

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

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NOTE

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INTRODUCTION

1. At its 1843rd plenary meeting of 18 September 1970, the General Assembly decided to include in the agenda of its twenty-fifth session the consideration of the report of the Special Committee on the Question of Defining Aggression on the work of its session held at the United Nations Office at Geneva from 13 July to 14 August 1970. 1/ It also referred this report to the Sixth Committee, which considered it at its 1202nd to 1209th and 1211th to 1213th meetings between 16 October and 2 November 1970. 2/ At its 1914th plenary meeting on 25 November 1970, the General Assembly adopted resolution 2644 (XXV), which reads as follows:

"The General Assembly,

"Having considered the report of the Special Committee on the Question of Defining Aggression on the work of its session held at Geneva from 13 July to 14 August 1970,

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

"Considering that it was not possible for the Special Committee to complete its task, in particular its consideration of the proposals concerning a draft definition of aggression submitted to the Special Committee during its sessions held in 1969 and 1970,

"Considering that in its resolutions 2330 (XXII) of 18 December 1967, 2420 (XXIII) of 18 December 1968 and 2459 (XXIV) of 12 December 1969 the General Assembly recognized the widespread conviction of the need to expedite the definition of aggression,

"Considering the urgency of bringing the work of the Special Committee to a successful conclusion and the desirability of achieving the definition of aggression as soon as possible,

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

"1. Decides that the Special Committee on the Question of Defining Aggression shall resume its work, in accordance with General Assembly resolution 2330 (XXII), as early as possible in 1971;

1/ See Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 19 (A/8019).

2/ Ibid., Twenty-fifth Session, Annexes, agenda item 87, document A/8171.

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

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

2. In accordance with this resolution, the Special Committee on the Question of Defining Aggression, whose composition is given in paragraph 2 of its report on the work of its 1968 session, 3/ met at United Nations Headquarters in New York from 1 February to 5 March 1971. All the States members of the Special Committee took part in its work. The list of representatives attending the 1971 session is reproduced in annex V to the present report.

3. At its 79th and 80th meetings, held on 1 and 2 February respectively, the Special Committee elected the following officers:

Chairman: Mr. Augusto Legnani (Uruguay)

Vice-Chairmen: Mr. Ilja Hulinský (Czechoslovakia)
Mr. Vincent Mutuale (Democratic Republic of the Congo)
Mr. Matti Cawén (Finland)

Rapporteur: Mr. Riyadh Al-Qaysi (Iraq).

4. The session was opened on behalf of the Secretary-General by Mr. Constantin A. Stavropoulos, Legal Counsel of the United Nations. Mr. Anatoly P. Movchan, Director of the Codification Division of the Office of Legal Affairs, and Mr. Chafic Malek served respectively as Secretary and Deputy Secretary of the Special Committee. Mr. Tatsuro Kunugi and Mr. Eduardo Valencia-Ospina served as Assistant Secretaries.

5. At its 80th meeting on 2 February, the Special Committee adopted the following agenda:

1. Opening of the session
2. Election of officers
3. Adoption of the agenda
4. Organization of work
5. Consideration of the question of defining aggression (General Assembly resolutions 2330 (XXII), 2420 (XXIII), 2549 (XXIV) and 2644 (XXV))
6. Adoption of the report.

6. At the same meeting, the Special Committee decided, at the Chairman's suggestion, to devote its first six meetings to the consideration of specific

3/ Ibid., Twenty-third Session, agenda item 86, document A/7185/Rev.1.

questions mentioned in the report of the Working Group reproduced in annex II to the Special Committee's report on the work of its 1970 session; as noted in paragraph 9 of its report for 1970, the Special Committee had been unable, for lack of time, to examine the report of the Working Group. The Special Committee also decided to re-establish the Working Group.

7. In accordance with the decision taken by the Special Committee at its 88th meeting on 12 February, the Working Group was composed of the same eight member States as at the 1970 session, together with the Rapporteur, namely: Cyprus, Ecuador, France, Ghana, the Union of Soviet Socialist Republics, the United Arab Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America. It was understood that, at the current session only, the members of the Special Committee who were not members of the Working Group could take part in the Group's work but not in its decisions. The Group was instructed to help the Special Committee in the fulfilment of its task by formulating an agreed or generally accepted definition of aggression and, in case it was unable to reach such a definition, to report to the Special Committee its assessment of the progress made during the session, indicating both the points of agreement and disagreement. It was also invited to report periodically to the Special Committee on the progress of its work.

8. The Working Group held twenty-three meetings from 12 February to 4 March 1971. It submitted two successive reports (A/AC.134/L.30 and Corr.1 and A/AC.134/L.35) to the Special Committee, the text of which is reproduced in a single document annexed to this report (annex III). In addition, a working paper submitted to the Special Committee by Mexico (A/AC.134/L.28), is reproduced in annex IV.

9. The first report of the Working Group (A/AC.134/L.30 and Corr.1), covering the work done from 16 to 18 February 1971, reflected the outcome of the Working Group's discussions on the general definition of aggression and the principle of priority. The second report (A/AC.134/L.35), covering the work done from 19 February to 4 March 1971, reflected the outcome of the Working Group's discussions on the questions of political entities other than States, legitimate use of force, aggressive intent, acts proposed for inclusion in the definition of aggression, proportionality, legal consequences of aggression and the right of peoples to self-determination.

10. The Special Committee considered the first report of the Working Group at the Committee's 89th meeting, on 22 February 1971. An account of the discussion on that report is given below (paras. 45 to 65), in particular with reference to the two questions covered therein. At the same meeting, the Special Committee decided to take note of the Working Group's first report and to annex it to the report of the Special Committee. Also at the eighty-ninth meeting and in connexion with its consideration of the Working Group's first report, the Special Committee held a short discussion on the organization of its work on the basis of a proposal made by the representative of the Soviet Union to the effect that a second working group should be established. The Special Committee deferred its decision on the foregoing proposal. At the same meeting, one representative suggested that the Special Committee should end its work one week sooner than scheduled to prevent the session from overlapping with that of the important Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor, scheduled to meet at Geneva on 1 March.

11. At its 90th meeting, on 5 March 1971, the Special Committee had before it the second report of the Working Group; it decided to take note of it and to annex it to its own report, indicating that for lack of time, it had been unable to examine it.

12. At the 91st meeting of the Special Committee, on 5 March 1971, some members, who were also members of the Working Group, noted that the Working Group had not had before it in writing paragraphs 21 and 24 of the report of the Working Group and that they were unable to agree that the proposals on legal consequences and self-determination referred to in paragraphs 21 and 24 could usefully serve as a basis for discussion, although they had stressed in the Working Group their willingness to have these proposals set out in full in the Working Group's report.

13. At the same meeting of the Special Committee, one representative expressed the view that the Committee should have discussed, and decided to include a reference to, the question of the purposes of the definition of aggression in the present report.

I. DRAFT PROPOSALS BEFORE THE SPECIAL COMMITTEE

14. The Special Committee had before it three draft proposals submitted to it at its 1969 session, namely, the draft of the Union of Soviet Socialist Republics (A/AC.134/L.12), the new thirteen-Power draft (A/AC.134/L.16 and Add.1 and 2) and the six-Power draft (A/AC.134/L.17 and Add.1). The text of these three draft proposals is reproduced in annex I to this report.

15. On 22 February 1971, the United States representative submitted a draft proposal (A/AC.134/L.31) concerning the principle of priority. On 23 February 1971, he submitted a draft proposal (A/AC.134/L.32) concerning aggressive intent. The text of these two drafts is reproduced in annex II to this report.

16. At its 91st meeting, on 5 March 1971, the Special Committee had before it a draft resolution (A/AC.134/L.34) submitted by Czechoslovakia and Mexico, the text of which reads as follows:

"The Special Committee on the Question of Defining Aggression,

"Bearing in mind General Assembly resolutions 2330 (XXII) of 18 December 1967, 2420 (XXIII) of 18 December 1968, 2549 (XXIV) of 12 December 1969 which recognized the need to expedite the definition of aggression,

"Bearing also in mind that in its resolution 2644 (XXV) of 25 November 1970 the General Assembly considered the urgency of bringing the work of the Special Committee to a successful conclusion and the desirability of achieving the definition of aggression as soon as possible,

"Noting the progress so far achieved and the fact that the Special Committee has been already engaged in efforts to draft generally acceptable formulations of the individual elements of a definition,

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

"Recommends that the General Assembly, at its twenty-sixth session, invite the Special Committee to resume its work in 1972."

II. DEBATE

17. As indicated above (paragraph 6), the Special Committee first undertook the consideration of the report of the Working Group reproduced in annex II to the report of the Special Committee on the work of its 1970 session. Part A of this section contains an account of the views expressed on the Working Group's report. Part B will deal with the views expressed on the first report submitted to the Special Committee by the Working Group during the 1971 session in accordance with the Committee's decision to which reference is made above (para. 7).

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

18. For the sake of convenience, these views are presented in the same order and under the same headings as in the Special Committee's earlier reports.

19. It should be noted that most representatives stressed the value of the work accomplished by the Working Group as well as the progress it had made. It was observed that the Group's report indicated clearly the areas of agreement and disagreement as well as the possibilities for compromise; it also provided clear evidence of willingness on the part of the various delegations to resolve their difficulties and reconcile differences of opinion. It was noted further that the progress made by the Working Group was encouraging; in particular, its members had agreed on two very important considerations which were referred to in paragraphs 4 and 12 of its report, namely, that the general definition of aggression should reflect the concept of aggression as contained in the Charter and that the list of acts constituting aggression should be accompanied by a statement to the effect that they were listed without prejudice to the fullness of the powers of the Security Council, as provided in the Charter, particularly in declaring other acts to be aggression.

20. With regard to the procedure to be used for adopting a definition of aggression, several representatives expressed the view that the only way of arriving at an acceptable and lasting definition of aggression was by means of consensus; to take any other course would be to deprive the definition of all meaning. It was, however, noted that it was not necessary to apply the consensus method to all aspects of the Special Committee's work, including even the least essential:

1. Application of the definition

(a) The definition and the power of the Security Council

21. There appeared to be no objection to the view that any definition of aggression should safeguard the discretionary power of the Security Council as the United Nations organ primarily responsible for the maintenance of international peace and security. Nevertheless, one representative observed that the Security Council should not be given the power to interpret the term "aggression" as it pleased. Another representative felt that even if it was acknowledged that the list of acts

of aggression to be drawn up would not be restrictive and even if the list was introduced by a statement safeguarding the power of the Security Council, that statement could not be interpreted as authorizing the Council to add other acts to the list; it was simply intended to indicate that the definition did not affect the Council's power to judge and decide who was the aggressor.

