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SPECIAL COMMITTEE ON THE QUESTION OF DEFINING AGGRESSION

Third Session

Volume I*

SUMMARY RECORDS OF THE FIFTY-SECOND TO SIXTY-SIXTH MEETINGS

held at the Palais des Nations, Geneva,
from 13 to 29 July 1970

Chairman:	Mr. FAKHREDDINE	Sudan
Rapporteur:	Mr. OFSTAD	Norway

The list of representatives attending the session appears in the report of the Special Committee to the General Assembly (Official Records of the General Assembly, Twenty-fifth Session, Supplement No.19 (A/8019)), annex III.

* The summary records of the sixty-seventy to seventy-eighth meetings, held from 30 July to 14 August 1970, are contained in volume II.

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CONTENTS

SUMMARY RECORD OF THE FIFTY-SECOND MEETING

held on Monday, 13 July 1970, at 5.55 p.m.

Acting Chairman: Mr. MOVCHAN Secretary of the Committee

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

The ACTING CHAIRMAN welcomed the participants on behalf of the Secretary-General of the United Nations and conveyed the Secretary-General's cordial wishes for the success of the session.

In its resolution 2549 (XXIV) of 12 December 1969, the General Assembly, had noted the progress made by the Special Committee as reflected in its report on its 1969 session[1/] and, in view of the urgency of defining aggression and the desirability of achieving that objective, if possible, by the twenty-fifth anniversary of the United Nations, had decided that the Committee should resume its work, in accordance with Assembly resolution 2330 (XXII) of 18 December 1967. The Committee might usefully be guided by the views expressed in the Sixth Committee's debate on its report at the twenty-fourth session of the General Assembly.[2/] He wished the Committee success in its deliberations and assured its members that the Secretariat would give it every possible assistance.

As further unofficial consultations were necessary before the Committee could proceed with the election of its officers, he suggested that the meeting should be adjourned.

It was so decided.

The meeting rose at 6 p.m.

1/ Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 20 (A/7620).

2/ Ibid., Twenty-fourth Session, Sixth Committee, 1064th to 1070th meetings.

SUMMARY RECORD OF THE FIFTY-THIRD MEETING

held on Tuesday, 14 July 1970 at 4.20 p.m.

Acting Chairman:	Mr. MOVCHAN	Secretary of the Committee
Chairman:	Mr. FAKHREDDINE	Sudan

ELECTION OF OFFICERS (item 2 of the provisional agenda)

The ACTING CHAIRMAN invited the Committee to elect its officers. He called for nominations for the office of Chairman.

Mr. ALCIVAR (Ecuador) nominated Mr. Fakhreddine (Sudan), who had been a very successful Chairman at the Committee's 1969 session. He hoped that his candidacy would receive unanimous support.

Mr. ROSSIDES (Cyprus) seconded the nomination.

Mr. SCHWEBEL (United States of America) said he wished to express his delegation's warm support for the candidacy of the representative of Sudan. Its sole reservation related not to that representative, for whom it had a great respect and admiration, but to the principle of the rotation of offices among geographical groups. It regretted that that principle could not be applied in the present instance, but was gratified that it would nevertheless be possible to elect so able and distinguished a representative as Chairman.

Mr. STEEL (United Kingdom) said his delegation welcomed the candidacy of the representative of Sudan. It nevertheless thought it necessary and desirable to place it formally on record that the United Kingdom attached great importance to the principle of the rotation of the chairmanship of the subordinate organs of the General Assembly, and, had there been another candidate for the post, it would have felt obliged to vote for him in the interests of that principle. That question did not, however, arise and he wished to make it clear that his delegation had every confidence in the impartiality, integrity and competence of the representative of Sudan.

Mr. Fakhreddine (Sudan) was elected Chairman by acclamation and took the Chair.

The CHAIRMAN thanked the members of the Committee for his election. As far as the principle of rotation of offices was concerned, he thought that there might be something to be said for the principle of continuity in the case of the Special Committee.

He invited nominations for the three offices of Vice-Chairman.

Mr. NJOTOWIJONO (Indonesia) nominated Mr. Rossides (Cyprus).

Mr. CHAUMONT (France) and Mr. EL REEDY (United Arab Republic) seconded the nomination.

Mr. Rossides (Cyprus) was elected Vice-Chairman by acclamation.

Mr. YASSEEN (Iraq) nominated Mr. Alcívar (Ecuador).

Mr. SEPULVEDA (Mexico) and Mr. ROSSIDES (Cyprus) seconded the nomination.

Mr. Alcívar (Ecuador) was elected Vice-Chairman by acclamation.

Mr. KOLESNIK (Union of Soviet Socialist Republics) nominated Mr. Badesco (Romania).

Mr. KOULICHEV (Bulgaria) and Mr. YASSEEN (Iraq) seconded the nomination.

Mr. Badesco (Romania) was elected Vice-Chairman by acclamation.

The CHAIRMAN invited nominations for the office of Rapporteur.

Mr. CAPOTORTI (Italy) nominated Mr. Ofstad (Norway).

Mr. SCHWEBEL (United States of America) seconded the nomination.

Mr. Ofstad (Norway) was elected Rapporteur by acclamation.

ADOPTION OF THE AGENDA (item 3 of the provisional agenda) (A/AC.134/L.21).

The agenda (A/AC.134/L.21) was adopted.

The meeting rose at 4.50 p.m.

SUMMARY RECORD OF THE FIFTY-FOURTH MEETING

held on Wednesday, 15 July 1970, at 10.30 a.m.

Chairman: Mr. FAKHREDDINE Sudan

ORGANIZATION OF WORK (agenda item 4)

The CHAIRMAN reminded the Committee that at its 37th meeting on 18 March 1969 it had set up a working group of the whole, which on 20 March 1969 had defined the procedure that it intended to follow, as reproduced in annex I to the Special Committee's report on its 1969 session (A/7620). He took it that the Committee wished to continue to follow that procedure.

Mr. SCHWEBEL (United States of America) pointed out that at its 1969 session the Special Committee had not been able to hold more than a preliminary discussion on the six-Power draft (A/AC.134/L.17 and Add.1); the sponsors of that draft wished that debate to continue, so that they could hear the views of other Committee members on their proposals.

On the matter of procedure, his delegation did not think that the Committee should concentrate on one draft or another. It would be preferable to identify the substantive issues, noting how they were treated in the different drafts, and to see whether there was or was not agreement, or any possibility of agreement, on those concepts. After that preliminary stage had been completed, the Committee could take a concrete decision on procedure. His delegation's preference was for a committee of the whole, which had the advantage of allowing every representative to make his views known. On the other hand, where it was a question of trying to negotiate agreement or to bring views closer together on a specific point, the Committee should set up a working group consisting of one third or one half of its members. His delegation also favoured informal discussion, which could make it easier to arrive at a text satisfactory to all concerned.

Mr. ALLAF (Syria) said that, while his delegation approved of the procedure adopted at the 1969 session, it wished the Special Committee to explore the points on which no agreement had been reached to far. His delegation attached importance to the geographically representative character of the Special Committee, and believed that feature should be reflected in the composition of the working group. In view of the difficulty of achieving that result, it would be preferable that the working group should be open to all members rather than limited to half or one third of the Committee's

membership, as suggested by the United States representative. His delegation was not against further discussion of the six-Power draft, provided that a definite date was set for closing the debate. The Committee would benefit from making use of the comparative tables drawn up by the Secretariat when seeking to arrive at a true assessment of the various elements of the existing drafts and of any new drafts submitted; but the Committee should not lose sight of the fact that the end-objective of its work should be the drafting of a definition.

Mr. CHAUMONT (France) shared the United States representative's desire that the six-Power draft should be discussed, because it was important to know the Special Committee's opinion of that text. That did not exclude the possibility of discussing the other drafts during the debate.

His delegation felt that the procedure used previously had failed, with the result of slowing down the debate. The procedure defined by the working group of the whole at the 1969 session had outlived its usefulness, and the Committee should now try to reach agreement on a definition. His delegation thought that the re-establishment of the working group of the whole would only hold back the progress of the work.

Mr. CAPOTORTI (Italy) endorsed the view of the United States and French representatives that the Special Committee should discuss the six-Power draft in greater depth. That draft took its place alongside the other drafts, and its consideration could be included in a general discussion on all the texts submitted which had not been withdrawn. It appeared that the texts before the Committee were the thirteen-Power proposal (A/AC.134/L.16 and Add.1 and 2), the proposal by the USSR (A/AC.134/L.12) and the six-Power draft. It seemed to him that the Committee would derive no benefit from following the procedure laid down in annex I to its report on the 1969 session. There should be a discussion on concepts prior to a discussion of texts. It would not be really helpful to establish a smaller group unless formal proposals could be submitted to it, and the group would have to be in continuous contact with the Committee itself, reporting to it at all times.

Mr. BAYONA (Colombia) said he did not oppose a further discussion of the six-Power draft, provided that the duration of the debate was fixed. His delegation appreciated the Syrian delegation's concern to keep the working group broadly representative geographically. If the Committee decided to establish a working group,

it was important that all members should have access to it. His delegation would like the Secretariat to pursue the comparative study of the different drafts, including the six-Power draft. The Committee should leave it to the Chairman to establish a drafting group when the need arose.

Mr. ROSSIDES (Cyprus) considered that the request made by several delegations, to the effect that discussion on the six-Power draft should be reopened, was reasonable; the Committee had not been able to consider the draft in depth at its 1969 session. It would be helpful to hear the opinions of all Committee members on that draft, as on the others. The fact that for the first time a draft had been submitted by countries which had always maintained that it was neither possible nor desirable to define aggression showed a welcome change of attitude, attributable to the constructive discussions in the Committee. His delegation welcomed that new spirit and hoped that it would be maintained, so that the Committee could arrive at a definition that satisfied all concerned. It would be the Committee's best way of contributing to the success of the twenty-fifth anniversary of the United Nations. His delegation did not see the necessity of re-establishing a working group: if it were a group of the whole, it would be merely an informal recapitulation of the Committee's debates and that would slow down the work.

Mr. NJOTOWIJONO (Indonesia) concurred with the procedure suggested by the Chairman. A working group of the whole should be established for the purpose of holding constructive discussions on the texts submitted, since the stage of general debate was now past. Moreover, it was not excluded that the working group would be led to study new proposals. That principle having been accepted, the most important issue for decision was the procedure to be followed by the working group; in that connexion, he thought that the working group should not meet every day, and that informal consultations should take place between meetings.

Mr. ALCIVAR (Ecuador) recognized the fairness of letting all delegations state their position on the six-Power draft. He wondered whether it was not premature to discuss the establishment of a working group at that stage; it would be wiser to wait until the following week, and meanwhile to devote the morning meetings to the consideration of the six-Power draft and the other drafts submitted to the Committee and to keep the afternoons free for informal contacts between delegations; by the end of the week, the Committee would be in a better position to decide what procedure to adopt.

Mr. VALERA (Spain) said that the Committee was in no way compelled to follow the procedure adopted at its previous session; but he thought it was too early to decide on a procedure for the present session. Since all Committee members were agreed that the work should start with a general discussion, it would be best to begin by determining the points on which there was concordance between the drafts, which would give the Committee time to consider whether to set up a working group of the whole, or perhaps smaller working groups, according to the nature of the problems outstanding. He also favoured setting a definite date for ending the general discussion. Finally, the Secretariat should issue a comparative table of the drafts still before the Committee.

