the opinion of some delegations, the chronological order of events would be an important criterion and might even be decisive in determining who was responsible for aggression. It was maintained that it would be necessary, when preparing a definition of aggression, to explain that the aggressor State would be that State which first committed any of the acts enumerated in the definition. The priority principle was mentioned as a most important criterion for aggression and a long-recognized principle of international law, which was embodied in Article 51 of the Charter. A definition which neglected this principle of priority would not only be ambiguous, but might also be used as a justification for preventive war. Such a definition would lose most of its value.

71. Other delegations, although recognizing the significance of the priority principle, emphasized the necessity of a logical and reasonable interpretation of that principle. It was said, furthermore, that an exception to the priority principle was the case of collective measures ordered or recommended by the competent United Nations organs. In that case, the State first having recourse to armed force, and com-

mitting one of the acts enumerated in the USSR draft, should not be condemned as aggressor.

72. In the opinion of other delegations, the chronological order of events as enumerated in the USSR draft could not stand, because it would lead to dangerous consequences. They denied the existence of the priority principle, as embodied in the USSR draft, as a principle recognized in international law. Furthermore, it was often difficult to decide who acted first, especially when many States were involved in a conflict in which they were not all fighting for the same reason or object. According to that view, a country that initiated a process was not necessarily responsible for all the acts committed subsequently. The question of which State was "first" to commit a certain act was therefore basically irrelevant, and everything depended essentially upon the circumstances.

73. Other delegations maintained that, although the chronological order had significance, the decisive factor in the definition of aggression could not consist in the priority principle, but in the character of the acts forbidden to be committed first. In their opinion, the main weakness of the emphasis on the priority principle in the USSR draft was demonstrated by the fact that, on the one hand, it provided that a border incident (which might consist of shooting, bombing or trespassing across the border) did not warrant self-defence under Article 51 and, on the other hand, that it provided that shooting, bombing, and violation of the

border were aggression if committed first; thus, the draft contained a contradiction which would make its application difficult. Others maintained that an aggressor would not necessarily be the first to commit a given act classified beforehand as an act of aggression. In their view, the circumstances peculiar to each particular case would determine whether or not aggression had been committed.

(b) The indication of cases never justifying armed attack in self-defence

74. It was proposed by some members to include in the definition of aggression a certain number of circumstances which should in no case serve as justification of aggression. In their view, such a provision formed an essential element in the definition. Accordingly, paragraph 6 of the USSR draft (A/C.6/L.332/Rev.1) mentioned circumstances which would never justify armed attacks, first in a general way, and then giving two more specific situations, under each of which were listed special cases. Preventive war, it was explained, would then be deprived of any basis or justification.

75. Other delegations, sharing this view, pointed out that the essence of this paragraph was identical with the principle of non-intervention as recognized by the States of the American hemisphere.

76. Although an enumeration of circumstances not justifying armed attack was not included in the joint draft of Iran and Panama (A/C.6/L.335/Rev.1), the representative of Iran declared himself prepared to supplement the draft resolution to the effect that aggression could not be justified by political, strategic, economic or social considerations.

77. Other delegations disputed the wisdom of paragraph 6 of the USSR draft and similar proposals. They opposed the idea of such a provision on the ground that an enumeration of considerations not justifying acts of an aggressive nature was likely to give the impression, and might easily lead to the conclusion, that other considerations than those mentioned could justify such acts. Furthermore, it would be illogical to give various circumstances which could not serve as justification for armed attack when the basic principle was that nothing justified it, except armed attack.

(c) The principle that the use of force should have a specific quality to constitute aggression

78. Some delegations maintained that the distinction made in the USSR draft (A/C.6/L.332/Rev.1) between the enumerated acts of armed force constituting aggression, on the one hand, and the frontier incidents which were apparently not considered to constitute aggression, on the other, showed the need to indicate in a definition the difference between the two kinds of armed action. This distinction, they argued, showed the need to indicate, by naming quality or quantity, the very features of aggression. Not every use of armed force, but only a specific use of armed force, may be considered as an act of aggression.

79. Some of the proposed draft definitions mentioned specific kinds of the use of armed force. The revised

draft resolution submitted by Iran and Panama (A/C.6/L.335/Rev.1), after having first generally referred to the use of armed force, proposed to consider as aggression in all cases: (1) invasion; (2) armed attack against territory, population or military forces; (3) blockade; and (4) specific activities in relation with armed bands.

80. It was pointed out by some delegations that the words used would need further clarification and definition. Furthermore, attention was drawn to the fact that the activities mentioned included the organization, the toleration of the organization, or the encouragement of the organization, of armed bands for incursions into the territory of another State. It was felt that to consider these actions as aggression would promote rather than discourage preventive war, for it followed that acts could be considered as aggression without any actual fighting having taken place.

81. In the Paraguayan draft definition (A/C.6/L.334/Rev.1) only those cases of the employment of armed force were described as armed aggression (1) which are directed against the territory, population, armed forces, or the sovereignty and political independence of another State (or other States), or against the people, territory or armed forces of a non-self-governing territory; (2) by which the State provokes a breach or disturbance of international peace and security. Moreover, the Paraguayan draft specifically mentioned declaration of war, and the organization, encouragement, toleration or support of armed bands.

82. Here again the objection was made that several concepts used in the draft needed definitions. Many delegations considered "to provoke" and "disturbance of international peace and security" as vague terms, not used in the Charter, needing to be made more specific.

83. The Chinese draft definition (A/C.6/L.336/Rev.2) gave as a general description "the unlawful use of force, by a State against another State, whether directly or indirectly", followed by examples including particular forms of subversive activity.

84. In the view of several delegations, however, the definition of aggression by the formula "unlawful use of force" was useless because it gave no clarification of the concept of aggression.

85. Draft definitions were given by the Netherlands delegation as suggestions to contribute to the discussion.^{23/} In these drafts, the distinctive criterion to indicate the threat or use of force which would constitute aggression consisted of the circumstance that the threat or the use of force was directed "against the territorial integrity or political independence of another State or against the territorial integrity or political status of a territory under an international régime, whatever the weapons employed and whether openly or otherwise". In these drafts, exception was made for the cases of individual or collective self-defence, and for acts in pursuance of a decision or recommendation by a competent organ of the United Nations.

86. This formula, again, was criticized for its vagueness. According to many delegations it partly repeated

^{23/} Official Records of the General Assembly, Ninth Session, Sixth Committee, Summary Records, pp. 73 and 109.

the Charter, and partly introduced concepts which needed defining. Although it was stated by the Netherlands representative that it was not the purpose of the actor, but the purport of the act which was decisive, some delegations felt that a subjective element - a

F. Legal and moral value of a General Assembly resolution defining aggression

87. Opinion differed about what legal or other value a definition adopted by a resolution of the General Assembly might have. It was generally recognized that recommendations based on a majority decision were legally not binding upon Members or organs of the United Nations. The General Assembly was not a world legislator. A majority could not impose its will on the minority. That followed, it was argued, from the principle of sovereign equality of the Member States (Article 2, paragraph 1, of the Charter).

88. Moreover, it was maintained, the Security Council had the primary responsibility for the maintenance of peace, and it would be contrary to the system adopted in the Charter to consider the Council in any way bound by a recommendation of the Assembly. In particular, it was pointed out that the Assembly could not impose on the Council any definition it adopted, when action by the Council depended upon the agreement of the five permanent members.

89. It was remarked that a definition would be generally binding only if it were inserted in the Charter or if a convention embodying the definition were signed and ratified by all Member States.

90. In the opinion of several representatives, however, a General Assembly resolution defining aggression would at any rate provide guidance for Member

States and United Nations organs. The moral authority of such a definition was recognized and highly estimated by several representatives. Such moral authority would be all the more weighty if the definition had been supported by an overwhelming majority.

91. Some delegations, recognizing the moral and political value of a definition and its influence upon United Nations organs and Member States, maintained that a definition would also have a juridical significance.

92. The view was held that a definition, based on the Charter provisions and not deviating from these provisions, would constitute a more or less authoritative interpretation of the Charter. Although such an interpretation by the General Assembly would not be strictly binding upon the Security Council or Member States, it would clarify the Charter provisions and contribute in this way to a generally accepted interpretation of the Charter.

93. On the other hand, it was stated that a definition adopted by the Assembly would constitute a general principle of law recognized by civilized nations and might in that way become part of international law. The Council would not lightly disregard such a new principle of international law embodied in an Assembly resolution. Consequently, a definition would contribute to the progressive development of international law.

III. VIEWS EXPRESSED IN THE 1956 SPECIAL COMMITTEE ON THE QUESTION OF DEFINING AGGRESSION

1. Views expressed in the general debate

A. Views about the possibility and desirability of a definition

94. General Assembly resolution 599 (VI) declared that it was possible and desirable, with a view to ensuring international peace and security and to developing international criminal law, to define aggression. In view of that resolution, some delegations thought it unnecessary and improper to consider those questions again. Others maintained that it was the function of the Special Committee to explore the possibilities of co-ordinating the views of the Member States, and that, therefore, a discussion about the possibility and desirability of defining aggression could not be avoided.

95. The overwhelming majority of the Committee considered it possible to define aggression. This was the position, in particular, of China, Czechoslovakia, the Dominican Republic, France, Iraq, Mexico, the Netherlands, Paraguay, Peru, the Philippines, Poland, Syria, the Union of Soviet Socialist Republics and Yugoslavia, which held that a definition of aggression was possible and desirable in the interests of maintaining international peace and security. It appeared,

however, that substantial differences of opinion did exist as to the question how aggression should be defined. The representative of the United States referred to the artificial and insubstantial character of the impression that a large measure of agreement existed in the United Nations on the possibility of drafting an acceptable definition of aggression. He found fundamental and irreconcilable differences among those who strongly advocated a definition and who considered that one could and should be approved (A/AC.77/SR.13, p. 3).^{24/}

96. General Assembly resolution 688 (VII) stated that continued efforts should be made to formulate a generally acceptable definition. What did the words "generally acceptable" mean? According to the representative of France, the definition should be acceptable to all the great Powers primarily responsible for the maintenance of international peace and security as well as to the great majority of Member States

^{24/} The references in brackets which follow are to the summary records (SR/...) of the meetings of the 1956 Special Committee.

(SR.2, p. 3). The delegate of Norway shared this view, and added that he strongly doubted the possibility of finding such a generally acceptable definition (SR.6 pp. 9 and 10). The Netherlands representative understood "generally acceptable" as acceptable to the great majority of the Member States and to all, or nearly all, the permanent members of the Security Council, and he reminded the Committee that only such a generally acceptable definition would be supported by his Government (SR.13, p. 15). The representative of the Philippines gave a statistical survey of the views expressed in the Sixth Committee, in which he noted that the mixed type of definition appeared to be favoured by the majority, although within that category there existed divergencies of views both on the character of the general formula and on the extent of the illustrative acts of aggression (SR.1, pp. 9 and 10; SR.19, pp. 4 and 5). The representative of China, however, noted that none of the views expressed in the Sixth Committee commanded the support of a majority, the advocates of defining aggression being divided as to the function, type and content of a definition (SR.3, p. 3). The Netherlands representative expressed the opinion that the discussions in 1954, as well as the discussions in the present Special Committee, had shown that it was not likely to succeed in effectively co-ordinating the views on the concept of aggression as this term was used in Article 39 of the Charter. He suggested, therefore, that efforts should be concentrated on the concept of "armed attack" in Article 51; in that way, a generally acceptable formula might perhaps be found (SR.3, p. 6; SR.8, p. 6; SR.13, p. 15). This appraisal was shared by the representative of Norway (SR.6, p. 9).

97. During the discussions, seven different draft definitions were introduced (see annex II and para. 208 below), showing the difficulty of arriving at a generally acceptable definition. In this connexion, the representative of the United Kingdom remarked that whether, considered as an abstract proposition, a definition was desirable depended on whether any satisfactory definition was possible. The desirability of adopting a particular definition depended on whether it was a satisfactory one or not (SR.6, p. 7).

98. At the end of the Committee's discussions, the representative of China stated that the present time did not seem the best to come to a generally acceptable definition of aggression. The present international community might be compared with a community where every one freely carried arms, every one freely produced arms, where no police force or courts with compulsory powers existed. In view of this the definition, which would always be imperfect, would not be very helpful. It was better, instead of attempting to define aggression, to search for means to enforce respect for the Charter provisions (SR.18, p. 6).

99. A unanimous opinion about the desirability of a definition did not exist. A large majority of the Committee considered it desirable, in principle, to define aggression. Some delegations, however, pointed to the dangers inherent in defining aggression. The problem was, as the representative of China stated, whether it was safe for States to accept a definition as a safeguard against aggression (SR.3, p. 4). The case for or against a definition of aggression, said the United

States representative, did not rest solely on its specific provisions but on its capacity, as a whole, to meet the requirements of its intended or claimed purpose. He pointed out the difficulty of putting into words something that was so dependent on circumstances, on the context as a whole, of a given situation as was the case with an act of aggression. It would be no remedy to say that any definition must, of course, be interpreted and applied in the light of circumstances. That would, in his opinion, be another way of saying that it was impossible to avoid appraising a threat or act of aggression in the light of the circumstances as a whole. Since each threat of aggression varied in its history and its facts in an infinite number of ways, it taxed human ingenuity and wisdom beyond reasonable limits to evolve a formula which would anticipate events and provide useful guidance (SR.13, p. 3).