(b) Political entities to which the definition should apply

22. Several representatives questioned the advisability of referring to political entities other than States in the definition of aggression. In that connexion, it was stated that reference to such entities might be construed as meaning that the legal existence of a State could be placed in doubt simply because it was not recognized by a majority of members of the international community; the existence of a State did not depend on its recognition by other States. It was pointed out that the definition should apply to all States, whether or not they were recognized by certain States Members of the United Nations; otherwise, the Special Committee would be compelled to establish a precise definition of the terms "State" and "political entity", a task which would be outside its terms of reference. It was further stated that only States were full subjects of international law and were the only "political" entities that could commit or be the victims of an act of aggression; the reference to political entities other than States in paragraph II of the six-Power draft had no basis in the Charter and lent itself to differing interpretations. Important as it might be, it was added, the question of recognition, to which the six-Power draft seemed to refer, had nothing to do with the definition of aggression; the term "State", as used in the Charter, was broad enough to cover all situations to which the definition should apply. The view was also expressed that the reference to political entities other than States would give rise to a restrictive interpretation of the term "State" and blur the distinction between international conflicts and civil wars; furthermore, any extension of the political entity concept to cover territories which had not yet achieved independence might raise extremely delicate problems; moreover, the fact that a State had not been recognized by other States should not prevent the application of enforcement action against that State.

23. According to one representative, any definition of aggression formulated by the Special Committee should apply only to States which had acceded to the Charter. He did not deny that a State not a Member of the United Nations could commit aggression, but a definition of aggression based on the Charter could not be applied to such a State; acts of aggression committed by States not Members of the United Nations had to be dealt with under general international law; the terms "States" and "political entities" should therefore be replaced in the three draft definitions before the Special Committee by the expression "Members of the Organization". Some representatives, however, considered that that solution might raise substantial difficulties in cases where the Security Council would have to apply a definition which was so limited that it would not take into account the situations involving non-member States.

24. Some representatives commented favourably on the compromise solution in paragraph 6 of the report of the Working Group and observed that if the definition of aggression did not expressly include political entities, an explanatory note should be annexed to the definition to the effect that the term "State" included States whose statehood was disputed. In that connexion, it was observed that the concept of political entities had been used for the sole purpose of ensuring that

the definition was given the broadest application in international relations in perfect accord with one of the purposes of the United Nations, namely "the suppression of acts of aggression".

25. In another connexion, one representative observed that one or several States could commit an act of aggression against another or several other States; in his view, the definition should refer not only to a State" but also to groups of States.

2. Acts proposed for inclusion in the definition of aggression

26. There was no fundamental objection to the idea that the definition should be limited to the use of armed force; according to some representatives, the forms of aggression other than armed force should be defined at a later stage. Different opinions were, however, expressed with regard to the question whether the definition should cover, for the purposes of the exercise of the right of self-defence, the indirect use of armed force.

27. Several representatives said that the definition should cover only direct armed aggression, which they considered to be the only form of aggression justifying the exercise of the right of self-defence under Article 51 of the Charter. In that connexion, it was observed that the constituent elements of aggression could be defined only by reference to the Charter, which in Article 1 and Article 39 referred to threats to the peace, breaches of the peace and acts of aggression, and in Article 51 to armed attack; it followed that the notion of aggression embraced several types of situations, the most dangerous of which was armed attack; however, the fact that the Charter did not mention indirect aggression did not preclude the drawing of a distinction between direct and indirect aggression; both forms constituted a threat to international peace, and the difference between the two forms of aggression was the same as that existing between armed attack and a breach of the peace; under Article 51 of the Charter, only armed attack, and not other breaches of the peace, gave rise to the right of self-defence. It was also pointed out that the word "aggression" meant primarily a physical act which was objectively observable and especially serious; Article 2 (4) of the Charter did not define aggression but merely mentioned categories of prohibited behaviour, of which aggression was only one example; Article 39 enumerated such behaviour in order of seriousness, the highest level being the act of aggression, which was thus the most serious act, and entitled the victim to exercise the right of self-defence under Article 51 in the event of armed attack. It was further said that an analysis of Article 1 of the Charter showed that it drew a distinction between "threats to the peace" and "acts of aggression or other breaches of the peace", the former being governed by Chapter VI and the latter by Chapter VII; the Charter dealt equally severely with acts of aggression and other breaches of the peace; however, the latter did not justify the exercise of the right of self-defence under Article 51; the purpose of the Charter was to limit the risk of war; that was why, in the event of a breach of the peace, States did not have the right to defend their own cause but had to appeal to the Security Council to take action. Similarly, in Article 39 the Charter drew a distinction between a breach of the peace and an act of aggression; any United Nations body responsible for preparing a definition of aggression should take that distinction into account. Acts such as organizing, supporting or directing armed bands that infiltrated into another State did not entitle the State against which they were directed to exercise its right of self-defence under Article 51 of the Charter; it must, however, be admitted that there

were marginal cases in which the infiltration was so substantial and the danger so great that they were tantamount to an armed attack and justified the exercise of the right of self-defence; it might perhaps be advisable to include a provision to that effect in the definition. One representative observed that paragraph IV B of the six-Power draft enumerated acts which in fact would result only in a breach of the peace, unless they were of particularly great intensity. He added that in any case, if the expression "armed force however exerted", suggested in paragraph 4 of the Working Group's report, was used in the definition, it should be explained that that meant armed force justifying the exercise of the right of self-defence as established in Article 51 of the Charter.

28. On the other hand, other representatives maintained that the definition should apply to so-called "indirect" armed aggression and that, in their view, that form of aggression was covered by the right of self-defence mentioned in Article 51 of the Charter. According to these representatives, any definition in order to be consistent with the Charter would have to be complete, which required that it must include indirect uses of force. Indirect uses of force such as those covered by paragraph IV B of the six-Power draft could not be considered in contemporary circumstances as "mere" infiltration or subversion; nor could an armed response to them be regarded as anything other than a legitimate use of the inherent right of self-defence; such problems must be resolved in a manner properly reflecting the experiences and needs of the international community. The view was also expressed that the Special Committee should avoid engaging in an inconclusive conceptual debate on whether the term used in Article 1 and Article 39 of the Charter on the one hand, and the different term used in Article 51 on the other, were necessarily identical or equivalent; the Charter was not drafted that way and the collective security system was not intended to operate on that basis. The function of Article 39, which had to do with activating the collective security system, and the quite different function of Article 51, which was designed to exempt the inherent right of self-defence from the prescriptions of Article 2, illustrated the difficulties in adopting such an approach. The terms used were different and the context was different. Any attempt to merge those two concepts would produce a distortion of the legal régime embodied in the Charter. There might indeed be breaches of the peace where the collective security mechanism ought to be activated but which it would be neither right nor practical to designate as acts of aggression. However, in that case the criterion should not be the means employed, for it mattered little whether the act had been committed by soldiers in uniform or by a band of armed saboteurs. The notion that a State was not entitled in every case to use the whole of its military might against another State in response to an isolated act also had some merit. Once again, the criterion was not whether the isolated act had been a shell fired by the regular army of the other State on the orders of the Head of State or a bomb smuggled across the border by a terrorist. It was also said that it could not be argued that the direct or overt use of armed force to destroy the political independence or territorial integrity of another State was aggression while at the same time maintaining that the indirect or covert use of armed force for such purposes was not aggression. The clandestine infiltration of armed bands into the territory of another State could be at least as dangerous as an open invasion and was the commonest form of aggression in the present-day world. It was contended that provisions such as those in operative paragraph 7 of the thirteen-Power draft did not belong in a definition of aggression. The limits of the right of self-defence were not derived from the means employed by the aggressor, but from the basic objective of self-defence, which was to safeguard the State, the Government and its institutions; it was only where self-defence went beyond that objective that it ceased to constitute an acceptable use of force

under the norms of the international order and might become an illegal act. But it was impossible, it was added, to determine a priori in what situations a State which used force by virtue of its right of self-defence was abusing that right; under Article 51 of the Charter, the assessment of specific situations must be left either to the State or States concerned or to the Security Council, to which the State or States concerned were required to report immediately any measures taken in the exercise of the right of self-defence; it was therefore not possible to establish general rules making the exercise of that right dependent on the means of aggression used. Some representatives expressly rejected the idea that the right of self-defence derived from Article 51 of the Charter and arose only in the event of what that article described as "an armed attack". They stressed the use of the term "inherent" in Article 51 in support of this view.

29. On the subject of specific acts of aggression that might be mentioned as examples in the definition, one representative observed that a declaration of war was an element which must be taken into account in determining whether an act of aggression had been committed. Another representative wondered whether it was advisable to mention in the definition the use of weapons of mass destruction as a typical act of aggression. Consideration should be given to the possibility of reaching compromise formulas on a question which, although not of primary importance, was fundamental for certain States, in particular for the nuclear Powers; the principle to be maintained was that the legality of the use of nuclear weapons should not be recognized in all cases of self-defence. At the same time, it should be indicated whether the annexation of a territory could ipso facto be described as aggression; no one could deny that territorial acquisition resulting from the unlawful use of force was illegal; a State could not annex the territory or part of the territory of another State in the exercise of its right of self-defence, a principle which had long been recognized. The question was, of course, whether it was really desirable to include such provisions in a definition of aggression. In the opinion of other representatives, occupation and annexation of a territory should be considered as constituting aggression in themselves. While it was true that occupation and annexation were the result of an invasion or an armed attack, it was no less true that they could constitute an end in themselves; the definition of aggression could not ignore the concept of permanent aggression and the responsibilities arising therefrom. The view was also expressed that any military occupation, even if temporary, should be included among the examples of acts of aggression, since it constituted a flagrant violation of the Charter principles that States should refrain from the use of force.

30. According to one representative, the examples of acts of aggression to be enumerated in the definition should include the case in which a State made its territory available to another State so that the latter could commit aggression against a third State.