Mr. EL REEDY (United Arab Republic) said that the discussion which had just taken place showed that opinions differed on the advisability of establishing a working group, on what form that group should take and, finally, on the question of a general debate. He thought that there should be a limited general debate, and that the Chairman should be asked to consult the various groups in order to reach a general consensus on the question whether a working group should be established and on what form such a group should take. Finally, he wished to know the exact intentions of the sponsors of the six-Power draft: did they wish to explain the text further, or did they feel that they had already explained it sufficiently at the previous session? On the reply to that question would depend the attitude which his delegation would adopt in the general debate.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) said that, like most of the non-aligned countries, the USSR and the other socialist countries were determined to arrive at a definition of aggression. Now new difficulties were arising as to what working method should be adopted; for its part, his delegation was prepared to accept any method of work that would enable the Committee to achieve its assigned objective. At the previous session, six countries which had up till then doubted the possibility and desirability of defining aggression had presented a draft at a very late date; that new development should not lead the Committee to re-embark on a general debate which might last so long that the session would come to an end without any progress being recorded. His delegation was therefore convinced that at the present stage discussions should be based on the results already obtained; some points of agreement had already been identified and it was now important to go a step further by widening the area of agreement. There should be no question of accepting any proposal that would divide the Committee's work into three stages, namely, a general debate, identification of the

basic questions and the establishment of a working group, because that would delay the definition of aggression indefinitely. His delegation suggested that to satisfy the sponsors of the six-Power draft the Committee should start on the basis of the results already obtained and proceed by studying the proposals, including the six-Power draft, side by side. It was also worth noting that several delegations, including his own, had already spoken on the six-Power draft; accordingly, there could be no question of the text being introduced again by its sponsors. His delegation was not opposed to the establishment of a working group of the whole, as suggested by the Chairman, but felt that the Committee should not lose itself in generalities. Finally, he wished to re-emphasize that his delegation was participating in the Committee's work with a specific intention, that of defining aggression by finding an area of agreement with the delegations which shared that intention; its only opponents were those who sought to complicate the Committee's task.

Mr. JELIC (Yugoslavia) considered it premature at that stage to discuss the question of setting up a working group. Furthermore, the terms of reference of such a group would have to be discussed. Only when the Committee's work had progressed sufficiently and when it could see what to expect of a working group would it be able to decide upon the terms of reference and composition of such a group.

Mr. EL SHEIK (Sudan) admitted that the six-Power draft had not been examined in as much detail as the other texts before the Committee, but he recalled that the debates which had taken place since the establishment of the Committee in 1967 were regarded as having fully dealt with all the general aspects of the matter. The six-Power draft had, moreover, been commented upon by several delegations, including that of Sudan. The general discussion and acceptance of the method already adopted at the previous session seemed to him to be very closely connected. In fact, should the Committee accept that method, the six-Power draft would be examined article by article as had been the case with other drafts.

Mr. BILGE (Turkey) considered that the Committee's work during the current session fell into three stages: firstly, the Committee had to study the six-Power draft, for it was necessary to examine all drafts on an equal footing and the delay in submitting that text in no way justified discrimination. Such an examination ought not to hinder the Committee's work, since it would take but little time and no delegation was any longer opposed to a definition of aggression. The Committee should then compare

the three proposals with the main object of harmonizing them. Lastly, if the result of that effort appeared conclusive, that is to say, if agreement were reached on a text acceptable to the majority of the members of the Committee, then it could set up a drafting committee responsible for preparing the definition.

Mr. CLARK (Canada) felt, as did the representative of Ecuador, that the Committee should meet only in the mornings, leaving the afternoons until the end of the following week for unofficial contacts.

His delegation, which was one of the sponsors of the six-Power draft, wished to be more fully informed of the views of the members of the Committee on that draft. On the other hand, the sponsors of the draft could give further clarifications.

Mr. KOULICHEV (Bulgaria) attached great importance to the question of organizing the Committee's work. The Committee had, during its first two sessions, made some positive and encouraging contributions to the question of defining aggression. There was now a consensus both on the scope of the definition and on the principles upon which it should be based, as the existence of the USSR draft and that of the thirteen Powers bore witness. He was not opposed to continuing the examination of the six-Power draft, especially as the General Assembly had, in the third paragraph of the preamble to resolution 2549 (XXIV) specified that the Committee had not been able to complete the examination of the drafts before it. The six-Power draft had undergone a preliminary examination at the end of the 1969 session, and in the Sixth Committee some ten delegations had expressed their point of view. A closing date should be set for the remainder of the discussion. If a working group was to be set up, it should be open to all delegations.

Mr. WIREDU (Ghana) supported the views of the representative of Ecuador, who had been seconded by the representative of Canada. The fact that there had been a delay in presenting the six-Power draft was no reason for not examining it in detail. As with other drafts, it should be the subject of a general discussion, after which a limited group might possibly be set up.

The CHAIRMAN said that his preference for the method adopted by the working group at the 1969 session rested on the fact that it had appeared to him to be generally accepted. It was, however, possible that it was not the most efficient method and that it might involve a waste of time. There would not seem to have been agreement on that point. No very clear criticisms had been levelled at the notion of a limited working group.

Before deciding whether a general discussion was called for, it was necessary to clarify what was meant by that term. It had been said that the discussion should not involve new presentations, as that had already been done, but that it should concentrate on texts already submitted. He felt that such a discussion should take place in plenary and not in a working group. If a limit had to be fixed, five meetings should be the maximum.

The Committee had three drafts before it and the Secretariat should bring up to date the comparative table of proposals and written amendments (A/AC.134/L.15).

Mr. ROSSIDES (Cyprus) was not greatly in favour of setting up a working group if it was to resemble that set up at the 1969 session, which had made little progress. According to the report of that working group (A/7620, annex I), its terms of reference had been considerably restricted owing to reservations expressed by a certain number of representatives to the effect that no decision taken by the working group could prejudice their position when it came to the final adoption of the provisions under discussion with a view to including them in a definition of aggression.

The Committee had obtained some excellent results at its 1968 session. It had, in fact, acted essentially as a working group. It would be most unfortunate if the Committee were to lose itself in fruitless discussions just when there was a particular need to define aggression.

Moreover, when the Bureau of the General Assembly had prepared the agenda for the General Assembly in 1968, the Secretary-General had suggested that as no definition of aggression had yet been achieved, an item on the Code of Offences against the Peace and Security of Mankind and on international criminal jurisdiction could be included in the agenda. But the Bureau had voted unanimously - including all the permanent members of the Security Council - in favour of waiting to do so until a definition of aggression had been made.

He was in favour of devoting the morning meetings to a general discussion and reserving the afternoons for unofficial contacts in a spirit of mutual understanding.

The Special Committee had, in 1969, agreed that it would be advisable to limit the definition of aggression to that of armed aggression. It had yet to be decided whether that definition would cover both direct and indirect armed aggression. The Committee could for the time being limit itself to defining direct aggression.

The Committee should continue with its discussion as if it were a working group, avoiding as far as possible the reconsideration of positions already declared. He proposed that the discussion, concentrating on the three drafts, should be opened while unofficial discussions were held concurrently.

Mr. WIREDU (Ghana) pointed out that it was difficult at that stage to pass an opinion on the advisability of a working group. The question of creating a more limited group would not arise until the Committee had examined the drafts. But the subject of the discussion had first to be defined.

Mr. BAYONA (Colombia) referring to the time-limit proposed by the Chairman, suggested that during the general discussion of various drafts, stress should be laid on the six-Power draft. The unofficial contacts which members of the Committee would be concurrently making during the afternoons would later allow them to decide how the work should continue.

Mr. ALLAF (Syria) felt that it was not too early to decide upon the creation of a working group. That matter arose directly from agenda item 4.

He considered that the Committee was in itself a working group, composed of 35 members, in accordance with the wishes of the General Assembly. He was opposed to the idea of a limited working group which would not be open to all delegations.

The meagre results achieved by the working group established during the preceding session could be explained by the fact that its main task had been to seek an area of agreement. That stage was now past, and a true definition of aggression, not a list of points of agreement, had to be communicated to the General Assembly.

A distinction should be made between the idea of a "working group" and that of a "drafting group". A working group tried to reach a consensus, whereas a drafting group only intervened once the consensus has been reached in order to put it into concrete form.

Referring to the suggestion made by the representative of Ecuador that the afternoons should be devoted to unofficial consultations, he felt that that should not begin until later, when there was some genuine matter for unofficial discussion. He suggested that two meetings a day should continue, in order to conclude the limited discussion, after which a working group could be convened. He hoped that, contrary to the indications of some representatives, the discussion would not be limited to the six-Power draft.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) seconded the proposals made by the Chairman with regard to the organization of work and the bringing up to date of the comparative table. He understood that no decision had been taken on the creation of a working group. The Chairman might possibly consult the representatives in order to submit a proposal on the establishment of such a group after the general discussion. His delegation considered that the working group should be open to all delegations.

Mr. SCHWEBEL (United States of America) accepted the Chairman's proposals. He would nevertheless prefer the Committee to hold only one meeting a day, in order that the representatives might have time to prepare their speeches. He was also in favour of a general discussion and considered that the comparative table of proposals should be brought up to date. On the other hand, the advantages of a working group over a plenary Committee were offset by the risk that the results obtained by a working group open to all delegations might not be as constructive as those emerging from a limited group. He was in agreement with those representatives who wished to settle the matter of creating a working group at a later date.

The CHAIRMAN noted that most members of the Committee were agreed that five meetings should be devoted to examining the three draft proposals, accepting the interpretation that the representative of Italy had put on such an examination.

It was so decided.

The CHAIRMAN proposed that the Secretariat be asked to prepare a new comparative table of the proposals before the Committee.

It was so decided.

The CHAIRMAN called upon the members of the Committee to study the proposal of the representative of Cyprus that the meetings of the Committee should be considered as meetings of a working group. He suggested that the matter of holding meetings in the morning only be left open for the time being.

The meeting rose at 12.50 p.m.

SUMMARY RECORD OF THE FIFTY-FIFTH MEETING

held on Thursday, 16 July 1970, at 10.15 a.m.

Chairman: Mr. FAKHREDDINE Sudan

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTIONS 2330 (XXII), 2420 (XXIII) AND 2549 (XXIV) (agenda item 5) (A/7620; A/AC.134/L.12, A/AC.134/L.16 and Add.1 and 2, A/AC.134/L.17 and Add.1)

Mr. STEEL (United Kingdom) recalled that the Committee had decided not to re-open the question of the purpose to be served by a definition of aggression. His delegation had on several occasions expressed doubts, which had not subsequently been wholly dispelled, regarding the wisdom of defining aggression, for it was afraid that the work of the United Nations organs dealing with peace and security might thereby be made more difficult. Since, however, many delegations held the opposite view, his delegation had joined with others at the 1969 session in submitting a draft definition which sought to avoid the pitfalls that were to be foreseen.

He considered that there were three fundamental conditions which any definition must satisfy to fulfil its purpose.

First of all, the definition must have regard to the special role which the United Nations Charter gave to the Security Council. Under the Charter, it was for the Security Council to determine whether or not an act of aggression had been committed. The definition of aggression could not in any way circumscribe or take away that function of the Security Council. It would even be dangerous to use a form of words which might suggest that such was the Committee's intention. The definition which the Committee prepared should serve as a guide to the Security Council in deciding, in the light of the particular circumstances of each case, whether an act of aggression existed or not.

