REPORT OF THE SPECIAL COMMITTEE ON THE QUESTION OF DEFINING AGGRESSION

13 July - 14 August 1970

GENERAL ASSEMBLY

OFFICIAL RECORDS : TWENTY-FIFTH SESSION

SUPPLEMENT No. 19 (A/8019)

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NOTE

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I. INTRODUCTION

1. At its twenty-second session, on 18 December 1967, the General Assembly adopted, on the recommendation of the Sixth Committee, 1/ resolution 2330 (XXII), by which it established a Special Committee on the Question of Defining Aggression, specified its composition and defined its terms of reference.

2. The Special Committee set up under this resolution met at the United Nations Office at Geneva from 4 June to 6 July 1968 and prepared a report 2/ which, on 27 September 1968, the General Assembly included in the agenda of its twenty-third session and referred to the Sixth Committee for consideration. On 18 December 1968, the General Assembly, on the recommendation of the Sixth Committee, 3/ adopted resolution 2420 (XXIII), by which it decided 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 1969".

3. In accordance with this resolution, the Special Committee on the Question of Defining Aggression met at United Nations Headquarters, New York, from 24 February to 3 April 1969 and prepared a report 4/ which, on 20 September 1969, the General Assembly included in the agenda of its twenty-fourth session and referred to the Sixth Committee for consideration. On 12 December 1969, the General Assembly, on the recommendation of the Sixth Committee, 5/ adopted resolution 2549 (XXIV), 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 in New York from 24 February to 3 April 1969,
>
> "*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 1968 and 1969,

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1/ *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 95, document A/6988, para. 21.

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

3/ *Ibid., Annexes*, agenda item 86, document A/7402, para. 31.

4/ *Ibid., Twenty-fourth Session, Supplement No. 20* (A/7620).

5/ *Ibid., Twenty-fourth Session, Annexes*, agenda item 88, document A/7853, para. 25.

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

"*Considering* the urgency of defining aggression and the desirability of achieving this objective, if possible, by the twenty-fifth anniversary of the United Nations,

"1. *Decides* that the Special Committee on the Question of Defining Aggression shall resume its work, in accordance with General Assembly resolution 2330 (XXII), at Geneva in the second half of 1970;

"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-fifth session an item entitled 'Report of the Special Committee on the Question of Defining Aggression'."

4. 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, met at the United Nations Office at Geneva from 13 July to 14 August 1970. With the exception of Czechoslovakia, Haiti and Sierra Leone, all the States members of the Special Committee took part in its work. The list of representatives attending the 1970 session is reproduced in annex III to this report.

5. At its 53rd meeting, on 14 July, the Special Committee elected the following officers:

Chairman:	Mr. Fakhreddine Mohamed (Sudan)
Vice-Chairmen:	Mr. Zenon Rossides (Cyprus) Mr. Gonzalo Alcívar (Ecuador) Mr. G. Badesco (Romania)
Rapporteur:	Mr. E.F. Ofstad (Norway)

6. The session was opened on behalf of the Secretary-General by Mr. Anatoly P. Movchan, Director of the Codification Division of the Office of Legal Affairs, who also represented the Secretary-General at the session and acted as Secretary of the Special Committee. Mr. Chafic Malek served as Deputy Secretary. Mr. Tatsuro Kunugi and Mr. Eduardo Valencia-Ospina served as Assistant Secretaries.

7. At its 53rd meeting, on 14 July, the Special Committee adopted the following agenda (A/AC.134/6):

(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) and 2549 (XXIV)).

(6) Adoption of the report.

8. At its 54th meeting, on 15 July, the Special Committee decided to devote five meetings to a general discussion of the three draft proposals before it (see paragraph 10 below). At its 61st meeting, on 23 July, it decided to consider these draft proposals paragraph by paragraph, according to the concepts on which the paragraphs were based.

9. At its 74th meeting, on 7 August, the Special Committee decided to establish a working group of eight members representing the sponsors of the three draft proposals in proportion to their number, that is, one representative for the USSR draft, five representatives for the thirteen-Power draft and two representatives for the six-Power draft. The Working Group was requested 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. The Working Group held ten meetings from 10 to 14 August and brought its report to the attention of the Special Committee at its 78th meeting, on 14 August (A/AC.134/L.25/Rev.1). At the same meeting, the Special Committee decided to take note of the report of the Working Group and to annex it to the report of the Special Committee, with the understanding that, for lack of time, the Special Committee had been unable to examine the report of the Working Group. The report of the Working Group is reproduced in annex II to the present report.

II. DRAFT PROPOSALS AND DRAFT RESOLUTION BEFORE THE SPECIAL COMMITTEE

10. The Special Committee had before it three draft proposals which had been submitted during its 1969 session, namely, the draft proposal of the USSR (A/AC.134/L.12), the new thirteen-Power draft proposal (A/AC.134/L.16 and Add.1 and 2) and the six-Power draft proposal (A/AC.134/L.17 and Add.1). The text of these three draft proposals is reproduced in annex I to this report.

11. On 16 July 1970, the sponsors of the six-Power draft proposal submitted a preamble (A/AC.134/L.17/Add.2) to their proposal. The text of this preamble is incorporated in the draft proposal.

12. At its 78th meeting, on 14 August, the Special Committee had before it the following draft resolution submitted by Bulgaria (A/AC.134/L.26):

"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 and 2549 (XXIV) of 12 December 1969, which recognized the need to expedite the definition of aggression,

"Noting the progress made by the Special Committee and the fact that it did not have sufficient time to complete its task at its current session,

"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,

"Recommends that the General Assembly, at its twenty-fifth session, invite the Special Committee to resume its work as early as possible in 1971."

III. DEBATE

13. As indicated above (paragraph 8), the Special Committee undertook its work by first engaging in a general discussion on the draft proposals before it and then considering these proposals paragraph by paragraph, having regard to the underlying principles. Part A of this section contains an account of the views expressed during the general discussion of the draft proposals; part B will deal with the views expressed on the various provisions of these draft proposals in relation to the principles which they embody.

A. VIEWS EXPRESSED DURING THE GENERAL DISCUSSION OF THE DRAFT PROPOSALS

14. For the sake of convenience, these views are presented under appropriate headings. Mention should, however, be made here of the opinions expressed on certain general aspects of the question of defining aggression.

15. The preliminary question of the desirability of defining aggression was raised. Some representatives, while stating that they would welcome a definition of aggression which, in their view, was sound and generally accepted, pointed out that the doubts which their delegations had previously expressed on a number of occasions concerning the advisability of defining aggression, and particularly concerning the impact that a definition would have on the behaviour of States, had not been completely dissipated. In their view, a definition might render more difficult the task of United Nations organs concerned with international peace and security. Several representatives, however, maintained that a definition of aggression was necessary. Such a definition would provide a legal basis for establishing the existence of acts contrary to a rule of _jus cogens_. In addition to contributing to the progressive development of international law, and representing an important stage in its development, it would dispel much of the imprecision associated with the concept of aggression and would help to deter potential aggressors. It would also assist the competent organs of the United Nations in establishing the existence of an act of aggression and would help to promote the peaceful settlement of international conflicts. It would, in addition, enable world public opinion to understand the basis for the adoption of collective measures by the United Nations to restore peace, as well as for acts of self-defence by States. It was further pointed out that a definition of aggression was long overdue; it was needed not only as a guide to the Security Council and to States with respect to the exercise of the right of self-defence but, what was more important, it was needed to complete important legislative proposals, such as the draft Code of Offences against the Peace and Security of Mankind, the question of an international criminal jurisdiction and many international instruments concerning matters of security, including the Charter of the United Nations. The view was also expressed that efforts to define aggression were an integral part of efforts by supporters of progress to promote and strengthen the authority of justice and law in international relations and of the basic principles underlying those relations, which essentially postulated respect for every nation's right to self-determination, national sovereignty and independence, equality of rights and non-interference in the internal affairs of other countries.

16. As regards the procedure for the adoption of the definition of aggression, some representatives expressed the view that it was necessary to draft a definition commanding a consensus in the Committee and, particularly, accepted by all the permanent members of the Security Council. However, a substantial number of representatives considered that if unanimity, although desirable, could not be reached, a definition which would command the agreement of a large majority of the Committee would serve a useful purpose. The consent of all permanent members of the Security Council was not indispensable. It was observed in that connexion that a demand for unanimity would show too little respect for the will of the majority of States and too much for the will of the minority. If unanimity proved impossible, there should be no balking at a majority decision, such as was provided for in the rules of procedure of the General Assembly. It would of course be an advantage if the definition was accepted by all the permanent members of the Security Council, but that was in no way a prerequisite for the accomplishment of the Special Committee's task, since the foundation stone of the United Nations was the principle of the sovereign equality of States; the right of veto was an exception applicable to matters of security, and there was no question of extending it to questions relating to the progressive development of international law and world order. It would be better to present the General Assembly with a draft definition accepted by a large majority of the members of the Committee than to have no definition at all; moreover, a definition supported by the majority could influence the attitude of the minority, so that sooner or later it would be possible, on the basis of such a definition, to frame one expressing a consensus.

17. In the opinion of other representatives, however, if the definition was to be of value and not to be harmful and a source of division, it should have the support of all members of the international community. It was stated that the Special Committee's task was to draft a definition which, once adopted by the General Assembly, would be an authoritative statement of the law generally recognized and an authoritative interpretation of the Charter. However, the General Assembly did not make the law, not having the power to do so; all it could do was to declare what the law generally recognized was, such a declaration having legal weight only if accurate. In the case in point, if the General Assembly adopted a resolution purporting to be declaratory of international law and if, for example, the sponsors of the six-Power draft proposal voted against it, the resolution would be invalid in law or, at any rate, it could not be declaratory of international law. Six States, representing a significant portion of the world's power, economic vitality, political leadership, military strength and legal tradition, would be saying that the law was otherwise. The same would be true if the resolution was opposed by other consequential elements of the General Assembly's membership. The fact that the resolution would be opposed by at least two permanent members of the Security Council would make it an *a fortiori* case. Accordingly, the Committee must succeed in drafting a definition which reflected a consensus.

18. It was remarked in this respect by a representative that the duty of the Committee as a legal body was to draft the legal document of a definition and send it to the General Assembly in accordance with its mandate. It was for the General Assembly, where all the membership of the United Nations is represented, to consider the expediency of the political aspect of unanimity of the membership.

1. Application of the definition

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

19. All the representatives who spoke on this point agreed in recognizing that the definition should safeguard the power of the Security Council as the United Nations organ primarily responsible for the maintenance of international peace and security. But their views differed on the extent to which the Security Council should be free in the application of the definition.

20. According to some representatives, it was of fundamental importance that any definition of aggression should preserve the discretionary power of the Security Council in determining whether any specific situation involved an act of aggression within the meaning of the Charter. In that sense a definition of aggression should not be intended for automatic and categorical application, but should be understood as providing guidance for the Security Council in the exercise of its responsibilities under the relevant provisions of the Charter. Under the Charter, it was for the Security Council to determine whether or not an act of aggression had been committed. The definition could not in any way circumscribe or take away that function of the Council. It would even be dangerous to use a form of words which might suggest that such was the Committee's intention. In the view of those representatives, the six-Power draft would be satisfactory in that respect.

21. On the other hand, several representatives expressed the view that the definition should not leave the Security Council entirely free to determine whether an act of aggression had been committed. A definition which fully maintained the discretionary power of the Council would be useless. The definition could not, of course, affect the Security Council's powers under the Charter, but should be worded in such a way as to prevent the Security Council from taking arbitrary decisions. It could even be said that if the definition was based on the Charter, the Security Council would be bound to observe it in performing its functions. Regarding operative paragraph I of the six-Power draft, it was argued that the wording of that paragraph contributed nothing to a definition of aggression. It was open to different interpretations and would give the impression that the Security Council would have discretionary powers in the application of the definition. If the definition was not to be applicable in the same way in all cases, not only would it be of little use, but it might become a subject of procedural disputes in the Security Council. If, however, the intention of the paragraph was that the Security Council should determine the existence of the act of aggression, it would be better to use those words, which were those of Article 39 of the Charter. With such a wording, paragraph I of the six-Power draft would partly correspond to the fourth preambular paragraph of the thirteen-Power draft. The Security Council must, of course, act in accordance with its constitutional powers, which were not unlimited, being strictly subject to the purposes and principles of the United Nations; but the text of paragraph I of the six-Power draft gave the impression that aggression was no more than a term used in the Charter to be interpreted as the Security Council saw fit, i.e. as the permanent members of the Security Council saw fit, with all that that implied.

22. One representative, while recognizing the need to safeguard the discretionary power of the Security Council, expressed the view that the definition should not make that power exclusive to a point where a deadlock in the Security Council would prevent other competent United Nations organs, particularly the General Assembly, from deciding upon the existence of a case of aggression.

(b) Political entities to which the definition should apply

23. Some representatives considered that the definition should contain a provision which would place on the same footing States and political entities that are not universally recognized as States but which are delimited by international frontiers or internationally agreed lines of demarcation.

24. Several representatives felt, however, that such a provision would be contrary to the Charter, would lead to confusion and would even be dangerous. The illusion that aggression could be committed by political entities other than States, it was said, introduced concepts which were not found in contemporary international law or in the Charter of the United Nations. Any definition of aggression must be based on the premise that only full subjects of international law, that was to say, States, performed acts at the international level. It was true that the possibility was not excluded of aggression by international organizations with legal status under international law and sometimes with armed contingents under their control. But there was no need to include a special provision to cover that eventuality in a definition of aggression. Any real threat would be from States, and not from international organizations or entities "delimited by internationally agreed lines of demarcation". It was also pointed out that most, if not all, of the entities which were described as political entities were genuine sovereign States. The fact that they were not recognized by some Governments did not alter their status as such. Implicitly to deny such entities the status of States by describing them as political entities, in a declaration of the General Assembly, would be to place one more obstacle in the way of the principle of universality, subscribed to by the United Nations. The view was also expressed that if the definition was to deal with direct armed aggression, it must be made clear that only States could be aggressors or victims of aggression. The reference to political entities in operative paragraph II of the six-Power draft would be meaningless in a definition confined to direct armed aggression and might be dangerous, as it could be interpreted as a means of obtaining recognition of a pre-existing situation.

25. With regard to the various criticisms of the concept of a political entity referred to in the six-Power draft, it was pointed out in the first place that the Charter spoke of "aggression" without specifying whether it was an act committed by a State or by an entity recognized to be a State. When the Charter referred to a State in that connexion, it was to an "enemy State" in the very special clause which was Article 53. It was pointed out, in the second place, that in so far as the argument concerned Article 2, paragraph 4, of the Charter, which did not employ the word "aggression", it was true that the paragraph referred to "all Members" and "any State", and did not speak of Members or States not recognized to be such. But it would be pedantic literalism to suggest that Article 2, paragraph 4, of the Charter could not accordingly apply to an entity whose statehood was disputed. The argument that only States could be victims or authors of aggression need only be stated to be refuted. A definition of aggression which included the concept of an entity not recognized as a State would be very helpful. It would, in fact, be dangerous if a definition of aggression did not expressly refer to that concept.

2. Acts proposed for inclusion in the definition of aggression

26. The idea that the definition should be limited, for the present at least, to the concept of armed aggression as understood under the Charter, was approved by

most of the members of the Special Committee. However, different views were expressed on the question whether, for purposes of the exercise of the right of self-defence, this concept should cover armed aggression in its indirect form. The question was raised whether the definition should extend to this form of aggression.

27. Some representatives felt that the definition should be applicable to so-called indirect armed aggression. They argued that infiltration across frontiers or internationally agreed lines of demarcation by armed bands, external participation in acts of terrorism and subversion, or other use of force intended to violate the territorial integrity or independence of States were activities which could constitute threats to the maintenance of international peace and security that were quite as serious as acts of direct aggression. The Charter provided that Members of the United Nations should refrain in their international relations from the threat or use of force, not against other Members or against other States, but against "the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations". In view of the obvious interrelationship between the prohibition of the threat or use of force and the Charter concept of aggression, the definition of aggression must take account of the Charter's fundamental purpose of protecting the territorial integrity and political independence of States. In the view of those representatives, the six-Power proposal, which was based on the idea that indirect aggression must be assimilated to direct aggression, would be in conformity with the Charter. Thus the acts of indirect aggression mentioned in that proposal would imply a use of force which was prohibited in Article 2, paragraph 4, of the Charter; if a State used force, even through the agency of volunteers, terrorists and the like, it would, according to the conception on which the six-Power proposal was based, be violating that provision of the Charter. In that regard, it was noted that the USSR draft definition was much closer to the six-Power draft than to the thirteen-Power draft. The latter did not ignore acts of indirect aggression, but did not treat them as acts of aggression; in particular, it deprived States of their right under the Charter and under general international law to have recourse to individual or collective self-defence when they were the victims of subversive or terrorist acts by irregular bands.