3. The principle of priority

31. No representatives appear to have objected to the inclusion of the principle of priority in the definition of aggression. However, according to some representatives, the definition should specify that the element of priority itself was not the determining factor and that other elements should also be taken into account. It was pointed out that the automatic application of the principle might result in classifying acts committed by accident or the use of force based on the

right of self-defence as acts of aggression. It was obvious, one representative stated, that in formulating guidelines for determining the existence of an act of aggression within the meaning of Article 39 of the Charter, the Special Committee must avoid providing States with excuses for interpreting Article 51 as authorizing them to over-react to an act of violence committed against them. That was the risk incurred by a simplistic application of the principle of priority, which could not be accepted as an absolute. It was stated, however, that the principle was not determinative in every case, particularly in the case of indirect aggression; other factors must therefore be taken into account in establishing that aggression had been committed. In that connexion it was suggested that the wording proposed by a member of the Working Group, in paragraph 5 of its report, might serve as a basis for a compromise solution.

32. However, the wording proposed in paragraph 5 of the Working Group's report was considered unacceptable by several representatives. The principle of priority, it was said, was a fundamental criterion, not an incidental one which should merely be given "due weight"; it should be determinative, although it might be difficult to say whether there had been aggression when there had been a border incident first. It was suggested that it would be advisable to study whether or not a distinction should be made, in the definition of aggression, between acts of aggression and border incidents. It was also suggested that consideration should be given to the possibility of stating that armed aggression was the use by a State, first, of armed force "in an international conflict", which would make it clear that the party which committed an act of aggression was not necessarily the party committing one of the isolated acts enumerated in the definition but rather the party which took the initiative in making illegitimate use of force and thus triggered an armed conflict.

4. Aggressive intent

33. In the view of some representatives, the concept of intent should be a fundamental element in any definition of aggression. In this respect, it was said that the concept of intent was a basic principle of law, and it was difficult to conceive of a definition which did not indicate the principal illegal purposes constituting aggression; a definition must necessarily indicate the nature of the aggressive intent. It was also pointed out that the criterion of intent enabled an act of aggression to be distinguished from an unpremeditated incident; an act of aggression was the result of conscious and premeditated human activity carried out with a definite aim in view; the pursuit of an unlawful end was therefore inherent in an act of aggression, and any definition of aggression must take that fact into account. The question of intent, it was also stated, should be accorded full treatment in the definition; it was an element which invariably played a very important part in the definition of premeditated crime in all legal systems; aggression was a serious international crime, and the responsibility of the aggressor was directly related to his intention; aggression and the responsibility of the aggressor should therefore be considered simultaneously.

34. It was also said that the principle of priority led only to a rebuttable presumption of guilt, i.e., that the principle of priority necessarily involved presumed intent; no situation could be conceived in which the presumption of guilt could be rebutted except by proof of absence of intention; the enumeration in paragraph IV A of the six-Power draft appeared to confuse intent with motive; the

mens rea in an act of aggression could be construed simply as the intention to affect in any way the sovereignty, political independence or territorial integrity of a State contrary to the provisions of the Charter; as such, intent was the mens rea of an act of aggression and was undeniably an important element.

35. Several representatives made a distinction between aggressive intent and the motives of the aggression. Although in theory, it was said, intent could be different from the motives of aggression, which might be the desire to obtain revenge, to secure economic advantages, to annex the territory or to overthrow the Government of a State, etc., there was no need to refer to motives in a definition of aggression; aggressive intent would suffice. Consequently, some representatives regarded paragraph IV A of the six-Power draft as unacceptable. It was stated that the enumeration in the said paragraph confused intent with motive; the element of intent could be construed only in the sense of a deliberate act as distinct from one due to accident or mistake. It was further said that paragraph IV A of the six-Power draft definition contained an enumeration of purposes of aggression; the Charter of the United Nations did not mention intent in connexion with an act of aggression, but the element of intent was clearly implied; acts committed by mistake presented no problem and were not covered by the Charter; intent was not mentioned in the thirteen-Power draft proposal because an element of intent was implicit in any act of aggression; however, in order to accommodate certain delegations, that draft might be amended, if necessary, to include an explicit reference to the element of intent. It had also been argued that the first use of force could not be divorced from aggressive intent inasmuch as the second use of force was of necessity bound up with the concept of self-defence. Questions of intent, motivation and objectives were relevant criteria before the prohibition of wars of aggression. In the contemporary international legal system, however, the first use of force automatically created a presumption of guilt.

36. One representative, referring to the three draft definitions before the Special Committee, pointed out that they took into account the two criteria of priority and intent, which, in his view, were not incompatible. Each draft definition laid more stress on one or the other of the two principles, he noted; a formula should be found which would give equal weight to the two criteria. The problem was to determine the value to be attached to each of those criteria. It was argued that the objective criterion was simpler and more effective whereas the subjective criterion was merely an aid in the refinement and qualification of the judgement formed on the basis of the objective criterion. In defining aggression, the objective criterion should be paramount; the question of aggressive intent should not be neglected in the process, but it was no more than a secondary consideration. There was no question that the Security Council had the power to inquire into the intent of a party committing an act of aggression, but it was extremely difficult to mention that right in a general definition of aggression. It would be preferable to refer to it in a paragraph defining the Council's powers.

37. Some representatives considered that aggression should be defined without resorting to a subjective criteria. Inclusion of the element of intent in a definition, they said, might distort the legal framework for the exercise of the right of self-defence. That did not mean that aggressive intent or the aims of aggression should be overlooked; those elements should be evaluated by the Security Council. It was also said that the view that the element of intent was not necessarily subjective and that it was generally inferred from the objective

circumstances of the act was not acceptable. Moreover, the principle of priority and that of intent could not be given equal weight; the element of intent became irrelevant once the Security Council had determined that a certain State had been the first to use armed force against another State. The inclusion of that element in the definition would give the aggressor the opportunity to justify his act. The burden of proof should always be on the aggressor, not on the victim, and that principle of law could be applied in the context of aggression only by excluding the element of intent from the definition. In the opinion of one representative, aggressive intent could be a determinative factor only in some cases. Where an act of aggression in itself constituted a breach of the peace, it was argued, there was no need to establish whether it had been committed with intent. However, where it was a question of illegal acts which might cause a breach of the peace if they were generalized, the criterion of intent became relevant. The criterion of intent therefore belonged not in a general definition of aggression but in an enumeration of specific cases. According to another representative, the inclusion in the definition of aggression of the concept of intent introduced a subjective criterion which could open the way to countless abuses. As a compromise, he pointed out, it might be possible to find a solution which did not treat animus aggressionis as the decisive element in determining whether an act of aggression had been committed.

5. Legitimate use of force

(a) Self-defence

38. Several representatives pointed out that the definition of aggression should draw the line between aggression and the legitimate use of force. To do so, it was noted, it need only state clearly and unambiguously the circumstances in which the use of force was legitimate. The best solution would be to have a general statement which excluded from the scope of the definition all cases in which the use of force was legitimate. The wording in paragraph 6 of the draft of the Union of Soviet Socialist Republics was considered satisfactory in that respect. Other representatives felt that the Special Committee's task was to define aggression, not self-defence. The right of self-defence, they held, should be mentioned only in so far as it had a bearing on the definition of aggression. In that connexion, the formulation proposed in paragraph 7 (a) of the Working Group's report laid the groundwork for a possible compromise; on the other hand, the text of paragraph 7 (b) was not relevant to the Committee's main task. It was further pointed out that Article 51 of the Charter and the inherent right of self-defence should not be taken as a point of departure for a definition of aggression. The Special Committee would be wise to be content with a general formulation safeguarding the inherent right of self-defence, which existed independently of the Charter. Furthermore, that right was not affected by Article 2 (4) of the Charter; it was not dependent on Article 51 and was not limited by that article.

39. One representative held the view that the definition should make clear that no political, military or other consideration could justify the use of force by a State or group of States. Such a provision, he pointed out, was contained in the preamble of the thirteen-Power draft, but in view of the importance of emphasizing the preventive nature of the definition of aggression, it should be stated in the operative part of the text.

40. Several representatives opposed the inclusion of the principle of proportionality in the definition of aggression. Apart from the fact that it was not universally accepted in international law, that principle hardly lent itself to a legal definition and might even be advantageous to the aggressor. The Charter, it was further stated, contained no reference to that principle, which, in diplomatic practice and in international law, had been applied to reprisals. The real limit of self-defence did not derive from the fact that the measures taken by the victim State were proportionate to the aggression suffered, but from the fact that they conformed to the basic purpose of self-defence, as recognized by the international community. There was no general rule that would make it possible to determine whether such conformity existed; that must be done, in accordance with Article 51 of the Charter, by the State or States concerned and the Security Council. The principle of proportionality, it was further stated, could not by itself be used to establish whether or not an act of aggression had been committed; a disproportionate reaction to an act of aggression did not necessarily constitute aggression; it might be due, for example, to a mistaken evaluation of the facts. That principle, it was also pointed out, could be applied in the case of an indirect armed attack or breach of the peace, where the danger was less imminent; in any case, Article 51 of the Charter recognized the right of self-defence as an inherent right, without any restriction whatsoever; the meaning of that article could not be stretched to include the principle of proportionality.

41. According to other representatives, the inclusion of the principle of proportionality in the definition of aggression would be useful. It would dispose not only of any disagreements concerning the definition of individual or collective self-defence but also of the difficulties which might arise with regard to the inclusion in the definition of a provision concerning armed bands.

(b) Organs empowered to use force

42. Several representatives stated that they could not endorse proposals which sought to give the General Assembly and regional organizations powers that were not granted to them by the Charter. Under Articles 39 and 42 of the Charter, the only organ which could decide to take the coercive measures involving the use of armed force was the Security Council. Accordingly, the use of force under regional agreements or by regional bodies would be legitimate only after a prior decision to that effect by the Security Council, acting under Article 53 of the Charter. Other representatives expressed opposing views. It was pointed out that, according to certain Members of the United Nations, the use of force could be authorized not only by the Security Council but also, in cases where the Council was powerless to act, by the General Assembly under Articles 10, 11 and 14 of the Charter; furthermore, several Member States held that, since Article 51 of the Charter recognized the right of collective self-defence, it allowed organizations whose purpose was to establish a collective system of defence to use force in carrying out that objective; moreover, while Article 53 of the Charter made enforcement action by regional agencies contingent upon the authorization of the Security Council, it was arguable that in certain cases that authorization for enforcement action might follow or be given implicitly. In view of such different interpretations of the Charter by Member States, it would be best to adopt as neutral a formula as possible, such as that contained in paragraph III of the six-Power draft.