The notion of priority, or, in other words, the criterion, who had been the first to commit some particular act, had been discussed at length. The United Kingdom delegation recognized the importance of that criterion, but it was not the sole and determining one. The reason why a certain act had been committed must also be considered; for the definition of aggression would be of little value to the Security Council if it did not take account of the element of intention.

To be really useful to the Security Council, the definition of aggression must be couched in terms covering all the situations which could arise in practice. In the six-Power draft, reference was made to acts committed by or against "political entities" other than States. That phrase had been criticized, and his delegation was prepared to consider any suggestion for improving it. The condition that the

definition of aggression must be of practical use to the Security Council meant that the definition would have to win the ungrudging support of the international community and of the Security Council itself, including all the permanent members. It therefore followed that the definition would have to be adopted by the previous unconstrained assent of the members of the Committee.

The second condition was that the definition must be consistent with the Charter. That was obvious, but the Committee would have to be alert to the danger of adopting forms of words which could beconstrued as derogating from the Charter or going beyond it. Nor must the definition purport to proscribe any activity which, under the Charter, was a legitimate activity, or seek to place any restrictions on such an activity that were not envisaged by the Charter. An example was the exercise of the inherent right of self-defence. The six-Power draft conformed faithfully to that second condition.

The third condition would confine the definition to the essential attributes of aggression without introducing extraneous concepts, such as were found in some proposed definitions, dealing, for instance, with the consequences of aggression. Digressions of that nature were unnecessary and even harmful. They might slow down the Committee's work and by distorting the definition reduce its effectiveness.

Another concept extraneous to the definition was the principle of self-determination That was an important principle, but it should be treated in a different context. Care was also needed on the question of self-defence, which the six-Power draft carefully avoided defining, although making the necessary reservation.

The six-Power draft met each of the speaker's three conditions. His delegation was prepared to agree to improvements in the draft in the light of the comments which had already been made and of those which would be made in further discussion.

Unlike the USSR and thirteen-Power drafts, the six-Power draft did not at present contain any preamble. That was not because the sponsors of the six-Power draft were opposed to a preamble; they had just preferred to concentrate first on the essential elements of the definition itself. It might at the present stage be convenient for the Committee to have before it a draft of a preamble, and the sponsors of the six-Power draft had prepared a draft preamble which the Secretariat would circulate shortly. The text of the draft preamble had a great deal in common with the preambles to the other two draft definitions.

He had no illusions about the difficulty of the task that lay before the Committee. If, however, the members of the Committee adopted an attitude of understanding and

good faith, it might be possible in the end to produce a substantial measure of agreement. It was encouraging that the Committee had so far refrained from entangling itself in sterile charges and countercharges relating to particular cases. For the first time a Special Committee on the Question of Defining Aggression had before it a number of drafts reflecting all the different points of view of the Committee members. His delegation would make every effort to enable the Committee to produce a definition which would enjoy a wide measure of agreement and be really practical. It was to be hoped that when the present session was over, the Committee would demonstrate that States could work effectively together, whatever the differences in their opinions and however formidable their task.

Mr. CAPOTORTI (Italy), reviewing the results obtained, recalled that the Special Committee had approved the text of five paragraphs of the preamble; that result was of some importance, as the preamble held the key to the interpretation of the text. It had been decided, for example, to include the fifth paragraph of the preamble to the USSR proposal, as amended, and the sixth paragraph of the preamble to the thirteen-Power proposal, which substantially reproduced, respectively, Article 1, paragraph 1, and Article 2, paragraph 3, of the Charter. Those decisions reflected a concern to remain faithful to both the letter and the spirit of the Charter, and that was important, in view of the impossibility of indirectly modifying its balance. The same concern to respect the Charter was also basic in the six-Power proposal, which began with the words "Under the Charter of the United Nations". The obligation to abstain from aggression was thus placed within the context of the obligation to settle disputes by peaceful means, to take measures for the prevention of threats to the peace and to refrain from any threat to the peace (Article 1, paragraph 1, of the Charter). That reminder of Article 1, paragraph 1, of the Charter implied recognition of the need for effective collective measures; the underlying idea was that the security system of the United Nations should be strengthened, that rules of conduct were not enough and that the organizational rules should be improved. The inclusion of the fifth paragraph of the USSR proposal, as amended on the proposal of the French representative, amounted to a reminder of the provisions of Article 39 of the Charter. It was a way of recognizing the responsibility of the Security Council and the discretionary character of its action, for the Council could choose not only between recommendations and decisions, but also between two determinations - breach of the peace and act of aggression. A similar

concern underlay paragraph I and the beginning of paragraph II of the six-Power proposal. The functions and powers of the Security Council were also recognized in the other proposals, especially in paragraphs 2 and 3 of the USSR proposal, and in paragraph 5 of the thirteen-Power proposal.

It had also been decided to include the seventh paragraph of the preamble to the USSR proposal, which marked an agreement in principle on the dual utility of the definition - to States on the one hand and to the organs of the United Nations on the other. The sponsors of the six-Power proposal were also convinced that the definition could encourage States to abstain from acts of aggression and at the same time facilitate action by United Nations bodies.

The eighth paragraph of the preamble to the USSR proposal had been included only on condition that the definition referred to armed aggression. That reservation was reflected in the wording of the six-Power proposal, especially in paragraph II and in the various sections of paragraph IV (B), where aggression was regarded as implying the use of armed force. That concept was in accordance with Article 2, paragraph 4, of the Charter. Agreement must be sought on the forms which such use might take, or, in other words, on the means used for aggression; the six-Power proposal differed, in that respect, from articles 1 and 2 (B) of the USSR proposal and from articles 2 and 5 of the thirteen-Power proposal.

The six-Power proposal was based on the idea that indirect aggression should be treated in the same way as direct aggression. It was in relation to that idea that the words "directly or indirectly" in paragraph II of the proposal, and recourse to the means defined in the last three sections of paragraph IV (B), should be understood. The acts mentioned in those sections - organizing, supporting or directing armed bands or irregular or volunteer forces, or civil strife or acts of terrorism, or subversive activities - implied a use of force prohibited in Article 2, paragraph 4, of the Charter.

On those points, he noted some convergence with paragraphs 1 and 2 C of the USSR proposal. On the other hand, the six-Power proposal differed on that point from the idea underlying paragraph 7 of the thirteen-Power proposal, which did not concede the right of self-defence to a State subjected on its own territory to acts of subversion or terrorism by armed bands or irregular or volunteer forces organized or supported by another State. 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 Article 2, paragraph 4, of the Charter. That being so, it was

difficult to understand why the application of Article 51 of the Charter had been deliberately excluded in the thirteen-Power proposal. It was not clear, incidentally, what reasonable and adequate steps to safeguard its existence and its institutions could be taken, under the thirteen-Power proposal, by a State which was a victim of that form of aggression.

The six-Powers rejected the absolute criterion of priority. There was a striking contrast between the allegedly constant and automatic nature of that criterion and the indicative character of the definition. The problem of aggressive reactions to incidents of a limited character was not so simple. It was important to safeguard the Security Council's discretionary power to weigh up the situation, especially in cases where military action might be taken in response to an indirect aggression.

The six-Power proposal recognized the need to place on the same plane States and political entities whose status was contested but which were delimited by international boundaries or internationally agreed lines of demarcation. It was in that sense that paragraphs II and IV A (1) and (2) of the six-Power proposal should be interpreted. The Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States had that idea in mind when it formulated the principle prohibiting the threat or use of force.

The definition should extend to cases where the use of force was legitimate. It was to meet that necessity that paragraph 3 concerning the exercise of the right of individual or collective self-defence, had been inserted in the thirteen-Power proposal. Paragraph 6 of the USSR proposal was based on the same idea, but its wording was inadequate. In the thirteen-Power proposal, too, there was a contradiction between paragraph 1, which conferred on the United Nations the right to use force, and paragraphs 3 and 4, which concerned other cases where the use of force was allowed.

The six-Power proposal had not mentioned the problem of defining aggression as an international crime, the problem of the use of force in relation to self-determination, and the principle of the non-recognition of territorial gains acquired by force. The six Powers were doubtful about the need to include those three points in a definition. They also wished to remain within the framework of the Charter, which was silent on those points. Lastly, the Committee on Friendly Relations had formulated principles relating to the three points. The six Powers' failure to mention them was due to their anxiety not to upset the very delicate balance of the proposals put forward by the Committee on Friendly Relations, not to impair them by reproducing them only in part and not to try to amend them indirectly.

He was convinced that the texts could be improved, and that a single text acceptable to all could be drafted. The important thing was to agree on the substance; the wording would follow. To reach agreement, it was necessary to show a real spirit of compromise, of tolerance and of understanding for the demands of others. It was also important to rise above contingent or special interests. Any legal definition must be abstract in the sense of being applicable to any future situation, whatever the parties involved.

Mr. EL REEDY (United Arab Republic) described as specious the reasons put forward by the Italian representative to justify the exclusion, from the six-Power proposal, of the case of territorial gains acquired by force. The fact that the Committee on Friendly Relations had considered that problem did not justify its exclusion from a draft definition of aggression. If the case of territorial gains acquired by force were to be excluded for that reason from a definition of aggression, then the case of indirect aggression should also be excluded. But that was mentioned in the six-Power proposal. The Italian representative had also given as a reason for that exclusion the fact that territorial gains acquired by force were not mentioned in the Charter. The legal order created by the Charter was based on the inviolability of the territory of the State. If express mention in the Charter was to be taken as the criterion, he wondered why subversion was referred to in paragraph IV B (8) of the six-Power proposal. The Charter did not deal with that problem.

Mr. CAPOTORTI (Italy), replying to the representative of the United Arab Republic, said that the sponsors of the six-Power proposal had left certain questions aside because they considered them to fall within the scope of the draft Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, and not within a definition of aggression. They had reached the conclusion that they should deal in their proposal with the points which were the subject of sub-paragraphs 6, 7 and 8 of paragraph IV B so as to define the actual idea of the use of force. Any consideration of the extent of the use of force inevitably led to the question of the so-called indirect forms of the use of force. On the other hand, the sponsors of the six-Power proposal had been of the opinion that the other questions raised in the other proposals and omitted from their own fell within the scope of the draft Declaration rather than that of a definition of aggression.

Mr. ROSSIDES (Cyprus) said he would first like to congratulate the United Kingdom and Italian representatives on the spirit of understanding they had displayed; that was a good augury for the rest of the Committee's work. He was convinced that the members

of the Committee would succeed in overcoming their differences of opinion and in drawing up a proposal acceptable to all. At the present stage, he would merely make a preliminary remark on the six-Power proposal. According to that proposal, aggression contained two elements: (a) purpose and (b) act. He wondered whether the element of purpose was really necessary, since all the acts listed in paragraph IV B of the six-Power proposal were obviously aimed at inflicting harm; it seemed inconceivable that in the presence of such acts, the Security Council should have to discover a purpose, since the intent was evident and placed on the victim the onus of proving it. He hoped, therefore, that the sponsors of the proposal would clarify that point.

On the other hand, he thought, as did the Italian representative, that if it was to be objective, a definition of aggression should not take into account the contingent or special interests of a particular State. Precisely because the members of the Security Council had to consider the facts in each particular case, it was necessary that they should be able to rely on a definition of aggression drawn up objectively by a committee of experts.