28. On the other hand, several representatives were of the opinion that the Special Committee should endeavour first to define armed direct aggression; the definition of indirect armed aggression and other forms of aggression not involving the direct use of armed force should be undertaken later. Furthermore, the aggression to be defined should be armed agression within the meaning of the Charter. The definition would essentially be linked with Articles 39 and 51 of the Charter; Article 2, paragraph 4, of the Charter also dealt with the use of force, but went beyond what was needed for the definition of aggression. The Committee was concerned with the definition of an action and not of the rights and obligations of States. The violation of lines of demarcation or of armistice lines might constitute a violation of an international obligation and not necessarily an act of aggression. If a link was to be established between the provisions of Article 2, paragraph 4, concerning the use of force and those of Article 51 concerning the right of self-defence, the concept of aggression should be limited to cases in which it took the form of the use of direct armed force; other illegal acts of pressure against a State were covered by the principle of international law prohibiting intervention in the domestic affairs of other States, a principle which

the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States had incorporated in the draft Declaration 6/ adopted at its recent session; there was no doubt that such acts violated the Charter, but they could not be termed aggression within the meaning of Article 51 of the Charter, which authorized the exercise of the right of self-defence only in the case of armed attack. It was stated that one reason why the right of self-defence under Article 51 was granted only in the case of a direct armed attack was because such an attack posed an immediate danger and there was no time for deliberation or appropriate action by the Security Council. Infiltration by armed bands or saboteurs into the territory of another State constituted a form of direct aggression whether or not a uniform was worn and regardless of the legal status of the armed forces used; however, most forms of indirect aggression were breaches of the peace and it would not only be unwise but contrary to the Charter to include in a definition of aggression breaches of the peace which fell short of aggression.

29. Some representatives challenged the view that there would be no point in defining indirect aggression immediately, since it was not the main element in the definition. In their view, it was not possible to define some forms of aggression and to postpone the definition of others. The result would be an inaccurate and misleading definition which might be harmful as well as unrealistic. Furthermore, aggression today was increasingly tending to take an indirect form, and the Committee should be careful not to give the impression of licensing that type of aggression. If aggression was to be defined in two stages, a start should be made with indirect aggression. The draft Declaration of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States admittedly contained provisions relating to indirect acts of aggression, but if the Committee was to exclude from the definition everything concerning aggression contained in that Declaration, it would be very difficult for it to draft a definition; aggression by indirect means might certainly constitute intervention in the affairs of a State, but it was none the less aggression. With regard to the argument that it would be difficult to prove responsibility in cases of indirect aggression, it was pointed out that questions concerning proof of the aggressor's responsibility were not an integral part of the definition. Moreover, the difficulties of proof might be even greater in the classic case of bombardment or invasion than in the case of less direct use of force.

30. One representative noted the absence from all the drafts submitted to the Committee of any reference to the case where one State put its territory at the disposal of another for use as a base in an armed attack against a third State. He nevertheless considered that that was an act of aggression which merited inclusion in the list of acts of aggression which the definition would contain.

3. The principle of priority

31. Several representatives expressed themselves in favour of the principle of "first use" embodied in the USSR draft and in the thirteen-Power draft. It was

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6/ Ibid., Twenty-fifth Session, Supplement No. 18 (A/8018), para. 83.

argued that the principle of "first use" was justified by the letter and spirit of the Charter, since the latter authorized the use of force only in specific cases, including that of self-defence as laid down in Article 51. That Article sanctioned the "first use" principle, since it authorized a State which was the subject of an armed attack to exercise its right of self-defence. Clearly, an armed attack must precede the exercise of the right of self-defence. It was also stated that the "first use" principle was embodied in both municipal and international law and was not therefore new. It was to be found in certain studies carried out under the League of Nations. All the countries which had proposed definitions in connexion with the discussions on disarmament had referred to this principle. In practice, world public opinion and certain major Powers had recourse to the principle in determining the existence of aggression. The point was also made that the "first use" principle had the fundamental advantage of providing an objective criterion in determining the existence of an act of aggression; it placed the burden of proof, not on the victim, but on the one who acted first. Moreover, it did not carry with it an irrefutable presumption of culpability. It was stated, in this connexion, that there was a presumption _juris tantum_ that the first to use armed force should be considered the aggressor. Aggression was a fact and should be judged according to objective criteria. It was not a question of an intellectual exercise to ascertain what a State's intentions were, but of specific acts which resulted in one State becoming the victim of aggression by another.

32. Several representatives considered, however, that the principle of "first use" should not be automatically applied. There was not an absolute cause and effect relationship between the "first use" of force and the designation of the aggressor; although the principle of "first use" was fundamental to the determination of the aggressor, there could be exceptions. In that respect, they considered the thirteen-Power draft more satisfactory than the USSR proposal, because the latter adopted an inflexible position on this principle. One representative found the thirteen-Power draft not fully satisfactory in this respect, for by including a reference to the principle of "first use" in its operative paragraph 5 and omitting such a reference in paragraph 2, it might give the impression that different criteria for determining the aggressor were used in the two paragraphs.

33. With reference to the principle of "first use" incorporated in the thirteen-Power draft, the view was expressed that there could be no question of the automatic application of that principle for the purpose of determining whether or not an act of aggression had been committed. It was for the Security Council to determine whether an act of aggression existed, in accordance with Article 39 of the Charter. Except in the case of self-defence, no situation, even though it involved the violation of an uncontestable right, justified a war. There were procedures for determining who was right and who was wrong in a dispute. The important point was to avoid war and if it broke out, to prevent it from spreading by localizing the conflict. The concept of priority might, of course, in special circumstances or in the case of error, lead to disastrous results, but that could be overcome by using, in the operative part of the definition, the phrase "in the circumstances of each particular case", referred to in the preamble of each of the drafts submitted.

34. The "first use" principle was challenged, however, by some representatives who considered it unduly facile and even potentially dangerous. The principle of priority, as formulated in the USSR draft and in the thirteen-Power draft, could only be interpreted in one of two opposite ways, neither of which provided for proportionality of response by a victim using methods other than those employed by the aggressor. The "first use" concept could be interpreted either as compelling the victim to respond by employing the same method as that used by the aggressor, or else as placing no limitation whatsoever upon the victim's response. There were also serious practical difficulties in determining what, in fact, should be regarded as "first use". Consequently, the sponsors of the six-Power draft had felt that analysis should be left to the discretion of the Security Council, in preference to applying a blanket "first use" approach. It was stated that, in the view of the sponsors of the draft, "first use" was important and sometimes even very important, but not decisive. It was for the Security Council to decide whether or not there was aggression. The "first use" theory had its superficial attractions, but it was spurious. If the six-Power draft did not mention the "first use" of certain weapons of mass destruction as aggression, the omission was deliberate and well founded. Supposing the armed forces of a major Power attacked a neighbouring country and the latter used atomic weapons because it had no alternative, that country could not be accused of an act of aggression.

4. Aggressive intent

35. Some representatives considered that in determining aggression in a specific dispute, due consideration should be given not only to the element of illegality of the act committed, but also to the element of intent on the part of the entity committing that act. It was pointed out that the possibility could be envisaged of certain illegal acts being committed accidentally without any intention of aggression; it went without saying that such acts should not be treated as acts of aggression; it was also true that an act which on the face of it might present all the physical characteristics of use of force, might well be an act of self-defence and not an act of aggression according to the concrete circumstances of the case; in the determination of an act as aggression, the element of intent was, therefore, essential.

36. Several representatives expressed a different opinion. It was argued that the adoption of intent as a basis would tend to place the burden of proof on the victim of aggression. Furthermore, such a subjective fact as intent would often be impossible and in any event extremely hard to prove. It was also pointed out that none of the provisions of the Charter, including Articles 39 and 51, referred to animus agressionis.

37. It was noted that it was an indisputable principle of universal judicial practice that the intent was presumed when an illegal act was committed; the onus of proof rested with the accused and not with the victim, still less with the judge; it was true that what was apparently an act of aggression might have been committed by mistake, without any aggressive intent; but there was nothing to prevent evidence to that effect from being produced before the competent political or judicial body, though error was not in itself sufficient to exempt from responsibility; furthermore, the introduction of the element of intent would open the door to abuse, as the absence of aggressive intent could be invoked in all kinds of circumstances; an inexhaustible list could be prepared of the possible

motives a State could adduce in order to claim that it had not been actuated by the purposes described in paragraph IV A of the six-Power proposal; human ingenuity was far too great to allow the adoption of aggressive intent as the criterion; in fact, if such a criterion was adopted, it would have the effect of inviting war; it would put the clock back to the days of just and unjust wars and would make recourse to war a legal right.

38. In connexion with the six-Power draft, the question was raised whether the uses of force enumerated in paragraph IV B would be licit if applied for purposes other than those listed in paragraph IV A. It might be asked, for example, whether a State would be justified in using one of the means listed in paragraph IV B, not for one of the purposes provided for in paragraph IV A, but for the purpose of enforcing a favourable decision of a court of arbitration or an international tribunal; or whether a State which was the object of a threatened aggression was entitled to use any of the means listed in paragraph IV B first, in other words, to launch a preventive war; it was impossible to list all intentions; the same applied to material acts of aggression, but at least there was the possibility of listing a minimum number of acts with regard to which agreement could be reached; the difficulty could perhaps be overcome by repeating the phrase "in the circumstances of each particular case" in the operative part of the draft; in that way, the concern of the sponsors of the six-Power draft regarding the concept of intent would be met without distorting the definition of aggression. In view of the difficulties that might be raised by adoption of the criterion of intent, one representative said he preferred imputability to intent as the criterion; in his view, imputability would have the advantage of facilitating the solution of the problem of error; an act committed by mistake, he noted, could involve the responsibility of a State, but could not be imputed to it.

39. It was argued in support of the inclusion of the concept of intent in the six-Power draft that its inclusion was necessary in the first place by reason of the provisions of the Charter. Obviously, it was pointed out, there might be a threat to the peace or a breach of the peace which did not amount to aggression; clearly, therefore, it was necessary to distinguish between those three concepts, and a criterion must be found to define "act of aggression" as opposed to other illicit uses of force; the element of "intent" seemed to be the only adequate criterion found in many years of study. Moreover, if aggression was to be defined as a crime giving rise to international criminal responsibility, the element of "intent" could hardly be ignored; under the general principles of law, intent and criminal responsibility were inextricably interwoven. The argument that the introduction of the element of intent into the definition would cause the burden of proof to fall on the victim was untenable; it was clear from Article 51 of the Charter that the victim did not need to wait to defend itself until the Security Council had established an act of aggression. Contrary to what had been claimed, proof of "objective" facts was not always easy; proof of intent would, as a rule, be even more difficult, but that was no reason to deny the relevance of the criterion; when States referred their case to the Security Council, it was for the latter to establish aggression "in the light of all the circumstances of each particular case", as stated in all the drafts submitted; intent was certainly one of the circumstances to be examined by the Council, whose discretionary power was not disputed by any member of the Special Committee. Furthermore, to argue that the most benevolent intent did not justify the slightest interference with the territorial integrity or political independence of another State was to confuse intent with the wrongdoer's motive; a State resorting to force with intent to

deprive another State of its political independence was an aggressor, even if its avowed motive was to liberate the people of that State from the rule of an oppressive government; the motive would be irrelevant, but the intent would be most relevant. It was also argued that where the facts were clear, namely, where in a particular case the only reasonable conclusion that could be drawn from an examination of the facts was that an act of aggression had been committed, there might well be no need expressly to examine the question of intent; however, generally speaking, determination of acts of aggression was likely to be exceedingly difficult; for that very reason, the discretionary authority of the Security Council must be safeguarded in order to enable it to look at the intent of the alleged aggressor in the light of the circumstances of each particular case.

40. It was argued that a distinction ought to be made between acts of aggression according to their gravity; where an act by itself constituted a breach of the peace, there was no need to ascertain whether it had been carried out with or without aggressive intent; but where it was a matter of illegal acts which might cause a breach of the peace if they reached a certain magnitude, then the criterion of intent was required; there was no need to introduce the concept of intent into a general definition; it was when specific examples were given that the question of deliberate perpetration became relevant.

5. Legitimate use of force

(a) Self-defence

41. Most representatives emphasized the need to include in the definition of aggression a provision recognizing the right of self-defence as laid down in the Charter. The Charter, it was stated, safeguarded the inherent right of individual or collective self-defence (Article 51) and sanctioned regional security arrangements (Article 52); both Articles constituted exceptions to the Charter prohibition of the use of force; the exception which was implicit in Article 51 and which raised the issue of the relationship between the right of self-defence and the concept of aggression was one of the most difficult problems facing the Special Committee; there was, first and foremost, the problem of the point in time at which the right of self-defence arose; then there was the problem of whether there must have been an actual use of force or whether a threat of force could suffice to bring the right of self-defence into operation. Given the complexity of those problems, the course of wisdom would be to indicate in the definition itself, as the six-Power draft did, the general exceptions to the prohibition of the use of force and to leave it to the Security Council to determine whether, in a given instance, such exceptions were applicable. Paragraph 6 of the USSR proposal, it was noted, was based on the same idea, but its wording was inadequate; in the thirteen-Power proposal, too, there was a contradiction between operative paragraph 1, which stated that the United Nations only had competence to use force, and operative paragraphs 3 and 4, which concerned other cases where the use of force was permitted.

42. Several representatives pointed out that the right of individual or collective self-defence did not carry with it an unlimited power to use force; it was a right that could be exercised exclusively to repel an armed attack, and then only within the limits and under the conditions provided for in Article 51 of the Charter; to consider the application of enforcement measures provided for

in Chapter VII and the exercise of the right of self-defence recognized in Article 51 of the Charter as exceptions to the prohibition of the threat or use of force set forth in Article 2, paragraph 4, would be to misinterpret the principle involved, which, being a rule of jus cogens, could not be subject to any exceptions whatsoever; the confusion stemmed from the fact that the use of force was permitted in only two cases: preventive action taken or sanctions applied by the world Organization in carrying out its primary function of maintaining international peace and security, and defensive action taken by States, individually or collectively, to repel an armed attack; the possibility of the former was inherent in the authority vested in the United Nations as the government of the universal international community; the latter was an act of necessity, not a power, which exampted from responsibility only those exercising their right of self-defence in the circumstances prescribed by the rules of international public order.

43. The principle of proportionality, which was included in the thirteen-Power draft, was supported by several representatives. It was argued that it was in the interests of all that the use of force to repel armed attack should be commensurate with the armed attack itself; an unrestricted right of self-defence could not provide protection, particularly for small States. On the other hand, it was pointed out that, although the principle of proportionality was sometimes referred to in international affairs, it was not laid down in any instrument nor was it directly mentioned in the Charter; moreover, its incorporation might hinder acceptance of the definition; it would also raise the problem of determining the proportionality of measures adopted in self-defence and the action to be taken if they were deemed disproportionate.

(b) Organs empowered to use force

44. Several representatives stressed the importance of the principle set forth in operative paragraph 1 of the thirteen-Power draft, namely, that the United Nations only has competence to use force in conformity with the Charter. If the definition of aggression was to conform to the principles of the Charter and lend itself to a proper interpretation and application, it was pointed out in that connexion, the definition must include an expression of that principle, to which there could be no exceptions; the right to use force under regional arrangements or through regional agencies must be conferred solely on the legally organized international community as a whole, i.e. with the express authorization of the Security Council in accordance with Article 53 of the Charter; operative paragraph 4 of the thirteen-Power draft contained a provision to that effect; the right of individual or collective self-defence mentioned in operative paragraph 3 of that draft did not constitute an exception to the principle enunciated in paragraph 1, but was an instrument of last resort to be used in a situation where international responsibility no longer existed; the two paragraphs were therefore complementary; although paragraph III of the six-Power draft combined the substance of the provisions of operative paragraphs 3 and 4 of the thirteen-Power draft, it permitted regional organizations to use force before a decision had been taken by the Security Council, and that was inconsistent with Article 53 of the Charter. It was stated that a radical amendment to the Charter would be required, if regional organizations were to be empowered to use force in the way suggested in the six-Power draft; in matters relating to the maintenance of international peace and security, the regional organizations were, as could be seen from Chapter VIII of the Charter, strictly and absolutely

subordinate to the authority of the Security Council; under Article 53, the only enforcement action they were permitted to take without the Council's authorization was against States which, during the Second World War, had been enemies of any signatory of the Charter.

45. Some representatives, however, found operative paragraph 1 of the thirteen-Power draft not wholly satisfactory, since it might be inferred from it that not only the Security Council but other organs of the United Nations were competent in the matter of the use of force; that would be contrary to the provisions of the Charter, particularly those of Article 24 and Chapter VII, and might have unfortunate consequences. A reference to the powers and duties of the Security Council in operative paragraph 5 of the thirteen-Power draft would be quite appropriate and would, in fact, be sufficient.

46. It was pointed out, on the other hand, that the six-Power draft excluded the use of force pursuant to decisions of or authorization by competent United Nations organs or regional organizations "consistent with the Charter of the United Nations"; some Members of the United Nations believed that the General Assembly and regional organizations had a limited competence in that sphere, illustrated by Articles 52 and 53 of the Charter and by the practice of the General Assembly, the Security Council and the Organization of American States; other Members held different views about that competence and some of them even denied it altogether; the phrase "consistent with the Charter of the United Nations" in operative paragraph III of the six-Power draft had, among its other virtues, that of recognizing the position of other Members; if any Members believed that an action of a United Nations organ or regional organization was inconsistent with the Charter, the provision in question enabled them to state their point of view. Some representatives nevertheless thought that the phrase "consistent with the Charter of the United Nations" in paragraph III of the six-Power draft did not suffice to remove doubts concerning the compatibility of that paragraph with Article 53 of the Charter.