100. The representative of the United Kingdom shared this opinion about the difficulty of covering all cases in the definition. The terms of the definition might be pleaded in justification of an act of aggression that was not explicitly covered by the definition, and in that sense the existence of a definition might have the effect of encouraging the aggressor. There was also the danger that, whatever proviso might be inserted in a definition as to the Security Council's freedom of action, that body might tend to attach less importance to acts not expressly mentioned in the definition. That had been the view taken by the Committee of the 1945 San Francisco Conference of which M. Paul-Boncour had been the rapporteur (see also para. 149 below). The Committee should not, in this respect, consider only the utility of the definitions put forward and the desirability of their adoption, but also whether in some circumstances they might be positively dangerous (SR.6, p. 8).

101. The United States representative held that any definition would create further definitional problems. He emphasized the mischief and confusion which a definition could introduce into the work for peace of the United Nations. A wrong definition might do great harm. He wondered whether the Committee had adequately considered the relationship between what was desirable and possible and what was practical, helpful and acceptable. The question was: how would it influence the decisions of States, acting collectively or individually? He pointed to the danger of hindering the Security Council in its work by defining aggression and not defining the threats to the peace and the breaches of the peace also mentioned in Article 39. A definition might have the effect of impairing the right of self-defence and, by curtailing the freedom of action of the State attacked, might even be an incentive to aggression. On the other hand, a party might be tempted, in case events occurred constituting acts of aggression under the terms of the definition, to take up arms without waiting for a decision by the Security Council. Consequently, a definition might rather be harmful than helpful (SR.5, pp. 3 *et seq.*; SR.13, pp. 3 *et seq.*).

102. It was not right, in the opinion of the United States representative, to cite in support of a general definition the precedents of the Act of Chapultepec of 8 March 1945 and the Inter-American Treaty of Reciprocal Assistance signed at Rio de Janeiro on

2 September 1947, which contained enumerations of particular acts of aggression. The signatories of those instruments belonged to the same geographical area and were united by many bonds, including a feeling of solidarity, which were not present to the same degree among the Members of the United Nations (SR.5, p. 7). This opinion, however, was not shared by the representative of the USSR. In his view, a definition of aggression would be even more useful if it were accepted by States with widely divergent opinions (SR.5, p. 10).

103. Against these considerations was emphasized the danger of not arriving at a generally acceptable definition. The representative of Yugoslavia stressed the point that, by its very adoption, a definition would indicate the determination to stop aggression. If the Committee failed, it would disappoint world hopes for peace and justice. It was better to adopt an imperfect definition, representing the highest common factor of agreement, than to adopt no definition at all (SR.7, p. 8). In this opinion the representative of Peru concurred, on the basis of what he considered a pragmatic approach; in his view, a legislator should not insist on formulating only perfect rules (SR.18, p. 9). The representative of China took exception to this point of view. A defective definition would only have a confusing effect and would therefore be harmful and dangerous. The adoption of such a definition by the Committee could only be detrimental to the prestige of the United Nations (SR.14, p. 5). Other delegations shared the latter view.

104. Many arguments were advanced in favour of defining aggression, and are more fully mentioned in the following chapters. A definition would be a factor in the promotion of peace and security, of justice and international law. A clear definition of aggression would contribute substantially to the maintenance of international peace and security. A General Assembly resolution containing such a definition was one of the measures whereby the United Nations could effectively help States to maintain and strengthen friendly relations based on the principle of coexistence regardless of differences in political and economic structure. Moreover, a definition would be a contribution to peace by preventing an aggressor from using the pretext of acting in self-defence (USSR, SR.3, pp. 9 and 11; Netherlands, SR.3, pp. 6 to 8; Czechoslovakia, SR.6, p. 4; Norway, SR.6, p. 10). A definition might not only substantially hamper a potential future aggressor, but it would also help the other Powers to recognize the nature of his acts (Czechoslovakia, SR.6, p. 4). The Mexican representative emphasized that a definition would be a safeguard for pacific settlement of disputes and would influence public opinion and understanding of the actions of United Nations organs, as well as those of States acting in self-defence. A definition would dispel many of the doubts and uncertainties which beclouded the legal concept of aggression, would have considerable persuasive force, and would contribute to the progressive development of international law (SR.7, pp. 4 and 5).

105. Some delegations agreed with the arguments against defining the "act of aggression" mentioned in Article 39 of the Charter. For that and other reasons, the Netherlands delegate suggested not defining the

"act of aggression" mentioned in Article 39 but rather defining "armed attack" as that term is used in Article 51 (SR.3, pp. 6 to 8).

106. Against the thesis that a definition would be a "signpost for the guilty" and as such might encourage the aggressor, the representative of Yugoslavia remarked that such a statement would be tantamount to asserting that the existence of detailed criminal legislation encouraged criminals to commit crimes (SR.7, p. 7). The Netherlands representative called attention to the shift of emphasis in the work of the United Nations from collective security to collective conciliation. In this connexion, qualified scholars had spoken of "a new United Nations". The introduction of the Secretary-General to his latest annual report on the work of the Organization^{25/} reaffirmed this appraisal. Moreover, in the opinion of many Member States, the United Nations not only failed in its function to guarantee the peace through collective action, but also did not succeed in the maintenance of law and justice. It seemed that, with regard to this development, the opinion prevailed in many circles that the significance of Article 2, paragraph 4, and of Article 51, especially the prohibition of the use of force, had diminished accordingly. By defining armed attack and, by so doing, indicating the limits of self-defence, the United Nations would clarify and fortify the Charter provisions. This seemed to be more needed than ever before (SR.3, pp. 7 and 8).

B. Views about the function and scope of the definition

107. General Assembly resolution 599 (VI) considered that it was desirable to define aggression with a view to ensuring international peace and security and to developing international criminal law. General Assembly resolution 688 (VII) stated that continued efforts should be made to formulate a generally acceptable definition of aggression, with a view to promoting international peace and security and to developing international law. The question as to the respects in which the definition of aggression might promote peace and justice was discussed in the Committee.

108. In the opinion of the Netherlands representative, former discussions had shown that a definition of aggression might be relevant and significant in four respects. Firstly, a definition would serve as a guiding principle for United Nations organs in their task of maintaining peace and security. This would mean the definition of the "acts of aggression" mentioned in Article 39 of the Charter. Secondly, a definition would help to determine in what cases a State or States might act in individual or collective self-defence. This would mean the definition of "armed attack", as that term was used in Article 51 of the Charter. Thirdly, the concept of aggression might have significance in disarmament arrangements, as had been evidenced at the session held in London in 1954 of the Sub-Committee of the United Nations Disarmament Commission.^{26/}

^{25/} Official Records of the General Assembly, Eleventh Session, Supplement No. 1A (A/3137/Add.1).

^{26/} Cf. paras. 40-41 above.

Fourthly, a definition of aggression might be significant in relation with the draft Code of Offences against the Peace and Security of Mankind^{27/} (SR.8, pp. 5 and 6).

109. During the discussions, the relation of the definition of aggression to disarmament treaties concerning nuclear weapons was not elaborated, nor did an exhaustive debate develop concerning the concept of aggression in a criminal code.

110. The representative of Iraq remarked that it was an established rule of criminal law in all States that offences had to be expressly defined, and the same rule applied to international law (SR.4, p. 3). The representative of the United States of America stated in this connexion that it had been argued that legislation against an offence should not wait until the offence had been committed. That was a very creditable aim, but sufficient attention had perhaps not been given to the fact that such a code already existed in the form of the Charter of the United Nations. If an international criminal jurisdiction was ever successfully established, the law it applied would obviously be the Charter (SR.5, p. 1).

111. The Netherlands representative concurred in this opinion. The post-war trials had shown that a judge did not need a definition. A definition of aggression might be a contribution to the development of international criminal law, as General Assembly resolution 599 (VI) declared, but such a definition was not a *conditio sine qua non* for the preparation of a code of offences against the peace and security of mankind, or for the establishment of an international criminal jurisdiction (SR.8, p. 6).

112. General Assembly resolution 599 (VI) considered that it would be of definite advantage if directives were formulated for the future guidance of such international bodies as might be called upon to determine the aggressor. This function was referred to by many delegations during the discussion in the 1956 Special Committee, and was especially mentioned in the draft resolution submitted at the ninth session of the General Assembly by Iran and Panama, and reintroduced by Peru in the Special Committee (A/AC.77/L.9).^{28/}

113. Against the misgivings expressed by the representatives of the United Kingdom (SR.6, p. 6) and of the United States (SR.13, p. 3, who elaborated on the mischief and confusion a definition could introduce into the work for peace of the United Nations), the representative of the USSR maintained that a definition would facilitate the task of the Security Council (SR.5, p. 9), and that the United States representative showed an unjustified pessimism with regard to the efficacy of United Nations organs (SR.14, p. 8). A definition would help to recognize the nature of the aggressor's acts, according to the representative of Czechoslovakia (SR.6, p. 4). The Mexican representative stressed the point that a definition would dispel many of the doubts and uncertainties which beclouded the legal concept of aggression, and would have considerable persuasive force. It would be a guide for

United Nations organs as well as for countries forced to act in self-defence (SR.7, p. 5).

114. It was pointed out, however, that the Security Council was entitled to act in case of a threat to the peace, breach of the peace and act of aggression. It might seem of little use to define aggression when the Security Council could order the same action in cases of threats to the peace and breaches of the peace (Norway, SR.6, p. 9). Moreover, almost all members of the Committee agreed that the Security Council should not be restricted in its freedom to brand as acts of aggression what it thought proper to consider as such, as had been suggested from the start by the representative of the Philippines (SR.1, p. 10). Other representatives, and in particular the USSR representative, considered that it should be the sense of the definition of aggression that, if the acts enumerated in the USSR draft were first committed by a State against another State, the Security Council should declare them to be acts of aggression. Otherwise the General Assembly's recommendation would be meaningless. It stood to reason, however, that, as provided by paragraph 5 of the USSR draft, the Council should have the right to treat as acts of aggression such acts, other than those enumerated in the definition, as might be declared to constitute acts of aggression by decision of the Council in each specific case (SR.3, p. 9; SR.5, p. 9).

115. Some delegations wondered what was left of the definition's function of guidance if such a provision was inserted (Netherlands, SR.3, p. 8; Norway, SR.6, p. 9). There was also the danger, according to the United Kingdom representative, that whatever proviso might be inserted in a definition as to the Security Council's freedom of action, that body might tend to attach less importance to acts not expressly mentioned in the definition (SR.6, p. 8; see also paras. 100 and 149 of the present report).

116. The freedom necessary for the Security Council or any other United Nations organ with responsibility for the maintenance of peace had, in the views of some delegations, still another aspect. The joint draft proposed by the Dominican Republic, Mexico, Paraguay and Peru (A/AC.77/L.11)^{29/} provided not only the freedom to name as acts of aggression events not mentioned in the definition, but also the freedom to determine the existence of, or take a decision upon, an act of aggression in case events before United Nations organs came under the acts mentioned in the definition. The representative of Yugoslavia expressed the view that the adoption of a definition of aggression would not make for the automatic application of the sanctions provided for in the Charter. Naming the aggressor must not necessarily be followed by measures to stop the aggression; the latter question was one within the jurisdiction of the competent United Nations organs (SR.7, p. 8).

117. This thought was embodied in the provision suggested by the representative of the Philippines: "Nothing in the definition would prevent the Security Council from dealing with the cases enumerated in the relevant provisions of the Charter in the manner it deemed proper in the circumstances" (SR.1, p. 10; SR.2, p. 4). The USSR representative, however, took

^{27/} Cf. paras. 42-46 above.

^{28/} See annex II, 3, below.

^{29/} See annex II, 6, below.

exception to such a provision. It would in fact authorize the Security Council to hold that an act did not constitute aggression even though it was an act enumerated in the definition. There would be no point in working out a definition if its efficacy was to be destroyed by such a reservation (SR.3, p. 9).

118. The representative of Syria, though advocating freedom for the Security Council, maintained that there should be provisions which would limit to a certain extent the discretionary powers of the competent organs of the United Nations, with a view to creating the feeling that they were at least morally bound to designate as an aggressor any State which had committed acts covered by the definition (SR.4, p. 6; SR.13, p. 13).

119. Different views also existed as to whether a definition serving as a guide to the Security Council, and consequently being a definition of "aggression" as used in Article 39, would also be valid for the term "armed attack" mentioned in Article 51 of the Charter. Delegations which agreed that "aggression" in Article 39 covered not only armed aggression but also indirect, economic or ideological aggression (USSR draft definition (A/AC.77/L.2) France, SR.2, p. 3; China, SR.3, p. 5; Czechoslovakia, SR.6, p. 5; Poland, SR.7, p. 3; Mexico, SR.7, pp. 5-6; Dominican Republic, SR.7, p. 9; Peru, SR.12, p. 4; Syria, SR.13, p. 10), held different views on the question of what place within this definition should be given to "armed aggression".

120. In the USSR draft, a clear distinction was made between "armed aggression" and the other forms of aggression, it being emphasized by the USSR representative that armed aggression constituted the most dangerous aspect, and was the only form of aggression entitling a State to the use of force in self-defence (SR.10, pp. 5-6). The Yugoslav representative stressed the point that any provision for aggression of the economic or ideological type could open the door to preventive war. That did not mean that such acts were not serious or that they could not represent a threat to the peace, but any reference to them in the definition of aggression would make it possible to justify so-called liberation crusades (SR.7, p. 7).