6. Acts considered not to constitute acts of aggression -

Right of self-determination

43. Several representatives stated that the definition of aggression should cover situations in which the use of force was legitimate, in particular, the exercise by colonial peoples of their inalienable right to oppose by force any attempt to deprive them of their right to self-determination. Such a right, which had recently been reaffirmed in the Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States, must be upheld in a safeguard clause in the same way as the rights derived from Articles 51 and 53 of the Charter. On the other hand, some representatives felt that the definition should not refer to that right. In the three draft definitions submitted to the Special Committee aggression was defined as an act directed by one State against another State, and therefore the use of force by dependent peoples in the exercise of their right to self-determination did not come within the scope of a definition of aggression; it would not be possible to accept a provision to the effect that an act which under all other circumstances would be defined as aggression would not be considered as such if it was committed in the context of self-determination. Moreover, provisions concerning that question were already included in the Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States; there was therefore no point in repeating them in a definition of aggression.

7. Legal consequences of aggression

44. The question whether the definition should include a provision on the legal consequences of aggression, or otherwise, was taken up by some representatives, who answered it in the affirmative. The inadmissibility of the acquisition of territory by force and the principle of responsibility for aggression were two points on which a number of accepted principles of international law existed and which should be taken into account in the definition. The occupation of a territory as a result of aggression or territorial gains resulting from the use of force were no less important than aggression itself; the legal order established by the Charter was based on the inviolability of the territory of States; forcible annexation of a territory as well as other forms of territorial acquisition were not only the result of armed attack but they themselves constituted aggression; consequently, continued occupation by force of a territory by another State should be considered as continued aggression against that State. It was also stated that if the definition was to be adequate, and therefore effective, it must refer either in the preamble or in the operative part to the consequences of aggression.

B. Views expressed on the first Report submitted by the Working Group to the Special Committee at its 1971 Session.^{1/}

45. Some representatives considered that the Working Group deserved the Special Committee's gratitude for its businesslike approach to the task entrusted to it; during its discussions, the positions of different delegations had been clarified, and some progress had been made. This was evidenced in the Working Group's report,

^{1/} See above, paras. 7 to 11.

even though its rather short length did not do full justice to the work actually accomplished in the Group. Other representatives, however, were of the opinion that the deliberations of the Working Group, as reflected in its report, indicated no change from positions previously taken.

46. In the opinion of some representatives, the Working Group had done well to use the device of putting controversial parts of the text in brackets. It was to be hoped, however, that the phrases within brackets did not reflect definitive positions since middle positions on some issues were possible; accommodations could still be made. There was no reason why the brackets should not be progressively eliminated in the course of further negotiations. On the other hand, the view was expressed that if fundamental difficulties remained, the Working Group should not attempt to solve them through the use of drafting devices; the ambiguities that would arise from such a solution might lead to serious dangers.

47. Some representatives stated that if a useful definition was to be reached, its text would have to be acceptable to a majority of the Committee and the membership of the United Nations, and to the permanent members of the Security Council; if the definition did not meet the latter requirement, it could not guide the Council in the discharge of its primary responsibility for the maintenance of international peace and security. On the other hand, the view was expressed that although ideally the definition of aggression should enjoy the largest possible support in the United Nations and the agreement of the five permanent members of the Security Council, the permanent members, which were entitled to use their veto in the Council, did not have the right to impede the development of international law, for which many small countries felt a strong responsibility.

1. General definition of aggression

48. In the opinion of one representative, the general definition of aggression could not be dissociated from the definition as a whole; only when the Committee saw the entire definition could it evaluate the relative importance of the general definition; accordingly, the text submitted by the Working Group should be left in its present form for the moment and reconsidered only after the Working Group had reported on all other elements of the definition.

49. The view was also expressed that the text on the general definition of aggression reflected three different positions, despite the praiseworthy efforts of the Working Group aimed at producing a single text. A first position was said to be that which defined aggression as "the use of armed force by a State against another State or in any way affecting the sovereignty or the territorial integrity, including the territorial waters and airspace, or political independence of another State, or in any other manner inconsistent with the purposes of the United Nations". It was stated that this formulation was acceptable because it was the closest to the original thirteen-Power draft.

50. A second position was said to be that which defined aggression as "the use of armed force by a State against the sovereignty or the territorial integrity or political independence of another State, or in any other manner inconsistent with the purposes of the United Nations". It was said in this connexion that although the wording of that text was close to that of Article 2 (4) of the Charter, it was not satisfactory, firstly because there could be cases in which the object

of armed aggression was not limited to the territorial integrity or political independence of a State and, secondly, because it omitted the concept of "territorial waters and airspace", which, though implicit in the concepts of territorial integrity and sovereignty, should nevertheless be expressly stated.

51. In relation to the foregoing two positions, the opinion was expressed that they seemed to be easily reconcilable. Also with reference to those positions, it was said that there seemed to be no reason to place the words "the sovereignty or" in brackets, since it was untenable and contrary to the Charter to suggest that an armed attack against the sovereignty of a State was not aggression. It was stated that the phrase had been placed in brackets because it did not appear in Article 2 (4) of the Charter, but that although paragraph (4) covered aggression, it was concerned with the more general notion of the threat or use of force. Accordingly, there was no need to follow the wording of the article, since the Committee was concerned solely with aggression, which was exclusively the use of armed force within the meaning of Articles 1 and 39 of the Charter. That point should not therefore be a stumbling-block. On the other hand, the view was expressed that the reference to sovereignty could be deleted from the general definition since that notion was already contained in the terms "territorial integrity" and "political independence".

52. The third of the positions reflected in the general definition was said to be implied in the bracketed phrase "however exerted". In the opinion of some representatives, that phrase was unnecessary as it was implicit in the use of the words "armed force" without any qualification. That phrase had been proposed in order to cover the idea of indirect aggression, but, in the view of some representatives, it did not in fact do so. Moreover, it introduced a highly controversial element in the text, which only complicated the Committee's task, since it reopened the question of direct and indirect aggression; although other phrases in brackets in the general definition were also controversial, that phrase was more objectionable because it departed so basically from the position taken by the majority of members and because it prejudged the question of proportionality. The view was therefore expressed that, despite the statement in paragraph 3 of the Working Group's report that the phrase "however exerted" was unacceptable to many members, the Working Group should have presented two texts instead of one.

53. Other representatives stated that the insertion of the phrase "however exerted" in the general definition had been proposed by those States which felt that a definition which did not include all possible types of aggression would be a dangerous one. Nevertheless, it was said that while the sponsors of the six-Power draft felt that the phrase "however exerted" was felicitous, they were not wedded to it, although it was difficult to consider that phrase in isolation from other parts of the definition. It was also stated that the phrase could be safely eliminated although the idea must appear elsewhere in the definition. In this connexion the view was expressed that the idea should appear in any list of specific acts which was eventually agreed upon.

54. Regarding the question of indirect aggression, the opinion was expressed that the object of the definition of aggression should be to guide the Security Council in determining whether or not any particular use of force constituted an act of aggression, to limit the legitimate use of force to a minimum, and to discourage States from using armed attack as an instrument of national policy under any pretext

whatsoever. The Charter did not ignore the idea of indirect aggression, as could be seen from its references to "breaches of the peace" and "threats to the peace", but to seek to enlarge that concept into a consideration of the circumstances of a casus belli would be to go beyond the Charter and the Committee's mandate.

55. On the other hand, it was said that although the question was a controversial one whether or not a reference to armed aggression "in any form" should be included in the general definition of aggression and whether or not such a reference should also be included in the passages of the definition listing specific acts of aggression, the attempt to include such a reference should not be abandoned. The formulation of the principle regarding the non-use of force in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations contained provisions regarding the forms of aggression other than direct armed aggression. The three draft definitions before the Committee, each contained, although in very different words, the idea of the use of force "in any form", showing that their authors understood the necessity for such a reference in the definition. Furthermore, the inclusion of such a reference would be in full conformity with the principles of international law embodied in the Charter and would serve to make the definition an effective political and legal instrument which would discourage possible aggressors.

56. Some representatives stated that the attacks or infiltration by armed bands or mercenaries were as serious as other uses of force and, whether overt or covert, were covered by Article 1 (1) of the Charter, which referred to the suppression of acts of aggression or other breaches of the peace; they were also covered by Article 39. However, the right of self-defence under Article 51 could be invoked only in the event of armed attack; infiltration by armed bands and other forms of indirect aggression should, if they did not amount to armed attack, be treated as breaches of the peace. If a State's independence was threatened by an armed attack, it was a serious situation giving rise, under Article 51, to the right of self-defence, and the State under attack was entitled to take defensive measures not only in its own territory but also beyond its frontiers. In the case of attacks or infiltration by armed bands, as a result of which a State's independence was not threatened, the State's right of self-defence should be limited to its own territory. Not all indirect uses of force were acts of aggression, although some might be, and it should be possible to reach agreement on the subject on the basis of the text set out in paragraph 22 of the Working Group's 1970 report.

57. The view was also expressed that, with regard to the question of the inclusion in the definition of indirect uses of force, there might be a middle position involving a formulation which made it clear that while not every use of force was an act of aggression, some were, depending on the circumstances and on the discretion of the Security Council. In this connexion, one representative observed that a number of States now were agreed that the extent and circumstances of indirect aggression should determine whether it was included in the definition, although some States were adamant that it should be excluded. The hope was expressed by some representatives that it would be possible to find a formula flexible enough not to exclude indirect aggression; a compromise might be reached along the lines suggested in the statements made before the Committee.

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

2. The principle of priority

59. One representative pointed out that all members of the Working Group had unanimously expressed their willingness to accept the principle of priority. Nevertheless, it was said that the text submitted by the Working Group raised more questions than it answered; specifically, it raised three problems: the discretionary powers of the Security Council with regard to the first use of force, whether or not priority was determinative, and animus aggressionis.