6. Acts considered not to constitute acts of aggression

47. Several representatives criticized the six-Power draft for not taking into account the struggle of nations for independence, self-determination and sovereignty; in their view, the definition of aggression should include, as did the USSR and the thirteen-Power proposals, a provision making an exception where the use of force was necessary to ensure the exercise of the right of peoples to self-determination. They stated that such a provision was essential in a period of vigorous national liberation movements; it would be a safeguard as necessary and important as the safeguard in Article 51 of the Charter concerning the right to self-defence or the safeguard concerning the use of force pursuant to a decision or authorization of a competent United Nations body. Some representatives argued, however, that the principle of self-determination would be extraneous to the definition of aggression. While recognizing the importance of the principle, they believed that it should be treated in a different context. It was stated that the six-Power draft did not contain a clause safeguarding the principle of self-determination because nothing in it impaired that principle; there was no need to make a gratuitous statement and the absence of such a statement in no way limited the application of the Charter provisions concerning the exercise of the right of peoples to self-determination.

7. Legal consequences of aggression

48. Several representatives said that the definition of aggression should expressly state, as did the USSR and the thirteen-Power proposals, that territorial acquisitions obtained by force would not be recognized; they considered that a provision of that kind was quite appropriate in a definition of aggression, since occupation of the territory of another State following aggression was contrary to the principle of inviolability of the territory of a State and was tantamount to continued aggression. It was useful, in their view, that the principle of the aggressor's international responsibility should be stated; that was not an element which, strictly speaking, formed part of the definition, but it was closely linked with it. Some representatives stated that military occupation, annexation and other forms of the acquisition of territories by force constituted aggression in its most serious form; and that the principle of non-recognition of the acquisition of territories by force, a principle based on the Charter, should properly be considered under the heading of "consequences of aggression". It was also said that paragraph 8 of the thirteen-Power draft raised certain complex issues connected, on the one hand, with the non-recognition of territorial acquisitions obtained by force in the past and, on the other, with the competence of the Security Council; as those matters had been carefully considered by the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, it would be inappropriate to draft a text dealing with such matters without taking into account that Committee's work, as reflected in the draft Declaration which was to be submitted to the General Assembly by that Committee.

49. Some representatives, however, opposed the inclusion in the definition of a provision relating to non-recognition of territorial acquisitions obtained by force. It was pointed out that the sponsors of the six-Power draft had not mentioned the matter in their proposal because they doubted the need to deal with it in a definition of aggression; they also wished to remain within the framework of the Charter, which was silent on that point; the omission was also explained by the fact that the matter had already been dealt with by the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States; the six Powers had therefore been anxious not to upset the very delicate balance of the formulae put forward by the Special Committee, not to impair them by reproducing them in part and not to try to amend them indirectly. It was argued, however, that the fact that the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States had concerned itself with the non-recognition of territorial acquisitions obtained by force did not justify the exclusion of that question from the definition of aggression; if it was to be excluded from the definition for that reason, it would also be necessary to exclude from the definition the other topics dealt with by that Special Committee, such as the question of indirect aggression; though the Charter did not mention such acquisitions, neither did it mention cases of aggression by subversion. The view was expressed, on the other hand, that it was necessary to use judgement and to exclude those elements of the draft Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States which were inappropriate in a definition of aggression, but that there should be no hesitation in including relevant elements.

B. VIEWS EXPRESSED ON THE VARIOUS PROVISIONS OF THE DRAFT PROPOSALS IN RELATION TO THE CONCEPTS INVOLVED

50. The arrangement of this section is based on the order in which the Special Committee examined the various provisions of the draft proposals. It is divided into sub-sections, with headings indicating the relevant paragraphs and the underlying principles. As far as possible, views already recorded in the previous section will be omitted from this section.

1. Paragraph 1 of the USSR draft, paragraph 2 of the thirteen-Power draft and paragraph II of the six-Power draft: Direct or indirect aggression, the principle of priority and political entities

(a) Direct or indirect aggression

51. Some representatives stated that to define aggression meant to give fullness of meaning to the term; at the outset, therefore, mention should be made of the characteristics of aggression, among which was that aggression could be committed by overt or covert and by direct or indirect means. It was said that their viewpoint was based on the Charter, which referred to aggression, armed attack and the use of armed force, but did not at any point confine those terms to "direct" aggression; the Charter prohibited aggression by any means whatsoever. In this connexion, it was also observed that all the three draft definitions under consideration included what was generally known as indirect aggression, from which it appeared that there was a general consensus that it was a form of aggression. Some representatives noted further that the members of the Committee were almost unanimous in thinking that the indirect use of force was at least as dangerous to international peace and security as aggression committed by obvious means and that indirect aggression was the most frequent form of aggression in the world today. In the circumstances, they argued, any definition which concerned the direct use of force and which left unsettled the question whether the indirect use of force did or did not constitute aggression would not be a satisfactory definition. One representative pointed out that treaties defining aggression that had been concluded in the past always contained a paragraph dealing with support given to armed bands, and he maintained that even a minimum definition must include indirect armed aggression; economic or ideological aggression had not the same affinity to indirect aggression as the latter had to direct aggression.

52. Several representatives felt that in order to achieve agreement, the Committee should focus attention first of all on direct aggression, leaving aside the question of indirect aggression to be considered at a later stage. It was said that it should not be difficult to agree on what constituted armed aggression, which was referred to in the Charter and against which a victim State could exercise the right of self-defence under Article 51. To define the conditions under which the right of self-defence could justifiably be exercised in the face of indirect aggression was a difficult problem, which would take time to solve. In addition, it was argued that a definition of armed aggression was what was most urgently needed; in the case of less direct and less obvious forms of aggression there was generally time to seek action through the Security Council, whereas armed aggression generally required defensive action without waiting for a decision by the Security Council. Some representatives expressed the view that all the three drafts envisaged aggression in reference to Articles 39 and 51 of the Charter, and

that was "armed aggression"; there was no disagreement that some forms of indirect aggression were armed aggression; and once a definition of armed aggression had been drawn up, the Committee could see how such forms of indirect aggression might be included.

53. In the opinion of some representatives, a distinction drawn between "direct" and "indirect" aggression was alien to the Charter, which did not contain such terms. One representative observed that what was generally referred to as indirect aggression was a matter of particular concern to small countries, because of their vulnerability to it; but if the word "aggression" was qualified by such vague terms as "covert" or "indirect", the safeguard in Article 51 might be weakened and give States an opportunity to use force under the pretext of self-defence.

54. On the other hand, some representatives felt that the question whether direct and indirect aggression were mentioned in the Charter was of no importance; if the Committee was to be bound by the terminology used in the Charter, it would be unnecessary for it to define aggression at all. Furthermore, it was said that there was no justification in the Charter for describing aggression by certain means and excluding aggression by other means; the Charter did not stipulate that acts by armed bands, saboteurs and the like did not constitute aggression. In arguing for the retention of the terms "direct" or "indirect", some representatives maintained that the wording of the Charter might not be clear enough to embrace the essence of aggression in all its practical manifestations and unless direct and indirect aggression were mentioned expressly, the definition might not be readily understood to refer to both direct and indirect use of force. In response to the expressed concern lest the inclusion of indirect use of force might unduly dilute the concept of aggression and expand the scope of permissible self-defence, one representative considered that there was a simple answer to that point: to be legitimate, the use of force in self-defence must be proportionate; the same cardinal principle would apply whether the use of force was by direct or indirect means.

55. The representative of the USSR stated that his delegation was prepared to delete the words "direct or indirect" appearing in parenthesis in paragraph 1 of the USSR draft. In doing so, it had accepted the view that the draft definition to be prepared at the present stage should not cover indirect aggression; but that did not mean that his delegation considered that there was no need to define such form of aggression; on the contrary, it attached great importance to the task of defining indirect aggression, which the United Nations would undertake at a later date. The representative of the USSR also said that as paragraph 2 C in the USSR draft referred to indirect aggression, it would be deleted in consequence of the deletion of the words "direct or indirect" from paragraph 1.

56. Nearly all the representatives who supported the view that the Committee should first concentrate on defining direct aggression specified that it was solely for procedural reasons due to the difficulties involved in defining indirect aggression that they supported that view; they attached as much importance to indirect aggression as to direct aggression; the Committee's task would not be completed until it had dealt with defining indirect aggression. Certain representatives suggested that no matter what definition was drawn up at this stage, the preamble to it should contain a paragraph specifying that the definition did not cover the whole concept of aggression and that forms of aggression not covered would be defined later.

57. The deletion of the words "direct or indirect" from the USSR draft was welcomed by some representatives, as the deletion, in their opinion, made the USSR draft much closer to the thirteen-Power draft. One representative observed, however, that if the qualification of aggression was omitted from paragraph 1, and if paragraph 2 C was deleted from the USSR draft, that might be interpreted as giving licence to States to resort to the use of armed force through the medium of armed bands, saboteurs and the like. He would have preferred it if the USSR delegation had decided to delete only the word "indirect" before the word aggression at the end of paragraph 2 C; however, as the whole paragraph had been deleted, he wondered whether the USSR delegation would be prepared to reinsert the reference to direct aggression in paragraph 1, the beginning of which would then read: "Direct armed aggression is the use by a State ..."; it would then be clear that the definition did not cover the whole concept of aggression.

(b) The principle of priority

58. A large number of representatives expressed the view that the principle of priority should hold a very important place in the definition of aggression. It was said that the principle, enunciated for the first time twenty-five years ago, had been sanctioned by many international instruments; it was the only objective criterion which could be applied; and it was directly based on the provisions of the Charter, particularly Article 51 which described the sequence of events leading to the exercise of the right of self-defence, and according to which the use of force was authorized only in response to an armed attack; if the principle was not included, the definition would depart from the provisions of the Charter. Some representatives emphasized that under the Charter, legitimate use of force was confined to the United Nations and that this warranted the conclusion that whoever used force first automatically committed an act of aggression. In their view, objection on the score of the automatic character of the principle was groundless, because the Security Council had to determine who the aggressor was, and it was precisely for that purpose that it had to determine who had used force first; in other words, "first use" was an essential element which had to be appraised by the Security Council in determining whether the right of self-defence had been exercised in conformity with Article 51. One representative stressed that, while it was true that the Security Council had to take into account facts that took place after the launching of an attack, it was not possible to disguise the original fact as such a launching. Several representatives noted that there was general consensus among the members of the Committee that the principle of "first use" had a place in the definition; that it was an important factor which the Security Council should take into account, although the Council was not called upon to make its decision on the basis of that criterion alone.

59. On the other hand, several representatives raised questions as to the nature of the principle and the possibility of making it a criterion to be generally applied. One representative stated that if the criterion of priority was considered as a simple or rebuttable presumption, as had been suggested by some of its proponents, he would have no objection to its being given a place on that basis in the definition of aggression, due weight being given to other factors of aggression; however, neither the USSR draft nor the thirteen-Power draft presented priority as a simple presumption but rather as an automatic and determinative rule; besides, the objectivity of the principle as a criterion was only superficial and it would in practice provide no more reliable information than would purely subjective tests. Some representatives referred to various situations in which the

application of the "first use" criterion would be very difficult or would lead to surprising results. For instance, in a case where a State exercised the right of self-defence, by virtue of a mutual defence agreement with another State, without itself having been a victim of aggression, would that State be considered the aggressor? If, in reply to an armed attack of very limited scale, a State committed a disproportionately aggressive act, the application of the "first use" criterion would lead to an unjust result. It might also happen that two States attacked each other, each intending to attack the other at the same time. If there was a declaration of war followed by an act of aggression by the State against which war had been declared, the latter could not automatically be considered as the aggressor because it had been the first to use force.

60. With regard to these questions and others raised earlier, several representatives, who supported the principle of priority, stated that the principle was not the only principle to be applied to determine who was the aggressor, but it was certainly one of the most important principles to be applied for such a purpose; the principle did not limit the discretionary power of the Security Council to appraise the circumstances of each case. As to the argument that the priority principle might bring about the launching of a war by mistake, it was pointed out that acts to be considered as constituting aggression were such acts characterized by a particular intensity that they could not be committed by mistake. It was also said that some of the criticisms of the priority principle seemed to be a direct appeal in favour of preventive war, a concept likely to bring about the collapse of the system of collective security established by the United Nations. As for the question relating to a mutual defence agreement, it was said that such a case was covered by the right of individual or collective self-defence and it had no connexion with the principle of "first use"; a State could not unilaterally base its action upon the agreement in order to invoke self-defence, because that concept had an essentially subjective element. Concerning the hypothetical case of two States which attacked each other simultaneously, one representative considered that the principle of "first use" was of decisive importance, while another representative felt that the application of the principle was excluded, since there was a contradiction between the simultaneity of the attack and the concept of "first use". As regards the remark made in relation to a declaration of war, one representative wondered whether the USSR draft could be improved to take that remark into account. For that purpose, he suggested that sub-paragraph A of operative paragraph 2 of the draft might be deleted provided it had been reflected in a preambular paragraph and the words "even without a declaration of war" in sub-paragraph B of the same paragraph might be replaced by the words "with or without a declaration of war".

61. With regard to the relationship between the priority principle and the question of aggressive intent, one representative observed that several of the sponsors of the thirteen-Power draft supported the argument that the principle of priority raised a presumption of guilt; if that argument was accepted as valid, the only way of rebutting the presumption was to furnish proof of absence of animus. It was said by other representatives that the members of the Committee who supported the criterion of "first use" agreed that other criteria could be used, notably intent; the criterion of "first use" and that of intent were not irreconcilable; the priority principle should perhaps be amplified by the concept of intent. In the opinion of one representative, the six-Power draft contained positive ideas which should induce its sponsors to give the criterion of priority preference over that of intent; in cases where it was possible to determine who had first resorted to force the principle of priority was by far the more

important; when applied within the context of the idea of self-defence, the principle could render legitimate a form of resort to force which had appeared to be illegal, and vice versa.

62. Noting the views expressed by some of the sponsors of the six-Power draft, some representatives stated that neither the USSR draft nor the thirteen-Power draft allowed an automatic application of the principle of "first use" and that it would now be possible for the sponsors of those two drafts to meet the concern of the sponsors of the six-Power draft in respect of such automaticity by transferring that part of the preamble which dealt with the taking into account of all the circumstances in each case to the operative part of the drafts. One representative suggested specifically that the USSR delegation might consider inserting at the beginning of operative paragraph 1 of its text a phrase to read as follows: "Without prejudice to the conclusions the Security Council may reach in analysing the circumstances pertaining to the facts ...", and the sponsors of the thirteen-Power draft might include an identical phrase in operative paragraph 5 of their text. Some of the sponsors of the six-Power draft stated that they were prepared to agree that the factor of priority in the use of force should be given due, but not determinative, weight in a definition of aggression, together with other factors.

(c) Political entities to which the definition should apply

63. Some representatives stated that many conflicts which had arisen in the world since the adoption of the Charter, involving political entities whose statehood had been challenged, showed how important it was that the definition of aggression should cover such entities. It was said that the position of the sponsors of the six-Power draft was that entities whose statehood was challenged but which exercised governmental authority over a territory were bound by the obligations of international life, and in particular by Article 2, paragraph 4, of the Charter. Consequently, an entity not recognized as a State did not have the right to attack a recognized State; and, conversely, a recognized State did not have the right to attack an entity not so recognized. It was stated that the supporters of the USSR and thirteen-Power drafts might take up either of two alternative positions which were mutually exclusive: that entities whose statehood was challenged could not be the victims of perpetrators of aggression; or, conversely, they could be, but that was so obvious that it need not be stated in a definition of aggression, and that the case could be covered by adopting a broad enough idea of what was meant by "State". While the second position was defensible, the first position took no account of the realities of international life.

64. Some representatives who spoke on this subject held the view that entities whose statehood was challenged could nevertheless be perpetrators or victims of aggression; but it was not necessary to mention such entities in a definition of aggression; the term "State", as used in the Charter and as adopted in practice by the United Nations, was broad enough to cover entities whose recognition as sovereign States was far from general; besides, the parties to aggression were most often independent sovereign States. In the opinion of other representatives, political entities whose statehood was disputed could not be considered as States; the concept of such entities was alien to the Charter and it had no basis in other sources of international law; the definition of aggression should be based on the concept of the State in international

relations without invoking the recognition of States as a criterion. Several representatives said that the inclusion of the concept of political entities in the definition was not only unnecessary but also undesirable; it would have disadvantages and would raise legal and political problems. The inclusion would constitute departure from the Charter, which did not mention "political entities", and it might lead to the attribution of a more restrictive meaning to the term "State" in all other texts where the term appeared; it might also make the distinction between international conflicts and civil wars more confusing. Paragraph II of the six-Power draft linked the question of political entities with the delimitation of those entities by international boundaries or internationally agreed lines of demarcation, thus further complicating the issue, although not every violation of a demarcation or armistice line necessarily constituted an act of aggression. Some representatives expressed their concern that those wishing to apply the definition of aggression to political entities whose statehood was in dispute were seeking to prejudice the right of all peoples to self-determination; in fact, the sponsors of the six-Power draft had not deemed it necessary to specify in their text that the definition would not affect the right of self-determination of peoples. In the absence of any provision relating to self-determination, paragraph II of the six-Power draft was tantamount to sanctioning the use of force by certain metropolitan States, as well as to an acceptance of the delimitations of colonial boundaries which such States had made. Moreover, a provision pertaining to political entities might be used according to the convenience of the moment, for instance, as a cloak for acts of aggression: thus, in the case of an entity which unlawfully declared its independence, the State which was responsible under international law for that entity could exercise its discretion whether or not to invoke the definition if another State sent arms or troops into that entity; and that was something which should not be possible.

65. Some representatives felt that the term "political entities" would be irrelevant in so far as it referred to States whose statehood was disputed, but it might have some relevance if it referred to national liberation movements. In the opinion of one representative, it would represent progress to understand the term "political entities" as referring to national liberation movements as entities capable of being the active or negative subjects of aggression.