121. On the other hand, the representative of Peru maintained that self-defence was justified not only against armed attack but against all acts of aggression (SR.12, p.4). The representative of Syria emphasized the need for avoiding any abuse of the right of armed self-defence. Self-defence presupposed the use of means proportionate to the seriousness of the attack. States had to protect themselves with means other than the use of force in order to counter those types of aggression which might be called "secondary aggressions". It was therefore quite possible to draw up a definition covering both armed aggression and other forms, it being understood that only armed attack authorized states to exercise their natural right to armed self-defence under Article 51. It was of vital importance to avoid over-defining the concept of self-defence, for it was a natural right of self-preservation based on the duty of each State to ensure its own protection (SR.13, pp. 9 and 10).

122. Still another difference of view should be mentioned concerning the concept of armed aggression. Could it be said that "armed aggression" in the sense of Article 39 had the same meaning as "armed attack" in Article 51? In the view of the Netherlands representative, armed attack was a special case of armed aggression (SR.13, p. 15), and this view was shared by the representatives of Norway (SR.6, p. 9), Iraq (SR.4, p. 3) and Syria (SR.15, p. 7).

123. The representative of the USSR, however, considered it inconsistent with the Charter provisions to argue that the notion of armed aggression in Article 39 was different in principle from the notion of armed attack in Article 51. The provision of Article 39 relating to armed aggression (Article 39 was also concerned with other forms of aggression but they would have to be dealt with separately) and the provision of Article 51, in conjunction with Article 2, formed a single concept of armed aggression. Therefore, it was wrong to suggest that to define the notion of armed attack in Article 51 would not be so broad a task as to define the notion of armed aggression in Article 39. The task in either case would be one and the same (SR.10, p. 5).

124. In this respect, the representative of Czechoslovakia stated that Article 39 was the introductory article in the Chapter dealing with action against threats to the peace, breaches of the peace and acts of aggression. Consequently, it had to speak of aggression in its widest sense in order to give the Security Council due authority to intervene in every case that might arise. Article 51, on the other hand, was a specific provision regarding cases in which the State attacked was entitled to exercise its right of self-defence. By stating that the right of self-defence could be exercised only in cases of armed attack, the Charter merely singled out that form of aggression as the most flagrant and dangerous. The basic concept of aggression was nonetheless indivisible (SR.10, p.7).

125. For the reasons that a definition of the term "aggression" used in Article 39 for the guidance of United Nations organs seemed to be useless (since the United Nations organs did not need a definition, and hardly anyone wished to restrict their freedom of decision); that it was regarded as dangerous; and that in view of the divergence of opinions - it seemed to be impossible to achieve, the Netherlands representative suggested concentrating on the definition of "armed attack" as this expression is used in Article 51 of the Charter. He emphasized that such a definition would be useful, for confusion on this point did exist. States needed guidance in this regard, and the need to restrict their freedom of decision was clearly felt. A definition of "armed attack" on the basis of the Charter provisions would enlighten and contribute to the forming of public opinion. The possibility of arriving at a generally acceptable definition seemed not at all excluded (SR.3, pp. 6 *et seq.*; SR.8, pp. 5 *et seq.*; SR.13, pp. 14 *et seq.*).

126. The representative of Norway endorsed this suggestion; defining "armed attack" as referred to in Article 51 would mean, in effect, describing the circumstances justifying the use of force in self-defence (SR.6, p. 9). So did the representatives of

Iraq (SR.4, p. 3) and Syria, who urged the Committee to concentrate on defining "armed attack" within the meaning of Article 51 (SR.15, p. 7). He suggested, however, that a definition should have two parts, the first dealing with armed attack within the meaning of Article 51, the second with other forms of aggression (SR.13, pp. 9 et seq.).

127. The definition of "armed attack" in Article 51 aimed at the clarification and - within the lines drawn by the Charter - the limitation of self-defence. The importance of this purpose was realized by many delegations. The USSR representative stated that the primary object was to define aggression in such a way that the aggressor could not follow the familiar pattern and invoke the right of self-defence (SR.3, p.11). On the other hand, the singling out of the concept of armed attack as used in Article 51 was criticized. In the opinion of the Czechoslovak representative, the Netherlands representative had not proposed a definition of aggression but had only given an explanatory comment to aid in the interpretation and practical application of Article 51 (SR.10, p. 7).

128. Defining armed attack would, in the opinion of the Netherlands representative, mean dealing only with the use of armed force, armed attack being a specific case of armed aggression (SR.13, p. 15). The crucial point was to determine the cases of the use of armed force in which a State might go to war in self-defence. In this regard, the representatives of the United Kingdom and of the Netherlands agreed that, as a matter of course in case of border incidents, a State might take limited action in self-defence (SR.12, pp. 4 and 5). In the view of the Netherlands representative such protective action was not based on the provision of Article 51 of the Charter, but followed from the function of the State to maintain law and order in its territory (SR.13, p.14). The representative of Iraq pointed out that the place of Article 51 - in Chapter VII dealing with "action with respect to threats to the peace, breaches of the peace and acts of aggression" - indicated that the self-defence referred to in that Article was defence against armed attacks of a specific quality constituting a breach of the peace (SR.18, pp. 7-8).

129. The representative of China stated that, although armed attack was the most obvious form of aggression, it was the one which stood least in need of definition (SR.3, p. 5), and it was not the most dangerous. Particularly since the end of the Second World War, aggressors had been resorting to more subtle forms of aggression. The most dangerous of them was subversion; it could not be left out of any definition of aggression. Subversion might well be said to be gradually taking the place of armed aggression as the method by which one State attacked the political independence of another. It was, therefore, not a commendable step to adopt a definition limited to armed attack; its effect would only be to create an illusion that aggression had been defined (SR.14, p.4).

C. Views about the various types of definition

130. It has become usual in the discussions about defining aggression to list three types of definition: the

general, the enumerative and the mixed definition. These three types were also referred to in the 1956 Special Committee. Not everyone, however, held the same opinion about the distinction between the types. The representative of the Philippines, surveying at the beginning of the Committee's work the attitudes of the Member States during the ninth session of the General Assembly, listed the USSR draft under the enumerative definitions. To this classification the representative of the USSR took exception, stating that in his view the USSR draft was at once analytical and synthetic; it did not, therefore, amount to a mere enumeration of acts of aggression, and for that reason it could be placed in the category of mixed definitions. It contained more than an enumeration, it also proposed a basic rule, including as it did the priority principle and the principle of the non-justification of the use of armed force in specific circumstances, as well as the principle that a State might never use armed force in response to a threat of force (SR.3, p. 11). The Yugoslav representative observed that a purely enumerative definition was now rejected by all the Member States (SR.7, p. 6).

131. Some delegations considered the question of form of secondary importance (China, SR.3, p. 4; Dominican Republic, SR.7, p. 10); others favoured in principle one of the three types. The representatives of France (SR.2, p. 3), Iraq (SR.4, p. 3) and the Netherlands (SR.8, pp. 5 et seq.) stated their position in favour of a general definition which indicated the basic elements of aggression. The representative of Iraq explained his preference for a general formula. He considered the Special Committee as a legislative rather than a judicial body, the idea being that the Committee should lay down the general rule of law, leaving it to the competent organ to adapt the rule to the specific cases referred to it. Another reason for favouring a general definition was that an enumerative definition, however meticulous, was bound to be incomplete and hence imperfect (SR.4, p. 5).

132. A general definition was criticized as too vague, and as being only a paraphrase of the Charter. According to the representative of Czechoslovakia, the Charter did not list the basic elements constituting aggression. General Assembly resolution 599 (VI) referred to the elements constituting aggression; they were nothing else than the acts or series of acts of aggression which constituted aggression itself (SR.6, p. 4).

133. The mixed definition, favoured by most of the members, was criticized in relation to the specific draft proposals. The United States representative associated himself with a statement made in the Sixth Committee by the representative of India: "A general definition would be of little value because it would be too vague, an enumerative definition would be dangerous because it might contain too much or too little, and a mixed definition was apt to combine the disadvantages of the other two types" (SR.13, pp. 3 and 4).

2. Views with regard to specific draft definitions

A. The USSR draft (A/AC.77/L.4)^{30/}

134. The USSR draft definition dealt with several forms of aggression: armed aggression, indirect, economic and ideological aggression. It was made clear that the right of individual and collective self-defence as recognized in Article 51 had to do only with defence against armed attack, the most dangerous type of breach of the peace. The representative of the USSR pointed out that the definition of armed attack was the principal task. The divergencies of views which might again become apparent regarding the definition of indirect, economic and ideological forms of aggression should not hinder an agreement on a definition of armed attack. The primary object of a definition was to define in such a way that the aggressor could not follow the familiar pattern and invoke the right of self-defence. Therefore it was necessary to concentrate on that fundamental question (SR.3, pp. 10 and 11).

135. The representative of the USSR observed that the USSR draft was at once analytical and synthetic in type. Paragraph 1 contained more than a simple enumeration, it also proposed a basic rule. It contained the principle that any State which first committed an act enumerated in that paragraph, on any pretext, should be declared an attacker. Paragraphs 6 and 7 emphasized the same point and specified that aggression could not be justified by any considerations of a political, strategic or economic nature, or by the desire to derive any kind of advantage or privilege, and that the threat of aggression could not be used as a pretext for armed attack (SR.3, p. 11). On later occasions he emphasized the significance of the essential principle of the first commission of an act (SR.14, p. 9), which constituted the basic principle (SR.15, p. 4). In particular, he pointed out that the principle that the State which first used armed force against another State should be declared the attacker was likewise derived from Article 51 of the Charter, since that Article regarded armed attack as an act antecedent to self-defence. He considered that that principle was widely recognized in international law (SR.14, p. 9).

136. The representative of Czechoslovakia concurred in attaching great importance to the priority principle, linked as it was with a list of actions which States were forbidden to commit first (SR.6, p. 5). So did the representative of Poland, who emphasized the idea that responsibility should invariably lie with the State guilty of the first attack (SR.7, P. 3).

137. The USSR draft was considered by the delegate of Syria as the most complete and specific of all those submitted. He thought that the examples given as illustrations of the various forms of aggression should be retained. But he considered that a general formula should be given to define "armed attack" as the term was used in Article 51. Other remedies than those provided in that Article were open to States in other cases of aggression. Consequently, the definition of aggression should consist of two parts, the first

dealing with armed attack within the meaning of Article 51, and the second dealing with the other (unarmed) forms of aggression. The first part would contain a general formula describing armed attack and an illustrative list of the most characteristic examples of armed attack; there should be a clause specifying the cases in which the use of individual or collective force was permitted in self-defence. Another clause would enable the competent organs of the United Nations to preserve the freedom of judgement and action necessary to deal with any situation. The second part of the definition should contain a general formula describing the secondary forms of aggression likely to endanger the maintenance of international peace and security within the meaning of the provisions of Chapter VI or the Charter. It would also contain a list - again not an exhaustive list - of the most characteristic cases of unarmed aggression, a clause which would allow the competent organs of the United Nations to designate as unarmed aggression any additional cases which might arise in the future. Such a system would be harmonious and all-inclusive; it would condemn all acts of aggression, and armed attack in particular; it would not prevent a state from claiming the right of self-defence in the case of armed attack; and, finally, it would make provision for other remedies in the case of unarmed aggression.

138. The USSR draft failed, in the opinion of the representative of Syria, to deal with two important problems: it did not specify the cases in which a victim of armed attack could resort to arms immediately in self-defence, or the remedies open to a victim of indirect aggression. The word "aggression", wherever used in the USSR text, should be qualified by whatever terms corresponded to the particular type of aggression dealt with.

139. Following these general observations, the Syrian representative suggested some particular alterations in the USSR draft. The word "social" should be inserted in paragraph 6, in conformity with the Mexican amendment. The second sub-paragraph 6 should read: "In particular, the following may not be used as justification for armed attack" (SR.13, pp. 8 et seq.). To this list of events not justifying the use of armed force should be added the nationalization by a State of foreign companies, or of companies comprising foreign elements which exploited the natural resources of a State (SR.4, p. 6). Finally, paragraph 5 should be amended so as to allow the Security Council greater freedom of action; at the same time, there should be provisions which would limit to a certain extent the discretionary powers of the Council or any other competent organ of the United Nations with a view to creating the feeling that it was at least morally bound to designate as an aggressor any State which had committed acts covered by the definition (SR.13, p. 13).

140. It will not be necessary in the present report to elaborate the differences between the USSR and the Mexican draft definitions, which follow more or less the same pattern. Those differences may be seen from a comparison of the texts.^{31/}

^{30/} See annex II, 1, below.

^{31/} See annex II, 1 and 5, below.

141. The same applies to the joint draft of the Dominican Republic, Mexico, Paraguay and Peru.^{32/} This draft, although in important aspects different from the USSR draft, has in common with the latter the enumeration of specific acts which shall be considered as acts of aggression in all cases, and a paragraph indicating circumstances which never justify aggression. The observations of the USSR representative about the differences between the USSR draft and the joint proposal will be found in paragraph 200 below.