60. In the opinion of some representatives priority was of the very essence of aggression, as was shown in Article 51 of the Charter and not a mere condition; the principle of priority must be dealt with clearly and on its own merits; it should not be confused with other elements. In the context of the principle of priority, the reference made in the Working Group's text to the powers and duties of the Security Council was irrelevant because the discretion of the Security Council would apply throughout the whole of the definition rather than merely to the question of priority. It was also stated that the phrase "due weight shall be given to the question whether" an act was committed first, deprived the principle of priority of both its obligatory and its determinative nature and would mean that while the Security Council was to give due weight to that principle, it would not actually be required to take it into account; such a formulation was self-defeating and completely unacceptable. The view was further expressed that as the principle of priority had been honoured by time, it seemed likely that agreement could be reached on the principle that the first State to carry out an invasion was the aggressor. There was no reason why the Security Council could not make an alternative finding if special circumstances existed in a particular case.

61. On the other hand, it was said that although the principle of priority was of great importance, its automatic application would only detract from its essence. It had been to prevent such automatic application that the preamble of the USSR and thirteen-Power drafts both stated that the question whether an act of aggression had been committed must be considered in the light of all the circumstances in each particular case. In view of the interpretative value of a preamble, some such formula should guide the Security Council in deciding whether or not an act of aggression had been committed; thus, the Council would declare a State an aggressor only after thorough examination of all the relevant circumstances and after giving primary, but neither exclusive nor absolute, importance to the principle of priority. That was why the phrase relating to the powers and duties of the Security Council had been proposed. Support could, therefore, be given to a formula which, while not affecting the essence of the principle, would make its application contingent on the circumstances of particular cases.

62. One representative stated that the sponsors of the six-Power draft were now prepared to accept the inclusion of the principle of priority, although there was still concern that priority might become a de jure presumption, which might, for example, damage the interests of an innocent State that had been involved in a minor border incident. The other State involved could use such an incident as an excuse to unleash an aggressive attack and invoke the right of self-defence referred to in Article 51 of the Charter.

63. The opinion was also expressed that the principle of priority, although important, was not the sole factor which should determine whether or not any particular use of force constituted aggression; priority could not be separated from other elements, particularly the question of intent. On the other hand, it was said that paragraph 4 of the Working Group's report clearly showed that few of its members still believed that the use of armed force could be divorced from animus aggressionis; thus, the controversy on the question of "intent" had crept into the question of the principle of priority, prejudging the Working Group's future work. No other element could be regarded as being equal in importance to the first use of force in determining whether or not an act of aggression had been committed, and its equation with any other element would only confuse and paralyse the Security Council.

64. It was further said that with respect to the connexion between the principle of priority and aggressive intent, which was an essential part of the position adopted by the sponsors of the six-Power draft, the first State to launch an attack was showing aggressive intent. It could not be denied that actions undertaken for the purposes set out in article IV A of the six-Power draft were acts of aggression.

65. In reference to the text on the principle of priority, one representative said that he favoured replacing the words "an act referred to in... constitutes aggression" by the words "an act of aggression had occurred" in view of the fact that the general definition would precede the text on the principle of priority.

III. RECOMMENDATION OF THE SPECIAL COMMITTEE

66. At its 91st meeting, on 5 March 1971, the Special Committee considered the draft resolution submitted by Czechoslovakia and Mexico (A/AC.134/L.34). At the same meeting the Special Committee adopted the draft resolution unanimously. The text reads as follows:

"The Special Committee on the Question of Defining Aggression,

"Bearing in mind General Assembly resolutions 2330 (XXII) of 18 December 1967, 2420 (XXIII) of 18 December 1968, 2549 (XXIV) of 12 December 1969 which recognized the need to expedite the definition of aggression,

"Bearing also in mind that in its resolution 2644 (XXV) of 25 November 1970 the General Assembly considered the urgency of bringing the work of the Special Committee to a successful conclusion and the desirability of achieving the definition of aggression as soon as possible,

"Noting the progress so far achieved and the fact that the Special Committee has been already engaged in efforts to draft generally acceptable formulations of the individual elements of a definition,

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

"Recommends that the General Assembly, at its twenty-sixth session, invite the Special Committee to resume its work in 1972."

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ANNEX I

Draft proposals before the Special Committee

- A. Draft proposal submitted by the Union of Soviet Socialist Republics (A/AC.134/L.12):

The General Assembly,

Basing itself on the fact that one of the fundamental purposes of the United Nations is to maintain international peace and security and to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace,

Noting that according to the principles of international law the planning, preparation, initiation or waging of an aggressive war is a most serious international crime,

Bearing in mind that the use of force to deprive dependent peoples of the exercise of their inherent right to self-determination in accordance with General Assembly resolution 1514 (XV) of 14 December 1960 is a denial of fundamental human rights, is contrary to the Charter of the United Nations and hinders the development of co-operation and the establishment of peace throughout the world,

Considering that the use of force by a State to encroach upon the social and political achievements of the peoples of other States is incompatible with the principle of the peaceful coexistence of States with different social systems,

Recalling also that Article 39 of the Charter states that the Security Council shall determine the existence of any threat to the peace, breach of the peace or act of aggression and shall decide what measures shall be taken in accordance with Articles 41 and 42 to maintain or restore international peace and security,

Believing that, although the question whether an act of aggression has been committed must be considered in the light of all the circumstances in each particular case, it is nevertheless appropriate to formulate basic principles as guidance for such determination,

Convinced that the adoption of a definition of aggression would have a restraining influence on a potential aggressor, would simplify the determination of acts of aggression and the implementation of measures to stop them and would also facilitate the rendering of assistance to the victim of aggression and the protection of his lawful rights and interests,

Considering also that armed aggression is the most serious and dangerous form of aggression, being fraught, in the conditions created by the existence of nuclear weapons, with the threat of a new world conflict with all its catastrophic consequences and that this form of aggression should be defined at the present stage,

Declares that:

1. Armed aggression (direct or indirect) is the use by a State, first, of armed force against another State contrary to the purposes, principles and provisions of the Charter of the United Nations.

2. In accordance with and without prejudice to the functions and powers of the Security Council:

A. Declaration of war by one State, first, against another State shall be considered an act of armed aggression;

B. Any of the following acts, if committed by a State first, even without a declaration of war, shall be considered an act of armed aggression:

(a) The use of nuclear, bacteriological or chemical weapons or any other weapons of mass destruction;

(b) Bombardment of or firing at the territory and population of another State or an attack on its land, sea or air forces;

(c) Invasion or attack by the armed forces of a State against the territory of another State, military occupation or annexation of the territory of another State or part thereof, or the blockade of coasts or ports.

C. The use by a State of armed force by sending armed bands, mercenaries, terrorists or saboteurs to the territory of another State and engagement in other forms of subversive activity involving the use of armed force with the aim of promoting an internal upheaval in another State or a reversal of policy in favour of the aggressor shall be considered an act of indirect aggression.

3. In addition to the acts listed above, other acts by States may be deemed to constitute an act of aggression if in each specific instance they are declared to be such by a decision of the Security Council.

4. No territorial gains or special advantages resulting from armed aggression shall be recognized.

5. Armed aggression shall be an international crime against peace entailing the political and material responsibility of States and the criminal responsibility of the persons guilty of this crime.

6. Nothing in the foregoing shall prevent the use of armed force in accordance with the Charter of the United Nations, including its use by dependent peoples in order to exercise their inherent right of self-determination in accordance with General Assembly resolution 1514 (XV).

B. Draft proposal submitted by Colombia, Cyprus, Ecuador, Ghana, Guyana, Haiti, Iran, Madagascar, Mexico, Spain, Uganda, Uruguay and Yugoslavia (A/AC.134/L.16 and Add.1 and 2):

The General Assembly,

Basing itself on the fact that one of the fundamental purposes of the United Nations is to maintain international peace and security and to take effective

collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace,

Convinced that armed attack (armed aggression) is the most serious and dangerous form of aggression and that it is proper at this stage to proceed to a definition of this form of aggression,

Further convinced that the adoption of a definition of aggression would serve to discourage possible aggressors and would facilitate the determination of acts of aggression,

Bearing in mind also the powers and duties of the Security Council, embodied in Article 39 of the Charter of the United Nations, to determine the existence of any threat to the peace, breach of the peace, or act of aggression, and to decide the measures to be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security,

Considering that, although the question whether aggression has occurred must be determined in the circumstances of each particular case, it is nevertheless appropriate to facilitate that task by formulating certain principles for such determination,

Reaffirming further the duty of States under the Charter of the United Nations to settle their international disputes by pacific methods in order not to endanger international peace, security and justice,

Convinced that no considerations of whatever nature, save as stipulated in operative paragraph 3 hereof, may provide an excuse for the use of force by one State against another State,

Declares that:

1. In the performance of its function to maintain international peace and security, the United Nations only has competence to use force in conformity with the Charter;

2. For the purpose of this definition, aggression is the use of armed force by a State against another State, including its territorial waters or air space, or in any way affecting the territorial integrity, sovereignty or political independence of such State, save under the provisions of paragraph 3 hereof or when undertaken by or under the authority of the Security Council;

3. The inherent right of individual or collective self-defence of a State can be exercised only in case of the occurrence of armed attack (armed aggression) by another State in accordance with Article 51 of the Charter;

4. Enforcement action or any use of armed force by regional arrangements or agencies may only be resorted to if there is decision to that effect by the Security Council acting under Article 53 of the Charter;

5. In accordance with the foregoing and without prejudice to the powers and duties of the Security Council, as provided in the Charter, any of the following acts when committed by a State first against another State in violation of the Charter shall constitute acts of aggression:

(a) Declaration of war by one State against another State;

(b) The invasion or attack by the armed forces of a State, against the territories of another State, or any military occupation, however temporary, or any forcible annexation of the territory of another State or part thereof;

(c) Bombardment by the armed forces of a State against the territory of another State, or the use of any weapons, particularly weapons of mass destruction, by a State against the territory of another State;

(d) The blockade of the coasts or ports of a State by the armed forces of another State;

6. Nothing in paragraph 3 above shall be construed as entitling the State exercising a right of individual or collective self-defence, in accordance with Article 51 of the Charter, to take any measures not reasonably proportionate to the armed attack against it;

7. When a State is a victim in its own territory of subversive and/or terrorist acts by irregular, volunteer or armed bands organized or supported by another State, it may take all reasonable and adequate steps to safeguard its existence and its institutions, without having recourse to the right of individual or collective self-defence against the other State under Article 51 of the Charter;

8. The territory of a State is inviolable and may not be the object, even temporarily, of military occupation or of other measures of force taken by another State on any grounds whatever, and that such territorial acquisitions obtained by force shall not be recognized;

9. Armed aggression, as defined herein, and the acts enumerated above, shall constitute crimes against international peace, giving rise to international responsibility;

10. None of the preceding paragraphs may be interpreted as limiting the scope of the Charter's provisions concerning the right of peoples to self-determination, sovereignty and territorial integrity.