66. With regard to the question whether the provision in the six-Power draft relating to political entities referred to peoples trying to exercise their right of self-determination, some of the sponsors of the draft stated that the provision referred to entities whose status as States was disputed; consequently, it could only relate to such peoples if they really constituted entities delimited by international boundaries or internationally accepted lines of demarcation. Failing that, such peoples could neither commit nor be victims of acts of aggression, which implied the crossing of such boundaries or lines of demarcation; consequently the provision in paragraph II of the draft did not in the ordinary course of things concern peoples trying to exercise their right of self-determination. More generally, they considered that the prohibition of aggression applied to all international boundaries or internationally accepted lines of demarcation, irrespective of the political régime of States or entities they delimited; the fact that a social system violated certain norms of international law did not justify the use of force to punish such violation. It was also said that the reason why the six-Power draft contained no provision similar to that in paragraph 10 of the thirteen-Power draft was precisely because the sponsors of the former draft considered that their text did not contain any provision limiting the scope of the

Charter's provisions concerning the right of peoples to self-determination, sovereignty and territorial integrity. It was also stated that the term "political entity" in paragraph II of the six-Power draft was not applicable to national liberation movements; since what was prohibited was the use of force "against the territorial integrity or political independence ...", paragraph II could only apply to entities which possessed such territorial integrity or political independence; the expression "in international relations" in paragraph II generally meant relations between governments, whereas the problem of national liberation movements had a very different setting.

67. Some representatives, on behalf of the sponsors of the six-Power draft, responded favourably to a specific suggestion made by one representative - a suggestion which consisted in replacing the words "other political entity" in paragraph II of the draft by the words "a State whose statehood was disputed"; those terms, it was said, covered exactly what the sponsors of the six-Power draft had in mind. One representative expressed the view that the words "and not subject to its authority" at the end of paragraph II of the six-Power draft constituted a real danger, because that wording implied that aggression against an entity subject to an authority was admissible. Certain representatives felt that the sponsors of the six-Power draft should shelve the question of political entities for the time being, so that the Committee could elaborate a definition of aggression and, at the same time, formulate an interpretative definition of the term "State", which could be annexed to the definition of aggression. In the opinion of some representatives, the three texts under consideration all suffered from a lack of precision: every time the word "State" was used in each of the three paragraphs, it should be followed by the words "or a group of States".

2. Paragraph 6 of the USSR draft, paragraphs 1, 3 and 4 of the thirteen-Power draft and paragraph III of the six-Power draft: Legitimate use of force

68. Some representatives pointed out that the question of the legitimate use of force was dealt with in the three drafts; it was referred to in the USSR draft only indirectly, whereas the two other drafts referred to it in a more direct manner; the latter drafts differed, however, as regards substance and form. It was stated that since the Charter referred to the use of force, both legitimate and illegitimate, the definition of aggression must make a clear distinction between the legitimate and the illegitimate use of armed force; a provision should therefore be included in the definition of aggression covering cases in which the use of force was legitimate, since it would help to define more clearly the notion of armed attack; such a provision should be based on Articles 51 and 53 of the Charter.

(a) Self-defence

69. A number of representatives addressed themselves specifically to the role of self-defence in the definition of aggression. In the opinion of some of those representatives, this was a question on which the thirteen-Power and and six-Power drafts had adopted completely different approaches. In their view, the sponsors of the thirteen-Power draft, on the basis that Article 51 of the Charter authorized self-defence in cases of aggression, regarded self-defence as the obverse of aggression and as providing the criterion by which aggression could be defined; since aggression was the use of force which gave rise to the right of self-defence, self-defence would therefore have to be defined within the framework of a definition of aggression.

However, those representatives noted that it was only the French text of Article 51 of the Charter which referred to "aggression armée", whereas the English and Spanish texts referred to "armed attack"; moreover, assuming that Article 51 did refer to aggression, it failed to define it in any way; it simply indicated what a State might do if aggression occurred; in the present case, the rule that one variable could not be defined by reference to another variable was applicable: if the nature of self-defence was unknown or not agreed on, it was impossible to define aggression, which meant different things to different persons, in terms of self-defence. In the opinion of those representatives, aggression was a broader concept than the mere obverse of self-defence. Moreover, the Committee's real task was to define aggression, not the limits of self-defence, which was only of incidental importance in relation to aggression; it would also have to be determined whether any attempt to define self-defence might not hamper rather than help the Committee in the accomplishment of its real task. In the opinion of those representatives, the use of force in the exercise of the right of self-defence was obviously not aggression, and any definition of aggression should make that clear so as to safeguard the right of self-defence; however, as regards self-defence, the Committee's task stopped there. In this connexion, it was suggested that, as the Committee was not called upon to define self-defence as such, but to relate it to aggression, it would be enough to state in the definition that self-defence under the Charter did not constitute aggression.

70. Other representatives, however, were of a different view in regard to the above question. At the outset they stressed that although the use of force had formerly been legitimate, the international legal order had been so transformed as to rule out recourse to force, thus establishing a general principle which had been part of positive international law even before the adoption of the Charter, which in that respect was merely declaratory and simply confirmed an existing rule. It was reaffirmed in this connexion that the principle of a United Nations monopoly of the use of armed force was incontestable. According to that principle, the use of armed force by any State Member of the United Nations constituted an act of armed aggression because the international community forming the United Nations alone was authorized to use armed force. The right of self-defence was a right which the United Nations granted States as members of the international community and not an exception to the principle of the prohibition of the use of armed force. In the opinion of those representatives, the rule being, then, that the use of force was banned, any derogation was in principle condemned by the international community. The Charter itself, however, envisaged the use of force in certain cases. The Committee therefore could not define aggression, which consisted essentially in the use of force, without clarifying the uses of force provided for in the Charter. The first such use was self-defence. There were cases where an armed attack, namely, the use of force against a State, although it had all the physical characteristics of an act of aggression, was not in fact aggression since it was considered to be self-defence. Logic demanded that to ascertain the meaning of aggression, especially armed aggression, the scope of self-defence must be defined. It was also said that it was most important to define, in the context of the definition of aggression, the opportunities for action open to the victim of aggression, for, in the absence of such definition, the position of the victim would be decidedly prejudiced. There was no reason why only illegitimate activities should be examined and legitimate activities left aside. The concept of self-defence was found in practically all legal systems, and, internationally, it had been characterized in the Charter as an inherent right and should, therefore, be

clearly stated. Although neither the Security Council nor the General Assembly had so far taken any decision involving an interpretation of Article 51 in this respect, the principle in question was of such paramount importance that it should be referred to in the definition of aggression.

71. In the opinion of some representatives, the inherent right of individual or collective self-defence referred to in Article 51 of the Charter was a right which had existed throughout man's history, enjoyed by all States under international law, independently of Article 51 by which it was in no way circumscribed. It was said that under this interpretation, self-defence was legitimate not only in the event of armed attack, but also in the event of a threat or a real danger of armed attack, in which case it was for the State concerned to decide whether the situation was such as to justify self-defence. It was further said that unless a non-restrictive interpretation was given to it, Article 51 would not cover the case where a State started a bacteriological war against another State, a possibility which could not be ruled out in view of the advance of science and technology since the Charter had been drafted: in such a case, as the victim State would not be the subject of armed aggression it would not be able to exercise its right of self-defence.

72. In the opinion of several representatives, on the other hand, the traditional concept of the right of self-defence had been modified under the Charter, and self-defence was truly justified only in the case of armed attack under the conditions indicated in Article 51. It was said that the right of self-defence, which had been borrowed from criminal law, did not constitute an authorization to use force, but merely grounds for absolving from liability anyone who, in the circumstances provided by law, had to face an armed attack. It was also said that the provision in Article 51 enabled the victim to react immediately, before the Security Council took action; but the same provision required immediate reporting to the Security Council. In the view of some representatives, if it were to respect the Charter, the Committee should try to limit the cases of legitimate uses of force, as was provided for in the thirteen-Power draft, which contained a very specific provision on the subject, whereas the six-Power draft left the way open to other uses of force by not confining self-defence to cases of armed attack. Furthermore, it was stated that self-defence must be subsequent to the attack. It was recalled in this connexion that at the Nürnberg trial the idea of preventive self-defence had been ruled out; the Charter too, left no room for doubt on the subject. It was also stated that subversive or terrorist acts could constitute an "armed attack" within the meaning of Article 51, however indirect such an attack might be, and that consequently, a State which was the victim of such acts should not be prohibited from exercising its inherent right of self-defence.

73. In the opinion of some representatives, the use of force was also legitimate in the case of national liberation movements or oppressed peoples which had recourse to armed force. This was an accepted principle of international law, which found support in the Declaration on the Granting of Independence to Colonial Countries and Peoples and in the draft Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States. References to that question were found in operative paragraph 6 of the USSR draft and in paragraph 10 of the thirteen-Power draft. The definition of aggression should therefore refer to that third case of legitimate use of force deriving from the very principle of the inherent right of individual or collective self-defence, although it was not indispensable that such mention be made precisely in the

provision corresponding to the present paragraph III of the six-Power draft or paragraphs 3 and 4 of the thirteen-Power draft, and such mention could be included in a special safeguard paragraph as was done by the USSR draft and the thirteen-Power draft.

74. Some representatives, however, considered that a reference to the use of armed force by dependent peoples was unacceptable. It could be interpreted either as a reference to the right to revolt or as authorizing the use of force across international boundaries and the latter would be consistent with the rejected theory of just wars. Other representatives were of the view that since the prohibition of the threat or use of force obviously related only to international relations, Article 51 in principle did not apply to civil wars or to liberation movements. It was difficult to determine how far a State was compelled to refrain from the use of force against a people fighting for its right to self-determination, and it was recognized that a colonial conflict could develop into an international conflict, entailing action by the Security Council.

(b) Organs empowered to use force

75. A number of representatives made reference to the expression "competent United Nations organs" in paragraph III of the six-Power draft. In the opinion of some representatives, the definition of aggression should safeguard the discretionary power of the Security Council, the principal United Nations organ responsible for peace-keeping, abut without preventing any other United Nations organ, for example, the General Assembly, from intervening in the event of an impasse. In their view, that position found support in Articles 10, 11 and 14 of the Charter and in the consistent practice of the Organization since 1950.

76. One representative, however, considered that if the six-Power draft was meant to imply that organs other than the Security Council would be competent in the matter, its wording was ambiguous; if the six-Power draft wished to attribute limited competence to the General Assembly in respect of the use of force, it should have used the word "recommendations".

77. Still other representatives considered that the expression used in paragraph III of the six-Power draft was unacceptable, since it was intended to endow the General Assembly with the competence to use force even though under the relevant provisions of the Charter the only United Nations organ which could, in accordance with Articles 39 and 42 of the Charter, decide to engage in enforcement action entailing the use of armed force was the Security Council.

78. In the opinion of some representatives, Article 53 of the Charter referred only to enforcement action; the possibility of the use of force in the exercise of the right of collective self-defence by regional arrangements or agencies should therefore in no way be denied. In this connexion, some representatives found paragraph 4 of the thirteen-Power draft concerning the use of force by regional arrangements or agencies, unacceptable, as it departed from both the text of the Charter and United Nations practice. Article 53 of the Charter referred, not to a decision, but to an authorization by the Security Council and it did not specify whether such authorization should be anterior or posterior, expressed or implied. Nevertheless, practice had shown that it could be posterior and implied. In the opinion of those representatives, the consistent practice of the Security Council

and of the Organization of American States, as authoritative interpretations of the Charter, could not be ignored. In their view, and generally speaking, it was clearly the abuse of the right of veto in the Security Council which had prevented that body from exercising the powers conferred on it under Chapter VIII of the Charter and which had led the international community to turn to the General Assembly or to regional bodies.

79. Several representatives, however, considered that paragraph III of the six-Power draft was unacceptable because its provisions made the United Nations and the regional agencies equally competent to have legitimate recourse to force; yet, according to the Charter, whose provisions in this respect were perfectly clear, no enforcement action could be taken by regional agencies without the authorization of the Security Council; regional agencies might play a co-operative role in the maintenance of peace and security, but their role was strictly subject to the authorization of the Security Council; furthermore, the use of force could not be justified a posteriori - the Security Council must first examine the matter and take a decision; in view of the language used by the Charter, it was clear that authorization must precede action; on this subject, however, there was no precedent since the Security Council had never authorized the use of force under a regional arrangement or by a regional agency. The Council had often been paralysed, not only by the use of the veto, but also by the abstentions of members which prevented it from taking decisions; the Council's inaction, however, could not be considered as an authorization to use force. In the view of those representatives, the word "decision" in the thirteen-Power draft was admittedly not used in the Charter; nevertheless, the Security Council gave its authorization in fact by way of a decision; moreover, in order "to utilize" the regional agencies, as provided for in Article 53 of the Charter, the Security Council must decide, in each case, whether such agencies ought to be utilized; the possibility of implied authorization was therefore excluded; the fact that action might have been taken as a result of exceptional emergency situations and that authorization might have been given only after the event must not be confused with the well-established rule.

80. In the opinion of some representatives, it was clear that Article 53 of the Charter authorized the Security Council to utilize regional arrangements or agencies for enforcement action, but it did not indicate whether such enforcement action went as far as to cover the use of armed force. In this respect, both paragraph 4 of the thirteen-Power draft, referring to cases in which force could be used legitimately under Article 53, and paragraph III of the six-Power draft, which took that provision into account in more general terms, should be rephrased in order to bring them more into line with the provisions of Article 53.

81. In addition to discussing the above two issues, a number of representatives addressed themselves to the approaches of the three draft proposals. In expressing support for the thirteen-Power draft, several representatives mentioned the fact that it specifically referred to Article 51 of the Charter in paragraph 3. It was also stated that paragraphs 3 and 4 of that draft contained provisions in complete harmony with the Charter, unlike paragraph III of the six-Power draft. It was said that while the six-Power draft dealt simultaneously with the use of force in the exercise of the right of self-defence or pursuant to authorization by a competent United Nations organ, the thirteen-Power draft rightly considered those two questions separately; such separate treatment was justified by the fact that, in the Charter, the right of self-defence was dealt with in Chapter VII while the

question of regional arrangements and agencies was dealt with in Chapter VIII; moreover, in Chapter VIII, the expression "use of force" was nowhere to be found: the expression used was "enforcement action". The opinion was also expressed that, as regards form, the thirteen-Power draft was preferable since its provisions dealing with the legitimate use of force were worded in a restrictive manner, stating, and rightly so if the possibilities of legitimate use of force were to be reduced to the minimum, that force could be used only in specified cases; the six-Power draft, on the other hand, did not, in general, seek to discourage the use of force and stated, in permissive terms, when the use of force in certain circumstances did not constitute aggression. Some representatives considered further that the detailed treatment given to the question in the thirteen-Power draft could be acceptable if the wording of the Charter were followed more closely, particularly in paragraphs 1 and 10, and the relevant provisions should be grouped either at the end of the operative part or immediately after the general definition.

82. In the opinion of other representatives, the thirteen-Power draft had the disadvantage of including overly restrictive clauses governing self-defence; although the draft mentioned Article 51, it limited its scope somewhat by saying that the right of self-defence "can be exercised only in case of the occurrence of armed attack (armed aggression)"; a fact of international life was that the question whether resort to self-defence was justified would invariably be determined by the State threatened with aggression; the Committee should therefore not circumscribe or delimit the inherent right of self-defence; it should indicate in the definition itself the Charter's general exceptions to the prohibition of the use of force and leave it to the Security Council to determine whether in a given instance, such exceptions were applicable. Further, the thirteen-Power draft's detailed treatment of the question would inevitably lead to disagreement. It was also stated that the main vice of paragraph 3 of the thirteen-Power draft was that it was too faithful to the language of the Charter; thus, according to Article 51, the right of self-defence was allowed only to Members of the United Nations; accordingly, that right would not be allowed to non-members of the United Nations who were victims of armed attack; it was doubtful whether the Charter should be interpreted as prohibiting non-member States having joint security arrangements with Members of the United Nations from seeking help from their allies in the case of armed attack; if that was acknowledged to be an issue, it would be possible for the sponsors of the thirteen-Power draft to consider how the Charter should be interpreted, for it had to be admitted that so literal an interpretation of some of the Charter's provisions did not reflect international reality.

83. In the view of some representatives, the best solution was offered by the provision in paragraph 6 of the USSR draft; it had the advantage of being concise and, as it was strictly in accordance with the Charter, was legally unexceptionable; by its general wording, it covered all cases of the legitimate use of armed force, which should be distinguished from an act of aggression, the result of an illegitimate use of armed force; by not seeking to define the limits of self-defence, it steered clear of any question of interpretation for which the Committee was not competent and left it to the Security Council to decide whether Article 51 of the Charter restricted the use of self-defence to the case of armed attack; the problem had been dealt with in the same way in the draft Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States. Other representatives shared the above views as regards, however, only the first phrase of paragraph 6 of the USSR draft.

84. In expressing support for the six-Power draft, some representatives made reference to the fact that it dealt with the question of self-defence in general terms, without defining its scope, thus providing the only basis on which a consensus could be arrived at; the draft had safeguarded the use of force in exercise of the inherent right of individual or collective self-defence as stated in the Charter in a way acceptable to the two schools of thought existing on the question; the draft made no reference to Article 51 since the definition of aggression need not establish any limitation of the right to exercise self-defence; the Committee should base itself not only on Article 51 but also on the purposes and principles of the Charter.