ORGANIZATION OF WORK (agenda item 4) (continued)

The CHAIRMAN informed the Committee that the Secretariat would incorporate the preamble to the six-Power proposal in the comparative table of proposals to be distributed at the next meeting. He also invited members of the Committee to consider the suggestion made at the 54th meeting by the representative of Cyprus concerning the organization of work; the Committee could discuss that suggestion at its next meeting.

Mr. ROSSIDES (Cyprus) said that, in view of the shortage of time, the Committee should get down to considering the operative parts of the proposals that had been submitted and leave the preambles till later, since, being essentially decorative, they were of secondary importance.

Mr. CHAUMONT (France) said he was somewhat concerned by the Chairman's suggestion concerning the programme of the next meeting. He recalled that the Committee had decided to devote five meetings to the consideration of the substance of the proposals submitted, especially that of the six Powers; it would certainly be regrettable to have to suspend the discussion of those proposals. He therefore requested the Chairman to invite the members of the Committee to take part in that discussion.

The CHAIRMAN said he agreed with the French representative; the sole aim of his suggestion had been to avoid the cancellation of a meeting.

Mr. ALLAF (Syria) said he would like the Chairman to appeal to those sponsors of the six-Power proposal who had not spoken at the meeting to come forward with any further explanations regarding the proposal which they might wish to offer.

Mr. BILGE (Turkey) said he did not agree with the representative of Cyprus that the preambles were essentially decorative; in his delegation's view, the preamble to a proposal was as important as the operative part, because it was in the light of the preamble that the operative part was interpreted. He was, however, in agreement with that representative as to the procedure to be followed; he also agreed with him that it was not necessary to consider the preambles immediately, especially if they were very much alike.

Mr. ROSSIDES (Cyprus) said he had not meant to say that all preambles were useless; in the case of a definition, however, no preamble was necessary.

Mr. EL REEDY (United Arab Republic) said he shared the concern expressed by the French representative, and thought that before discussing the organization of work - a subject on which, in any case, informal contacts were to be made in order to find a solution - it would be better to wait until the five meetings to be devoted to a general debate on the three proposals had been held.

The CHAIRMAN again said that there was no reason why the organization of work should be discussed at the next meeting if there were enough speakers to take part in the general debate on the proposals submitted.

The meeting rose at 12 noon.

SUMMARY RECORD OF THE FIFTY-SIXTH MEETING

held on Friday, 17 July 1970, at 10.15 a.m.

Chairman: Mr. FAKHREDDINE Sudan

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTIONS 2330 (XXII), 2420 (XXIII) and 2549 (XXIV)) (agenda item 5) (A/7620; A/AC.134/L.22) (continued)

Mr. CLARK (Canada) officially submitted the preamble (A/AC.134/L.17/Add.2) which the sponsors of the six-Power draft (A/AC.134/L.17 and Add.1) had just added to the text submitted by them at the 1969 session; the preamble was also to be found in the new comparative table of draft proposals (A/AC.134/L.22).

The Canadian delegation was appreciative of the spirit of co-operation prevailing among members of the Committee; for its part, although it had continuing doubts as to the possibility of reaching general agreement on an adequate definition, it had endeavoured to play a constructive and positive role in the formulation of a definition and would continue to do so.

The Canadian representative reminded those present that the sponsors of the six-Power draft had enumerated the criteria which a definition of aggression should meet; fundamentally, a definition should be specifically directed towards assisting the competent organs of the United Nations in fulfilling the purposes of the Charter, namely, the maintenance of international peace and security, and the protection of the territorial integrity and the political independence of States against aggression. He would like, at that point, to comment on three matters which continued to give rise to particular difficulties. First, there was the concept of "indirect aggression"; in that connexion the co-sponsors of the six-Power draft had made it clear that the definition must be applicable not only to the direct use of force, but also to so-called indirect armed aggression. Examples of such aggression would be infiltration across frontiers or internationally-agreed lines of demarcation by armed bands, external participation in acts of terrorism and subversion, or other uses of force intended to violate the territorial integrity or independence of States. It was well recognized that such activities could constitute threats to the maintenance of international peace and security quite as serious as acts of direct aggression. The Charter provided that all 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." The obvious relationship between the prohibition of the threat or use of force and the Charter concept of aggression obliged the Committee to take account of the Charter's fundamental purpose of protecting the territorial integrity and political independence of States, and to co-ordinate its conclusions with the results achieved by the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States; the latter had itself referred - in enunciating the principle that States should refrain in their international relations from the threat or use of force - to acts which fell within the category of so-called indirect aggression. The Canadian delegation was of the opinion that paragraph II of the six-Power draft definition was in harmony both with the Charter principle and with the formulation of that principle by the Special Committee on Friendly Relations.

Turning to the "first use" principle, he said that his delegation continued to believe firmly that, in the definition, the aggressor must not automatically be the party which first used force, irrespective of the inherent right of individual or collective self-defence; on the contrary, the definition should bear on the unlawful intent as well as the illegal act. Replying to the criticism made on that issue by the representative of Cyprus, he observed that where the facts were clear, namely, when in a particular case the only reasonable conclusion that could be drawn from an examination of the facts was that aggression had been committed, there might well be no need expressly to examine the question of motive or intent. However, generally speaking, the determination of acts of aggression was likely to be exceedingly difficult. For that very reason, most members of the Committee appeared to agree that the discretionary authority of the Security Council must be safeguarded. That general consensus emerged clearly when one compared paragraph 6 of the preamble of the Soviet draft definition, paragraph 5 of the preamble of the thirteen-Power draft, and paragraph 4 of the preamble of the six-Power draft, which virtually repeated the language of the Soviet text. In operative paragraph I of the six-Power draft, the phrase "when appropriate" emphasized that it was the task of the Security Council to find that aggression had been committed.

That accepted authority of the Security Council to examine the circumstances of each particular case must undoubtedly include the right to look at the intent of the alleged aggressor. The act or acts which could give cause for a charge of aggression

might have been carried out by mistake or by accident; they might be mere localized disturbances, minor border incidents or use of force in a manner so limited in nature and in duration that an allegation of aggression could not but fail to be substantiated. For those reasons, the Canadian delegation would not wish to see the Committee produce any definition which did not lay adequate stress on the element of aggressive intent. Regarding the "first use" concept, his delegation considered it to be unduly facile and even potentially dangerous. The principle of priority, as formulated in the Soviet 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 as either compelling the victim to respond, 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 the analysis of a situation should be left to the discretion of the Security Council, in preference to the application of a blanket "first use" approach. For that reason, the six-Power draft avoided any reference to the "first use" principle.

Regarding the inherent right of self-defence, the Canadian delegation had always held the view that the definition should be consistent with the Charter provisions safeguarding the inherent right of individual or collective self-defence (Article 51) and sanctioning regional security arrangements (Article 52). Both Articles constituted exceptions to the Charter prohibition against the use of force. The second presented no special difficulty, but the first, which raised the issue of the relationship between the right of self-defence and the concept of aggression, was, in his delegation's view, one of the most arduous problems facing the Committee. There was, first and foremost, the temporal problem: at what point in time did the right of self-defence arise? Then there was the qualitative question whether there must have been an actual use of force, or whether a threat of force could suffice to bring into operation the right of self-defence? Given the complexity of those questions, his delegation believed that 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.

Finally, he stressed that his delegation continued to hold the view that a definition of aggression must be equally applicable to States and to entities not generally recognized as States. He would remind members of the Committee that they were not only representatives of their own Governments, but also of the whole membership of the United Nations. Consequently, each member of the Committee owed a particular duty to those other Member States of the United Nations not directly represented in the Committee, which had entrusted him with the task of acting on their behalf in the Committee, avoiding the acceptance of any considerations based on national preoccupations. It was therefore important for all members of the Committee to work constructively, to take their responsibilities seriously, and to judge any definition of aggression with great care and in the light of criteria of universal application. It was his delegation's view that the six-Power draft best met those requirements.

Mr. POLLARD (Guyana), replying to certain explanations given by the sponsors of the six-Power draft, said that the latter showed great concern about the effects that a definition of aggression could or should have. They were, however, less concerned about what the definition should contain. In his view, what mattered was not so much the wording of a definition as the realities the words were used to describe. Definitions should therefore serve to distinguish between the types of social phenomena to which the terms applied. If those remarks were opposite, it did not appear that the six-Power draft fulfilled the requirements of a definition.

The draft defined aggression as "a term to be applied by the Security Council when appropriate". But a definition which invoked the propriety of applying it or not could hardly be called a clear one. Indeed, what the Security Council should be concerned with was the appropriateness of the consequences flowing from a determination that an act of aggression had taken place.

The "first use" principle had been characterized as facile by the United Kingdom representative. In 1968, during the general debate, the delegation of Guyana had described that principle as a gratuitous attempt to elevate a tautology to the level of a legal imperative. That statement had been based on a recognition that legitimate self-defence necessarily implied a response to a prior initiative; consequently, the affirmation of the "first use" principle did not appear to be absolutely necessary. On a balanced evaluation, however, it was clearly better to recognize the importance of that principle than to place undue emphasis on the animus aggressionis. An attempt

to establish intent in any act of aggression placed the onus probandi on the victim. To do that was not only facile, but dangerous. The "first use" principle, on the other hand, imposed the burden of proof on the party that had acted first. It did not, as suggested by the sponsors of the six-Power draft, involve any element of automaticity, nor did it give rise to an irrefutable presumption of guilt.

The sponsors of the six-Power draft had insisted that an adequate definition of aggression should take into account political entities as evidenced by internationally agreed lines of demarcation. They were, however, contradicting themselves when they insisted at the same time that the definition should conform regorously to the Charter, for the relevant passages of the Charter took no account of political entities that were not States. The inclusion of those entities would therefore be in contradiction with the relevant provisions of the Charter - not to mention the implications entailed for the colonies of Rhodesia, Mozambique and Angola.

The United Kingdom representative had maintained that a definition of aggression, to be truly adequate, must win wide support in the international community. The delegation of Guyana agreed readily that the definition should preferably be generally accepted; what it did dispute was that the adequacy of a definition and its acceptance by the permanent members of the Security Council were necessarily correlates. At the present time, foreign policy decisions were no longer the exclusive preserve of the great Powers, and a definition approved by even a slight majority at the General Assembly would give the man-in-the-street a useful point of reference in terms of which he could assess the orientation of his Government's foreign policy and take corrective action, if in his view the policies of his Government deviated from generally accepted norms of international behaviour. Better a definition enjoying only limited support than no definition at all.

Mr. ROSSIDES (Cyprus), like the Canadian representative, felt that there could be frontier incidents or mistakes which did not constitute a threat to the territorial integrity or independence of a State; in such cases the intention was the decisive factor. As against that, the list of acts given in paragraph IV (B-1-5) of the six-Power draft - invasion, unwarranted use of armed forces in another State, bombardment, physical destruction, etc. - did not take the ascertainment of intention into reckoning. In each of those contingencies, which could in any case occur simultaneously, the intention to commit an act of aggression was manifest. If the Security Council had to determine the intention in every case, the victim State would

be unable to react before the Security Council's decision. As the representative of Guyana had pointed out, the onus probandi was on the victim. The same did not, however, hold good for acts of indirect aggression.