C. Draft proposal submitted by Australia, Canada, Italy, Japan, the United Kingdom of Great Britain and Northern Ireland and the United States of America (A/AC.134/L.17 and Add.1 and 2):

The General Assembly,

Conscious that a primary purpose of the United Nations is to maintain international peace and security, and, to that end, to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace,

Recalling that Article 39 of the Charter of the United Nations provides that the Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security,

Reaffirming that all States shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered,

Believing that, although the question of whether an act of aggression has been committed must be considered in the light of all the circumstances of each particular case, a generally accepted definition of aggression may nevertheless provide guidance for such consideration,

Being of the view that such a definition of aggression may accordingly facilitate the processes of the United Nations and encourage States to fulfil in good faith their obligations under the Charter of the United Nations,

Adopts the following definition:

I. Under the Charter of the United Nations, "aggression" is a term to be applied by the Security Council when appropriate in the exercise of its primary responsibility for the maintenance of international peace and security under Article 24 and its functions under Article 39.

II. The term "aggression" is applicable, without prejudice to a finding of threat to the peace or breach of the peace, to the use of force in international relations, overt or covert, direct or indirect, by a State against the territorial integrity or political independence of any other State, or in any other manner inconsistent with the purposes of the United Nations. Any act which would constitute aggression by or against a State likewise constitutes aggression when committed by a State or other political entity delimited by international boundaries or internationally agreed lines of demarcation against any State or other political entity so delimited and not subject to its authority.

III. The use of force in the exercise of the inherent right of individual or collective self-defence, or pursuant to decisions of or authorization by competent United Nations organs or regional organizations consistent with the Charter of the United Nations, does not constitute aggression.

IV. The uses of force which may constitute aggression include, but are not necessarily limited to, a use of force by a State as described in paragraph II.

A. In order to:

- (1) Diminish the territory or alter the boundaries of another State;
- (2) Alter internationally agreed lines of demarcation;
- (3) Disrupt or interfere with the conduct of the affairs of another State;
- (4) Secure changes in the Government of another State; or
- (5) Inflict harm or obtain concessions of any sort;

B. By such means as:

- (1) Invasion by its armed forces of territory under the jurisdiction of another State;

(2) Use of its armed forces in another State in violation of the fundamental conditions of permission for their presence, or maintaining them there beyond the termination of permission;

(3) Bombardment by its armed forces of territory under the jurisdiction of another State;

(4) Inflicting physical destruction on another State through the use of other forms of armed force; °

(5) Carrying out deliberate attacks on the armed forces, ships or aircraft of another State;

(6) Organizing, supporting or directing armed bands or irregular or volunteer forces that make incursions or infiltrate into another State;

(7) Organizing, supporting or directing violent civil strife or acts of terrorism in another State; or

(8) Organizing, supporting or directing subversive activities aimed at the violent overthrow of the Government of another State.

ANNEX II

Other draft proposals submitted to the Special Committee

- A. Draft proposal concerning the principle of priority, submitted by the United States of America (A/AC.134/L.31):

In determining whether an act of aggression has taken place, due weight shall be given to the question which State first used force.

- B. Draft proposal concerning aggressive intent, submitted by the United States of America (A/AC.134/L.32):

In determining whether an act of aggression has taken place, the Security Council shall ascertain the existence of aggressive intent and determine whether a State's actions were or were not undertaken for such purposes as to:

- (1) diminish the territory or alter the boundaries of another State;
- (2) alter internationally agreed lines of demarcation;
- (3) disrupt or interfere with the conduct of the affairs of another State;
- (4) secure changes in the Government of another State;
- (5) inflict harm or obtain concessions of any sort;

or otherwise for the purpose of violating the territorial integrity or political independence of another State.

ANNEX III

Report of the Working Group^{a/}

1. The Working Group established pursuant to the decision taken by the Special Committee at its 88th meeting on 12 February 1971 held twenty-three meetings from 16 February to 4 March 1971.

2. Generally speaking, the Working Group sought to combine the various positions adopted by its members in a single text by offering different versions of the text through the use of square brackets. The phrases which were not acceptable to all members appear in brackets.

General definition of aggression

3. The following text was worked out:

"Aggression is the use of armed force /however exerted/ by a State against /another State/ /or in any way affecting/ /the sovereignty or/ the territorial integrity /including the territorial waters and airspace/ or political independence of another State, or in any other manner inconsistent with the purposes of the United Nations."

4. It should be noted that the phrase /however exerted/ in the general definition of aggression was unacceptable to many members of the Working Group, while other members regarded it as essential. Differences were also expressed as to the other bracketed phrases in the general definition.

Principle of priority

5. The following text was worked out:

"/Without prejudice to the powers and duties of the Security Council/ /in determining whether/ an act referred to in... constitutes aggression /due weight shall be given to the question whether/ /it shall be established/ if it was committed by a State which so acted first /against another State in violation of the Charter/."

6. Although all members of the Group were in favour of incorporating the principle of priority into the definition of aggression, some members regarded it as a determinative factor while others felt that it should merely be taken into account together with other elements. The various positions are clearly apparent if one reads the text both with the phrases in brackets and without them. Other proposals

^{a/} The following two reports submitted by the Working Group are combined in the present single report: the first report of the Working Group on the questions covered in paragraphs 3 to 6 of the present report; and the second report of the Working Group on the questions covered in paragraphs 7 to 25 of the present report.

were submitted to the Group by some of its members or of the members of the Committee. Certain delegations expressed reservations concerning the text which was worked out.

Political entities other than States

7. Many members of the Working Group agreed that the definition itself should refer to States only and not to political entities as referred to in the six-Power draft. Some of these members denied any notion of political entities.

8. Some delegations noted that any extension of the so-called political entity concept to cover territories which had not yet achieved independence raised problems which have a direct bearing on national liberation movements; others denied the existence of a connexion with national liberation movements and recalled that the concept, as stated in the six-Power draft, related to political entities delimited by international boundaries or internationally agreed lines of demarcation. In the light of the wide-spread willingness in the Working Group to entertain the possibility of disposing of the question by an explanatory note annexed to the definition, a method envisaged in the report of the 1970 Working Group, further consideration was given to this idea. The Working Group was, however, unable at this stage to reach agreement on the terms in which an explanatory note might be formulated, although various possible texts were suggested. Among these texts was the following:

"The term 'State' is without prejudice to the question of the recognition of States or to whether or not a State is a Member of the United Nations."

Representatives of the co-sponsors of the six-Power draft considered, however, that the explanatory note should relate clearly, as did the corresponding part of the six-Power draft, to the case of political entities delimited by international boundaries or internationally agreed lines of demarcation.

Legitimate use of force

9. The Working Group took note of the following three texts which were proposed to it:

(a) "In the performance of the function to maintain or restore international peace and security, the United Nations only has competence to use force in conformity with the Charter.

"The inherent right of individual or collective self-defence of a State can be exercised only in case of the occurrence of armed attack (armed aggression) by another State in accordance with Article 51 of the Charter.

"Enforcement action or any use of armed force by regional arrangements or agencies may only be resorted to under Article 53 of the Charter."

(b) "The use of armed force in accordance with the Charter to maintain or restore international peace and security, or in the exercise of the inherent right of individual or collective self-defence, does not constitute aggression.

"Only the Security Council has the right to use force on behalf of the United Nations to maintain or restore international peace and security.

"Enforcement action by regional arrangements or agencies consistent with the Purposes and Principles of the United Nations, may only be taken under Article 53 of the Charter."

(c) "The use of force in the exercise of the inherent right of individual or collective self-defence, or pursuant to decisions of or authorization by competent United Nations organs or regional organizations consistent with the Charter of the United Nations, does not constitute aggression."

10. None of the three texts received sufficient support on the part of the Working Group.

Aggressive intent

11. There was agreement in the Working Group that there was no aggression without aggressive intent. Many delegations maintained that it was not necessary to include a reference to aggressive intent or the purposes of aggression in the definition, since aggressive intent was necessarily implied in any act of aggression, and the purposes of the aggressor never justified the commission of such an act. Others considered, however, that it was necessary to include express references to purposes which might make the use of force aggression.

12. The following five texts were proposed and were examined by the Working Group:

(a) "The use of armed force shall be recognized as aggression when undertaken with the following purposes:

"To eliminate another State;

"To annex territory of another State or to alter the boundaries of another State;

"To change the existing political or social régime in another State;

"To suppress national liberation movements in colonies and dependent territories and to keep peoples in colonial dependence;

"To receive economic and other advantages from another State."

(b) "In determining whether an act of aggression has taken place, the Security Council shall ascertain the existence of aggressive intent and determine whether a State's actions were or were not undertaken for such purposes as to:

- "(1) Diminish the territory or alter the boundaries of another State;
- "(2) Alter internationally agreed lines of demarcation;
- "(3) Disrupt or interfere with the conduct of the affairs of another State;
- "(4) Secure changes in the Government of another State;
- "(5) Inflict harm or obtain concessions of any sort;

or otherwise for the purpose of violating the territorial integrity or political independence of another State."

(c) "In determining an act of aggression, the Security Council shall duly take into account the stated intentions and the aims pursued by the States concerned."

(d) "Intent shall be presumed to exist in the commission of any act of aggression, without such presumption detracting from the right of the accused State to prove its innocence."

(e) "In determining whether an act of aggression has taken place, the Security Council shall presume that such an act was committed with aggressive intent unless the accused State proves otherwise."

13. However, none of the texts received sufficient support on the part of the Working Group.

Acts proposed for inclusion

14. The following text was worked out:

"In accordance with the foregoing and without prejudice to the powers and duties of the Security Council, as provided in the Charter, any of the following acts when committed by a State first with aggressive intent against another State in violation of the Charter shall constitute acts of aggression , independently of a declaration of war:

"Declaration of war

(a) Declaration of war by a State first against another State when accompanied by an armed attack;

"Invasion, attack, occupation or annexation

(b) The invasion or attack by the armed forces of a State of the territory under the jurisdiction of another State , or any military occupation, however temporary, or any forcible annexation of the territory of another State or part thereof;

"Bombardment; use of any weapons, particularly weapons of mass destruction

"(c) Bombardment by the armed forces of a State of the territory and the population under the jurisdiction of another State, or the use of any weapons, particularly weapons of mass destruction, by a State against the territory of another State;

"Blockade

"(d) The blockade of the coasts of ports of a State by the armed forces of another State;

"Attack on the forces of another State

"(e) An attack by the armed forces of a State on the land, sea or air forces of another State;

"Other acts of armed force

"(f) Other acts of armed force committed by a State against another State in such a way as to cause it serious physical destruction.