142. The USSR draft met with criticism from some delegations. According to the representative of the United States, the USSR definition created hazards by its omissions. It had been said that enumeration did not produce a definition at all, but rather an incomplete catalogue of methods. While considerable effort had obviously been made toward completeness, it would be unrealistic to assume that it was possible to foresee all the forms which the ingenuity of aggressors would contrive, especially if such a blueprint were given them in advance. There was a real danger, which must not be ignored, of creating a hierarchy of offences, in which the listed offences assumed, in the eyes of the State against which the act was directed as well as the eyes of the international organization responsible for dealing with it, a greater significance and seriousness than the omitted offences. Nor was the problem met by the inclusions of a provision authorizing the organs of the United Nations to find other acts to be acts of aggression. The danger was not that an organ would be precluded from making such a finding, but that the effect would be to discourage such a determination.

143. The United States representative asked how the proposed definition would affect the work of the United Nations organs responsible for the maintenance of peace. In his view the USSR draft, like any definition of its kind, created psychological hazards which would hinder the effective operation of the peace-maintaining machinery.

144. As to the question of the effect of the definition on the decisions of States, the United States representative believed that other problems were created. A look at the USSR draft suggested that it enumerated two broad categories of offences as instances of aggression. In the first category were the major and flagrant acts of aggression, such as armed attack, declaration of war, bombardment and so forth. No one could deny that those constituted acts of aggression. They also sometimes constituted acts of self-defence. What, then, he asked, was the use of that part of a definition? It did not simplify the functions of either the international organs or the State attacked to be told that major military acts of this nature were aggressive, when they might also be self-defence. It was the consideration of those acts in the context in which they were committed that constituted the problem before the United Nations and, in this respect, the question of "first act" was as deceptively simple in appearance as it was unworkable in practice.

145. The United States representative further observed that certain characteristics of the USSR draft

definition created other problems. The most conspicuous omission in the USSR draft definition was its failure to make an exception for collective security measures, whether at the behest of the Security Council or pursuant to Article 51. By that token, military action against a State would be aggression even though it had been called for by the Council under Article 42, and was made mandatory under Article 25.

146. It was further characteristic of the draft, he observed, that it created more definitional problems than it solved.

147. Furthermore, he did not believe that the wording of the provisions of paragraph 1 was free from danger. For instance, how would the provisions of paragraph 1 (b), (c), (d), (e) and (f) apply when the territory involved was of disputed ownership (SR.13, p. 7)?

148. In the opinion of the United States representative, a definition adopted by the General Assembly would and should weigh heavily on any debates within the Security Council concerning particular cases. To the extent that it carried such weight, the definition would tend to focus attention on the listed or enumerated acts. Such a definition would not facilitate but rather hinder expeditious action by organs of the United Nations by transferring the focus of attention from the real problem of ascertaining the facts to the artificial and formal one of determining whether the facts fitted the definition (SR.13, p. 7; SR.17, p. 4).

149. The representative of the United Kingdom associated himself with this point of view. He maintained that a definition containing a list of acts of aggression did not, as had been suggested, become free of all disadvantages by the inclusion of a provision authorizing the organs of the United Nations to find acts, other than those listed as such in the definition, to be acts of aggression. Such a provision would give rise to a tendency to regard as less important those acts not mentioned in the definition. This was not unwarranted pessimism as to the good sense of the organs of the United Nations, as the USSR representative (SR.14, p. 8) had suggested. It was of course a matter of opinion, but it was the opinion of at least the majority of the Committee whose report M. Paul-Boncour had presented at San Francisco in 1945, and which had agreed "to leave to the Council the entire decision as to what constitutes a threat to peace, a breach of the peace or an act of aggression"^{33/} That Committee's decision appeared to show a greater confidence in the Council's good sense than did those who thought that the Council needed a definition in order to function efficiently. Moreover, even with such a provision it would be open to an aggressor to argue that acts not specified in the definition prima facie did not constitute aggression (SR.16, p. 3).

150. The United Kingdom representative stressed his misgivings with regard to the priority principle, the criterion of the "first act". According to the USSR representative, this principle was embodied in Article 51 of the Charter (SR.14, p. 9). But that reference did

^{32/} Annex II, 6, below.

^{33/} United Nations Conference on International Organization, vol.12, p.505, quoted in A/2211, para 116.

not justify making the priority principle the basic element in the definition of aggression. It was self-evident that for a legitimate exercise of the right of self-defence something must first have happened to call it into play. It was, however, no denial of that to say that a definition which made the first of certain specified acts the decisive criterion did not afford a simple and infallible guide to determining who was the aggressor. That question was to be determined in the light of all the facts and circumstances (SR.16, pp. 3 et seq.).

151. The Netherlands representative emphasized that the priority principle was inherent in every definition dealing with armed attack and self-defence. The only problem was to what kinds of acts the priority principle was related. In regard to the problem of the quality of acts which made them "armed attack" in the sense of Article 51, the priority principle did not contribute anything, unless it were regarded as sufficient that the act was any act of force, which apparently the USSR draft did not. For that draft mentioned frontier incidents as acts which might not be used as justification of an attack. Thus, the question arose what use of force constituted a frontier incident, and what use of force constituted attack. The practice in the time of the League of Nations showed that in the cases when both parties had used force the priority principle was not decisive. Recent history showed that opinions differed about what was a border incident. The Noman Han and Lake Kassar hostilities in the late 1930's had at that time been considered as border incidents, but had been branded as aggressive wars by the Tokyo Tribunal in 1948. The USSR representative explained this difference in evaluation by the fact that, in 1948, new light was thrown upon the actual events, which appeared to be part of a general aggressive plan, and he recognized that it might not always be easy to establish whether a particular military action was a frontier incident or a form of aggression (SR.10, p. 4). In the opinion of the Netherlands representative, this demonstrated that the need did exist for a criterion to distinguish between frontier incidents and armed attacks. The priority principle did not give any assistance on this point. A definition designed to clarify Article 51 would necessarily indicate in what cases the use of force (amounting, as the context of Article 51 showed, to a breach of the peace) could be answered by a State by the use of its own armed forces (SR.13, p.14).

152. The representative of the Netherlands also found difficulty with the priority principle in another respect. The USSR draft recognized that other cases of armed attack than those listed did exist. Paragraph 5 of the draft definition granted the Security Council the freedom to declare other acts than those listed in paragraph 1 to be an attack. Did such freedom exist for the individual State (SR.16, p. 8)? The USSR representative answered that question in the affirmative (SR.16, p. 8). But if cases of armed attack other than those listed in paragraph 1 did exist, and a State so attacked might answer the attack with force under Article 51, what, the Netherlands representative wondered, was left of the priority principle, which declared to be the aggressor the State which first committed one of the listed acts (SR.17, p. 5).

153. The same opinion about the relation between the priority principle and the list of events enumerated in the USSR definition was held by the representative of Iraq, who considered that in that list too much emphasis was laid upon the material aspects of the events, and too little upon the legal aspects. In his view, the USSR draft lacked a distinction between acts of force which did constitute aggression and acts of force which did not. The gravity of the act and of the situation in which it was happening should be taken into account (SR.18, pp. 7 and 8).

154. In reply to the above objections, the representative of the USSR stated that in his view the United States, United Kingdom and Netherlands representatives had misinterpreted the USSR draft and, as a result, had arrived at unwarranted conclusions. In particular, it was incorrect to state that the USSR draft did not distinguish between armed aggression and self-defence. From the technical military standpoint, the acts enumerated in the USSR draft could be acts either of aggression or of self-defence. The USSR draft made it perfectly clear, however, that the acts it enumerated should be declared acts of aggression if they were first committed by a State against another State. That was likewise in accordance with Article 51 of the United Nations Charter, which regarded armed attack as an act antecedent to self-defence. With regard to measures of collective self-defence taken under Article 51 of the Charter and measures adopted by the Security Council, it was obvious that the USSR draft was based wholly on the provisions of the Charter, though it omitted a needless reiteration of the relevant Charter provisions. In his view, there were no grounds for the attitude that the USSR draft cast doubt on the legality of measures which might be adopted by the Security Council pursuant to Chapter VII of the Charter. In reply to the Netherlands representative, the representative of the USSR noted what he regarded as an incorrect approach to criticism of the USSR draft definition of aggression. In his opinion, it was a mistake to criticize any definition on the ground that it could not be applied without ascertaining the precise facts needed to clarify the actual situation, and that such a procedure entailed some effort, especially when a distinction had to be drawn between an act of armed aggression and a frontier incident. The USSR definition of aggression laid down the clear-cut principle that the commission of acts of aggression by a State might not be justified by a frontier incident. Again, it was incorrect to assert that the USSR draft restricted the right of self-defence where armed attack occurred in a form other than those envisaged in the draft. If there was a genuine armed attack, Article 51 of the United Nations Charter would apply even in such hypothetical cases (SR.16, p. 8; SR.17, pp. 9 and 10).

B. The Paraguayan draft (A/AC.77/L.7)^{34/}

155. The representative of the United States of America considered that the Paraguayan draft definition was a mixed definition and, since it was impossible for a text to be both broad and precise, it had all the defects of both general and enumerative definitions. Coming to the specific provisions, he stated that several noticeable defects existed.

^{34/} See annex II, 2, below.

156. In particular, he asked, since according to the draft a State committed aggression when it provoked a disturbance of international peace and security by employing armed forces against the people, territory or armed forces of a non-self-governing territory, would a State putting down a revolt in its non-self-governing territory be committing aggression? Paragraph 1 appeared to envision automatic determination of aggression in that instance.

157. It was generally considered, the United States representative said, that "aggression" was the narrowest of the jurisdictional terms used in Chapter VII (i.e., breach of the peace, threat to the peace and act of aggression). Yet the definition made a "breach of international peace" a sub-heading of aggression, that is, armed aggression. This was an example of how far the attempt to define aggression broadened the concept.

158. No direct provision was made, the United States representative observed, for collective security or Chapter VII action. The effect of the phrase "provokes a breach or disturbance of international peace and security" was obscure in this connexion because of the vagueness of the phrase, especially in situations where it was clear that the victim State would bow peaceably to the threat of its larger neighbour, were it not for the reinforcement of the victim's friends or United Nations enforcement troops. The possibility of the ally of the victim State being considered the aggressor under this definition was evident.

159. In paragraph 1, he remarked, the phrase "provoke a breach or disturbance of international peace and security" was crucial, since otherwise any use of military force was prohibited, even conceivably when force was used withing the territory of the "aggressor" State. This phrase created more problems than the term aggression. For example, did "provoke" mean the first act of aggression, or would the term include hostile acts which did not constitute aggression? When had international peace and security been "breached" or "disturbed"? What actually would be required here was an ad hoc measure of the dangers of the situation, i.e., was there a dangerous "breach" or "disturbance"? This would force the Security Council back into the procedure it now followed of considering all the circumstances of the case. Thus, the definition would serve no purpose, and would merely complicate and prolong the process.

160. When were armed forces, the United States representative asked, directed "against the... sovereignty or political independence of another State"? This could only be determined, again, by an ad hoc consideration of all the facts and circumstances.

161. Paragraph 2, according to the United States representative, dealt with two rather special situations. The first was where the aggressor announced his aggression, an increasingly rare occurrence. He was compelled to ask, under paragraph 2 (a), whether the declaration of war was "in contravention of Articles 1 and 2 of the Charter". These were the Purposes and Principles of the United Nations, and they were as broad as the Charter in its entirety. The effect of this provision was to raise the question of any violation of the Charter, which was so broad, again, as to require ad hoc consideration of the whole matter. It was necessary

to ask again if the only predictable consequence of this paragraph would not be to put a premium on unannounced aggression.

162. With regard to paragraph 2 (b), which concerned the organization, encouragement, support or mere toleration of armed bands intended to take action against other States, the United States representative considered that there were a number of problems. For example, when was an armed force an armed band and when was it not? Was it not necessary to qualify the "action" of the armed band with a word like "aggressive", and thereby make paragraph 2 (b) clearer (SR.13, pp. 5 and 6)?

163. The representative of the United Kingdom concurred in this appraisal, stressing the point that the Paraguayan draft was a mixed definition and, like other mixed definitions, must stand or fall by its introductory general formula. In his opinion, the draft failed in that respect. Moreover, it did not make any exception for self-defence (SR.16, p. 4).

164. The Syrian delegate considered the draft open to criticism on points of form (SR.14, p. 10).

165. The representative of the Netherlands associated himself with those who felt that words like "provoke", "breach of the peace" and "disturbance of the peace" needed definition. He considered it dangerous to introduce into the definition new general concepts not used in the Charter. He also found it dangerous to declare as aggression the organization, encouragement, support or mere toleration of the formation of armed bands intended to take action against other States (paragraph 2 (b)). In what circumstances, he asked, were bands to be considered as "intended to take action"? Was a State entitled to apply Article 51 in self-defence against such bands before they had started action against this State (SR.17, p. 5)?

166. In view of the fact that the representative of Paraguay had co-sponsored the joint Latin American draft proposal (A/AC.77/L.11, see section G below), the Paraguayan draft was not further discussed.

C. The joint draft of Iran and Panama, reintroduced by Peru (A/AC.77/L.9)^{35/}

167. The representative of Peru requested that the definition proposed by Iran and Panama in the Sixth Committee at the ninth session of the General Assembly (A/C.6/L.335/Rev.1) should be circulated so that it would be taken into consideration by the present Committee (SR.14, p. 7).