Regarding the question of "first use", he reminded the Committee that in the disarmament discussions, all countries proposing definitions had referred to that concept. In fact, the principle of "first use" was so elementary that it might seem pointless even to mention it.

Turning to the question of general acceptance of a definition by all permanent members of the Security Council, the representative of Cyprus felt that it was both highly desirable and necessary. However, that should not entitle a member of the Security Council to exercise his right of veto as in an ordinary matter. It was unthinkable that a State could impose a veto in a matter concerning the development of international law.

All legal problems had political aspects, but it was for the General Assembly to examine them, not the Special Committee. The Committee could, if necessary, set a closing date for its work, but it was important that it achieve positive results during the present session. He expressed his appreciation of the constructive spirit that had been shown by representatives. His delegation, one of the sponsors of the thirteen-Power draft, would be willing to delete from that draft certain passages which might impede the adoption of a definition.

The meeting rose at 11.20 a.m.

SUMMARY RECORD OF THE FIFTY-SEVENTH MEETING

held on Monday, 20 July 1970, at 10.20 a.m.

Chairman: Mr. FAKHREDDINE Sudan

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTIONS 2330(XXII), 2420(XXIII) AND 2549(XXIV)) (agenda item 5) (A/7620; A/AC.134/L.22) (continued)

Mr. NADIM (Iran) said that, in view of the limited time at the Committee's disposal, it would be wise to avoid academic discussion and the repetition of well-known arguments and to try to reconcile the three drafts submitted. The best method would be to use one draft as a basis for discussion and incorporate in it such elements of the other two as would make it acceptable to the majority of the Committee's members. As one of its sponsors, his delegation was naturally in favour of adopting the thirteen-Power draft as a basis for discussion. He believed that view was shared by the USSR, whose draft did not differ fundamentally in form or substance from the thirteen-Power draft. The six-Power draft was less suited to serve as such a basis because of certain omissions and shortcomings.

There was general agreement on two points: that the definition of aggression must conform to the provisions of the United Nations Charter and serve as a guide to the United Nations organs concerned, especially the Security Council, in the discharge of their functions, and that it should have the approval of the vast majority of United Nations Member States. In his opinion, the six-Power draft did not meet those requirements: with the preamble just proposed by the same sponsors, it still seemed to reflect their scepticism as to the usefulness of a definition of aggression and was not therefore in the spirit of General Assembly resolution 2549(XXIV). Moreover, because of its vague and abstract character, the draft would be of little assistance to United Nations organs in their efforts to maintain peace and international security. It did not give an entirely satisfactory definition of aggression, treating it only as a term "applicable to" or "to be applied to" certain acts, thereby reducing the issue to one of pure terminology. The Committee had been established to consider, not questions of terminology, but the principal crime under international law.

The six-Power draft was also centred on the concept of intent, an approach which was unacceptable to most members of the Committee, and indeed to most States Members of the United Nations, which believed that the determination of aggression should be

based, not on subjective criteria, but on objective ones deriving from the nature of the act itself. As had been pointed out by the representatives of Guyana and Cyprus, the adoption of intent as a basis would tend to place the burden of proof on the victim of aggression, whereas in his delegation's view aggressive intent should be presumed until there was proof to the contrary. Being based on the concept of intent, the six-Power draft could not recognize the principle of priority, which as the corollary of an approach based on objective criteria. That principle must be retained if the definition of aggression was to conform to Article 51 of the Charter.

The reference in the six-Power draft to political entities introduced a new concept which would complicate the Committee's work, since most members were opposed to its introduction. Moreover, the provision dealing with self-defence placed regional organizations on the same footing as the United Nations and therefore conflicted with Article 53 of the Charter. The draft also made no distinction between the various means of aggression, which differed radically. It did not take into account the struggle of nations for independence, self-determination and sovereignty and seemed to set the seal of legality on the colonial system by referring to territory under the jurisdiction of another State. Lastly, the draft made no reference to the legal consequences of aggression, whereas most members of the Committee wished to include a provision establishing the liability of the aggressor and the principle of non-recognition of gains obtained by force.

The thirteen-Power draft, on the other hand, was more balanced and had none of the faults of the six-Power draft. It was more likely to obtain the support of the vast majority of United Nations Members. His delegation would be prepared to consider any amendments that would make it more generally acceptable.

Mr. GROS ESPIELL (Uruguay) said his delegation was prepared to make any compromise that would result in a generally acceptable definition of aggression without sacrificing fundamental principles. He urged the Committee to be realistic and concentrate first on the definition of direct armed aggression. If it succeeded, it could then go on to deal with the more complex question of indirect aggression. Direct armed aggression was the only form which justified exercise of the right of self-defence under Article 51 of the Charter. That principle was established in operative paragraph 7 of the thirteen-Power draft.

Another essential principle, laid down in article 1 of the thirteen-Power draft, was that only the United Nations had competence to use force in conformity with the Charter. If it was to conform to the principles of the Charter and lend itself to proper interpretation and application, the definition of aggression 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 vested only in 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. Paragraph 4 of the thirteen-Power draft contained a provision to that effect. The right of individual or collective self-defence mentioned in 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 paragraphs 3 and 4 of the thirteen-Power draft, he did not agree with the implication in the six-Power draft that the use of force could be authorized by regional organizations before a decision had been taken by the Security Council. If the principle enunciated in paragraph 1 of the thirteen-Power draft was accepted, the provision in question could be formulated along the lines of paragraphs 3 and 4 of that draft.

The principle of priority was treated as a fundamental element in the determination of aggression in the USSR draft and was accepted in the thirteen-Power draft. It should be possible to agree on a common text for that provision, although the wording used in the thirteen-Power draft was the more flexible and precise. The incorporation of that principle was essential in order to avoid a definition whereby, for example, the victim of an armed attack could be accused of aggression because it had been the first to declare war. That had occurred on two occasions in the last war.

The definition should not include subjective criteria such as aggressive intent. It would be virtually impossible to determine the aggressor if such considerations were introduced. If the definition was to deal only with direct armed aggression, it must be made clear that only States could be aggressors or victims of aggression. The reference to political entities delimited by international boundaries or internationally agreed lines of demarcation in 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.

The definition must be merely enumerative in character and consist of a statement of certain principles by the international community, and a list of specific acts which would constitute aggression. Its purpose was to serve as a guide for action by the international community, especially the Security Council, one of whose functions under Article 39 of the Charter was to determine the existence of acts of aggression. The definition must therefore in no way hinder the Security Council in the exercise of its functions. The thirteen-Power draft and the USSR draft recognized that requirement. The three drafts used different methods of listing the acts which would constitute aggression, and it should be possible to agree on a single formulation. Only the thirteen-Power draft and the USSR draft, however, referred to the consequences of aggression. The definition must expressly state that territorial acquisitions obtained by force could not be recognized. Such a provision was included in the Charter of the Organization of American States[3/] and in the Protocol of Buenos Aires,[4/] which had just entered into force. The definition must also state that acts constituting aggression were crimes against peace, giving rise to international responsibility and criminal liability.

The thirteen-Power draft and the USSR draft specified that the use of force by dependent peoples, in accordance with the Charter and with General Assembly resolution 1514(XV), in the exercise of their right to self-determination did not constitute aggression. That right was indisputable, and it was precisely to avoid its being abused that reference must be made to it, with the necessary qualifications, in the definition.

Mr. CHAUMONT (France) said there were points in all three drafts which were acceptable to his delegation. There seemed to be general agreement on the purpose of the definition. It could serve as a guide to the Security Council and avoid the possibility of arbitrary action by States, since under Article 51 of the Charter, States could act in self-defence before the Security Council had taken action. The definition should not, however, hinder the Security Council in the exercise of its functions. To be of practical value, the definitions should list a minimum number of

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3/ United Nations, Treaty Series, vol. 119 (1952), No.1069, p. 48.

4/ Protocol of Amendment to the Charter of the Organization of American States, of 27 February 1967. For the text, see Unión Panamericana, Secretaría General, Organización de los Estados Americanos, Documentos Oficiales (OEA/Ser.A/2 (SEFP) Add.) (Washington, D.C., 1967).

acts which would indisputably constitute aggression. The definition would essentially concern Articles 39 and 51 of the Charter; Article 2, paragraph 4, 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.

It had been suggested that the violation of lines of demarcation or of armistice lines might be regarded as an act of aggression. But the violation of such lines was a violation of an international obligation and not necessarily an act of aggression.

Turning to the important principle of priority incorporated in the thirteen-Power draft, he said that in his opinion 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 when it was a case of self-defence, no situation, even though it involved the violation of an incontestable right, was worth 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 avoid its extension and to localize the conflict.

As to aggressive intent, it was more difficult to prove intent than to prove a fact. The representative of Guyana had mentioned the problem of the burden of proof. He agreed with that representative's arguments, and pointed out that there was no reference to intent in Article 39 and 51 of the Charter. In connexion with the six-Power draft, the question arose whether the uses of force enumerated in paragraph IV(B) would be valid if applied for any other purposes than those listed in paragraph IV(A). One might ask, 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 executing 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, or, 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 concept of intent led to the theory of the just war elaborated in medieval times and expressed in the works of Mao Tse-tung. The Marxist could admit the theory of the just war because he believed that some wars were waged to liberate peoples and oppressed classes while others were wars of imperialism. But the United Nations was composed of States with opposing ideologies, and no criterion of a just war would be acceptable.

For those reasons, he preferred the USSR and thirteen-Power drafts to the six-Power draft. For the sake of clarity, paragraphs 1 and 2(B) of the USSR draft might well be combined.

It should be made clear when the use of armed force was permissible in cases other than the one mentioned in Article 51 of the Charter. There was no ambiguity in the Charter. The only exception to the prohibition of the use of armed force was the case of self-defence referred to in Article 51. Articles 39 and 42 dealt with measures to be taken by the Security Council.

On the question of indirect aggression, his delegation's position was unchanged. The sending of armed bands or saboteurs into the territory of another State was a form of direct aggression; aggression did not depend upon the wearing of a uniform or the legal status of the armed forces employed. If support was given from the outside to a situation existing inside a State, that was a case of intervention in the affairs of that State. The matter had been considered by the Special Committee on the Principles of International Law concerning Friendly Relations and Co-operation among States, whose task was different from that of the Special Committee on the Question of Defining Aggression. In view of the support given by great Powers to certain internal situations in other States, he wondered whether any attempt to arrive at a definition of indirect aggression was desirable.

He thought, on the other hand, that there was hope for agreement on the definition of direct aggression. He shared the fear of the sponsors of the six-Power draft that the concept of priority might, in special circumstances or in the case of error, lead to didastrous results. Perhaps that could be overcome by using the phrase "in the circumstances of each particular case" in the operative part of the draft. In addition, the idea could be incorporated in the operative part of the same draft that the Security Council, in qualifying the act of aggression, should duly take into account the declared intentions and aims pursued by the States in question. 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.

Mr. OFSTAD (Norway) said that his Government had had considerable doubts whether it was possible to define aggression, and had consequently not been a sponsor of any of the drafts before the Committee. That did not mean his country had no interest in peace and in the abolition of aggression; it was precisely because of its interest that it maintained its doubts.