"Maintenance of armed forces in another State

"(g) Use of the armed forces by a State in another State in violation of the fundamental conditions of permission for their presence, or maintaining them there beyond the termination of permission.

"Indirect use of force

"(a) The use by a State of armed force by sending armed bands, mercenaries, terrorists or saboteurs to the territory of another State and engagement in other forms of subversive activity involving the use of armed force with the aim of promoting an internal upheaval in another State or a reversal of policy in favour of the aggressor shall be considered an act of indirect aggression.

"(b) When a State is a victim in its own territory of subversive and/or terrorist acts by irregular, volunteer or armed bands organized or supported by another State, it may take all reasonable and adequate steps to safeguard its existence and its institutions, without having recourse to the right of individual or collective self-defence against the other State under Article 51 of the Charter.

"(c) The sending by a State of armed bands of irregulars or mercenaries which invade the territory of another State in such force and circumstances as to amount to armed attack as envisaged in Article 51 of the Charter.

"(h) (d) The carrying out, directing, assisting or encouraging by a State of acts of incursion, infiltration, terrorism or violent civil strife or subversion in another State, whether by regular or irregular forces, armed bands, including mercenaries, or otherwise, or the acquiescing by a State in organized activities within its territory directed towards the commission of such acts.

"Additional acts as declared by the Security Council"

"In addition to the acts listed above, other acts by States may be deemed to constitute an act of aggression if in each specific instance they are declared to be such by the Security Council."

15. Some delegations expressed the opinion that the quantitative element implied in the word "serious" in paragraph (f) should not be taken into account solely in the cases covered by the paragraph; it could also be applied to other acts of aggression. Many delegations strongly objected to the inclusion of paragraph (f) which, they considered, had no place in the definition of aggression. Several delegations expressed the view that, subject to any future agreement on the acts listed in paragraph 14, those acts, in order to be aggression, should constitute the "armed attack" referred to in Article 51 of the Charter.

16. Some delegations indicated their support for the insertion of paragraph (g), while others objected to it. Other delegations felt that the text of paragraph (g), as well as the following formula appearing in paragraph 20 of the Working Group's report for 1970, merited more detailed study:

"Where the armed forces of one State are within the territory of another State by virtue of permission given by the receiving State, any use of such forces in contravention of the conditions provided for in the permission or any extension of their presence in such territory beyond the termination or revocation of the permission by the receiving State."

17. It was understood that there were differences of opinion among delegations as to the inclusion of some of the concepts listed in paragraph 14. As regards the question of indirect use of force, several delegations maintained the view that such use of force should be dealt with elsewhere in the definition by a provision such as (a) or (b) or (c) or (h) (d) above under the heading Indirect use of force, either because in their opinion it constituted aggression of a different kind or because they considered that it did not constitute aggression at all. Therefore they objected to the inclusion of paragraph (h) (d) in the list of acts considered as direct aggression. Others considered it essential that any list of acts of aggression should include acts of the kind referred to in (h) (d).

18. Some delegations felt that, irrespective of the question of the discretion of the Security Council to find other acts to be acts of aggression, the definition should expressly state that the list of acts given above should not be regarded as exhaustive.

Proportionality

19. The Working Group was not able to study this question in detail because of the lack of time. Some delegations felt that the notion of proportionality did not apply to legitimate self-defence, and consequently had no place in the definition. Other delegations pointed out that the concept of proportionality was not to be found in the Charter, and therefore it should not be included in the definition. Other delegations, on the other hand, felt that the concept was of great importance and could be studied on the basis of paragraph 6 of the thirteen-Power draft. In the view of other delegations, the concept required a delicate assessment not only of the means of retaliation, but also of the extent of the threat as perceived by the retaliating State; such assessment was, they felt, better left to the Security Council. Some delegations pointed out that the concept of proportionality should be included in the definition, to avoid invocation of the right to self-defence being used as a pretext for reprisals.

Legal consequences of aggression:

- (a) Non-recognition of territorial gains
- (b) The question of responsibility

20. Independently of the question whether military occupation and annexation were in themselves acts of aggression, several members considered it necessary to reflect in the definition the concept of the non-recognition of territorial gains resulting from aggression and the concept of responsibility for aggression. Some of those members believed that the definition should also make it clear that the territory of a State was inviolable and could not be the object of military occupation by another State. Other members maintained, without derogating from the views to which their Governments had subscribed on those concepts in any other contexts, that consequences of aggression should not be included in the definition.

21. It was agreed that paragraphs 4 and 5 of the draft proposal of the Union of Soviet Socialist Republics and paragraphs 8 and 9 of the thirteen-Power draft proposal could serve as a basis of discussion.

The right of peoples to self-determination

22. Some members believed that, since the use of force was involved, it would be appropriate to refer in the definition to the rights of peoples under the Charter and to the recognition by the United Nations of the right of colonial peoples opposing forcible efforts to deprive them of their right to self-determination to receive support in accordance with the principles of the Charter. Some of those members considered that the mention of the right of peoples to sovereignty and territorial integrity should be included together with the provision on self-determination, such as is done in the thirteen-Power draft.

23. Other members considered it unnecessary to mention the right of peoples to self-determination in the definition of aggression, as the two matters were not related.

24. It was agreed that paragraph 6 of the draft proposal of the Union of Soviet Socialist Republics and paragraph 10 of the thirteen-Power draft could serve as a basis of discussion.

Purposes of the definition of aggression

25. Because of the lack of time, the Working Group was not able to discuss in detail the question of the purposes of the definition of aggression. It was agreed that the matter could usefully be discussed at a later stage, if the Working Group's terms of reference were renewed.

* * *

Provisional character of the positions taken

26. The hope was generally expressed that, while the present text admittedly contained too many bracketed passages, a generally acceptable definition would be arrived at as a result of mutual give and take. It was pointed out in this connexion that the various elements of a definition were closely related to each other, and that the final positions of delegations would depend on the over-all solution arrived at.

ANNEX IV

Working paper submitted to the Special Committee

Working paper submitted by Mexico (A/AC.134/L.28):

Note. The sole purpose pursued in submitting this working paper was to attempt a summing-up of the stage reached in the negotiations of the Special Committee since its inception. The working paper should not be seen as representing a change in the position of the submitting delegation, which is one of the sponsors of the draft proposal set out in document A/AC.134/L.16 and Add.1 and 2.

1. Preambular paragraphs on which there is general agreement, subject to drafting changes, according to the report of the Working Group of the Whole established at the 1969 session (1969 report of the Special Committee, annex I)

The General Assembly,

"Basing itself on the fact that one of the fundamental purposes of the United Nations is to maintain international peace and security and to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace," (paragraph 5 of the report of the Working Group of the Whole)

"Recalling also that Article 39 of the Charter states that the Security Council shall determine the existence of any threat to the peace, breach of the peace or act of aggression and shall make recommendations or decide what measures shall be taken in accordance with Articles 41 and 42 to maintain or restore international peace and security," (paragraph 6 of the report of the Working Group of the Whole)

"Reaffirming further the duty of States under the Charter of the United Nations to settle their international disputes by pacific methods in order not to endanger international peace, security and justice,

"Convinced that the adoption of a definition of aggression would have a restraining influence on a potential aggressor, would simplify the determination of acts of aggression and the implementation of measures to stop them and would also facilitate the rendering of assistance to the victim of aggression and the protection of his lawful rights and interests,

"Considering also that armed aggression is the most serious and dangerous form of aggression, being fraught, in the conditions created by the existence of nuclear weapons, with the threat of a new world conflict with all its catastrophic consequences and that this form of aggression should be defined at the present stage," (paragraph 7 of the report of the Working Group of the Whole).

2. Elements in operative paragraphs on which there is general agreement, according to the report of the Working Group established at the 1970 session (1970 report of the Special Committee, annex II)

(a) There is general agreement that this definition of aggression should be limited to the concept of the use of armed force and should include an abstract formulation expressing in a balanced way the essential elements and the characteristics of the concept.

USSR proposal

1. Armed aggression (direct or indirect) is the use by a State, first, of armed force against another State contrary to the purposes, principles and provisions of the Charter of the United Nations. (Paragraph 1)

Thirteen-Power proposal

2. For the purpose of this definition, aggression is the use of armed force by a State against another State, including its territorial waters or air space, or in any way affecting the territorial integrity, sovereignty or political independence of such State, save under the provisions of paragraph 3 hereof or when undertaken by or under the authority of the Security Council. (Paragraph. 2)

Six-Power proposal

II. The term aggression is applicable, without prejudice to a finding of threat to the peace or breach of the peace, to the use of force in international relations, overt or covert, direct or indirect, by a State against the territorial integrity or political independence of any other State, or in any other manner inconsistent with the Purposes of the United Nations..... (Paragraph II)

Texts proposed in the Working Group

(i) "Aggression is the use of armed force by a State against the territorial integrity including the territorial waters and air space or sovereignty or political independence of another State, or in any other manner inconsistent with the purposes of the United Nations;"

(ii) "Aggression is the use of armed force by a State against another State, or in any way affecting the territorial integrity including the territorial waters and air space or sovereignty or political independence of such State."

(b) There is general agreement that the concept of "priority" or "first use" should be introduced into the definition; however, there are two ways of doing this:

(1) specific mention, as in the USSR draft (paragraph 1) and the thirteen-Power draft (paragraph 5);

(2) reference to this factor in a formulation of the kind found in paragraph 5 of the Working Group's report, which reads:

"In determining whether force was used by a State in order to act against the territorial integrity or political independence of another State, or in any manner inconsistent with the purposes of the United Nations, due weight shall be given to the question which of those States first used force."

(c) There is general agreement that it is essential to include in the definition a reference to the legitimate uses of force in accordance with the Charter.