168. The representative of the United States of America noted that the Iran-Panama draft like the drafts of Paraguay and China was of the mixed type, and showed the shortcomings of all mixed definitions. As was common with mixed definitions, they began with a general definition, followed by an enumeration that was generally very brief. Presumably an attempt was made to supply a broad scope by the general definition, and to supply definiteness by the enumeration. This was not possible, since the two were independent definitions loosely linked together, the latter not compensating for the former. The result

^{35/} See annex II, 3, below.

was not a broad yet precise definition. Rather, the defects and dangers of both became apparent. What were the dangers? They included an apparent hierarchy of offences and the danger of misleading the Security Council by directing attention to the wrong aspects of a situation. All of these dangers were present in mixed definitions.

169. The dangers presented by the general portions of these definitions were, in the view of the United States representative, that:

(1) A general definition might be either too narrow, so that it restricted the jurisdiction of the Security Council, or so broad that it did not help the Council in establishing whether or not an act of aggression had occurred, and created the danger of over-extension of United Nations jurisdiction;

(a) A general definition created more definitional problems than it solved. This was the inevitable effect of defining a term in other terms no more precise than itself.

170. Coming to more detailed observations, the United States representative stated that paragraph 1 defined aggression by treating it as the residue after self-defence and enforcement action had been subtracted. This created several problems: no elaboration of the limits of the right of individual or collective self-defence was offered. To state that aggression was that which was not self-defence or enforcement action, and then not to define self-defence, would not be helpful. It would be just as valid, and of just as much utility, to state that self-defence was that which was not aggression or enforcement action. That would not reduce the problem of the Security Council.

171. Paragraph 2 had, in his view, a number of defects as well. It did not effectively assimilate the exclusions of paragraph 1, although it should do so and probably was intended to do so. It stated that the listed acts constituted aggression "in all cases" yet, under paragraph 1, the acts would not be aggression if they were pursuant to a decision of the Security Council or in self-defence. That illustrated one of the dangers of any mixed definition. The problem of statutory construction, when there was a conflict between the general and the specific parts of a statute, might also occur on an international plane. Confusion of that sort would impede the operation of the Security Council, or else impel it to disregard the definition altogether.

172. Paragraph 2 (a), the United States representative observed, made no provision for the determination by impartial methods of when jurisdiction over a territory was "effective". Claims that the disputed territory was in a state of chaos might be expected to precede an attempt to occupy it if such a definition was adopted.

173. Such terms as "attack" were no more meaningful than the term "aggression". Since both involved an evaluation of motive and assessment of danger, neither could be determined except on the basis of an ad hoc inquiry into all the circumstances (SR.13, p. 6).

174. The representative of the United Kingdom shared this view about the shortcomings and insufficiencies

of any mixed definition. He stressed the point that the inclusion of the concept of self-defence in the definition raised the problem of the definition of self-defence (SR.16, p. 4).

175. The representative of the Netherlands considered that, by defining aggression as "the use of force against another State", the definition did not make any exception for border clashes, and would entitle a State to answer small-scale hostilities with war. He found a still greater danger in the last paragraph, which spoke of "armed bands for incursions". From that paragraph it followed that aggression already existed before any incursion had taken place and, therefore, such a provision might give a potential aggressor a very convenient pretext (SR.17, p. 6).

D. The Chinese draft (A/C.6/L.336/Rev.2)^{36/}

176. The representative of the United States of America considered that the Chinese definition was a variation of the other mixed definitions. The definition was a broad statement, the enumerative section apparently being purely illustrative rather than exhaustive. This raised the question whether this was properly considered an enumerative definition or a general one.

177. While it might well be, the United States representative remarked, that such loose treatment of the enumerative section of the definition reduced the dangers of over-emphasis by the Security Council of the acts of aggression mentioned therein and of under-emphasis of the omitted ones, the danger was still there, and the formula presented additional difficult definitional problems. The wording was so general that it might be doubted whether it would assist the functioning of the Council in determining whether an act of aggression had been committed. For example, when was force unlawful? What was an attack? Against whom and what must it be directed? Such questions were as difficult to define as aggression.

178. In his view, the provisions of paragraphs 2 and 3, while reasonably clear when read separately, had anomalous and contradictory implications when read together. It would appear that, although the indirect use of armed force was designated as aggression under paragraph 1, and although the right of self-defence against armed attack was recognized by paragraph 2, the use of armed force by "indirect" means would not under paragraph 3 justify the use of armed force to repel it. Under such circumstances, an elaboration of the term "direct" was essential but was not provided. This was one of the more serious definitional problems to which he had referred.

179. However the central criticism by the United States representative of the Chinese draft definition was its assumption. It was explicit in the Chinese definition, but implicit in the others. The assumption equated aggression with illegality. It was true that under the Charter aggression was unjust, i.e., illegal.

^{36/} Reproduced under No. 17 in working paper A/AC.77/L.6 which forms annex I to the present report. The draft definition was submitted to the Sixth Committee at the ninth session of the General Assembly and was not re-introduced in the present Special Committee.

But it was not true that everything illegal was therefore aggression. The assumption that everything illegal was aggression might be a reason for definitional difficulties. It also raised a dangerous suggestion that what was not aggression was therefore not illegal. This chain of reasoning was fallacious. It would be dangerous to seek to base Security Council action on such a fallacy.

180. The United States representative said that this was not to minimize the difficulty of ascertaining whether the nature of an act was aggressive or not. The intentions of the various persons controlling the actions of State were significant, but were only one element. An appreciation of the dangers created by the action, as well as other factors, was involved. These factors could not be reduced to a formula, and must be considered on an ad hoc basis (SR.13, p.6).

181. The representative of the United Kingdom agreed that the Chinese draft definition raised various definitional problems, including the meaning of self-defence. A specific difficulty was raised by the insertion of the concept of subversion in the definition of aggression. Although recognizing the importance of subversion, he maintained that it would be both very difficult and dangerous to insert subversive activities in the definition of aggression. Consequently, it would neither be satisfactory to include the concept, nor to exclude it. The same dilemma arose on many other points in connexion with defining aggression, which showed that it was better not to have a definition at all (SR.16, p.4).

182. In reply to the comment of the United States representative, the representative of China observed that the words "unlawful use of force by a State against another State, whether directly or indirectly", appearing in operative paragraph 1 of the Chinese proposal, did not create further problems of definition; the terms were themselves defined in operative paragraphs 2 and 3. Moreover, the concept that unlawful use of force constitutes aggression was based on the provisions of Article 2, paragraph 4, of the Charter (SR.14, p.4).

E. The Iraq draft (A/AC.77/L.8/Rev.1)^{37/}

183. The representative of Iraq, in introducing his draft definition, stated that it had been prepared after a careful comparison of the various proposals made to the organs of the United Nations, particularly the International Law Commission. He favoured a definition of the general type, giving a general rule of law, and leaving it to the competent organs to adapt the rule to the specific cases referred to them. The definition dealt with the use of force and did not cover other forms of aggression, any attempt at the moment to define indirect forms of aggression being doomed to failure. It was based on the fundamental difference between the concept of aggression under Article 39 of the Charter and that embodied in Article 51.

184. In order to distinguish between self-defence and an act of armed attack - bearing in mind that the situ-

ation in both cases was similar - the Iraqi representative had chosen a flexible criterion, taking into account both the purpose and the effect of the act in question; armed attack was an act aimed at, or resulting in, a change in the international juridical situation and a disturbance of international peace and security. The material factor was the gravity of the attack, judged by its scale and intensity.

185. The representative of Iraq emphasized that the definition took into account the fact that an international community lacking the attributes of statehood could nevertheless be a victim of aggression. Article 51 of the Charter dealt only with attacks on Member States, but it spoke of the inherent right of self-defence. Communities which were not States might also invoke that right (SR.14, pp. 5 to 7).

186. The representative of the United States considered that the Iraqi definition was open to all the objections voiced concerning definitions of the general type, which created more definitional problems than they solved (SR.17, p.3).

187. The United Kingdom representative found the Iraqi definition no more satisfactory than any other general definition. It was difficult to understand what was meant by some of the phrases employed in it: for instance, "the conditions of existence of the people and territories of a government or group of governments" and "a change in the international juridical situation" (SR.16, p.5).

188. The representative of Peru said that, in his opinion, the draft of Iraq was vague and confused in form. He considered that its most serious defect was the apparent implication that an armed attack would not necessarily constitute a breach of peace and security or a disturbance of the international juridical situation (SR.15, p.5). This view was shared by the representative of China, who feared that such a definition would impair the right of individual and collective self-defence, and might give the attacker new pretexts for his aggressive designs (SR.18, p.5).

189. The USSR representative considered the defects of the draft inherent in all definitions of a general type. The first part reproduced in essence the general formula proposed by Professor Alfaro to the International Law Commission at its third session (A/CN.4/L.8). In the light of criticism of this formula, Professor Alfaro had amended it and attached to it examples of acts of aggression. The re-appearance of the general formula was a retrograde development (SR.15, p.3). The general formula amounted, in the view of the USSR representative, to nothing more than the formula "aggression is aggression" (SR.14, p.10). The effect of the second part of the general formula used in the Iraq draft was to restrict the provisions, and even to alter the sense, of Article 51 of the United Nations Charter. Moreover, the Iraq draft contained no such over-riding criterion for the determination of the aggressor as first commission by a State of certain acts against another State. It failed to stipulate that armed aggression could not be justified on the grounds of any political, economic or strategic considerations. A definition of aggression which failed to embody those principles could not be effective.

^{37/} See annex II, 4, below.

190. The Netherlands representative shared the opinion of those who considered that many terms which needed definition were used in the draft. Another objection was based on the divergence of the phrasing of the definition from the wording of the Charter provisions; e.g., "independence" instead of "political independence" (SR.17, p.5).

191. On the other hand, the Netherlands representative expressed his support of two principles recognized in the Iraqi draft definition. First, a distinction was made between "aggression" in the sense of Article 39 and "armed attack" as used in Article 51. Secondly, the draft incorporated the principle that communities not having statehood could commit, as well as be victims of, aggression (SR.13, p.15). The latter principle had also the support of the representative of China (SR.14, p.4).

192. Answering the objections, the representative of Iraq maintained that the definition was in accordance with the provisions of the Charter taken as a whole. In particular, the definition proposed by his delegation was based on Article 2, paragraphs 3 and 4, of the Charter and on the provisions of Chapter VI which prohibits any change by force in the international juridical situation and recommends the use of peaceful means for the settlement of international disputes. Not every act of violence was, in the opinion of his delegation, an aggression in the sense of Article 51 of the Charter; only an act sufficiently serious to disturb international peace and security justified the recourse to self-defence. This view was clearly reflected in the provisions of Article 51. Regarding the omission of the adjective "political" before the word "independence", referred to by the Netherlands delegate, the representative of Iraq pointed out that Article 2, paragraph 4, of the Charter prohibited the threat or use of force not only "against the territorial integrity or political independence of any State," but also "in any other manner inconsistent with the purposes of the United Nations". The formula used by the Charter in this connexion was therefore wider than political independence. (SR.18, pp.7 and 8).

F. The Mexican draft (A/AC.77/L.10)^{38/}

193. In view of the fact that the representative of Mexico was a co-sponsor of the joint Latin American draft (A/AC.77/L.11) - though reserving his right to revert to his own proposal if the joint draft did not succeed in finding general support - the Mexican proposal was not thoroughly discussed. The representative of Czechoslovakia wondered why this proposal, so close in structure to the USSR draft, deviated in so many details (SR.17, p. 8). The Netherlands representative observed that sub-paragraph (d) of the Mexican proposal made a distinction between "the support to the organization of bands for incursion" and "the support for such incursions". Both events were considered as aggression, which seemed to him a too broad, and therefore dangerous, concept of aggression.

194. The Netherlands representative objected to the subjective element in the general formula "for the purpose of attacking". If the definition of "armed

aggression" in the Mexican proposal constituted at the same time a definition of "armed attack" as used in Article 51, it followed that armed attack was, in the words of the Mexican draft, "the ... use of force ... for the purpose of attacking". Moreover, if the definition covered "armed attack" in Article 51, it was still more difficult to understand the enumerated events, among which one - sub-paragraph (b) - consisted of "armed attack".

195. The last paragraph was almost identical with the USSR draft. The Netherlands representative had the same misgivings as he had concerning that draft; according to Article 51, armed force could never be used except against armed force or in the service of the United Nations. To mention special circumstances not justifying the use of force would weaken the legal position (SR.17, p. 6).

G. The joint draft of the Dominican Republic, Mexico, Paraguay and Peru (A/AC.77/L.11)^{39/}

196. The representative of Mexico, introducing the joint draft proposal, stated that the authors had endeavoured to produce a definition which would be acceptable, in existing circumstances, to the greatest possible number of States. To achieve a common proposal, they had made substantial sacrifices. The text could only become perfect after much time, experience, practice and adaptation (SR.16, pp. 6 and 7).

197. The representative of the Dominican Republic explained that the principal purpose of the authors of the joint draft resolution was to find an objective formula. For that reason, the draft contained no preamble; recitals could help in the interpretation of the operative part, but they might also contain features prejudicial to the objectivity of the operative clauses. In seeking to ensure that objectivity, the authors had based their proposal not only on the United Nations Charter but also on the Charter of the Organization of American States, especially articles 24 and 25 of the latter instrument, and they had also taken into consideration the 1947 Inter-American Treaty of Reciprocal Assistance as well as the various proposed definitions before the present Committee. The wording of paragraph 1 reflected the belief of the American States that provision should be made for forms of aggression other than armed attack. Paragraph 2 listed some specific cases in which the aggressor's intention was beyond dispute; that feature enhanced the proposed formula's objectivity (SR.16, p. 7).