The Committee had a difficult task before it. Efforts to define aggression made over half a century by a number of committees had been without success. That did not prove, however, that such efforts would always be of no avail. Rather did it indicate that, in searching for a definition, the Committee had been trying to attain a degree of perfection which hardly seemed justified. As the Canadian representative had said (56th meeting), a definition of aggression should be directed towards assisting the competent organs of the United Nations in fulfilling the purposes of the Charter. A definition should accordingly conform to and be based upon the Charter. It should also be supported by a large majority of the States Members of the United Nations, including all the permanent members of the Security Council. It should safeguard the discretionary power of the Security Council, but 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. The definition should be limited exclusively to aggression resulting from the direct use of armed force. The incorporation in the definition of varied and imprecise acts to which a State might be subjected would confer upon Article 2, paragraph 4, of the Charter an exclusive meaning which it did not have. It would be well to remember in that connexion the interaction between aggression and self-defence. The right to self-defence was stated in Article 51 of the Charter. There was, however, a connexion between defence and attack; and, consequently, any enlargement of the definition of aggression would entail a corresponding enlargement of the concept of self-defence. An enlarged definition of aggression might in the long run increase insecurity instead of abolishing it.

The principle of priority should form no part of a definition of aggression. His delegation agreed that priority might be very relevant in certain cases, but it was not, and could not be, the sole and determining criterion. The same applied, in his view, to the concept that the aggressor was automatically the party which used a special weapon. The Committee's task was to define the concept of aggression, and that did not involve specifying the nature of the weapons used.

The question of the legal consequences of aggression and the question of the right of dependent peoples to use force in the exercise of their right to self-determination were not naturally part of a definition of aggression, and his delegation therefore felt that it was better to leave those questions open and to try to agree on basic principles.

The problem before the Committee was a highly political one, and even the best of definitions would be of little help without a willingness on the part of States to respect their obligations under the Charter.

Mr. SMITH (Australia) said that members of the Committee would remember that his delegation had, in the past, expressed doubts about the utility of adopting a definition of aggression. As, however, the Committee had reached the stage of detailed discussion of several draft definitions at the end of the 1969 session, his delegation had felt that it was desirable to express, in a positive and constructive form, its own views as to what it would find acceptable by way of a definition. His delegation had therefore co-sponsored what had become known as the six-Power draft definition and, after careful consideration, it had associated itself with the submission at the current session of the draft preamble which had been added to that draft.

In sponsoring the draft, his delegation had had three important considerations in mind. The first was that no definition of aggression should, either in intention or in result, extend or in any other way qualify the meaning which the words "act of aggression" bore in the Charter. The term was used in Articles 1 and 39 of the Charter, and in both cases it was necessarily an act involving the use of armed force. In other contexts, aggression might bear different and wider meanings, but, in his delegation's view, the Special Committee's concern could only be with the meaning which the term bore in the United Nations Charter. The term was used in that way in the six-Power draft.

The second consideration was that no definition adopted should in any way impair or affect the powers and discretion of the Security Council. The discretion of the Security Council must be left unimpaired, so that the Council could make a determination in each particular case in the exercise of its powers under the Charter. The wording of the first paragraph of the six-Power draft fulfilled that requirement.

The third consideration was that a definition adopted by the Special Committee should be in the nature of a guide to the Security Council and should not attempt to set out an exhaustive list of acts of aggression. That point was recognized in the penultimate paragraph of the preamble to the six-Power draft. Again, in the operative part, the lists of uses of force were not exhaustive.

His delegation attached considerable importance to the inclusion in the draft definition of a provision which clearly stated the right of nations to use force in the exercise of their inherent right of individual or collective self-defence, expressly affirmed in the Charter. Any definition which limited that right would, in his delegation's view, be contrary to the provisions of the Charter. That right was clearly and explicitly recognized in the six-Power draft.

Also very important was the inclusion in the draft definition of references to aggression by the sending into a State of armed bands, armed infiltrators, guerrilas, saboteurs, terrorists and the like, or their support and assistance by a State with a view to their entering into another State. That form of aggression was explicitly referred to in the six-Power draft. A definition which did not contain such a provision would make little contribution to the task of applying the Charter to contemporary facts of life. In many areas of the world, the techniques of aggression by the use of armed bands and infiltrators, as distinct from the use of more conventional armed attack, were now relied upon. The expression "overt and covert, direct or indirect" in paragraph II of the six-Power draft, read in conjunction with the examples given in paragraph IV, embodied that essential principle clearly.

The doubts to which he had referred earlier had not been dispelled, and he still thought that the Committee must continue to rely on the Charter itself. His delegation appreciated, however, the desire of many members to work towards a definition, and was prepared to play a positive and constructive role in the work of ascertaining whether a generally acceptable definition could be found. He wished to emphasize, however, that if any resulting definition was to be useful - indeed if it was not to be positively divisive and harmful - it must be one which was generally accepted by the members of the international community. To achieve that acceptance, it was essential to maintain the consensus procedure, which had been a feature of the work of United Nations bodies in that field. By that means, there was greater certainty that any definition that was produced would be accepted by the international community and would stand the test of time.

Mr. KAGAMI (Japan) said that his delegation had co-sponsored the six-Power draft definition of aggression, and had already explained its basic position on the question of defining aggression as well as its reasons for associating itself with the submission of that proposal. Instead of repeating his delegation's basic views, he would confine himself to commenting on certain salient features of the six-Power draft which his delegation considered essential as elements of a meaningful and workable definition of aggression and which, therefore, should be taken into full account in any serious attempt to formulate such a definition.

First, his delegation considered that it was of fundamental importance that any definition adopted by the Committee should preserve the discretionary power of the Security Council in determining whether any specific situation involved an act of aggression under Article 39 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. It was therefore gratifying to note that both the thirteen-Power proposal and the USSR proposal made express reference to that aspect of the question. He pointed out, however, that a general reference to that point in the definition was not sufficient. The definition should be constructed in such a manner that it would in no way be construed as affecting the discretionary power of the Security Council. The six-Power proposal was very clear in that respect.

Second, it was the considered view of his delegation that any adequate definition of aggression must cover certain acts which were normally referred to as "indirect" aggression, in so far as the acts in question presented the same characteristics as the naked use of armed force. That point was covered in the six-Power draft both by the phrase "overt or covert, direct or indirect" in paragraph II and by the illustration of such acts in paragraph IV.B, sub-paragraphs (6), (7) and (8). Such acts were also mentioned in paragraph 7 of the operative part of the thirteen-Power proposal; but, under that proposal, a State which was a victim of such an act could only "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". His delegation felt that it would be unjustifiable to deny a State which was a victim of subversive or terrorist acts by

irregular, volunteer or armed bands organized, supported or directed by another State, the lawful recourse to the right of self-defence under Article 51 of the Charter. It did not claim that in each and every case of such indirect aggression a victim State was invariably justified in exercising the right of self-defence under Article 51, but a State should not be deprived of its lawful recourse to the right of self-defence simply because of the "indirect" nature of the acts of aggression of which it was a victim.

Third, with regard to the concept of "first strike" adopted in the USSR proposal and in the thirteen-Power proposal, his delegation wished to stress that in an adequate definition of aggression the discretionary power of the Security Council should be fully safeguarded. In the light of that principle, the element of certain automatic applicability which could be detected in the concept of "first strike" seemed to raise considerable difficulty, as it could prejudice the judgement of the Security Council in specific circumstances.

Fourth, his delegation thought that due consideration should be given not only to the element of illegality of the act committed, but also the element of "unlawful intent" on the part of the entity committing that act. That requirement would be justified from the practical as well as from the theoretical point of view. The possibility could be envisaged of certain illegal acts being committed accidentally without any intention of aggression; it went without saying that such a case should not be included in the category of aggression. It was also true that an act which on the face of it might present all the physical characteristics of the 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 unlawful intent was, therefore, essential. That was the reason for submitting the formula in paragraph IV(A) of the six-Power proposal. His delegation was convinced that that formula, coupled with the discretionary power of the Security Council to determine the existence of an act of aggression in the circumstances of each particular case, would be useful for eliminating the danger of abuse and misapplication of a definition.

Fifth, the complex situation existing in the present-day world gave rise to the question whether an act which would constitute aggression by or against a State should likewise constitute aggression when committed by or against a political entity which

was not generally recognized as a State. His delegation was convinced that any act which would constitute aggression by or against a State should likewise constitute aggression when committed by a State or political entity delimited by international boundaries or internationally agreed lines of demarcation against a State or other political entity so delimited and not subject to its authority.

Sixth, although the question of the legal effect of aggression, namely the non-recognition of territorial gains resulting from the illegal use of force and the responsibility of the aggressor, were important problems, his delegation had serious doubts about the advisability of dealing with them in the context of a definition of aggression. Those questions had been settled at the most recent session of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, through long and difficult negotiations, and the provisions agreed upon were contained in the draft Declaration adopted at that session. In view of the political implications of the matter, his delegation considered it preferable from a practical point of view to omit references to those questions in any definition of aggression.

To be meaningful, a definition of aggression should be so formulated as to accommodate the different points of view of various States, so that it would thus be generally acceptable to the members of the international community. His delegation attached great importance to basing the formulation of such a definition on consensus. It would indeed be very unfortunate if, through an excess of enthusiasm for producing a definition, the Committee were to lose sight of the genuine purpose of its task and disregard the legitimate points of view of some of its members. Being convinced that a satisfactory and workable solution to the problem could be found, his delegation was fully prepared to do its utmost towards the accomplishment of the Committee's task.

Mr. BILGE (Turkey) said he had noted with satisfaction that the Committee's discussion had progressed beyond the question of the desirability or not of defining aggression to the consideration of specific proposals.

All three drafts before the Committee had a common feature: they contained a general definition of aggression and a number of concrete examples. The USSR and thirteen-Power drafts, however, were based on an objective approach, while the approach displayed in the six-Power draft was subjective. Ever since the international community had started trying to define aggression, there had been those two approaches, and no useful purpose would be served by attempting to arbitrate between them.

The USSR and thirteen-Power drafts were based on the principle of priority, which his delegation supported. The principal merit of that principle was that it provided an objective criterion for the definition of aggression; the State which struck first would be the aggressor, and it would be unnecessary to ascertain whether its intention was aggressive or not. Aggressive intent was very difficult to determine, because elements other than the pure act of aggression were involved. Much time would be spent investigating those elements without providing the victim of the aggressive act with a prompt and effective remedy. The principle of priority also had the advantage of contributing to the regulation of the exercise of the right of self-defence.

The principle of priority had disadvantages too, the main one being the difficulty of reconciling the powers of the Security Council to determine the existence of aggression with the automatic character of the principle. While both the USSR draft and the thirteen-Power draft specified that the powers and duties of the Security Council under the Charter remained intact, he did not think that the problem would be solved if the principle of priority retained its automatic character. It was impossible to stipulate that the Security Council had power to determine when aggression took place and, at the same time, to say that it had not the power to determine aggression if the existence of an aggressive act had already been determined. So long as the principle retained an automatic character, the difficulty could not be overcome by saying that the definition of aggression was only a guide for the Security Council. Those considerations led his delegation to think that ways should be found of making the principle more flexible.