85. In the opinion of some representatives, the provisions of paragraph 6 of the USSR draft were so similar to the corresponding paragraphs of the thirteen-Power draft that there was a basis for agreement. Other representatives thought that there was a common approach in the six-Power draft and in the first phrase of paragraph 6 of the USSR draft, that phrase being the one most in keeping with the Charter. The opinion was, however, expressed that if the Committee wished to be specific, it should seek a middle ground between the thirteen-Power and the six-Power drafts; it might refer expressly to Article 51 without describing the right of self-defence as "inherent" but also without limiting the scope of the Article; the following wording was therefore suggested: "The exercise of the right of individual or collective self-defence in accordance with Article 51 of the Charter does not constitute aggression".

3. <u>Paragraph IV A of the six-Power draft: Aggressive intent</u>

86. Some representatives expressed support for the inclusion of the concept of intent in the definition of aggression. It was stated that the sponsors of the six-Power draft had included that concept precisely because in the absence of aggressive intent certain acts might not constitute aggression. Such acts might nevertheless give rise to responsibility based, for instance, on negligence. While malicious intent was an essential element of a breach of the peace, which was a voluntary and intentional act, the deliberate use of force was not always unlawful; an obvious exception was its use in self-defence, as provided for in Article 51 of the Charter. The existence of unlawful acts which were not necessarily acts of aggression was recognized in the Charter, for example in Article 1, paragraph 1, which referred to "acts of aggression or other breaches of the peace"; the six-Power draft had introduced the concept of intent as a perfectly relevant criterion for determining whether a particular case of the use of force constituted an act of aggression; the draft did not require evidence of intent in order to support a finding that aggression had been committed but made it clear that in the absence of aggressive will, a State could be exonerated from a charge of aggression. Conversely, by adopting intent as a criterion, an aggressor could never be considered innocent of aggression; in international affairs there were many cases of the use of force which did not constitute aggression; there was a close relation between operative paragraph IV A of the six-Power draft and at least part of Article 2, paragraph 4, of the Charter which in a way already qualified the use of force, relating to certain intentions; to facilitate classification among the types of unlawful acts, the sponsors of the draft had, by way of example, listed typical acts which constituted aggression; such qualitative distinctions between unlawful acts were common in criminal law; also, the list was not intended to be limitative; the sponsors of the draft had adopted violation of territorial integrity and political independence as the primary criterion for distinguishing between acts of aggression and mere breaches

of the peace. In international law, the purpose of the act determined its gravity; for example, it would be extending the concept of aggression too far to regard as an act of aggression shots aimed at a fugitive which struck one or more inhabitants of another country; the crossing of a frontier by a police patrol might or might not be considered aggression according to what the purpose had been; but there was undoubtedly an act of aggression when an act manifested an intent to acquire territory or to interfere in the domestic affairs of a State; with reference to minor border incidents, it was well to bear in mind the principle of "de minimis non curat lex"; a use of force in a manner so limited in nature and in duration of time could not be described as an act of aggression; that did not, of course, mean that such an incident could not be found to be a threat to the peace or even a breach of the peace. Through its definition of aggression, the Committee would help the Security Council to determine which of the uses of armed force prohibited by Article 2, paragraph 4, were of sufficient gravity to warrant characterization as acts of aggression; that Article of the Charter provided some parameters to that effect; they were insufficient, however, to distinguish an act of aggression from lesser breaches of the peace. It was true that what was important at the present stage was to make that distinction and not to define a breach of the peace; the latter problem must not, however, be considered a secondary one, since United Nations practice often spoke of the two together; Article 51 might be invoked in any particular case of armed action, and it was, therefore, important to give attention to the boundary between the two ideas. As for the text of the definition of aggression, if the Committee were to content itself with listing obvious examples, from which intent might normally be presumed, the basic question would not be settled, and the Security Council would not be able to apply the definition to less obvious forms of aggression; that method could lead to the erroneous description as acts of aggression of certain acts in which the element of intent was lacking; it would be much better to recognize that the offence of aggression contained a mental element and that account should be taken of the purpose aimed at. Another reason for accepting the criterion of intent was that the definition of aggression should serve in establishing international penal responsibility; it would be strange if the perpetration of an act involved responsibility when the accused was unable to exonerate himself by proving that he had no culpable intent; if intent were not considered to be an element of the offence, however, the absence of intent could not lead to acquittal.

87. On the other hand, several representatives reaffirmed their views contrary to the inclusion of the element of "intent" in the definition of aggression. It was said that any aggressor, knowing that he had that means of defence at his disposal, would argue that he had no "intent" of inflicting harm through an act of aggression; it was further stated that since the general principle was the prohibition of the use of force in international relations, only in the cases and in the manner authorized by the Charter was that use justified; the Committee's task was to give meaning to those instances mentioned in the Charter in terms of specific situations and in clearly defined language; the idea could not be accepted that a laudable intention could justify the use of force; the result of including the element of intent or purpose in a definition of aggression would be to add to the very few exceptional cases where the use of force was legitimate or permissible under the Charter; the idea that the use of force might or might not constitute aggression depending upon the objective aimed at might be acceptable only if the definition included an exhaustive list of objectives for the uses of force recognized as permissible under the Charter and by the United Nations, namely, self-defence in the face of armed attack, for enforcement action by or with the authorization of the competent United Nations body, and for liberating oppressed

peoples and securing their right of self-determination; a longer, non-exhaustive list would only extend the range of cases in which the use of force was permissible; it would have the effect of giving a green light to aggression and could only multiply the causes of war. It was also said that an armed attack, not by accident or in error, by a State against another State, for any purpose other than in self-defence, was aggression; there were no instances of the use of armed force which did not constitute aggression other than those covered by Article 51 of the Charter; most instances of the use of armed force not within the provisions of that Article and most of the acts of indirect aggression were breaches of the peace, in which cases no resort to arms was legitimate; besides, the Committee's task was not to define breaches of the peace but aggression; there was no point in trying to list all the possible purposes of armed attack, which were innumerable, when all that needed to be mentioned were the exceptions; there could be any number of "motives", good and bad; they did not fall within the definition of aggression; the Charter merely required that in case of aggression, the countries concerned should refer the matter to the Security Council; the Committee could not give its assent to a definition which defeated the Charter; a proposal to include "motive" in the definition as a necessary factor in the identification of aggression conflicted flagrantly with Article 51, which provided that should an armed attack be made (except in cases of accident or error), the victim could exercise the right of self-defence, as aggression had occurred; moreover, in view of the difficulties experienced by psychoanalysts in determining the motives of individuals, the difficulty the Security Council would have in determining those of peoples could well be imagined. The view was further expressed that intent could not convert the threat or use of force referred to in Article 2, paragraph 4, of the Charter into aggression; it was the material nature of the act that determined its gravity, and whether an act was a simple use of force or aggression depended on the circumstances in each particular case; thus, economic pressure might be considered a use of force, while bombing was aggression; it was the objective element and not the intent that determined the distinction; for example, if a State A intended to change the Government of another State B, it might bring economic pressure to bear on State B or it might invade State B; in either case, the intention of State A would be the same, but, in the first case, its action would be a threat or use of force and, in the second, aggression. As regards the case of a State deliberately pursuing a fugitive on the territory of a neighbouring State and opening fire on that territory without any intent to harm that other State, that was strictly speaking an act of aggression: no State could pursue a fugitive on the territory of another State by means of armed attack without infringing the sovereignty of that other State; as soon as the fugitive crossed the frontier the State which was pursuing him had to use other means, for instance request the neighbouring State to extradite the person concerned. Also, with reference to the characterization which had been made of limitations in time and/or in intensity in the case of an armed attack as not being sufficient for determining the aggressive character of the act, it was stated that the brevity of duration of an attack might be due to factors outside the will or design of the aggressor, for instance, to the intervention of a third party, such as the Security Council, or to the intensity of the self-defensive action; moreover, a short attack might be a question of tactics; it could not be taken as indicating an absence of aggressive design; furthermore, several brief attacks could not be considered as less harmful than a prolonged act of aggression; similar considerations were equal applicable to the intensity of an attack.

88. In the opinion of some representatives, whereas intent was the subjective element of an offence, the objective element was the attack, invasion, bombardment or other act when first committed; an offence could not be defined in terms of one of the two elements only; in the case of aggression, the subjective element was an expression of the degree of the aggressor's culpability, for there could be no responsibility without fault committed; intent was an important factor in the offence but was not the only one; it was not possible to say which was the more important, the objective factor of "first use" or the subjective factor of intent, since they were the two constituents of the offence and were of equal importance. As to whether or not there was a place for the subjective element in the definition of aggression, opinions might differ; the widely established legal rule could be favoured whereby in defining an offence, it was enough to define the objective element, and to leave the subjective element as being implicit; for example, when one State attacked another, the mere fact that there had been an "attack" implied that there had been no element of chance but a premeditated purpose; nevertheless, the inclusion of the subjective element of intent in the definition of aggression was not opposed because it was better to say too much than not enough; however, it would be as well if the definition of aggression did not mention that subjective element, since the very concept of aggression implied aggressive intent.

89. Referring specifically to the enumeration contained in paragraph IV A of the six-Power draft, some representatives emphasized that the cases listed in this paragraph were merely examples, perhaps the most obvious, and no more; the list was not exhaustive, as was evident from the phrase at the beginning of that paragraph: "but are not necessarily limited to"; it was perfectly conceivable that an act of the type described in paragraph IV A might prove to be an act of aggression even though it was committed with an objective different from those set out in this paragraph; thus an act intended not to "secure changes in the Government of another State" (paragraph IV A (4)) but to prevent such changes, would certainly constitute aggression in the sense of paragraph IV A; indeed, such an act would constitute aggression in the sense of paragraph IV A (3) already. In any event it was for the Security Council to decide the matter. The list was not concerned with unlawful acts of a minor character; it gave examples of those with grave consequences; the first four were indisputably major acts; the fifth might involve minor material consequences, but the use of force to obtain even relatively minor concessions still constituted aggression.

90. On the other hand, the view was expressed that it would be easy to imagine other "motives" as valid as those listed in sub-paragraphs (1) to (5) of paragraph IV A; did the absence of those further "motives" from that list mean that there was no aggression in such cases? If the objectives enumerated in paragraph IV A were to be considered as aggressive objectives, the logical implication would be that other objectives were not aggressive; inclusion of the words "but are not necessarily limited to" in the introductory part of the paragraph or even of a very clear statement that the list was not exhaustive would not suffice to remove the difficulty; the impression was given that objectives not listed were not so serious or so aggressive as those listed, and that could only work to the advantage of the aggressor; besides, a careful reading of that introductory phrase led logically to the conclusion that it did not relate to paragraph IV A but to paragraph IV B, since it concerned the uses of force and not the purposes of the use of force. Furthermore, in any list of "intentions" which provided a basis for a finding that aggression had occurred, there was a danger of seriously impeding the Security Council in the exercise of its powers of assessment, even though the

list might not be exhaustive; thus, for example, the intention not to "secure changes in the Government of another State" (paragraph IV A (4)) but to "prevent" such changes would not serve as effectively to prove aggression.

91. The opinion was expressed that to dispel the doubts arising in connexion with "intent", the list in paragraph IV A should be made less restrictive, and then, instead of stating that with one or another "motive" the attacking State would be deemed the aggressor, it should state that when one or another "motive" was honourable, the attacking State would not be deemed the aggressor. In regard to the criticism that there was some doubt whether paragraph IV A of the six-Power draft was exhaustive, the sponsors said that they would consider redrafting that paragraph. The objection raised could be met by replacing the words "In order to" by the words "For such purposes as", showing that the list was not exhaustive; the full stop at the end of the introductory sentence would be deleted. It was, however, considered that to change the expression "In order to" to "For such purposes as" was not sufficient to alter the meaning and did not make it any clearer that the list was not exhaustive.

92. A number of representatives considered that an element of confusion had been introduced by the use of various terms such as "intent", "motive", "objective", "purpose" and "animus aggressionis". In the opinion of some representatives, what the sponsors of the six-Power draft meant by "intent" was the "purpose" or "objective"; in any event, it was a question of the mental element, which clearly existed in every case of the use of force and which emerged from the facts, and not a question of the secret or psychological motivations of Governments. Support was expressed for the term "purpose" as being more precise than "intent" or "motive"; all legal systems distinguished between purpose and intent, the latter being a much broader concept since it could be direct or indirect: in the first case, the culprit, the aggressor in the present context, knew that he was committing an offence and was perfectly aware of the consequences that would flow from that offence; in the second case the culprit knew that he was committing a dangerous act but did not foresee the consequences of that act; it was therefore better in a definition of aggression to use the concept of purpose which was, moreover, equivalent to the notion of direct intent; motive, on the other hand, was a very different, subjective element, being that which induced a person to a course of action: in the case of aggression, the motive of the aggressor might be the desire to obtain economic advantages; accordingly, the concept of motive should be excluded from the definition of aggression.

93. Doubts were, however, voiced whether the notion of "purpose" thus supported coincided with that of the sponsors of the six-Power draft; it appeared that the latter saw aggression as a matter of "mental elements" which would have the effect of exonerating the aggressor from guilt even when his purpose had been to commit an aggressive act against the victim; in other words, his purpose might have been aggressive, but he would be innocent of aggression unless what he had had in mind had been to diminish the territory or alter the boundaries of his victim, etc.; thus, for example, a State which attacked another with the intent of causing destruction by bombardment, etc., or of overthrowing its Government or institutions while having in mind the defence of an oppressed minority, might be declared innocent of aggression; if that was so, there was a difference between the "purpose" for which support had been expressed and the idea of "mental elements" proposed by the six Powers, which more closely resembled "motives". It was also said that

whereas the factors listed in paragraph IV A of the six-Power draft constituted nothing else but illicit motives, the sponsors of the six-Power draft used the terms "purpose" or "objective" to retain the option of considering that no crime had been committed; technically, if those factors were described as "motives", any act based on one or the other of those motives would necessarily be a crime.

94. The view was further expressed that, on close examination, the six-Power draft constantly confused the notions of "intent" and "motive"; if, according to the six Powers, the crime that aggression represented on the international plane derived from an intention, that intention could neither be anything else nor more than the intent to inflict harm contrary to the Charter; all the rest was but "motive"; the only element in the list in paragraph IV A of the six-Power draft, which could be construed as an intention, corresponded therefore to the first two words of sub-paragraph (5), "inflict harm"; all the other elements quoted in sub-paragraphs (1) to (4) and in the second part of sub-paragraph (5) were nothing more than "motives"; for the purposes of defining aggression resulting from an intent to inflict harm contrary to the Charter, it was the element "contrary to the Charter" which was of the greatest importance. In the opinion of some representatives, a general formula of the type thus suggested was an excellent way of presenting the idea which recurred throughout the six-Power draft. In this connexion reference was made to a suggestion made during the general debate, namely that a provision should be incorporated in the operative part of the draft definition, to read: "The Security Council, in qualifying the act of aggression, shall duly take into account the declared intentions and aims pursued by the States in question"; such a provision would meet the concern of the sponsors of the six-Power draft and others regarding the concept of intent and might also allay the fears of those who would like to see less danger of wars that might be considered just and of the aggressors being exonerated from guilt in practically all cases.

95. As regards the question of how to establish the existence of aggressive intent, it was noted that the criterion of intent had been described as a subjective one and, consequently, more difficult to determine than more objective criteria; however, it was just as difficult to determine objective criteria such as who had made the first use of force, yet it was possible to do so as a result of the progress made in science and technology; it was precisely by reference to objective factors that intent was proved; in the case of a large-scale attack, the facts would often - but not invariably - enable a guilty intent to be presumed; conversely, in the case of a minor incident, the facts would suggest that there was no aggressive intent; in the final analysis the finding of an act of aggression would always be made in the light of the facts by which the State manifested its intent.

96. With respect to the question as to the burden of proof, the opinion was expressed that when the element of "intent" was taken to be an integral part of an offence, the formulation itself of the offence said so in clear terms, in which case the onus of proof rested with the party that alleged that the offence in question had been committed; in cases of aggression, however, when the element of "intent" was not recognized as indispensable to a verdict of crime, the onus of proof rested with the party that sought to exonerate itself from the charge; in such cases, the principle of "first use" was of overriding importance, since it enabled the party against whom intent had been alleged to defend itself objectively. In this connexion, and with reference to the case of an accidental dropping of a bomb by an aircraft belonging to one State on the territory of another, some

representatives considered that in such case there was a legal presumption of intent to inflict harm which laid the burden of proof on the State which owned the aircraft; it would be absurd to lay the burden of proof on the victim. A further view was also expressed to the effect that the question of proof had no place in a definition of aggression. To speak of purpose or intent in that connexion would imply that the onus of proof lay with the victim of the aggression, but it was the international community, represented by the Security Council, which had the task of establishing the facts and of determining who was the aggressor in a given instance and to what extent that aggressor was responsible. On the other hand, in the opinion of some representatives, the burden of proof was neither unilateral nor determining; according to cases, the facts would be adduced by the author of the indicted act, by the victim or by a United Nations organ; depending upon the gravity or the minor character of the attack, the burden of proof would lie on the acting party or the victim of the act respectively, although it was not possible to establish a comparison with the rules applicable in domestic law systems; the burden of proof was a decisive element in courts, which were bound by certain procedures designed to safeguard the positions of the parties; the Security Council was not a court and was not even required to hear the parties in all cases; it was required to act on its own initiative to establish the facts of a case by whatever means it considered appropriate and was not tied to a specific procedure; in any event, it would appear that the Security Council had never gone into the matter, nor did the six-Power draft introduce a procedure of proof similar to that of municipal law.