198. It was explained by the representative of Paraguay that "declaration of war" mentioned in paragraph 2 (a) meant a declaration followed by hostilities. A more theoretical kind of declaration could not form an element of the concept of aggression (SR.18, p. 6).

199. The representative of Peru stressed the point that the draft definition dealt with any use of force. It seemed inappropriate to make in the definition a distinction between armed aggression and armed attack. In fact, Article 39 merely referred to aggression in the widest possible sense, while Article 51

^{38/} See annex II, 5, below.

^{39/} See annex II, 6, below.

dealt with one particular form which aggression might take. Armed attack had been singled out only because it was the one occurrence which justified forcible counter-measures. The four-Power draft resolution was consequently logical in stating that any use of force other than in self-defence was aggression (SR.17, pp. 8 and 9).

200. The representative of the USSR remarked that the joint draft presented by the four Latin American countries was to some extent an improvement on the drafts those countries had advocated at the ninth session of the General Assembly. It was one indication of the positive results of the present Committee's work. At the same time that draft had, he felt, the following shortcomings. Between the general formula of the draft, in which an attempt was made to express both the notion of armed aggression and other forms of aggression, and the part containing an enumeration of acts of armed aggression, there was a contradiction which, in his view, detracted from the clarity of the general definition and might give rise to a dangerous impression that force might be used in self-defence in cases other than that in which it was permissible under Article 51 of the Charter, i.e., the case of an armed attack on a State. The four-Power draft contained no such fundamental criterion for determining the attacking party as an attack first committed by a State against another State. The four-Power draft, in contrast to the USSR draft, omitted, for no good reason, the provision that the commission of acts of armed aggression could not be justified by strategic considerations, and it excluded, again for no good reason, an exhaustive enumeration of other political and economic acts which could not justify acts of aggression. Finally he felt that, in the form in which they were expressed in the draft, the provisions concerning the use of armed force upon the decision of the United Nations ran counter to Chapter VII of the Charter. While the draft contained several valid provisions, he did not feel that, as a whole, it could be considered an effective definition of aggression in accordance with the Charter (SR.18, pp. 4 and 5).

201. According to the representative of the United States, the draft demonstrated the extent to which efforts to solve the extremely difficult problems involved in the definition of aggression could fall short of producing a satisfactory formula. It revealed the effects of an eclectic approach to the problem. It also showed how a willingness to compromise on basic issues produced nothing more than a patchwork combination of so-called "common elements" which it would be highly inadvisable and unproductive for the Committee to offer to the General Assembly (SR.17, p. 3).

202. The representative of the Netherlands stated that several concepts in the definition, e.g., "territorial inviolability" and "sovereignty", would need further defining. He wondered whether, in case "any use of force" mentioned in the draft constituted "armed attack", the definition would open the door for warlike hostilities in reaction to border skirmishes. He found it difficult to grasp the meaning of the words "in all cases" in paragraph 2, in view of the opening words of this paragraph. "Armed attack" was mentioned in

paragraph 2 (c) as one of the cases of aggression. The words "armed attack" apparently had another meaning than the same words used in Article 51. Finally, he had objections to the last paragraph, for the use of force could never be justified except in self-defence against armed attack or in the service of the United Nations (SR.17, pp. 6 and 7). The representative of China shared his misgivings about the words "in all cases". He considered the last paragraph superfluous and misleading, for the reason that aggression never was justified. He missed in the definition a reference to subversive activities (SR.18, p. 5).

H. The Netherlands representative's suggestion for a definition of "armed attack"

203. The Netherlands representative considered that to define aggression as the term is used in Article 39 of the Charter, as a guide for the organs called upon to apply that Article, was useless, dangerous and impossible. It was useless, for United Nations organs did not need guidance. It was dangerous, for the definition might hinder United Nations organs in the fulfilment of their task. It was impossible, for it seemed beyond human capacity to formulate a generally acceptable definition.

204. In his opinion, former attempts to define aggression had failed for the reason that the broad definition of aggression given in Article 39 could not be reconciled with the narrow concept of armed attack presupposed in Article 51. That difficulty would no longer exist in case only "armed attack" was to be defined. Such a definition might be helpful, for different views existed as to the scope of the right of self-defence, as recognized in Article 51. A definition of "armed attack" would be a useful guide for States, and might assist in the formation of a clear public opinion.

205. Such a definition of armed attack should, in the view of the Netherlands representative, make clear in what cases a State was entitled to use armed force otherwise prohibited as constituting a breach of the peace. The place of Article 51 in Chapter VII indicated clearly that small-scale hostilities connected with border incidents fell outside the scope of that Article. The crucial problem concerning the concepts of armed attack was, in his view, to find the criterion distinguishing armed attack from any other use of force, which did not entitle the State to take the action provided for in Article 51. He found this criterion in the use of force in such circumstances that the victim State had no means other than military to preserve its territorial integrity or political independence. If the use of force was such that United Nations intervention could provide sufficient protection, an armed attack within the meaning of Article 51 did not exist.

206. Consequently, on the one hand, not every shooting, bombing or trespassing across the border constituted armed attack and, on the other hand, armed attack was possible even without a bomb having been dropped or a border having been violated. In exceptional cases the factual direction of the armed force of a State against another State might, even without actual contact, constitute such a use of armed force as would constitute an armed attack under Article 51, for example, when the Japanese battleships were approaching Pearl Harbour.

207. The Netherlands representative shared the view, expressed by the representatives of Iraq and China, that an armed attack could be launched by a group or community which was not a State, and that such a community might also be the victim of an armed attack, e.g., territories under an international régime, as Trieste was at one time. However it seemed to the Netherlands representative that, in defining "armed attack" as the expression was used in Article 51, no reference should be made to such special units or communities. Article 51 dealt only with an armed attack by a State against a State. Definition of that concept would as a matter of course have a bearing on cases in which non-States were involved.

208. On the basis of these considerations, the Netherlands representative thought that a definition of armed attack might read:

"Armed attack as this term is used in Article 51 is any use of armed force which leaves the State against which it is directed no means other than military means to preserve its territorial integrity or political independence; it being understood that the definition may never be construed to comprise acts of legitimate individual or collective self-defence or any act in pursuance of a decision or recommendation by a competent organ of the United Nations" (SR.8, pp. 5 to 10; SR.13, pp. 14 to 18).

209. Such a definition could not be automatically applied, in the view of the Netherlands representative. It presupposed the evaluation of all circumstances, and consequently differences of opinion whether or not armed attack existed in a specific case could not be excluded. But it implied clearly enough in what cases a State might not go to war in self-defence.

210. The United States representative considered the Netherlands formula a text initially as much dependent on subjective evaluation by a State considering action in self-defence as any determination that State might make under the language of Article 51 itself. It provided no additional or effective compulsion to abide by the judgements of the organs of the United Nations.

211. Article 51 did not, in his view, directly use such terms as "unprovoked" or "first". The facts of the prior history of any given situation, the intentions of the parties to it, and other factors, were made relevant by the concept of self-defence itself. It would not seem unreasonable to suggest that of equal but by no means more important weight was the factor of "room to wait for United Nations action", and that this factor was equally relevant under the self-defence concept. That it alone among all the various elements of the events leading up to a given situation should be singled out for attention raised the same sort of difficult problem that was raised by an enumerative definition.

212. There were, of course, the difficulties inherent in any elaboration of the Charter language, and the chief of those, he observed, was the introduction of new terms which themselves defied useful definition. The Netherlands formula had several of those.

213. In any event, the United States representative considered there was reason to believe that the formula might seriously prejudice resort to self-defence as

recognized under Article 51. It was also possible that, by emphasizing the subjective character of the judgement to be made on timing, and providing an ambiguous new test to be applied, the "definition" could do more harm than good (SR.13, pp. 4 and 5).

214. The representative of the United Kingdom wondered whether a definition dealing solely with the concept of armed attack under Article 51 would serve a useful purpose. He doubted whether such a definition would deter any State from pursuing its aggressive designs. The term "armed attack" in Article 51 could not be satisfactorily defined without defining self-defence, and a satisfactory definition of self-defence was virtually impossible to achieve. It was, for instance, impossible, except in the light of the particular circumstances, to determine whether any particular case was a minor local attack justifying no more than the force immediately necessary to deal with it on the spot, or whether it was something more which justified more extensive measures of armed force. The ever-recurring problem was whether the reaction on the part of the victim was one which came within the scope of the concept of legitimate self-defence (SR.16, pp. 5 and 6).

215. The representative of the USSR considered it inconsistent with the Charter to argue that the notion of armed aggression in Article 39 was different in principle from the notion of armed attack in Article 51. They formed a single concept. He considered it dangerous to mention as the first element of the definition "the use of armed force", which did not in any way specify the types of acts envisaged, and lent itself to a very dangerous construction; it could be said to cover every type of military activity, including mere troop movements and routine manoeuvres which a neighbouring State regarded as menacing. The phrase thus tended to assimilate a threat of aggression to aggression proper, which would authorize a State to unleash a war on the pretext that it was only exercising its inherent right of self-defence. Furthermore, the Netherlands proposal made no mention of the role of the Security Council or of the limits on the exercise of the right of self-defence which the Council might impose in pursuance of Article 51. Again, the formula spoke of "territorial integrity and political independence", although Article 51 contained no similar phrase. The text of Article 51 was admirably clear, and elaborations of that type could be more confusing than helpful (SR.10, pp. 5 and 6).

216. The Czechoslovak representative shared this view. Moreover, in his opinion, the Netherlands representative's approach could not be reconciled with the express mandate given to the Committee. He opposed the argument that the Charter contained two different concepts of aggression (SR.10, pp. 6 and 7).

217. The representative of China was of the opinion that the idea embodied in Article 51 was made clearer by the definition. Nevertheless, the definition would not make it easier to thwart an aggressive policy. Subversion was the most dangerous form of aggression. It was not a commendable step to adopt a definition limited to armed attack. Its effects would only be to create an illusion that aggression had been defined (SR.14, p. 3).

SELECTED TEXTS OF DEFINITIONS AND DRAFT DEFINITIONS OF AGGRESSION

(Working paper prepared by the Secretariat)

Note: The report on the question of defining aggression presented by the Secretary-General to the General Assembly at its seventh session (See Official Records of the General Assembly, Seventh Session, Annexes, agenda item 54, document A/2211) contains a detailed study of the problem, reproducing methodically definitions of aggression drafted up to 1952. For the convenience of the members of the 1956 Special Committee, a number of the definitions included in the said report are reproduced below. Also reproduced below are definitions submitted to the International Law Commission at its third session, to the 1953 Special Committee on the Question of Defining Aggression and at the ninth session of the General Assembly.

1. The definition of aggression drafted by the Committee on Security Questions (the Disarmament Conference, 1932-1933) (Definition reproducing the substance of the USSR proposal defining aggression submitted to the General Commission) (A/2211, paras. 76 to 80):

Act relating to the Definition of the AggressorArticle 1

The aggressor in an international conflict shall, subject to the agreements in force between the parties to the dispute, be considered to be that State which is the first to commit any of the following actions:

- (1) Declaration of war upon another State;
- (2) Invasion by its armed forces, with or without a declaration of war, of the territory of another State;
- (3) Attack by its land, naval or air forces, with or without a declaration of war, on the territory, vessels or aircraft of another State;
- (4) Naval blockade of the coasts or ports of another State;
- (5) Provision of support to armed bands formed in its territory which have invaded the territory of another State, or refusal, notwithstanding the request of the invaded State, to take in its own territory all the measures in its power to deprive those bands of all assistance or protection.

Article 2

No political, military, economic or other considerations may serve as an excuse or justification for the aggression referred to in article 1.

Article 3

The present Act shall form an integral part of the General Convention for the Reduction and Limitation of Armaments.

...

Protocol annexed to article 2

The High Contracting Parties signatories of the Act relating to the Definition of the Aggressor,

Desiring, subject to the express reservation that the absolute validity of the rule laid down in article 2 of that Act shall be in no way restricted, to furnish certain indications for the guidance of the international bodies that may be called upon to determine the aggressor:

Declare that no act of aggression within the meaning of article 1 of that Act can be justified on either of the following grounds, among others:

A. The Internal Condition of a State:

E.g., its political, economic or social structure; alleged defects in its administration; disturbances due to strikes, revolutions, counter-revolutions or civil war.

B. The International Conduct of a State:

E.g., the violation or threatened violation of the material or moral rights or interests of a foreign State or its nationals; the rupture of diplomatic or economic relations; economic or financial boycotts; disputes relating to economic, financial or other obligations towards foreign States; frontier incidents not forming any of the cases of aggression specified in article 1.

The High Contracting Parties further agree to recognize that the present Protocol can never legitimate any violations of international law that may be implied in the circumstances comprised in the above list.

2. The definition included in the Treaty between Finland and the USSR of 21 January 1932, article 1 (A/2211, para. 192):

Any act of violence attacking the integrity and inviolability of the territory or the political independence of the other High Contracting Party shall be regarded as an act of aggression, even if it is committed without declaration of war and avoids warlike manifestations.

3. The definition included in the Act of Chapultepec signed by all the American Republics on 8 March 1945 (A/2211, para. 200):

Whereas...