Other less important considerations supported that view. For example, the thirteen-Power draft envisaged the principle of proportionality: a State could not exercise its right of self-defence except by taking measures reasonably proportionate to the armed attack against it. That meant that if a State exceeded the limit of proportionality, it would be the aggressor no matter what the chronology of its acts was. The principle of priority would lose its automatic character in such cases. Moreover, the principle of priority was not appropriate as a criterion for determining indirect aggression; the inherent right to collective self-defence was laid down in Article 51 of the Charter, and a State using force in defence of an ally without having itself been attacked could not be considered an aggressor. What he was trying to emphasize was that the principle of priority was not adequate in all cases for indicating the aggressor. It should be made more flexible and accepted only as an assumption; only then could it be used as a basis for defining aggression.

As to aggressive intent, the six-Power draft was based on the two elements of unlawful intent and illegality of the act. Generally speaking, it was possible to require that an aggressive act should be accompanied by unlawful intent. But the Committee was not concerned with an abstract notion, it was trying to define aggression as envisaged in the United Nations Charter. The concept of aggression in the Charter was intimately linked with the maintenance of international peace and security. Under Article 24, paragraph 1, primary responsibility for the maintenance of international peace and security was conferred on the Security Council, which, under the provisions of Article 39, had the power to determine the existence of any threat to the peace, breach of the peace or act of aggression and to make recommendations or decide on adequate measures to be taken in each case. All the relevant provisions of the Charter showed that aggression was regarded as being synonymous with a breach of the peace or, simply, with war. If the Charter was taken as the starting point, aggression was an illegal act of such gravity that the intention must be presumed. The problem arose in connexion with other illegal acts, which, when considered singly, did not constitute aggression, but which, when they were repeated and took on a certain magnitude, became a breach of the peace. It was in respect of such acts that recourse might be had to the notion of aggressive intent. A distinction ought to be made between acts of aggression according to their gravity. If an aggressive act by itself constituted a breach of the peace, there was no need to ascertain whether it was carried out with or without aggressive intent, but if 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 an element of intent into a general definition; but when concrete examples were given the question of deliberate perpetration became relevant.

So far as indirect aggression was concerned, he pointed out it was no longer exceptional; guerilla warfare had become almost conventional, and it was no longer necessary to mention such activities separately in a definition of aggression. In saying that, he was not attempting to prejudice the cause of self-determination and independence for all peoples.

As to the right of self-defence, he thought that the Committee should, for the time being, be content with a reference to Article 51 of the Charter. He was fully aware that aggression and defence were closely linked, but he did not think that the Committee could define the right of self-defence at the same time as aggression.

His delegation was not opposed to declaring aggression a crime against international peace, or to stating that the acquisition of territory as a result of aggression should not be recognized.

Mr. KOULICHEV (Bulgaria) said that from his previous comments (54th meeting) all members of the Committee would be aware that his delegation fully supported the USSR draft, appreciated the interesting new elements in the thirteen-Power draft and recognized the positive elements in the six-Power draft.

The Committee had reached a stage in its work where it was possible, and urgent, to take stock of the extent of agreement and of the differences of view. Attention should now be concentrated on the differences, so that ways could be found of overcoming them and of extending the area of agreement. It was with that in mind that he would comment on some of the basic problems of defining aggression.

First of all, the widest differences stemmed from the two essentially different concepts upon which the USSR draft and thirteen-Power draft, on the one hand, and the six-Power draft, on the other, were based. Those different concepts related mainly to the question what elements constituted aggression and what basic criteria would enable aggression to be determined. While the first two drafts were based on material and observable criteria, the six-Power draft introduced a subjective criterion attaching major importance to the intent of the aggressor. That subjective approach had been followed for a long time by those who were against defining aggression, but it had been translated into a text for the first time in the six-Power draft definition.

His impression was that that text confirmed all the fears and objections that the theory of animus agressionis had given rise to during the long discussions on defining aggression. By making the determination of aggression depend upon an element so subjective and so difficult to establish as intent, the aggressor's way would be made easy and the door would be opened to all kinds of abuse. Moreover, the victim of aggression would be placed in a much more difficult situation than the aggressor, since the onus of proof, not only of the material fact of aggression, but also of the criminal intent of the aggressor, would rest on him. Such a criterion was contrary to the provisions of Article 51 of the Charter, which was based on the principle of priority.

Paragraph IV(A) of the six-Power draft seemed to provide an exhaustive list of the purposes of aggression and the effect of that contrary to the provisions of the Charter, was to restrict even more the scope of the right of self-defence. The illegality of preventive war could only be postulated on the basis of the principle that an act of self-defence was a reply to an act of armed aggression, that was to say, on the principle of priority. That was the method adopted in Article 51 of the Charter to determine self-defence; the same method should be used in defining aggression.

Much had been said in the past about the supposed danger of the automatic application of that criterion and about the danger of considering as aggression relatively unimportant acts involving the use of force which were committed by accident or mistake. Those objections were groundless; it was unreasonable to suppose that the Security Council would apply the definition of aggression automatically, particularly as it was clearly stated in the preambles to all three drafts that the circumstances in each case should be taken into account. That formula should be interpreted as including the application of the element of intent whenever appropriate. The element of intent should play a subordinate role in any definition of aggression, as in the USSR and thirteen-Power drafts.

The principle of proportionality inherent in self-defence could be regarded as a brake; it would make it impossible for acts which were not serious in character to be regarded as aggression.

However important indirect aggression was in the modern world, he thought the suggestion that the notion should be excluded for the time being from a general definition of aggression was a wise one. That would not prevent that aspect of the problem from being dealt with as a special case not entirely within the category of self-defence.

The ideas contained in paragraph 1 of the thirteen-Power draft and paragraph I of the six-Power draft had perhaps be better placed in the preamble, leaving the general definition of aggression at the head of the operative part. As to the entities to which the definition was to apply, he felt it would be unwise to introduce into the definition notions not contained in the Charter; the term "State" was sufficiently wide in meaning to cover all entities to which the definition should apply.

As the definition of aggression was closely linked with cases in which the use of force was legal, it would be useful to mention such cases in the definition, and in particular the case of exercise of the right of self-defence. While those exceptions to the prohibition of the resort to force were given their rightful place in the USSR and thirteen-Power drafts, that was not so in the case of the six-Power draft, in paragraph III of which the regional organizations seemed to be placed on the same footing as the United Nations. The phrase "consistent with the Charter of the United Nations" in that paragraph did not suffice to remove doubts as to the compatibility of the paragraph with Article 53 of the Charter.

He had indicated the main reasons why his delegation could not consider the six-Power draft adequate as a basis for defining aggression. Despite all the difficulties facing the Committee, however, his delegation was confident that, with goodwill and a sincere desire on the part of all members to make progress, a successful outcome of its efforts could be achieved.

The meeting rose at 1.5 p.m.

SUMMARY RECORD OF THE FIFTY-EIGHTH MEETING
held on Tuesday, 21 July 1970, at 3.15 p.m.
Chairman: Mr. FAKHREDDINE Sudan

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTIONS 2330 (XXII), 2420 (XXIII) AND 2549 (XXIV) (agenda item 5) (A/7620; A/AC.134/L.22) (continued)

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics), emphasizing the important bearing of the Committee's work on the attainment of United Nations objectives, said that the definition of aggression would strengthen the position of peace-loving States in their efforts to prevent armed conflicts and promote international security. The USSR believed that such a definition should be preceded by a preamble setting out certain general considerations. The draft submitted by the USSR was based primarily on the principle of the first use of force, with or without a declaration of war. It made a clear distinction between aggression and collective action taken by States in accordance with the United Nations Charter to maintain or restore international peace and security. It also stipulated that the adoption of a definition of aggression should not prevent the use of armed force in accordance with the Charter, including its use by dependent peoples in the exercise of their right to self-determination. The latter provision was essential in a period of vigorous national liberation movements. A corollary to the prohibition of the use of force to settle international disputes was the non-recognition of territorial gains or advantages resulting from armed aggression; the USSR draft contained such a provision. It also invoked the political and material responsibility of States and the criminal responsibility of persons guilty of armed aggression. The USSR believed that its draft would make the Committee's work more purposeful and speed up agreement on a definition of aggression.

The submission of the six-Power draft was a welcome indication that the Western countries were prepared to make a more positive contribution to the Committee's work and no longer doubted the usefulness of trying to define aggression. However, the unfavourable first impression the draft had made on his delegation had been strengthened by further study. Operative paragraph I seemed to imply that the Security Council's function was to find appropriate words and that it was concerned with terminology. That was obviously by no means the case. Aggression could not be treated as a mere term. The Committee also was not concerned merely with terminology, but was required to define the international conception of aggression, although to do so it would have to find a suitable wording. Operative paragraphs I and II of the six-Power draft in effect belittled the importance of a definition of aggression.

Operative paragraph II referred to overt and covert, direct and indirect forms of aggression, whereas most members of the Committee were clearly in favour of initially defining direct armed aggression. The Committee should concentrate on the formulation of a general definition of aggression in accordance with the provisions of the Charter. He was sure the sponsors of the draft had not intended to broaden the concept of aggression to cover the use of force in all forms, including economic coercion for example, as that would be incompatible with Article 51 of the Charter, which referred only to armed attack. The Committee would have either to work out a definition which presupposed the right of States to individual or collective self-defence and the international legal responsibility of the aggressor, or to define the principle of the prohibition of the use of force in international relations and become involved in the consideration of a much broader range of problems. He would point out in passing that the principle prohibiting the threat or use of force had already been considered and formulated by the Special Committee on Principles of International Law Concerning Friendly Relations and Co-operation among States. If that second course was followed, there was a danger that the word "aggression" would be applied to a wide range of situations and ultimately lose the grim connotation, which it should properly possess, of a serious international crime.

The reference to the possibility of aggression by political entities "delimited by international boundaries or internationally agreed lines of demarcation" introduced concepts which were not found in contemporary international law or in the United Nations Charter. Any definition of aggression must be based on the premise that only full subjects of international law, that was to say States, acted in the international arena. It was true that the possibility of aggression by international organizations with legal status under international law and sometimes with armed contingents under their control was not ruled out, 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".

The reference to regional organizations in paragraph III seemed to equate the authorization of regional organizations to use force with that of the Security Council. That was contrary to Article 53 of the Charter. The paragraph would therefore have to be amended if it was to conform to the Charter.

Parts of paragraph IV B, especially sections (6), (7) and (8), dealt with indirect aggression and were therefore beyond the scope of a definition of direct aggression. The USSR was prepared to consider carefully, however, the arguments put forward by those delegations, including the sponsors of the thirteen-Power draft, which believed that the activities of armed bands, or acts of terrorism, did not justify the exercise of the right to individual or collective self-defence under Article 51 of the Charter. It was opposed to the introduction of the concept of volunteer forces into any text dealing with indirect aggression, and especially to their being placed on the same footing as armed bands. Volunteers had quite a different status under international law and could act only on the side of a victim of aggression. There were other defects in the six-Power draft, too, and he hoped the sponsors would take the criticisms that had been made into account in trying to overcome the difficulties it presented.

The thirteen-Power draft, on the other hand, showed that a generally acceptable text could be worked out for some important parts of the definition, though not all the provisions of that draft were beyond criticism, and some required further elaboration or modification. The preamble was commendable. The reaffirmation in paragraph 6 of the duty of States to settle their international disputes by peaceful means was particularly important, and should be included in any text adopted by the Committee. The wording of operative paragraph 1 was not entirely satisfactory, since it could be taken to imply that not only the Security Council, but other United Nations organs as well, had competence to use force; that would be contrary to the Charter, especially Article 24 and the provisions of Chapter VII, and could have undesirable consequences. Operative paragraph 6 of the USSR draft was therefore to be preferred. The reference to the Security Council's powers and duties in operative paragraph 5 of the thirteen-Power draft was appropriate and, in fact, sufficient. Although the principle of the first use of force was embodied in operative paragraph 5, it was not mentioned in operative paragraph 2, and that might be taken to imply that different criteria for determining the aggressor were used in the two paragraphs. Paragraph 2 referred to territorial waters and air space, but not to the other components of a State's territory; it would be more precise and logical either to use the concept of the territory of a State or to refer simply to the principle of territorial integrity.