97. Most representatives agreed that an act committed by accident or in error did not constitute aggression; in the opinion of some representatives, the question of accident or error need not be taken into account in the definition, first because such cases were very rare, and second because it was usually clear to all when an attack had been so made; wars did not start as a result of acts committed by accident or in error; if the effect of an act was very extensive, however, no one would expect the victim to wait for an apology or a possible second attack before taking action in self-defence; moreover, the Security Council already had the power to take the absence of deliberateness into account and to declare that a given act had been committed in error and hence did not constitute an act of aggression. The view was also expressed that, as the use of force was never authorized except in the cases covered by Articles 42, 51 and 53 of the Charter, acts committed by mistake would not be regarded as acts of aggression provided that a clause were included at the beginning of the definition to the effect that no intention or motive could authorize a State to use force first against another State. On the other hand, it was stated that if it was correct that proof of intent was to be the criterion for differentiating between certain acts involving the use of force, a solution would have been thereby provided for the problem of the use of force by accident or in error. If, as a result of an emergency situation aboard an aircraft, bombs had to be jettisoned by the aircraft over the sea and they damaged a ship on the high seas or an oil installation in a State's territorial waters, how would it be possible for the Security Council to determine, without examining the objective or purpose of the act, whether or not there had been armed attack in the sense of paragraph 5 (c) of the thirteen-Power draft? With regard to the foregoing example, it was stated that, in that case, there was no act of aggression; all that was involved was the civil liability of the pilot and of the State to which the aircraft belonged; the most probable outcome of the case would be for the State whose aircraft was involved to take the initiative in offering the victim State compensation for the material

damage caused by what in all probability was an accident; if however the victim State, in an excess of zeal, referred the incident to the Security Council, the State to which the aircraft belonged would have to prove that it was an accident.

98. Some representatives considered that the disagreements which still divided representatives on the question of "intent" might be overcome so as to find a generally acceptable text. In this respect it was noted that the co-sponsors of the six-Power draft had indicated that they maintained a flexible attitude with respect to the form of words of the six-Power draft definition of aggression when considering the various drafts before the Committee. They had also clearly stated that the list in paragraph IV A of their draft was not exhaustive; the indication had been given that it might be possible to envisage rather a general mention of intent. It was also said that the observations of a number of representatives seemed to indicate considerable interest in the approach adopted by the sponsors of the six-Power draft and even an agreement on the substance of that approach, as their reservations related only to details of formulation; moreover, it had been indicated that intent, or rather purpose, was an important while not a determinant factor, as was also the principle of "first use"; there was, in fact, no contradiction between those two elements.

99. However, the greater number of thoe who spoke objected to any specific inclusion of intent in the draft definition of aggression and insisted that the thirteen-Power draft and the USSR draft were completely right in excluding this element from their texts.

4. Paragraphs 2 A, 2 B, 2 C and 3 of the USSR draft, paragraph 5 (a), (b), (c) and (d) of the thirteen-Power draft and paragraph IV B (1) to (8) of the six-Power draft: Acts proposed for inclusion in the concept of aggression

100. The representative of the USSR, as sponsor of one of the drafts before the Committee, stated that some light might be thrown on the problem of which acts should be included in the concept of aggression by glancing again briefly at the principles underlying the definition proposed by the Soviet Union. In the approach adopted by his delegation, a scientific attitude was combined with one of compromise. The scientific approach was concerned with the proper understanding of a definition such as the one the Special Committee was called upon to prepare. First, it should be an abstract, yet substantive definition which would be helpful when applied to any situation arising in life, and not merely empty verbiage. The examples included should therefore present the most characteristic or typical symptoms of a particular phenomenon, for no definition could claim to comprehend them all. Second, the purpose of the definition of aggression was to provide a norm of international law on the basis of which, together with the United Nations Charter, the Security Council would find it possible to determine whether there had been aggression in any particular case. The Committee was thus preparing a model and a guide. It would be impossible to make a legal norm automatically applicable. Basing itself on the foregoing considerations, the Soviet Union delegation had adopted an attitude of compromise. Although it would, of course, like the Committee's definition of aggression to be based on the USSR's experience as expressed in its draft, it realized that the definition must be based on the experience of the whole world as it was intended to serve the whole world. It listed several acts which his delegation considered the most important in any consideration of whether aggression had taken place. The list was not, and could not be, exhaustive; and it did not claim to envisage every possible situation.

101. Agreement was expressed with the views of the Soviet Union representative as to the kind of definition the Committee should elaborate. It was also stated that other members of the Committee, sponsors of the two other drafts, were not lagging behind in approaching the task before the Committee in a spirit of compromise. However, the attitude to compromise could not be expected to be such that the only compromise possible was for the sponsors of one draft to abandon their own draft definition completely and accept the other drafts.

(a) Declaration of war

102. In the opinion of some representatives, as a declaration of war had many legal consequences and implications under both international and municipal law in such matters as trade with enemy countries, acts against the property of aliens, protection of the property of neutrals and the rights of combatants, the Committee would be wise to consider carefully the whole question of declarations of war in the context of the definition of aggression.

103. Several representatives favoured the inclusion of the declaration of war in the definition. In the opinion of some representatives, although declarations of war were things of the past, as wars were now not generally declared but simply started, they had not lost their legal significance, nor could the possibility of declarations of war in the future be ruled out. A declaration of war was unlikely unless there was the intention and readiness to launch an armed attack; therefore, it should be treated as an act of aggression although it did not itself constitute the use of force. It was further stated that the declaration of war should be included in the list of acts of aggression mainly to ensure the proper application of Article 51 of the Charter. A declaration of war was an act of legal significance which gave rise to the right of self-defence. Since declarations of war were generally accompanied or followed by armed attack, the victim should be permitted to take immediate, practical measures in self-defence. A country declaring war laid itself open to attack by the country against which it declared war. Moreover, the first declaration of war was a clear, unambiguous manifestation of aggressive intent; when a country declared war, aggressive intent must be presumed. If aggressive intent was a major element of aggression, it was only logical to regard a declaration of war as an act of aggression. Also, since an attempt to commit an offence was in itself an offence, a declaration of war could be equated with an act of aggression and should be included in the list of acts constituting aggression. Some representatives stated that the classification of a declaration of war as an act of aggression in both the USSR draft and the thirteen-Power draft was without prejudice to the powers of the Security Council and therefore subject to the findings of the Council. The existence or absence of aggression could not be determined solely on the basis of the scale of activities observed on the front at a given time. There might, for example, be a prolonged lull in the fighting after an initial exchange of fire. The actual use of force was therefore not always a valid criterion. Also, there were material consequences for the country against which war was declared. The declaration of war was no less important an element of aggression than the others mentioned in the three drafts as worthy of consideration in the determination of aggression. Such an important element should not be lightly discarded. The act of declaring war should not go unpunished.

104. The view was also expressed that the words "In accordance with the foregoing" at the beginning of operative paragraph 5 of the thirteen-Power draft linked the

statement that a declaration of war constituted an act of aggression with the statement in operative paragraph 2 that "For the purpose of this definition, aggression is the use of armed force". In that opinion, therefore, according to the thirteen-Power draft, a declaration of war without the use of force would not be an act of aggression but an unlawful act. Only if it was accompanied by the use of armed force could the victim legitimately resort to the use of force in self-defence under Article 51 of the Charter. Where a declaration of war was not accompanied by armed attack, the victim could take any appropriate defensive measures short of armed force.

105. The opinion was also expressed that the definition should make clear that a declaration of war constituted the most serious form of threat of force. However, although the threat of force was recognized as unlawful under the Charter and the draft Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, it did not entitle a country to use force in self-defence. On this basis, and bearing in mind that it might be the first step in an act of war, the declaration of war should be dealt with in the definition either in a separate paragraph or in a provision corresponding to paragraphs 6, 7 or 10 of the thirteen-Power draft.

106. Some representatives stated that the difficulty or inappropriateness of referring to declarations of war in a definition of the use of armed force that constituted aggression justified its exclusion from the six-Power draft. In this connexion, it was stated that a declaration of war was not a clear indication of aggressive intent. But even if it were, no one claimed that aggressive intent could by itself constitute aggression; it was merely an aspect of a physical act, and the combination of both elements constituted aggression. In other words, a declaration of war, if not accompanied by materially aggressive acts, did not constitute aggression. A declaration of war was merely a formal act expressing the intention to start a war; it was doubtful whether such a formal act could, in isolation, be considered as an armed attack within the meaning of Article 51 of the Charter. A declaration of war could not be considered to be sufficient grounds for warranting the use of force in self-defence under Article 51; the drafters of the Charter had intended that a country threatened with attack but not yet attacked should submit the case to the Security Council before resorting to force in self-defence. Furthermore, if to constitute aggression, a declaration of war must be accompanied by the use of force, there was no need to speak of a declaration of war in the draft definition as it would be the accompanying use of force that would be the decisive act.

107. The view was also expressed that, since it was apparently agreed that when a declaration of war was accompanied by a simultaneous or immediately subsequent use of force it constituted aggression, what the Committee was concerned with was therefore the case of a declaration of war which was not accompanied by an immediate use of force. It was said that in such cases, it might be necessary to distinguish between a "credible" declaration of war, or one in which there was an imminent threat of the use of force, and a "non-credible" declaration of war, or one in which the possibility of using force was left in the air. The question so far as concerned the "credible" declaration of war was whether it should necessarily be automatically classified as aggression without reference to other criteria; it was considered that on that point there was a difference of opinion, but that intent might well be the key. So far as concerned the "non-credible" declaration of war, such delcaration by itself could not be construed as identical with armed attack in the sense of Article 51 of the Charter. In other words,

there was not a mechanical relationship between the right of self-defence and an act of aggression; the problem, however, was worth further reflection. In this connexion, it was recalled that the need for limiting the scope of application of Article 51 of the Charter had been repeatedly stressed during the Committee's current session; on such basis, the hypothetical case where there was an interval between the declaration of war and the use of force should therefore be seen in the light of a formal interpretation of that Article, which laid down the emergency procedure to be followed in face of armed attack. If a declaration of war was not accompanied by the use of armed force, it could be interpreted as a breach of the peace. The State against which war had been declared could only appeal to the Security Council, which would certainly recommend the State that had declared war to refrain from using force. That State might accept the Security Council's recommendation and refrain from using armed force, but the "victim" might have no faith in the Security Council and might in the meantime attack the "aggressor" State. To determine then which State was the aggressor, the principle of priority was not so effective as it might appear at first sight; it left the problem of the relationship between a declaration of war and the use of force unresolved and would therefore provide no easy means of determining the aggressor in such cases. It was for the Security Council to consider the element of intent and the element of priority and to assess each particular case in the light of the circumstances. A declaration of war might perhaps be the decisive proof, but it did not itself constitute an act of aggression.

108. In the opinion of some representatives, it was impossible to ignore completely the concept of the declaration of war in the definition, but that did not mean that a declaration of war must be listed as an act of aggression. In this connexion, it was suggested that the list of material acts constituting aggression might be qualified by a statement to the effect that they constituted aggression whether or not they were accompanied by a declaration of war.

(b) Use of weapons of mass destruction

109. Some representatives objected to the inclusion of a special reference to weapons of mass destruction in the definition of aggression; there were conceptual and doctrinal objections to the inclusion of such reference. It was not the use of any specific type of weapon but the use of weapons of any kind by one State against another in violation of the Charter which constituted aggression. Since the aggressive character of an act did not depend on the weapons used, a distinction between different kinds of weapons would not help the Committee to distinguish between acts which constituted aggression and those which did not. The hope was therefore expressed that the sponsors of the thirteen-Power draft would agree to delete the phrase "particularly weapons of mass destruction" in paragraph 5 (c). Further, and with reference to paragraph 2 B (a) of the USSR draft, the fear was expressed that if that provision was intended to raise the question of the prohibition of nuclear, bacteriological and chemical weapons, the Committee's work would slow down. Moreover, unless the element of intent and the effect of the act were taken into account, the underground testing of nuclear devices, for example, would constitute an act of aggression.

110. Other representatives agreed that technically it was not the type of weapons used but the use of any weapons by one State against another in violation of the Charter which constituted aggression. Nevertheless, they considered that the

transcendent character of weapons of mass destruction, particularly as their use was opposed by public opinion throughout the world and the consequences were of universal concern, warranted a special reference in a definition of aggression. Some representatives, while holding the above views, nevertheless considered that the corresponding phrase in the thirteen-Power draft might be deleted. Other representatives, however, indicated that they could not agree to the deletion of the phrase in that draft. It was also stated that nuclear, bacteriological or chemical weapons were mentioned in the USSR draft as examples of weapons of mass destruction; although they might seem of overriding importance at the present day, a case might occur in the near future in which weapons of a kind not yet heard of were used. In that draft, therefore, the mention of such weapons was qualified by the phrase "or any other". Nevertheless, and in a spirit of compromise, the USSR was disposed to delete the corresponding sentence from its draft.

111. The opinion was also expressed that the difficulty lay, not in the inclusion or omission of a reference to such weapons, but in the fact that the reference would encroach on the right of self-defence by preventing a country under attack from using such weapons first. The inclusion of a specific reference to weapons of mass destruction would not give rise to objections if it was made clear that their use, in itself, would not constitute aggression.

112. It was also stated that, while there could be some degree of agreement with the objections raised to the inclusion of the phrase, the opinion could also be shared whereby a reference to weapons of mass destruction would reflect the universal concern about the consequences of their use. With the constant development of new, unconventional weapons, it was conceivable that a country might employ, for example, a bacteriological means of warfare which would not be recognized by some countries as a weapon. The suggestion was therefore made to add a paragraph to the preamble stating that the use of certain weapons, for example, nuclear, bacteriological and chemical weapons and napalm, was inhuman, besides constituting an aggressive act. The operative paragraph might then refer only to "the use of any weapon". While some representatives supported this solution, doubts were, however, expressed about its usefulness.

(c) Invasion, attack, military occupation and annexation

113. Several representatives expressed support for the inclusion in the definition of aggression of a provision such as that of paragraph 2 B (c) of the USSR draft and paragraph 5 (b) of the thirteen-Power draft. According to those texts, invasion, attack, military occupation and annexation all constituted acts of aggression. In the opinion of those representatives, occupation and annexation were not merely consequences of invasion and, therefore, of aggression, but were in themselves acts of aggression; they could not be excluded from the definition on semantic grounds. It was as necessary to mention occupation and annexation as invasion, since they were the continuation of invasion. Unlike the act of invasion, however, they were of an indefinite or permanent character. Both were continuing acts of aggression since they relied on the use of armed forces; both were condemned by international law and in the Charter. Their condemnation had first been stated in the Charter of the Organization of American States, an instrument which was not only of Latin American origin but which represented the jurisprudence of all the Americas. In this connexion, some representatives indicated that they preferred the thirteen-Power text to that of the Soviet Union, firstly because it was more precise in stating military occupation "however

temporary to be aggression and secondly, because the use of the adjective "forcible" to qualify annexation should obviate any misgivings in connexion with a possible annexation by means of a peace treaty. The thirteen-Power text referred to unilateral annexation resulting from the use of force, and that was an act of aggression.

114. Some representatives, however, took a different view in this regard. It was thus stated that the invasion by one State of the territory of another State could be carried out in circumstances which did not render it aggression. There were such cases, for example, where the armed forces of one State invaded the territory of another State in order to defend or attack a third State, as had been done by allied forces during the Second World War. Such an invasion was not an aggressive invasion; if it was to be considered as such, with the result that the armed forces of the defending State would always have to stop short at the defending State's own frontiers, the aggressor could never lose, even though he might not win. Likewise, when the armed forces of one State invaded the territory of another State in the exercise of the right of self-defence. The opinion was also expressed that both in the thirteen-Power and the USSR drafts, invasion and attack were grouped together as similar concepts, whereas they were quite different. An attack could consist of bombardment and need not involve the entry of armed forces into the territory of another State. It would therefore be more appropriate to add the concept of attack to the sub-paragraph dealing with bombardment and delete it from the one dealing with invasion. It was further stated that no military occupation, however necessary, was ipso facto aggression; there was the case of territories occupied and sometimes annexed both before and after the Second World War; military occupation might become aggression in certain circumstances, for example, when occupation was no longer necessary. The view was expressed that, as the Committee was trying to determine what forms of the use of force constituted aggression, it would be inappropriate to introduce into the definition such matters as military occupation and annexation which were consequences of aggression. No State's interests, whatever its political situation, would be prejudiced by the omission from the definition of a provision dealing with the consequences of aggression. It was also stated that the concepts of occupation and annexation had not been completely ignored in the six-Power draft; paragraph IV B (2) was based on the notion of an attack by one State against the territorial integrity of another, and that implied diminution of territory; according to paragraph IV A (1), if the purpose of the act was to diminish the territory or alter the boundaries of another State, it would constitute an act of aggression, and hence the act mentioned in paragraph IV B (2), which was tantamount to annexation, would constitute an act of aggression. Similarly, the acts mentioned in paragraph IV B (2) were a form of occupation and if committed for any of the purposes listed in paragraph IV A, they would not be the consequence of aggression, but would themselves constitute aggressive acts. If the thirteen Powers acknowledged that their draft went too far in that respect, their approach could be reconciled with that of paragraph IV B (2) of the six-Power draft.