(j) ... any attempt on the part of a non-American State against the integrity or inviolability of the territory, the sovereignty or the political independence of an American State shall be considered as an act of aggression against all the American States.

...

Part I

Declare:

...

3. That every attack of a State against the integrity or the inviolability of the territory, or against the sovereignty or the political independence of an American State, shall, conformably to Part III hereof, be considered as an act of aggression against the other States which sign this Act. In any case, invasion by armed forces of one State into the territory of another trespassing boundaries established by treaty and demarcated in accordance therewith shall constitute an act of aggression.

4. The definition included in the Inter-American Treaty of Reciprocal Assistance signed at Rio de Janeiro on 2 September 1947 (A/2211, para. 201):

Article 1. The High Contracting Parties formally condemn war and undertake in their international relations not to resort to the threat or the use of force in any manner inconsistent with the provisions of the Charter of the United Nations.

...

Article 3. The High Contracting Parties agree that an armed attack by any State against an American State shall be considered as an attack against all the American States, and, consequently, each one of the said Contracting Parties undertakes to assist in meeting the attack in the exercise of the inherent right of individual or collective self-defence recognized by Article 51 of the Charter of the United Nations.

...

Article 9. In addition to other acts which the Organ of Consultation may characterize as aggression, the following shall be considered as such:

(a) Unprovoked armed attack by a State against the territory, the people, or the land, sea or air forces of another State;

(b) Invasion, by the armed forces of a State, of the territory of an American State, through the trespassing of boundaries demarcated in accordance with a treaty, judicial decision, or arbitral award, or, in the absence of frontiers thus demarcated, invasion affecting a region which is under the effective jurisdiction of another State.

5. Draft definition submitted by Bolivia to Committee 3 of the Third Commission of the San Francisco Conference (A/2211, paras. 113 and 114):

A State shall be designated an aggressor if it has committed any of the following acts to the detriment of another State:

(a) Invasion of another State's territory by armed forces.

(b) Declaration of war.

(c) Attack by land, sea, or air forces with or without declaration of war, on another State's territory, shipping, or aircraft.

(d) Support given to armed bands for the purpose of invasion.

(e) Intervention in another State's internal or foreign affairs.

(f) Refusal to submit the matter which has caused a dispute to the peaceful means provided for its settlement.

(g) Refusal to comply with a judicial decision lawfully pronounced by an International Court.

This proposal was accompanied by the following observation:

In general the Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and should make recommendations or decide on the measures to be taken to maintain or restore peace and security. If the nature of the acts investigated entails designating a State as an aggressor as indicated in the following paragraph, these measures should be applied immediately by collective action.

6. Draft definition submitted by the Philippines to Committee 3 of the Third Commission of the San Francisco Conference (A/2211, para. 115):

Any nation should be considered as threatening the peace or as an aggressor, if it should be the first party to commit any of the following acts:

(1) To declare war against another nation;

(2) To invade or attack, with or without declaration of war, the territory, public vessel, or public aircraft of another nation;

(3) To subject another nation to a naval, land or air blockade;

(4) To interfere with the internal affairs of another nation by supplying arms, ammunition, money or other forms of aid to any armed band, faction or group, or by establishing agencies in that nation to conduct propaganda subversive of the institutions of that nation.

7. Resolution 380 (V) adopted by the General Assembly on 17 November 1950 (A/2211, para. 126):

The General Assembly,

...

Condemning the intervention of a State in the internal affairs of another State for the purpose of changing its legally established government by the threat or use of force,

1. Solemnly reaffirms that, whatever the weapons used, any aggression, whether committed openly, or by fomenting civil strife in the interest of a foreign Power, or otherwise, is the gravest of all crimes against peace and security throughout the world;

...

8. The Charter of the International Military Tribunal, annexed to the Agreement between France, the USSR the United Kingdom and the United States of America, signed in London on 8 August 1945, article 6 (A/2211, para. 142):

(a) Crimes against peace: namely, planning, preparation, initiation or waging a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a Common Plan or Conspiracy for the accomplishment of any of the foregoing;

...

9. The definition drafted by Mr. Alfaro and amended by the International Law Commission (A/2211, para. 132)^{1/}:

Aggression is the threat or use of force by a State or Government against another State, in any manner, whatever the weapons employed and whether openly or otherwise, for any reason or for any purpose other than individual or collective self-defence or in pursuance of a decision or recommendation by a competent organ of the United Nations.

10. The definition proposed by Mr. Amado see report of the International Law Commission covering the work of its third session (1951), Official Records of the General Assembly, Sixth Session, Supplement No. 9 (A/1858, para. 40):

Any war not waged in exercise of the right of self-defence or in application of the provisions of Article 42 of the Charter of the United Nations [is] an aggressive war.

11. The definition proposed by Mr. Yepes (A/1858, para. 42):

For the purposes of Article 39 of the United Nations Charter an act of aggression shall be understood to mean any direct or indirect use of violence (force) by a State or group of States against the territorial integrity or political independence of another State or groups of States.

Violence (force) exercised by irregular bands organized within the territory of a State or outside its territory with the active or passive complicity of that State shall be considered as aggression within the meaning of the preceding paragraph.

The use of violence (force) in the exercise of the right of individual or collective self-defence recognized by Article 51 of the Charter or in the execution of a decision duly adopted by a competent organ of the United Nations shall not be held to constitute an act of aggression.

No political, economic, military or other consideration may serve as an excuse or justification for an act of aggression.

12. The definition proposed by Mr. Hsu (A/1858, para. 43):

Aggression, which is a crime under international law, is the hostile act of a State against another State, committed by (a) the employment of armed force other than in self-defence or the implementation of United Nations enforcement action; or (b) the arming of

^{1/} This definition was not adopted by the International Law Commission. However the Commission decided to insert the following paragraphs in article 2 of its draft Code of Offences against the Peace and Security of Mankind:

"The following acts are offences against the peace and security of mankind:

"(1) Any act of aggression, including the employment by the authorities of a State of armed force against another State for any purpose other than national or collective self-defence or in pursuance of a decision or recommendation by a competent organ of the United Nations.

"(2) Any threat by the authorities of a State to resort to an act of aggression against another State" (A/1858, para. 53).

organized bands or of third States, hostile to the victim State, for offensive purposes; or (c) the fomenting of civil strife in the victim State in the interest of some foreign State; or (d) any other illegal resort to force, openly or otherwise.

13. The definition proposed by Mr. Córdova (A/1858, para. 44):

Aggression is the direct or indirect employment by the authorities of a State of armed force against another State for any purpose other than national or collective self-defence or execution of a decision by a competent organ of the United Nations.

The threat of aggression should also be deemed to be a crime under this article.

14. The definition proposed by Mr. Scelle (A/1858, para. 53):

Aggression is an offence against the peace and security of mankind. This offence consists in any resort to force contrary to the provisions of the Charter of the United Nations, for the purpose of modifying the state of positive international law in force or resulting in the disturbance of public order.

15. The definition proposed by the USSR (Official Records of the General Assembly, Ninth Session, Annexes, agenda item 51, document A/C.6/L.332/Rev.1)^{2/}:

16. The Mexican amendment (A/AC.66/L.8) to the USSR definition (A/AC.66/L.2/Rev.1) (see report of the 1953 Special Committee on the Question of Defining Aggression, Official Records of the General Assembly, Ninth Session, Supplement No. 11 (A/2638, p. 14). The text of the USSR definition was, with the exception of drafting changes, the same as that of document A/C.6/L.332/Rev.1 mentioned under 15 above;

The proposed definition of the USSR (A/AC.66/L.2/Rev.1) could be considerably improved and would be acceptable to the Mexican delegation with the following changes:

1. The insertion after the preamble of the following paragraph:

Declares that:

In an international conflict aggression shall be regarded as the direct or indirect use of force by the authorities of one State against the territorial integrity or political independence of another State or for any purpose other than legitimate individual or collective defence or compliance with a decision or recommendation of a competent organ of the United Nations. In particular, the commission of any of the following acts shall be regarded as aggression:

(a) ...

(b), etc.

(There would then be inserted paragraphs (a) to (f) of paragraph 1 of the Soviet draft.)

Paragraph 5 of the Soviet draft definition would be deleted.

^{2/} For the text of the definition, see annex II, 1, below.

2. In view of the influence which the definition of aggression may have on the application and interpretation of Article 51 of the United Nations Charter, it seems, in the opinion of the Mexican delegation, hazardous to extend the concept of aggression to include separate elements of the use of force. Thus, acts constituting so-called indirect, economic or ideological aggression should be regarded as aggression only if they involve or are accompanied by the use of force. Consequently, for the purposes of the definition:

(a) Such acts when actually constituting aggression are already covered by the general definition proposed in paragraph (1).

(b) Even though such acts did not constitute aggression, they might justify enforcement measures by the Security Council as provided in Article 39 of the Charter in the same manner as though aggression had been committed if by their effect on the victim State or for any other reason they constituted a threat to the peace. This circumstance should be particularly emphasized in our Committee's report to the Assembly.

The deletion of paragraphs 2, 3 and 4 of the Soviet draft is accordingly proposed.

3. Paragraph 6, first part. Amend the wording to conform with the suggested deletion of paragraphs 3, 4 and 5. Add the words "or social" after the words "strategic or economic". Delete that part of the paragraph beginning with the words: "Or by the desire to exploit..." up to the words: "[interests in that] territory".

Amend the wording of paragraph 6, sub-paragraph B, item (a), so as to include those treaties which by their very nature justify the use of force if they are violated.

17. The definition proposed by China (Official Records of the General Assembly, Ninth Session, Annexes, agenda item 51, document A/C.6/L.336/Rev.2):

The General Assembly,

Recalling its resolutions 599 (VI) and 688 (VII),

Having considered the report of the Special Committee on the Question of Defining Aggression,

Mindful of the responsibilities of the Security Council concerning aggression under Article 1, paragraph 1, and Chapter VII of the Charter, and of the function of the General Assembly envisaged in Assembly resolution 377 A (V),

Considering that, although the question whether aggression has occurred must be determined in the circumstances of each particular case, it would nevertheless be advisable to formulate certain principles as guidance,

Recommends that the Security Council in the discharge of its responsibilities under Article I, paragraph 1, and Chapter VII of the Charter, and the Members of the United Nations, when the Assembly is called upon to consider an item pursuant to resolution 377 A (V), take account, inter alia, of the following principles:

1. That aggression is the unlawful use of force by a State against another State, whether directly or indirectly, such as:

- (a) Attack or invasion by armed forces;
- (b) Organization or support of incursion of armed bands;
- (c) Promotion or support of organized activities in another State aiming at the overthrow by violence of its political or social institutions;

2. That the use of force is lawful when it is in pursuance of a decision or recommendation by a competent organ of the United Nations, or is in self-defence against armed attack until a competent organ of the United Nations has taken the measures necessary to maintain international peace and security;

3. That the employment of measures, other than armed attack, necessary to remove the danger arising from an indirect use of force is likewise lawful until a competent organ of the United Nations has taken steps to remove such danger.

18. The definition proposed by Bolivia (working paper A/AC.66/L.9 submitted to the 1953 Special Committee on the Question of Defining Aggression, Official Records of the General Assembly, Ninth Session, Supplement No. 11 (A/2638, p. 15):

The General Assembly,

Considering it necessary to define some acts of aggression in order to maintain international peace and security, in accordance with the Purposes and Principles of the United Nations Charter,

Hereby resolves as follows:

1. Independently of acts of aggression designated as such by the competent international organs of the United Nations, the invasion by one State of the territory of another State across the frontiers established by treaties or judicial or arbitral decisions and demarcated in accordance therewith, or, in the absence of marked frontiers, an invasion affecting territories under the effective jurisdiction of a State shall in all cases be deemed to constitute an act of aggression.

2. A declaration of war, an armed attack with land, sea or air forces against the territory, ships or aircraft of another State, support given to armed bands for purposes of invasion, and the overt or covert inciting of the people of one State by another State to rebellion for the purpose of disturbing law and order in the interests of a foreign Power shall also be defined as acts of aggression.

3. Any threat or use of force against the territorial integrity or political independence of any State or in any other manner incompatible with the purposes of the United Nations, including unilateral action whereby a State is deprived of economic resources derived from the proper conduct of international trade or its basic economy is endangered so that its security is affected and it is rendered unable to act in its own defence or to co-operate in the collective defence of peace shall likewise be deemed to constitute an act of aggression.

4. Apart from the cases provided for in paragraphs 1 and 2, which shall constitute sufficient grounds for the automatic exercise of the right of collective self-defence, other acts of aggression shall be defined as

such, when they take place, by the competent organs established by the United Nations Charter and in conformity with its provisions.

19. The definition proposed by Paraguay (Official Records of the General Assembly, Ninth Session,

Annexes, agenda item 51, document A/C.6/L.334/Rev. 1)^{3/}:

20. The definition proposed by Iran and Panama (Ibid., document A/C.6/L.335/Rev. 1)^{4/}:

^{3/} For the text of the definition, see annex II, 2, below.

^{4/} See annex II, 3, below.