USSR proposal

6. Nothing in the foregoing shall prevent the use of armed force in accordance with the Charter of the United Nations, including its use by dependent peoples in order to exercise their inherent right of self-determination in accordance with General Assembly resolution 1514 (XV). (Paragraph 6)

Thirteen-Power proposal

3. The inherent right of individual or collective self-defence of a State can be exercised only in case of the occurrence of armed attack (armed aggression) by another State in accordance with Article 51 of the Charter;

4. Enforcement action or any use of armed force by regional arrangements or agencies may only be resorted to if there is decision to that effect by the Security Council acting under Article 53 of the Charter; (Paragraphs 3 and 4)

Six-Power proposal

III. The use of force in the exercise of the inherent right of individual or collective self-defence, or pursuant to decisions of United Nations organs or regional organizations consistent with the Charter of the United Nations, does not constitute aggression. (Paragraph III)

Texts proposed in the Working Group

(i) "The use of armed force in accordance with the Charter to maintain or restore international peace and security, or in the exercise of the inherent right of individual or collective self-defence, does not constitute aggression;"

(ii) "The use of armed force in accordance with the Charter to maintain or restore international peace and security, or in the exercise of the inherent right of individual or collective self-defence, does not constitute aggression.

"The inherent right of individual or collective self-defence of a State can be exercised only in case of the occurrence of armed attack (armed aggression) by another State in accordance with Article 51 of the Charter.

"Enforcement action or any use of armed force by regional arrangements or agencies may only be resorted to under Article 53 of the Charter."

(d) There is general agreement that the non-exhaustive list of the most common cases of aggression should be preceded by a statement to the effect that the enumeration is made without prejudice to the authority vested in the Security Council by the Charter.

USSR proposal

"2. In accordance with and without prejudice to the functions and powers of the Security Council:

"3. In addition to the acts listed above, other acts by States may be deemed to constitute an act of aggression if in each specific instance they are declared to be such by a decision of the Security Council." (Paragraphs 2 and 3)

(e) There are two views on the inclusion of "declaration of war" among the typical acts of aggression:

(1) "Declaration of war" should be included among typical acts of aggression.

(2) A statement should be included before the listing of typical acts indicating that the acts included in the list constitute aggression whether or not they are accompanied by a declaration of war.

(f) There is general agreement on the desirability of including in the list of typical acts of aggression the following cases:

Thirteen-Power proposal

"3. In accordance with the foregoing and without prejudice to the powers and duties of the Security Council, as provided in the Charter,...." (Paragraph 5)

"I. Under the Charter of the United Nations, 'aggression' is a term to be applied by the Security Council when appropriate in the exercise of its primary responsibility for the maintenance of international peace and security under Article 24 and its functions under Article 39." (Paragraph I)

(e) There are two views on the inclusion of the concept of "declaration of war" among the typical acts of aggression:

(1) "Declaration of war" should be included among typical acts of aggression.

(2) A statement should be included before the listing of typical acts indicating that the acts included in the list constitute aggression whether or not they are accompanied by a declaration of war.

(f) There is general agreement on the desirability of including in the list of typical acts of aggression the following cases:

Invasion of the territory of another State

USSR proposal

"(c) Invasion or attack by the armed forces of a State against the territory of another State, military occupation or annexation of the territory of another State or part thereof," (Paragraph 2.B.c.)

Thirteen-Power proposal

"(b) The invasions or attacks by the armed forces of a State, against the territories of another State, or any military occupation, however temporary, of any forcible annexation of the territory of another State or part thereof," (Paragraph 5.b)

Six-Power proposal

"(1) Invasion by its armed forces of territory under the jurisdiction of another State;" (Paragraph IV.B.1)

Bombardment of the territory of another State

USSR proposal

"(b) Bombardment of or firing at the territory and population of another State...." (Paragraph 2.B.b)

Thirteen-Power proposal

"(c) Bombardment by the armed forces of a State against the territory of another State,...." (Paragraph 5.c)

Six-Power proposal

"(3) Bombardment by its armed forces of territory under the jurisdiction of another State." (Paragraph IV.B.3)

Attack on the armed forces, ships or aircraft of another State

USSR proposal

"(b) ... or an attack on its land, sea or air forces;" (Paragraph 2.B.b)

Thirteen-Power proposal

"(5) carrying out deliberate attacks on the armed forces, ships, or aircraft of another State;" (Paragraph IV.B.5)

Six-Power proposal

Indirect use of force

(g) There is general agreement that reference should be made in the definition to the problem of armed bands or irregular forces; however, there is no agreement on how to do this.

USSR proposal

"C. The use by a State of armed force by sending bands, mercenaries, terrorists or saboteurs to the territory of another State and engagement in other forms of subversive activity involving the use of armed force with the aim of promoting an internal upheaval in another State or a reversal of policy in favour of the aggressor shall be considered as an act of indirect aggression." (Paragraph 2.C)

Thirteen-Power proposal

"7. When a State is a victim in its own territory of subversive and/or terrorist acts by irregular, volunteer or armed bands organized or supported by another State, it may take all reasonable and adequate steps to safeguard its existence and its institutions, without having recourse to the right of individual or collective self-defence against the other State under Article 51 of the Charter;" (Paragraph 7)

Six-Power proposal

"(6) organizing, supporting or directing armed bands or irregular or volunteer forces that make incursions or infiltrate into another State;

"(7) organizing, supporting or directing violent civil strife or acts of terrorism in another State; or

"(8) organizing, supporting or directing subversive activities aimed at the violent overthrow of the Government of another State." (Paragraph IV.B 6, 7 and 8)

Text proposed in the Working Group

The following text was proposed in the Working Group to replace paragraph IV.B, 6, 7, and 8 of the six-Power proposal:

"The sending by a State of armed bands of irregulars or mercenaries which invade the territory of another State in such force and circumstances as to amount to armed attack as envisaged in Article 51 of the Charter."

3. Points on whose inclusion there is no agreement

- (a) Recognition of the fact that the power of decision to use force is centralized in the United Nations and consequences of the application of this principle in the activities of the regional agencies in accordance with Article 53 of the Charter.
- (b) Application of the definition to political entities other than States.
- (c) Inclusion of the use of weapons of mass destruction as a typical case of aggression.
- (d) Naval blockade as a typical case of aggression.
- (e) Question of maintaining armed forces in another State.
- (f) Principle of proportionality.
- (g) Inclusion of the concept of "aggressive intent".
- (h) Inclusion in the definition of the legal consequences of aggression, fundamentally of the following:
 - (i) Aggression is a crime against peace and commission of this crime entails international responsibility;
 - (ii) There exists an obligation not to recognize the occupation and acquisition of territory by force.
- (i) Inclusion in the definition of the question of the right of peoples to self-determination of.

ANNEX V

List of representatives^{a/}

Algeria: Mr. Nouredine Harbi, Mr. Mohamed Berrezoug

Australia: Sir Laurence McIntyre, Mr. H.C. Mott,* Mr. G.J.L. Coles*

Bulgaria: Mr. Dimitar T. Kostov

Canada: Mr. J.A. Beesley, Mr. H. Lyon Weidman,* Mr. L.S. Clark*

Colombia: Mr. Ajusto Espinosa, Mr. José María Morales-Suárez*

Congo (Democratic Republic of): Mr. Nicolas Bofunga, Mr. Vincent Mutuale

Cyprus: Mr. Z. Rossides, Mr. A.J. Jacovides, Mr. D. Moushoutas

Czechoslovakia: Mr. Ilja Hulinsky, Mr. Václav Kralik

Ecuador: Mr. Gonzalo Alcívar, Mr. Horacio Sevilla-Borja

Finland: Mr. Matti Cawén,, Mr. Holger Rotkirch

France: Mr. François de la Gorce, Mr. Alain Deschamps, Mr. Philippe Petit,
Mrs. Catherine Boivineau

Ghana: Mr. R.M. Akwei, Mr. G.C.N. Cudjoe,* Mr. Emmanuel Sam**

Guyana: Mr. P.A. Thompson, Mr. S.R. Insanally, Mr. Duke E. Pollard

Haiti: Mr. M.C. Duplessis

Indonesia: Mr. H. Roeslan Abdulgani, Mr. Datuk Mulia,* Mr. Mohamed Sidik*

Iran: Mr. Hooshang Amirmokri, Mr. Farrokh Parsi*

Iraq: Mr. Talibh El-Shibib, Mr. Adnan Raouf,* Mr. Wissam Al-Zahawie,*
Mr. Riyadh Al-Qaysi*

Italy: Mr. Francesco Capotorti, Mr. Joseph Nitti,* Mr. Vincenzo Starace*

Japan: Mr. Hideo Kagami, Mr. Takao Kawakami,* Mr. Yoji Ohta**

Madagascar: Mr. Moïse Rakotosihanaka

* Alternate.

** Adviser.

a/ See paragraph 2 of the report.

Mexico: Mr. Sergio González-Gálvez, Mr. José L. Vallarta*

Norway: Mr. Per E.S. Tresselt, Mr. Haakon B. Hjelde*

Romania: Mr. Gheorghe Diaconescu, Mr. Vergiliu Ionescu*

Sierra Leone: Mr. Oulu W. Harding

Spain: Mr. José Luis Messia, Mr. Amador Martinez Morcillo,* Mr. José Cuenca

Sudan: Mr. Omer El Sheikh

Syria: Mr. Dia-Allah El-Fattal

Turkey: Mehmet Güney

Uganda: Mr. S.T. Bigombe

Union of Soviet Socialist Republics: Mr. V. Chkhikvadzé, Mr. D. Kolesnik,*
Mr. O. Bogdanov,** Mr. E. Nasinovsky,
Mr. J. Rybakov**

United Arab Republic: Mr. Mohamed H. El Zayyat, Mr. Aly Ismail Teymour,
Mr. Mohamed M. El-Baradei**

United Kingdom of Great Britain and Northern Ireland: Mr. J.R. Freeland,
Mr. N.C.R. Williams*

United States of America: Mr. Herbert K. Reis, Mr. Morris Rothenberg,*
Mr. Robert B. Rosenstock*

Uruguay: Mr. Augusto Legnani, Mrs. Ana A.Fasanello de Gamou,* Miss Graziella Dubra*

Yugoslavia: Mr. Miljan Komatina, Mr. Aleksandar Jelić, Mr. Zlatan Kikic,*
Mrs. Gordana Diklić-Trajković,** Mr. Radomir Zečević**

* Alternate.

** Adviser.