115. Some representatives expressed doubts in particular about the inclusion of annexation among the acts which constituted aggression. The view was expressed that invasion and occupation presupposed a continuing state of war whereas annexation implied a post-war situation which had legal implications, created by a declaration or a treaty changing the status of occupation. It was also stated

that in so far as annexation was a manifestation of the use of armed force, there was no doubt that it constituted aggression and nothing to that effect need be added to the definition. When, however, annexation took place after the use of armed force, it could not in itself be regarded as an aggressive act; annexation was different in nature from aggression and it would be doing the international community a disservice to put it on the same footing. The above views should not, however, be taken as justifying forcible annexation, which was contrary to the principles of international law. The question was rather whether or not annexation should have a place in the definition of aggression; in this respect, it was stated that although annexation should be avoided in a list of acts of aggression, it might be included in a provision corresponding to that of paragraph 8 of the thirteen-Power draft.

116. Other representatives, however, objected to the idea that it was unnecessary to mention annexation in the definition on the grounds that it would be covered by the inclusion of invasion. In this respect it was stated that history provided irrefutable proof that wars and acts of aggression were primarily motivated by the acquisition of territory. In the view of some representatives, as far as responsibility was concerned, occupation and annexation were the same thing, although the circumstances might not coincide. From the legal point of view, the difference lay in the declaration of annexation. For other representatives, however, annexation aggravated the original act of aggression; being permanent, it was worse than occupation from the point of view of international law. The view was also expressed that the difference between invasion, occupation and annexation was mainly a matter of time. Invasion might take place in only a few hours: the troops might then be withdrawn and there would be no occupation. If they remained, that would be occupation, namely a continuing act of aggression. Annexation was not merely the result of an illegal declaration; it transformed continuing aggression into a state of permanent aggression, at least in the intention of the aggressor. Moreover, annexation was not always simply a declaration: it was sometimes accompanied by the imposition of political, social, economic and cultural changes, all of which were acts of aggression; if invasion and occupation were included, annexation must be included also; they were three stages of the same act. As regards the suggestion that a reference to annexation might be made in the provision corresponding to paragraph 8 of the thirteen-Power draft, it was pointed out that paragraph 8 also referred to occupation. If both annexation and occupation could be mentioned under paragraph 8, it was difficult to understand why they could not both be mentioned also under paragraph 5 (b) of the same draft.

117. Several representatives criticized the expression "under the jurisdiction of another State" in paragraph IV B (1) of the six-Power draft. It was said that if that expression meant the territory of another State, the question arose why the words "the territory" had not been sufficient; if it meant something else, that should be stated. It was also considered that under such provision, a State which tried to regain territory occupied by foreign troops or annexed would be considered an aggressor. It was further stated that as such expression could only refer to a colony, it had no place in a definition of aggression.

118. On the other hand, the opinion was expressed that the suspicions and doubts about the words "territory under the jurisdiction of another State" were unjustified. That expression envisaged two cases: the case of a territory concerning which there was a dispute as to whether it lawfully belonged to the

State attacked; and the rarer case of a territory of one State which had been placed under the jurisdiction of another State by virtue of a particular regulation, for example, the Panama Canal Zone. Moreover, in no way could that expression be interpreted as having anything to do with colonialism.

119. Some representatives considered the provisions of paragraph IV B (2) of the six-Power draft unacceptable. In this respect, the view was expressed that that paragraph dealt with a matter which concerned the bilateral relations between States and not the definition of aggression. The international community should not be allowed to interfere in such matters prematurely. Such cases did not constitute a serious danger to peace and therefore did not warrant a special reference in the definition. It was also considered that that paragraph tended to give a permanent character to situations which were contrary to the spirit of decolonization, i.e. the practice of establishing military bases and stationing troops in foreign territory. The reference to conditions of permission for the presence of foreign troops implied acceptance of that practice. Besides, the behaviour of troops on foreign soil was irrelevant to the definition of aggression. The opinion was also expressed that there was a contradiction in the position adopted by the six Powers; they argued that retention of armed forces on the territory of a State beyond the period to which permission for their presence applied constituted aggression, but they did not recognize that military occupation was always aggression. Occupation was, in fact, the retention of armed troops on the territory of another State without permission or beyond the period to which permission applied; it was an act of aggression.

120. On the other hand, some representatives expressed support for paragraph IV B (2) of the six-Power draft. They pointed out that that paragraph covered an unusual form of aggression where foreign armed forces invited by a State, a practice permitted under international law, had refused to withdraw when asked. A situation might arise in which those armed forces were used in a manner that went beyond the conditions attached to the permission for their presence or in which they were not withdrawn on the expiry of the period to which the permission related or at the request of the host State. In such situations, the continued retention of those armed forces on the territory of another State constituted aggression. It was also stated that there was nothing in that text about colonialism or that could be taken as justifying colonialism.

121. The view was also expressed that, as the situation provided for in paragraph IV B (2) might give rise to aggression, the idea contained in that paragraph could be retained with the proviso that it must specify that the permission was accorded by the constitutional bodies of the State concerned. That point had been made more clearly and precisely in proposals that had been advanced by the Soviet Union in 1950, 1953 and 1956; the wording of the paragraph could be improved accordingly.

(d) Bombardment, attack on land, sea or air forces, blockade and the use of other forms of armed force

122. As pointed out by some representatives, bombardment was referred to as an act of aggression in all the three drafts. In this respect, the expression "territory under the jurisdiction of another State" in paragraph IV B (3) of the six-Power draft was criticized as being both vague and ambiguous; it would be

better to keep to the simple formula, "territory of another State", used in the other two drafts. The opinion was also expressed that if the notion that bombardment was an act of aggression was retained, as it should be, and paragraph 2 B (a) of the USSR draft and the comparable part of paragraph 5 (c) of the thirteen-Power draft relating to the use of weapons of mass destruction were deleted, as had been suggested in the context of those two paragraphs, that would be tantamount to saying that the use of nuclear weapons, for example, was not an act of aggression. While it was true that the question of prohibiting the use of nuclear weapons was not within the Committee's competence, that was not what the relevant passages of the USSR and the thirteen-Power drafts were about: they dealt with the question of the first use of arms or weapons.

123. Support was expressed for the wording of paragraph IV B (4) of the six-Power draft, as it covered all possible uses of force by any means. The comparable part of paragraph 2 B (b) of the USSR draft was considered to be not so comprehensive; it would not, for example, cover the use of force in space.

124. The word "deliberate" in paragraph IV B (5) of the six-Power draft was criticized as being unclear; if what was in mind was that all the acts listed must be deliberate, the word should appear in each case. It was unnecessary, however, to use the word at all, because what was being listed were acts committed first; if an act was committed first, it was aggression, otherwise it was not.

125. Support was also expressed for the inclusion of blockade of coasts or ports as an act of aggression in the definition.

(e) <u>Armed bands, volunteer forces and terrorist and subversive activities</u>

126. Some of the sponsors of the six-Power draft emphasized that acts mentioned in sub-paragraphs (6), (7) and (8) of paragraph IV B of the draft formed an integral part of any concept of aggression, because they were inseparably tied with the use of force in international relations, namely, the use of force across boundaries; the use of force across international boundaries was only justified in exceptional cases under the Charter. It was said that any definition of aggression that did not cover unlawful uses of force by indirect means - which most of the members of the Committee agreed constituted aggression - would not be acceptable; to omit consideration, even temporarily, of unlawful uses of force such as those described in the three sub-paragraphs would be to omit consideration of the principal methods by which acts of aggression were committed in the contemporary world; the inclusion of such acts in a definition was entirely consistent with the Charter and with recent history and was essential to the attainment of the purposes which a definition of aggression was intended to serve.

127. On the other hand, several representatives argued that the indirect use of force could be sufficiently serious to be characterized as aggression but was not necessarily aggression in all cases; the right of self-defence arose at the point where such use of force was on a sufficient scale to constitute direct armed aggression; indirect aggression, not being as serious or as dangerous as direct aggression, should be left for further consideration at a later stage of the Committee's work. Some representatives stated that they were prepared to accept an

definition at the present stage which, first, recognized and affirmed that the use of force violated the United Nations Charter; second, included a paragraph similar to operative paragraph 7 of the thirteen-Power draft; and third, expressly stated that indirect aggression would be defined at a later stage. It was said that the concept of armed attack in Article 51 was more restrictive than the concept of aggression in Article 39, and that was the criterion used in paragraph 7 of the thirteen-Power draft; a victim of indirect aggression had the right to take reasonable measures to safeguard its institutions, but not to proceed so far as to use the armed force to which self-defence under Article 51 was applicable. It was also pointed out that, if the armed bands or mercenaries imperilled the national existence of a State and were considered by the Security Council to be tantamount to armed attack, the State would be authorized to resort to self-defence; such authorization in the case of incursions by armed bands as distinct from an all-out open attack therefore depended on the degree of the danger they constituted. In the opinion of one representative, acts mentioned in sub-paragraphs (6) and (7) of paragraph IV B of the six-Power draft could in certain cases constitute aggression, but it was difficult to include the acts described in sub-paragraph (8) in the cases of aggression as the latter necessarily entailed the use of armed force by an aggressor State. It was also said that the hesitation of some members of the Committee concerning sub-paragraphs (6), (7) and (8) was largely due to their fear that the inclusion of those sub-paragraphs might lead to the recognition of the concept of preventive war; in certain circumstances it might be easy for a Government with expansionist ambitions to claim that a political opposition group within the country was a subversive organization directed by another State and to launch an armed attack against that State under the pretext of legitimate self-defence. It was suggested in this connexion that the definition of aggression should perhaps include a clear statement that the Security Council could assimilate serious, flagrant cases of subversion to direct armed aggression within the meaning of Article 51; paragraph 7 of the thirteen-Power draft might be amended along those lines; in the definition, certain cases of subversion which did not give rise to the right of self-defence could also be described as constituting aggression but expressly within the meaning of Article 39 and not Article 51.

128. Some representatives rejected the argument that unlawful uses of armed force in international relations could be divided into two categories - those which permitted recourse to the inherent right of self-defence and those which did not - on the basis of the directness of the manner in which armed force was used. This argument, in their view, had no foundation in fact or in law; if the Security Council was unable to act or to act quickly, the existence of a State which was the victim of the incursion of armed bands or widespread violence directed from a neighbouring State might be jeopardized, and no State whose national existence was thus imperilled would hesitate to take whatever action was necessary to repel an aggressor where the choice was between self-defence and waiting for rescue which might not arrive. Furthermore, the argument was inconsistent with the Charter; the right to self-defence referred to in Article 51 of the Charter was an inherent right and nothing expressed or implied in the text of that Article, nothing in its drafting history and nothing in United Nations practice since its adoption suggested that self-defence was not available to repel aggression, for example, in the form of incursions by armed bands. It was also said that the argument could have serious implications for the future of world peace; if the definition stated that the procurement of mercenaries to make incursions into the

desired territory to terrorize and demoralize the population would not be an act of aggression and that the victim State would not have lawful recourse to measures of self-defence, the State with expansionist amibitions would have reason to believe that its objective could be gained without the risk of counter-attack or even of being condemned as an aggressor; if that plan was carried out, the definition would make it more difficult for the victim State to obtain assistance from the United Nations; moreover, if the victim State found that the only way to stop persistent incursions by mercenaries was to attack their base across the frontier and did so, it might itself be condemned as an aggressor.

129. In the opinion of some representatives, the proposition underlying paragraph 7 of the thirteen-Power draft was that, in cases described in sub-paragraphs (6), (7) and (8) of paragraph IV B of the six-Power draft, the right of self-defence was either not available or limited; the argument in support of that proposition was unacceptable. It was true that Article 51 spoke of the right of self-defence if an "armed attack" occurred; but it did not say direct armed attack, and the examples put forward in sub-paragraphs (6), (7) and (8) were "armed attack". In the view of another representative, the accepted terminology under international law for such acts as hot pursuit of criminals was "border incidents"; such acts were not invasions and were not armed attacks in the sense of Article 51.

130. Several representatives felt that at the current session, the Committee was unlikely to produce more than a draft on direct aggression; it would however be useful to list the points of agreement and disagreement; it did not seem essential to produce a complete, generally acceptable definition of indirect aggression at this stage; there were in fact many points of disagreement on that subject. Some representatives, on the other hand, stated that a definition which covered only part of the acts which all considered as aggression would be of no use to the Security Council and would not find sufficient support in the Committee; the definition of aggression should cover so-called direct and indirect aggression without making a distinction expressis verbis or specifying what consequences should follow in each case.

5. Paragraph 6 of the thirteen-Power draft: Proportionality

131. In the opinion of some representatives, the intimate relationship between aggression and self-defence made it necessary to clarify the limits of self-defence in a definition of aggression; in certain situations, measures used in self-defence could be transformed into acts of aggression; proportionality, therefore, was an important principle to be included in the definition. The legal scope of the principle and its basis were explained as follows. First, the proportionality principle established a relationship between the defensive action and the attack by conferring on a victim State the right to use force when necessary to halt an attack and, at the same time, by placing on it the obligation to limit the use of force to the amount necessary to halt the attack. Secondly, the principle stemmed from the notion that the use of force in self-defence was legitimate only because the victim of an armed attack must defend itself immediately; under the Charter, once that use of force had accomplished its purpose, no further use of force was permissible. Thirdly, without the principle of proportionality a State which was the victim of an armed attack could invoke the right of self-defence for undertaking a war of revenge; without the priority principle, preventive wars would be permissible, and, without the proportionality principle, wars of revenge would be permissible. The principle would also help to ensure that the use of force was centralized in the hands of the United Nations, which delegated its prerogative in the matter of the use of force only in cases of self-defence.

132. Several representatives expressed the view that the concept of proportionality was relevant to the question of legitimate recourse to self-defence; but the concept was irrelevant to a definition of aggression, which should not attempt to define the limits of self-defence; it was therefore unnecessary for the Committee to try to solve the difficult problem of how far and in what circumstances proportionality was a relevant or determining factor. It was said that the principle of proportionality was important and had a place in international law; but it was only one of several attributes of the inherent right of self-defence, others being for example necessity and immediacy; all these principles were included in the concept of self-defence, as embodied in customary international law. Some representatives felt that the question of proportionality needed further study; it was difficult to establish at what stage the aim of self-defence was achieved: whether it was when an armed attack was repulsed or when the security of the victim had been ensured; proportionality could not be taken to mean an exact balance, and any estimate of what constituted a reasonably proportionate response would depend on the circumstances. In the opinion of some representatives, the principle of proportionality did not require that a catalogue of means to be used in self-defence must be included in the definition; evaluation of what was reasonable and proportionate should be left to the Security Council; although such evaluation might sometimes be difficult, the principle should be accepted in the cases of flagrantly disproportionate or inhuman methods of self-defence.

133. Some representatives considered that Article 51 of the Charter did not include the concept of proportionality; a time-limit was built in by the phrase "until the Security Council has taken measures ...", but proportionality in the sense of the intensity and extent of the reply and the type of weapons used did not appear. It was also pointed out that when Article 51 was drawn up, there had been proposals that it should include provision for the "necessary" self-defence, embodying the idea of proportionality; it had, however, been omitted and the words "inherent right of" had been used instead. From the viewpoint that the question of proportionality should be considered in the light of actual instances of aggression, it was stated that the inclusion of the proportionality principle would unreasonably tie the hands of the victim of aggression, who had all the disadvantages, and would give undue benefit to the aggressor, who had all the advantages, such as surprise and unrestricted choice of means of attack; it was unreasonable to try to limit the victim's choice of weapons and scale of defensive response when it was the aggressor whose hands should be tied. In the opinion of one representative, the concept of proportionality had no basis in modern jurisprudence as far as self-defence was concerned; the right to self-defence was recognized as inherent and was not limited; the introduction of the concept of proportionality would only benefit the attacker and impose on the victim the burden of proving that the action was necessary for defence and relating the quality of that action to that of the attack.

134. The view was expressed by some representatives that the usefulness of the concept of proportionality depended on the substance of the definition of aggression. If the definition was to mention acts of indirect aggression and minor means of aggression, it would perhaps be necessary to include proportionality, for otherwise a limited attack might be alleged as a pretext for aggression under the name of self-defence. If, however, it was agreed that the definition should be confined to the most serious cases of direct armed aggression, the question of proportionality could be left to the Security Council.

135. One representative raised the question of the right of a State to take similar measures, if another State mobilized or concentrated its armed forces near the common frontier, without crossing the frontier.

6. Paragraphs 4 and 5 of the USSR draft and paragraphs 8 and 9 of the thirteen-Power draft: legal consequences of aggression

136. Many representatives, who held the view that it was essential to include the consequences of aggression in any definition of aggression, stated that in order to be complete, the definition must recognize the immediate legal consequences of aggression and reflect an international attitude towards it; the non-recognition of territory acquired by force was an obligation, assumed by all members of the international community under the Charter: Article 1 of the Charter placed an obligation on all Member States to participate in collective measures for the suppression of acts of aggression or other breaches of the peace, and under Article 2, paragraph 2, States undertook to fulfil in good faith the obligations assumed in accordance with the Charter and therefore not to encourage or tolerate aggression or the acquisition of territory by force. Moreover, in order that the definition should be a deterrent to a potential aggressor, it should contain elements which would show a potential aggressor that no matter how he camouflaged his acts, he would be branded as an aggressor and would not profit from his deeds; under various criminal codes, an individual was entitled to know what his punishment would be if he committed a certain act, and the same should be the case under international criminal law. It was recalled in this connexion that, on the basis of political and legal considerations, the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States had, in its draft Declaration, introduced the legal consequences of aggression in the formulation of the principle of the non-use of force; these considerations were equally relevant to the definition of aggression.