ANNEX II

DRAFT DEFINITIONS SUBMITTED TO THE 1956 SPECIAL COMMITTEE

1. Union of Soviet Socialist Republics: draft resolution (A/AC.77/L.4)

The 1956 Special Committee on the Question of Defining Aggression recommends to the General Assembly the adoption of the following resolution:

The General Assembly,

Considering it necessary to establish guiding principles with a view to determining which party is guilty of aggression,

Declares that:

1. In an international conflict that State shall be declared the attacker which first commits one of the following acts:

(a) Declaration of war against another State;

(b) Invasion by its armed forces, even without a declaration of war, of the territory of another State;

(c) Bombardment by its land, sea or air forces of the territory of another State or the carrying out of a deliberate attack on the ships or aircraft of the latter;

(d) The landing or leading of its land, sea or air forces inside the boundaries of another State without the permission of the Government of the latter, or the violation of the conditions of such permission, particularly as regards the length of their stay or the extent of the area in which they may stay;

(e) Naval blockade of the coasts or ports of another State;

(f) Support of armed bands organized in its own territory which invade the territory of another State, or refusal, on being requested by the invaded State, to take in its own territory any action within its power to deny such bands any aid or protection.

2. That State shall be declared to have committed an act of indirect aggression which:

(a) Encourages subversive activity against another State (acts of terrorism, diversionary acts, etc.);

(b) Promotes the fomenting of civil war within another State;

(c) Promotes an internal upheaval in another State or a change of policy in favour of the aggressor.

3. That State shall be declared to have committed an act of economic aggression which first commits one of the following acts:

(a) Takes against another State measures of economic pressure violating its sovereignty and economic independence and threatening the bases of its economic life;

(b) Takes against another State measures preventing it from exploiting or nationalizing its own natural riches;

(c) Subjects another State to an economic blockade.

4. That State shall be declared to have committed an act of ideological aggression which:

(a) Encourages war propaganda;

(b) Encourages propaganda in favour of using atomic, bacterial, chemical and other weapons of mass destruction;

(c) Promotes the propagation of fascist-nazi views, of racial and national exclusiveness, and of hatred and contempt for other peoples.

5. Acts committed by a State other than those listed in the preceding paragraphs may be deemed to constitute aggression if declared by decision of the Security Council in a particular case to be an attack or an act of economic, ideological or indirect aggression.

6. The attacks referred to in paragraph 1 and the acts of economic, ideological and indirect aggression referred to in paragraphs 2, 3 and 4 may not be justified by any considerations of a political, strategic or economic nature, or by the desire to exploit natural riches in the territory of the State attacked or to derive any other kind of advantages or privileges, or by reference to the amount of capital invested in that territory or to any other particular interests in that territory, or by the refusal to recognize that it possesses the distinguishing marks of statehood.

In particular, the following may not be used as justification:

A. The internal situation of any State, as for example:

(a) Backwardness of any people politically, economically or culturally;

(b) Alleged shortcomings of its administration;

(c) Any danger which may threaten the life or property of aliens;

(d) Any revolutionary or counter-revolutionary movement, civil war, disorders or strikes;

(e) Establishment or maintenance in any State of any political, economic or social system.

B. Any acts, legislation or orders of any State, as for example:

(a) Violation of international treaties;

(b) Violation of rights and interests in the sphere of trade, concessions or any other kind of economic activity acquired by another State or its citizens;

(c) Rupture of diplomatic or economic relations;

(d) Measures constituting an economic or financial boycott;

(e) Repudiation of debts;

(f) Prohibition or restriction of immigration or modification of the status of foreigners;

(g) Violation of privileges recognized to the official representatives of another State;

(h) Refusal to allow the passage of armed forces proceeding to the territory of a third State;

(i) Measures of a religious or anti-religious nature;

(j) Frontier incidents.

7. In the event of the mobilization or concentration by another State of considerable armed forces near its frontier, the State which is threatened by such action shall have the right of recourse to diplomatic or other means of securing a peaceful settlement of international disputes. It may also in the meantime take counter-measures of a military nature similar to those described above, without, however, crossing the frontier.

2. Paraguay: draft resolution (A/AC.77/L.7)

The 1956 Special Committee on the Question of Defining Aggression recommends to the General Assembly the adoption of the following resolution:

The General Assembly,

Considering that at its 368th plenary meeting it resolved that, although the existence of the crime of aggression may be inferred from the circumstances peculiar to each particular case, it is nevertheless possible and desirable, with a view to ensuring international peace and security and to developing international criminal law, to define aggression by reference to the elements which constitute it" (resolution 599 (VI)),

Declares:

1. A State (or States) commits (or commit) armed aggression if it (or they) provokes (or provoke) a breach or disturbance of international peace and security through the employment of armed force against the territory, population, armed forces or the sovereignty and political independence of another State (or other States), or against the people, the territory or the armed forces of a Non-Self-Governing Territory;

2. Without prejudice to the provisions of Article 39 of the Charter, the General Assembly recommends that in addition to other acts of aggression the following acts shall be deemed to constitute armed aggression:

(a) A declaration of war by one State against another (or others) in contravention of Articles 1 and 2 of the Charter;

(b) The organization by a State within its territory of armed bands intended to take action against other States, either within or outside the territory of such States; or the encouragement, support or the mere

toleration of the formation or action of such armed bands in its territory.

Nevertheless, a State shall not be considered to be an aggressor if, being unable to suppress the activities of such bands in its territory or having justifiable reasons for not undertaking their suppression, it reports the matter to the competent organ of the United Nations and offers its co-operation.

3. Iran and Panama: draft resolution (A/AC.77/L.9)

The following draft resolution submitted by Iran and Panama at the ninth session of the General Assembly is circulated to the 1956 Special Committee at the request of the representative of Peru:

The General Assembly,

Considering that, although the existence of aggression may be inferred from the circumstances peculiar to each particular case, it is nevertheless possible and desirable, with a view to ensuring international peace and security and to developing international criminal law, to define aggression by reference to the elements which constitute it,

Considering further that it would be of definite advantage if directives were formulated for the future guidance of such international bodies as may be called upon to determine the aggressor,

Declares that:

1. Aggression is the use of armed force by a State against another State for any purpose other than the exercise of the inherent right of individual or collective self-defence or in pursuance of a decision or recommendation of a competent organ of the United Nations.

2. In accordance with the foregoing definition, in addition to any other acts which such international bodies as may be called upon to determine the aggressor may declare to constitute aggression, the following are acts of aggression in all cases:

(a) Invasion by the armed forces of a State of territory belonging to another State or under the effective jurisdiction of another State;

(b) Armed attack against the territory, population or land, sea or air forces of a State by the land, sea or air forces of another State;

(c) Blockade of the coast or ports or any other part of the territory of a State by the land, sea or air forces of another State;

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

4. Iraq: revised draft resolution (A/AC.77/L.8/Rev.1)

The Special Committee on the Question of Defining Aggression,

Considering that the General Assembly, in resolution 895 (IX), requested the Special Committee to submit to the General Assembly at its eleventh session a draft definition of aggression,

Recommends to the General Assembly the adoption of the following draft definition of aggression:

The General Assembly,

Considering that a definition of aggression would contribute greatly to the maintenance of international peace and security, and to the development of international law and international justice,

Declares that aggression, within the meaning of Article 39 of the Charter of the United Nations, is the use of force in international relations, and, within the meaning of Article 51 of the Charter of the United Nations, the use of armed force in international relations.

Aggression, within the meaning of both Article 39 and Article 51, is the use of force by a State or group of States, or by a Government or group of Governments, against the territorial integrity or independence of a State or group of States, or against the conditions of existence of the people and the territories of a Government or group of Governments, in any manner, by any method and for any purpose whatever, other than that of enforcement action in pursuance of a decision or recommendation of a competent organ of the United Nations, or than that of individual or collective self-defence against an armed attack which is aimed at, or results in, a change in the international juridical situation and a disturbance of international peace and security and with respect to which the competent organ of the United Nations has not taken measures necessary to maintain international peace and security and to enable it to take the place of the party possessed of the right of individual or collective self-defence.

5. Mexico: working paper (A/AC.77/L.10)

1. Resolution 895 (IX), in accordance with which this Special Committee has met to discuss the question of defining aggression, requests this Committee, among other things, to "submit to the General Assembly at its eleventh session a detailed report followed by a draft definition of aggression, having regard to the ideas expressed at the ninth session of the General Assembly and to the draft resolutions and amendments submitted".

2. In accordance with the foregoing instructions, the Special Committee has been carefully examining various documents but has given special attention to drafts submitted or reintroduced by various representatives. We have, on the other hand, referred only incidentally to definitions contained in previous proposals made to the General Assembly at its ninth session or in various treaty provisions, such as the definitions appearing in the first few pages of document A/AC.77/L.6, which was prepared through the kindness of the Secretary-General.

3. Although the Mexican delegation to the 1953 Special Committee proposed a specific formula, which was in the form of an amendment to the USSR draft resolution, the Mexican representative to the present Special

Committee has considered it appropriate to embody that formula in a draft resolution so that, as expressed in his statement of 22 October, some of the ideas contained in the formula might be used in preparing a single draft as requested by the General Assembly.

4. Although the Mexican delegation is endeavouring, together with other Latin American delegations, to draft a joint text which it is hoped will prove acceptable to other members of this Special Committee, 't is aware that, in spite of our efforts, we may be unable to attain the objective referred to in resolution 895 (IX).

5. In that event, the draft included in this working paper will once more stand in its entirety, for, as can be readily seen, it contains important distinctive elements which will probably have to be sacrificed in drafting a joint proposal that will naturally entail mutual concessions. Such a sacrifice would be justified only if we could reach an agreement that would enable us to fulfil the noble mission entrusted to us by the General Assembly.

6. The Mexican delegation considers that the definition of aggression should:

(a) Be confined to the idea of the use of force, and thus leave out of consideration the so-called indirect, ideological or economic forms of aggression and, in particular, the threat of force, except where an attempt to give effect to that threat has been initiated;

(b) Contain a general statement expressing in concise form all the basic characteristic features constituting aggression, including the principle under which, in an international conflict, the responsibility lies with the party that is the first to take the initiative in carrying out an act designated as aggression;

(c) Contain a non-exhaustive enumeration of the more usual types of aggression;

(d) Specify that the powers of deliberation and decision of the competent international organs called upon to designate an aggressor would remain unimpaired but that such organs, in applying the definition, could not at their discretion regard as aggression any other case not included in the definition;

(e) Embody the idea that no considerations of a political, economic, strategic or social nature can justify the commission of an act constituting aggression.

7. In accordance with the foregoing points, the Mexican delegation proposes the following text:

Draft resolution

The General Assembly,

Recalling its resolutions 599 (VI), 688 (VIII) and 895 (IX),

Declares that:

In an international conflict, the direct or indirect use of force by the authorities of a State taking the initiative for the purpose of attacking the territorial integrity or political independence of another State, or for any purpose other than individual or collective self-defence or compliance with a decision or recommendation of a competent organ of the United Nations, shall be regarded as aggression.

In particular, the commission of any of the following acts shall be regarded as aggression:

(a) Invasion by the armed forces of one State of territory belonging to, or under the effective jurisdiction of, another State;

(b) Armed attack against the territory or population or the land, sea or air forces of one State by the land, sea or air forces of another State;

(c) The blockading of the coast or ports or any other part of the territory of one State by the land, sea or air forces of another State;

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

In no event may an act constituting aggression be justified by any considerations of a political, economic, strategic or social nature.

In particular, aggression may not be justified on any of the following grounds:

I. The internal situation of a State, as for example:

(a) The political, economic or cultural backwardness of a people;

(b) Administrative shortcomings;

(c) Dangers which may threaten the life or property of aliens;

(d) Revolutionary movements, civil war, disorders or strikes;

(e) The establishment or maintenance of any political, economic or social system in a State.

II. Any act, legislation or regulations of a State, as for example:

(a) Violation of rights or interests acquired by another State or its nationals with regard to trade, concessions or any other kind of economic activity;

(b) Breaking-off of diplomatic or economic relations;

(c) Measures constituting an economic or financial boycott;

(d) Repudiation of debts;

(e) Prohibition or restriction of immigration or modification of the status of aliens;

(f) Violation of privileges accorded to the official representatives of another State;

(g) Refusal to allow the passage of armed forces proceeding to the territory of a third State;

(h) Measures of a religious nature;

(i) Frontier incidents.

6. Dominican Republic, Mexico, Paraguay and Peru:
draft resolution (A/AC.77/L.11)

The 1956 Special Committee on the Question of Defining Aggression recommends to the General Assembly the adoption of the following draft resolution:

The General Assembly,

Recalling its resolutions 599 (VI) 688 (VIII) and 895 (IX),

Declares that:

1. Any use of force by a State (or States) against the territorial integrity or inviolability or the sovereignty or political independence of another State (or States), or against a territory under the effective jurisdiction of another State, or for any purpose other than the exercise of the inherent right of individual or collective self-defence or the execution of a decision or recommendation of a competent organ of the United Nations, shall be regarded as aggression;

2. In accordance with the foregoing definition, and without prejudice to the power of the competent international organs to determine the existence of, or take a decision upon, an act of aggression, the following shall be acts of aggression in all cases:

(a) Declaration of war by one State against another State (or States) in violation of the Charter of the United Nations;

(b) The invasion by the armed forces of one State of the territory of another State or of a territory under the effective jurisdiction of another State;

(c) Armed attack against the territory or population or the land, sea or air forces of one State by the land, sea or air forces of another State;

(d) The blockading of the coast or ports or any other part of the territory of one State by the land, sea or air forces of another State; and

(e) Incursions into the territory of one State by armed bands organized by, or with the participation or direct assistance of, another State.

In no event may aggression be justified by any considerations of a political, economic or social nature.