137. Some representatives expressed doubt about the deterrent effect of the definition; it was a historical fact that some States signed non-aggression treaties, but they were not deterred thereby from subsequently committing the very acts proscribed under those treaties against the State with which the treaty had been signed. It was also said that the analogy drawn between the definition of aggression and the provisions of criminal codes was inappropriate; whereas criminal codes described offences and prescribed penalties and procedures, the Committee's task was not to draw up a criminal code, but simply to define aggression; it was more likely to accomplish that task by considering only what was essential to the definition.

138. One representative stated that, to facilitate agreement on a definition of aggression, it might be wise to exclude from the definition any disputed elements which were not indispensable; and, in his view, classification of aggression as a crime and the criminal responsibility it gave rise to were both consequences of aggression and not essential to the definition. On the other hand, the occupation and annexation of territory were closer to aggression itself than to its consequences; they had rightly been linked with paragraph IV B (2) of the six-Power draft, which recognized that the maintenance of armed forces in the territory of another State could in itself be aggression; occupation and annexation should therefore be mentioned in the definition, whereas other elements which were clearly consequences of aggression could be omitted from it.

139. In the opinion of some representatives, paragraph 8 of the thirteen-Power draft was preferable to paragraph 4 of the USSR draft; the former was more specific and exhaustive than the latter, and would thus afford more protection to small States; it was very important to such States to provide that they "may not be the object, even temporarily, of military occupation or of other measures of force..."; it was essential that the principle of the inviolability of the territory of a State should be enshrined in the definition. However, other representatives preferred the wording of paragraph 4 of the USSR draft; it was more precise and stated the principle involved, without referring to matters which had only an indirect bearing on that principle; it also referred to the non-recognition, not only of territory acquired by force, but also of other advantages resulting from armed aggression.

140. Some representatives felt that paragraph 5 of the USSR draft and paragraph 9 of the thirteen-Power draft were almost identical, the only difference being one of drafting. One representative preferred paragraph 5 of the USSR draft, which dealt with the responsibility not only of States, but also of individuals in accordance with the principle established in international law by the Charter of the Nürnberg Tribunal. Another representative preferred the wording of paragraph 9 of the thirteen-Power draft, since international responsibility was generic, and no aggressor would be able to claim, for example, that only criminal or civil responsibility attached to the act committed.

7. Paragraph 6 of the USSR draft and paragraph 10 of the thirteen-Power draft: the right of self-determination

141. The principle enunciated in paragraph 6 of the USSR draft and in paragraph 10 of the thirteen-Power draft was supported by several representatives. Some of them considered, however, that paragraph 10 of the latter draft was more satisfactory and better expressed the respect due to the Charter. Paragraph 6 of the USSR draft, it was noted, had the merit of stating very clearly that dependent peoples had the right to use armed force, but its defect was that it only referred to General Assembly resolution 1514 (XV); paragraph 10 of the thirteen-Power draft, on the other hand, placed a broader interpretation on that right, since it mentioned not only the right of self-determination, but also the right of sovereignty and territorial integrity. That was justified, since it was also necessary to take into account the case of peoples who were victims of neo-colonialism and of peoples whose territory was occupied, for they also were oppressed. Paragraph 10 of the thirteen-Power draft therefore had the merit of acknowledging the right of all oppressed peoples, and not only of dependent peoples in the sense of General Assembly resolution 1514 (XV). It had been argued consequently that the best formula would be a combination of paragraph 6 of the USSR draft and paragraph 10 of the thirteen-Power draft; thus the last part of the latter paragraph might read as follows: "... concerning the right of peoples to use force in order to achieve self-determination, sovereignty and territorial integrity".

142. Some representatives, on the other hand, considered that the definition of aggression should not include any provision concerning the right of self-determination. A common denominator of the three drafts, it was stated, was that they defined aggression as an act directed by one State against another; for that reason, the use of force by dependent peoples in the exercise of their right of self-determination did not come within the range of the definition of aggression.

In addition, the problem had been discussed at length in the past and had been given a balanced solution in the draft Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, one part of which dealt with the right of peoples to self-determination; it would therefore be inadvisable to return to the same question in an entirely different context, at the risk of introducing an element of incoherence into the global action of the United Nations. Moreover, self-determination and the administration of dependent territories had been carefully regulated by the Charter, which had instituted a system that had proved effective. That system did not envisage the use of armed force by dependent Territories. A definition of aggression in international law could not describe as aggression the use of force by a State to repress a rebellion on its own territory; that was a fact imposed on the Committee by its terms of reference. Furthermore, since the Committee was concerned with acts performed in international relations, it was impossible to accept a provision, the effect of which would be that an act that would otherwise be defined as aggression by one State against another would not be considered aggression simply because it had been accomplished in a "self-determination context"; such a provision would be unacceptable, since it would completely distort the notion of aggression. In any event, it was emphasized that nothing in the six-Power draft derogated from the right of dependent peoples to exercise their right of self-determination.

143. In support of including a provision concerning the right of self-determination in the definition of aggression, it was argued that such a provision would be in conformity with the Charter and with the purposes of the United Nations. One of those purposes, it was stated, was to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples. The United Nations had pursued that purpose since its establishment and had tried to give substance to the principle of self-determination. Those efforts had reached their peak with the adoption of General Assembly resolution 1514 (XV) on the granting of independence to colonial peoples, which had been the signal for bringing colonialism to an end. Dependent countries therefore had had the right to fight for their liberation, and in doing so they were fulfilling an international function. The Special Committee, it was also argued, was not dealing with the principle of self-determination _per se_; it was discussing cases in which the use of force was lawful and could not therefore be qualified as aggression. Among such cases, there were the exercise of the right of self-defence and the measures taken by the Security Council. The use of force by dependent peoples to liberate themselves from oppression stemmed directly from the notion of self-defence provided for in Article 51 of the Charter, as those peoples were the victims of a permanent attack on their sovereignty. They were, in fact, defending themselves against Powers that were preventing them from forming independent States. The Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States had, of course, dealt with relations between States, as its very title indicated. It had nevertheless dealt with the question of the use of force by dependent peoples. Thus, it was difficult to see why that question should not be dealt with by the Special Committee on the Question of Defining Aggression. The argument that the definition of aggression should not qualify as aggression the use of force by a State to suppress a rebellion on its own territory was irrelevant. If the territory was a colonial or occupied one, the situation was different, for the colonial or occupying Power was not acting on its own territory.

144. It was also pointed out that although the definition of aggression should, of course, apply only to States, it must not be forgotten that there were organizations recognized by the United Nations, such as the Organization of African Unity, which gave dependent peoples aiming at self-determination the right to be supported by independent African States. The relationship between such a provision and the definition of aggression was obvious, for otherwise the definition might be misinterpreted as meaning that a State which gave its support to a dependent people must be considered as indirectly supporting an aggression. In law, however, a person assisting a lawful act did not commit an offence; consequently, the definition of aggression should contain a provision which would protect those independent States which helped dependent peoples struggling for their right of self-determination.

145. The view was also expressed that the definition should cover the case where a dependent people was operating from another territory than its own and attacking the geographical region which rightly belonged to it. It was held that such a case should be regarded as an exception to the principle that any armed attack constituted aggression. It was pointed out, on the other hand, that that condition of dependence was a fact of international life which had certain consequences in international law. Perhaps such a situation should be ended, but that was a different question and one that was being dealt with by other bodies.

146. The view that the definition of aggression should be broadened to include not only dependent peoples, but also oppressed peoples, was contested by some representatives. Such a digression, it was said, well demonstrated the danger of introducing self-determination into the definition. The extension of that notion to oppressed peoples would mean that a democratic State was entitled to overthrow the government of a dictatorial State whose people seemed to it to be oppressed. In the view of those representatives, such a doctrine was false, both in law and in politics, and it had never been recognized by the United Nations.

IV. RECOMMENDATION OF THE SPECIAL COMMITTEE

147. At its 78th meeting, on 14 August, the Special Committee considered the draft resolution submitted by Bulgaria (A/AC.134/L.26). At the same meeting the Special Committee unanimously adopted the draft resolution. The text of the resolution 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 and 2549 (XXIV) of 12 December 1969, which recognized the need to expedite the definition of aggression,

"Noting the progress made by the Special Committee and the fact that it did not have sufficient time to complete its task at its current session,

"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,

"Recommends that the General Assembly, at its twenty-fifth session, invite the Special Committee to resume its work as early as possible in 1971."

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 definiton 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

Report of the Working Group

1. The Working Group established pursuant to the decision taken by the Special Committee at its 74th meeting, held ten meetings from 10 to 14 August 1970. The Working Group decided to bring the present report to the attention of the Special Committee.

A general definition of aggression

2. Independently of the question of "direct or indirect" aggression, the following alternative texts were proposed:

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

(b) "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 airspace] [or sovereignty] or political independence of such State".

3. However, a number of delegations considered that the foregoing texts were not satisfactory and stated that they would maintain the draft definition of aggression contained in paragraph 2 of the thirteen-Power draft. The representatives of the co-sponsors of the USSR draft and the six-Power draft also maintained their respective paragraphs.

4. On the question of "direct or indirect" aggression, the members of the Working Group were agreed that the general definition of aggression should reflect the concept of aggression as contained in the Charter. Further, the view was expressed by several members that the general definition of aggression should refer only to the use of armed force, without qualifying it as "direct" or "indirect". The point of view was otherwise expressed by some members that the general definition should, if it did not refer to the use of armed force, overt or covert, direct or indirect, at least refer to armed force "however exerted".

The principle of priority

5. The Working Group noted that all members were in favour of introducing the principle of priority into the definition. However, several members believed that the definition should specify that the element of priority was not the determining factor by itself, and that other elements should also be taken into account by the Security Council or any other body required to determine whether or not aggression had been committed. That point of view was embodied in the following text, proposed by one member:

"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."

However, several delegations considered that the foregoing text was not satisfactory.

Political entities other than States

6. The Working Group noted that many members wished the definition to refer only to States, while others believed that, if the text did not expressly include States whose statehood was disputed, an explanatory note should be annexed to the definition to the effect that the term "States" included States whose statehood was disputed. Some delegations noted that they saw a connexion between the concept of political entities and national liberation movements.

Legitimate use of force

7. The Working Group took note that the following two texts had been proposed:

(a) "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";

(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.

"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."

8. Neither of these two texts received enough support from the Working Group. In the light of the foregoing, the representatives of the sponsors of the three drafts maintained their original texts.

Aggressive intent

9. The Working Group noted that there were three points of view on this subject. Some members were in favour of a general statement to the effect that the Security Counci should take purposes and intentions into account in determining whether an act of aggression had been committed. Some members considered that it was acceptable to list examples of purposes which might make the use of force aggression, as is done in paragraph IV A of the six-Power draft, or in the following proposed text:

"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."

10. However, there was no agreement among the adherents to this second view on the particular examples cited in the foregoing text or in paragraph IV A of the six-Power draft.

11. Some members were opposed to any reference to the concept of intent in the definition and to the elaboration of any list of purposes.

Acts proposed for inclusion

12. It was agreed that the list of acts constituting aggression should be preceded 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. To the extent that agreement was reached on the basic concept of priority, this concept should be mentioned. Those who advocated the inclusion of the concept of "intent" felt that that concept should also be mentioned in this connexion.

Declaration of war

13. The Working Group noted that there were two points of view on this question. Some members considered that a declaration of war was an act of aggression and should be included in the list of acts constituting aggression. Other members did not hold that view, but were prepared to accept a statement to the effect that the acts so listed constituted aggression whether or not they were accompanied by a declaration of war.

Use of weapons of mass destruction

14. The Working Group noted that some members were in favour of omitting specific reference to weapons of mass destruction from the definition, while others thought it might be necessary to mention them specifically in a general reference to weapons because of the special consequences of their use. It was decided that the final views of other members of the Committee on that point should be ascertained.

Invasion and attack

15. The Working Group agreed that the term "invasion" should be retained and that the inclusion or omission of the words "or attack" was a matter of drafting.

Occupation and annexation

16. Several members believed that occupation and annexation were in themselves acts of aggression, while others maintained that they were consequences of aggression and should not therefore be included in the list of acts constituting aggression.

Bombardment of the territory of another State

17. The Working Group noted that there was agreement on the inclusion of bombardment in the list of acts constituting aggression.

Blockade

18. The Working Group noted a readiness to agree on the inclusion of a reference to blockade, although some members did not believe that such a reference was necessary and would agree to it only by way of compromise in the context of broader agreement on a definition.

Maintenance of armed forces in another State

19. There was no agreement on paragraph IV B (2) of the six-Power draft. Some members who had doubts about it thought it might be acceptable in the context of broader agreement. Some members expressed the view that, as they considered that the concept had not been explained, they could not commit themselves to it. Inasmuch as the concept related to illegality of military occupation, they were ready to consider this paragraph of the draft.

20. The Working Group took note of the following text proposed as a possible alternative to paragraph IV B (2) of the six-Power draft:

> "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."

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

21. The Working Group noted that there was agreement on the substance of this concept, as embodied in paragraph 2 B (b) of the USSR draft and paragraph IV A (5) of the six-Power draft. A suitable text would be drafted.

Indirect use of force

22. Because of the lack of time the Working Group's discussion on this subject was inconclusive. The Working Group agreed that the question needed further study. The Working Group took note of the following text proposed as a possible substitute for paragraph IV B (6) to (8) of the six-Power draft:

> "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."

23. This proposal was made on the understanding that the sending of armed bands under the circumstances envisaged therein could amount to direct armed aggression.

24. Some members of the Working Group were of the view that the foregoing proposal's treatment of aspects of the aggressive use of force by indirect means was incomplete and inadequate.

25. Independently of their interest in the foregoing text, some other members of the Working Group expressed the view that only armed attack could give rise to the right of self-defence in accordance with Article 51 of the Charter.

26. Some delegations felt that while the proposal was worth considering as a possible solution to the problem facing the Committee, their ultimate attitude would largely depend on providing adequate safeguards for the protection of the struggle of peoples deprived of their right to self-determination.

Proportionality

27. The Working Group noted that some members supported and others disputed the principle of proportionality. A number of members took a flexible position as to its inclusion in a definition of aggression. A number of members favoured its inclusion, although they took a flexible position on the manner of treating it within the definition.

Legal consequences of aggression:
(a) Non-recognition of territorial gains
(b) The question of responsibility

28. 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.

The right of peoples to self-determination

29. 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.

30. 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.

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Provisional character of the positions taken

31. It was unanimously agreed that the positions taken by any delegation on any matter were provisional and that their final positions would depend upon the definition ultimately to be agreed on.

ANNEX III

List of representatives[a/]

Algeria: Mr. Khélifa Lokmane

Australia: Mr. R.J. Smith, Mr. G.J.L. Coles*

Bulgaria: Mr. Téniu Petrov, Mr. Luben Koulichev

Canada: Mr. J.A. Beesley, Mr. P.A. Lapointe,* Mr. L.S. Clark,* Mr. R. Auger**

Colombia: Mr. Antonio Bayona

Congo (Democratic Republic of): Mr. Vincent Mutuale

Cyprus: Mr. Zenon Rossides, Mr. Ozdemir Ozgur,* Mr. Alecos Siambos**

Ecuador: Mr. Gonzalo Alcívar

Finland: Mr. Holger Rotkirch, Mr. Garth Castrén*

France: Mr. Charles P. Chaumont, Mr. Philippe Petit*

Ghana: Mr. K.B. Asante, Mr. E.K. Wiredu,* Mr. E. Sam**

Guyana: Mr. Duke E. Pollard

Indonesia: Mr. Umarjadi Njotowijono, Mr. Datuk Mulia,* Mr. Mohamad Sidik*

Iran: Mr. Jafar Nadim, Mr. Mehdi Ehassi*

Iraq: Mr. Mustafa K. Yasseen

Italy: Mr. Francesco Capotorti, Mr. Vincenzo Starace, Miss G. Simbolotti,** Mr. Alberto Schepisi**

Japan: Mr. Hideo Kagami, Mr. Kojiro Takano*

Madagascar: Mr. Maxime Zafera

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* Alternate.

** Adviser.

a/ See paragraph 4 of the report.

Mexico: Mr. Bernardo Sepulveda, Mr. Ricardo Valero*

Norway: Mr. E.F. Ofstad, Mr. J.B. Heggemsnes

Romania: Mr. Gheorghe Badesco, Mr. Costel Mitran*

Spain: Mr. Enrique Valera, Mr. José Cuenca Anaya*

Sudan: Mr. Fakhreddine Mohamed, Mr. Omer El Sheikh*

Syria: Mr. Mowaffak Allaf, Miss S. Nasser*

Turkey: Mr. A. Coskun Kirca, Mr. Suat Bilge, Mr. Nüzhet Kandemir,
Mr. Tugay Uluçevik, Mr. Ürner Kirdar*

Uganda: Mr. Samusoni Twine Bigombe

Union of Soviet Socialist Republics: Mr. Victor Chkhikvadzé, Mr. D. Kolesnik,*
Mr. Oleg Bogdanov,** Mr. G. Boulgakov**

United Arab Republic: Mr. Omar Sirry, Mr. El Sayed Abdel Raouf El Reedy

United Kingdom of Great Britain and Northern Ireland: Mr. H. Steel, Mr. P.J. Allott*,
Mr. D.J. Johnson,*
Miss Candida Wheatley*

United States of America: Mr. Stephen M. Schwebel, Mr. Michael H. Newlin,*
Mr. James H. Michel**

Uruguay: Mr. Hector Gros Espiell, Mr. Sergio Pittaluga-Stewart*

Yugoslavia: Mr. A. Jelić, Mr. Borut Bohte

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* Alternate.

** Adviser.

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