The acts listed in paragraph 5 as constituting aggression should be described more precisely. The meaning of the word "forcible" before the word "annexation", for example, was unclear, since the annexation of territory without the use of force seemed inconceivable.

Although sometimes referred to in international affairs, the principle of proportionality introduced in connexion with self-defence in paragraph 6 was not laid down in any instrument, or directly mentioned in the Charter. It needed further study before it could be enunciated in a United Nations document. 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.

Although it did not use the expression, paragraph 7 dealt with indirect aggression; it was for the Committee to decide - and the same point arose in connexion with paragraph 2 C of the USSR proposal - whether to consider indirect aggression or not. If paragraph 7 was retained, the implications of paragraph 9 would be somewhat broadened; but indirect aggression need not necessarily be equated with direct armed attack.

Paragraph 8 recapitulated much of what was stated in earlier paragraphs, and it also 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. 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.

The thirteen-Power draft as a whole was a constructive contribution to the attainment of the Committee's objectives. The USSR believed that every effort should be made to reconcile the different approaches so as to speed up agreement on an effective definition of aggression. His delegation would spare no effort to attain that end and would consider any reasonable compromise. The trend of opinion in the Committee gave grounds for optimism and he urged delegations which had not yet taken a firm position to seek their governments' permission to do so.

Mr. ALCIVAR (Ecuador) said that before commenting on the six-Power draft he would refer briefly to some principles underlying the thirteen-Power draft, of which Ecuador was one of the sponsors.

The basic principle was the vesting of the monopoly of force in the international community, legally constituted as the United Nations. Only the world body could use force for the maintenance of international peace and security, either in the form of preventive action or as a sanction. Consequently, if a State or group of States -

whether acting by virtue of regional agreements or not - used force against another State, it was committing the crime of aggression and incurred the responsibilities and sanctions of the United Nations system. 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.

It was often said that there were two exceptions to the prohibition of the threat or use of force set forth in Article 2, paragraph 4, of the Charter: the application of enforcement measures provided for in Chapter VII and the exercise of the right of self-defence recognized in Article 51. But that was a misinterpretation of the principle involved, which, being a norm of jus cogens, could not be subject to any exceptions whatsoever. The confusion stemmed from the fact that the use of force was permissible in only two cases: the preventive action taken or sanctions applied by the world body in carrying out its primary function of maintaining international peace and security; and the defensive action taken by States, individually or collectively, to repel an armed attack. In the former was inherent the authority vested in the United Nations as the Government of the universal international community, and the latter was an act of necessity - not a power - which exempted from responsibility only those who exercised the right of self-defence in the circumstances prescribed in the standards laid down by the international legal order.

Paragraph I of the six-Power draft referred to aggression as a term to be applied when appropriate by the Security Council in the exercise of its primary responsibility for the maintenance of international peace and security under Articles 24 and 39 of the Charter. The Security Council must, of course, act in accordance with its constitutional powers, and they were not, as had been claimed in the Dumbarton Oaks draft, unlimited; they were strictly subject to the purposes and principles of the United Nations and were set forth in Chapters VI, VII, VIII and XII of the Charter. The impression given in paragraph I, however, was that aggression was no more than a term used in the Charter to be interpreted as the Security Council saw fit, which meant as the permanent members of the Security Council saw fit, with all that that implied in the way of paralysis of the Council's work through exercise of the veto and through abstention. But aggression was not simply a term used in the Charter, it was an international crime, and it was that crime which the Committee had to define.

His delegation could not accept the contention that the animus aggressionis should be one of the elements in the crime of aggression. It was an indisputable principle of universal judicial practice that the intent was presumed when an illegal act was committed. That was, of course, a legal presumption, and as such open to refutation. But the onus of proof rested with the accused and not with the victim, or, much less, with the judge. The sponsors of the draft asserted that what was apparently an act of aggression might have been committed by mistake, without any aggressive intent. 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. Failure to exercise necessary care was a fault which was usually regarded as an extenuating factor in determining responsibility and the sanctions to be applied. The damage caused by a 20 megaton nuclear weapon released in error would, however, be infinitely greater than that caused by aggression with conventional weapons limited to a small sector of a State's territory. Nevertheless, legally, the former act would be less serious than the latter. 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, as, indeed, it had been only a few years before, when an invading State had alleged that its action was not aggression since it had been undertaken, not with aggressive intent, but to protect human rights in the invaded country. The element of intent was unacceptable to his delegation from both the legal and the political points of view.

His delegation could not agree to the inclusion of the idea of political entities in the draft definition. 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. To deny such entities the status of States implicitly by describing them, in a declaration of the General Assembly, as political entities would be one more obstacle in the way of the principle of universality, subscribed to by the world Organization. Responsibilities and duties could not be imposed without granting rights.

The greatest difficulty his delegation had with the six-Power draft was 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 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; and, under Article 53, the only enforcement action they were permitted to take without the Council's authorization was against States which, in the Second World War, had been enemies of any signatory of the Charter.

His delegation could not agree, either, that indirect aggression should be treated in the same way as direct armed attack. Only in the case of the latter could the right of self-defence be exercised. That right could not be exercised in the face of a threat to use force, which was indirect armed attack; complaints of such threats had to be submitted to the Security Council. The same applied in the case of subversive activities supported from outside. Although he agreed with the French representative that an armed attack against a State did not depend upon whether or not the attacking force wore the military uniforms of the State assumed to be the aggressor, the existence of a case of direct armed attack could not be determined except by reference to a combination of various elements such as the size of the forces involved, the type of armaments used and, above all, absolute proof that the attackers were acting under the orders of a foreign Government, the last element being the most difficult to establish. They were usually presumed to be doing so, and it was there that the danger lay of allowing the right of self-defence, and particularly collective self-defence, to be exercised in anticipation of any action by the Security Council. There was even less justification for that in the cases mentioned in paragraphs IV B (6), (7) and (8) of the six-Power draft. Those were cases of indirect aggression which should be submitted to the world Organization, and to use force in those cases would not only be contrary to the letter and the spirit of the Charter, but would violate the obligations laid down in Article 51.

In conclusion, he reaffirmed his delegation's conviction that the declaration being prepared must include clauses relating to non-recognition of the territorial gains normally made as a result of direct armed aggression, and to recognition of the right of peoples to use arms against colonial domination.

Mr. BAYONA (Colombia) said he felt it was a good omen for the work of the Committee that three draft definitions had been submitted. He was confident that a definition acceptable to all would be found, marking an important milestone in the evolution of international law.

He was gratified that six delegations had decided to submit a draft of their own; that demonstrated their willingness to collaborate in implementing the wish of the General Assembly that agreement should be reached on a definition of aggression for

the twenty-fifth anniversary of the United Nations. There were, of course, differences between the six-Power draft and the drafts submitted by the USSR and the thirteen Powers, but he hoped that, as a result of the current debate, all the sponsors of the different drafts would attempt to reconcile their differences and see if it was possible to agree on a single text. If that was not possible, negotiations should be initiated immediately on the basis of those texts which bore the greatest resemblance, for the Committee had a moral obligation to submit a draft definition to the General Assembly which, even if it did not have the unanimous approval of the Committee, was nevertheless acceptable to a large majority of its members.

Negotiation between the sponsors of the three drafts was the proper course to take, since, judging from what they had said during the debate, it was clear that their objectives were the same; they wanted a definition which was in conformity with the United Nations Charter, which in no way infringed the competence and authority of the Security Council and which would be of use to the organs of the United Nations in their task of maintaining international peace and security. Since the objectives were the same, the differences might be due to nuances of judgement or to misinterpretations, which should be easy to iron out in the prevailing atmosphere of goodwill.

That having been said, he would confine himself to commenting on some aspects of the six-Power draft, which, unfortunately, was the furthest removed from the draft sponsored by his delegation. Before doing so, however, he wished to say that a study of the USSR and thirteen-Power drafts by the delegations of the Latin American countries, the non-aligned countries and Spain had shown that agreement would be possible with a view to producing a joint text.

The Colombian delegation had already stated in the Sixth Committee of the General Assembly that it had difficulty in accepting some parts of the six-Power draft. In the first place, the wording of paragraph I contributed nothing to a definition of aggression, it was open to different interpretations, and many thought it gave the impression that the Security Council would have discretionary powers in the use 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 dispute 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 paragraph 4 of the preamble to the thirteen-Power draft.

Paragraph II of the six-Power draft spoke of aggression as applicable to the use of force in international relations, overt or covert, direct or indirect, while the thirteen-Power draft confined itself to defining direct armed attack. His delegation thought that in the interests of finding areas of agreement and disagreement, only direct armed attack should be defined at first. If that were done, it would be possible to see a little more clearly in which cases the right of self-defence could be exercised. Under the six-Power draft, that right could be invoked, it would seem, in situations which could not be regarded as armed attack, and an excessively broad interpretation was thus placed on Article 51 of the Charter.

In that connexion he wished to make it quite clear that, although his delegation had sponsored a draft restricted to a definition of armed aggression, it bore constantly in mind the fact that other, indirect, forms of aggression existed, and would have to be dealt with in due course. Particularly important among them was economic aggression, which could be very dangerous and a threat to international peace and security in the same way as armed aggression.

The main differences of opinion in the Committee undoubtedly related to the principle of priority, which was incorporated in the USSR and thirteen-Power drafts, and to the question of intent, which was a prominent feature of the six-Power draft. His delegation could not agree with the contention that the principle of priority would diminish the powers conferred on the Security Council by the Charter. Moreover, as had been said the day before by the representative of Bulgaria, both the thirteen-Power draft and the USSR draft stipulated in their preambles that the circumstances surrounding each specific case must be taken into account in determining whether aggression had taken place. There was no automatic application there.

Since that point was so important, he wondered whether it would be possible to meet the concern about automatic application by transferring the provision relating to the study of the circumstances in each particular case from the preamble to the definition itself. Such a presentation would improve the thirteen-Power draft and would be acceptable, too, to the sponsors of the six-Power draft, the preamble to which also contained a paragraph on taking the circumstances into account. In any case, such a presentation would be preferable to paragraph IV A of the six-Power draft, which might limit the scope of action by the Security Council in considering the circumstances.

Mr. EL REEDY (United Arab Republic) said that the submission of the six-Power draft definition was welcome in itself because it marked the end of a stage of scepticism by the members concerned regarding the Committee's task.

The main purpose of a definition of aggression was to provide an objective criterion by which to judge certain acts. The increasing tendency to use fine words and phrases to conceal aggression had created a credibility gap; any attempt to seek objective criteria by which to judge acts of aggression should reduce the element of subjectivity in assessing those acts. Unfortunately, the six-Power draft introduced a subjective element, namely aggressive intent, and that, in his opinion, was a retrograde step.

The Canadian delegation had stated (56th meeting) that where the facts were clear in the case of an act of aggression there might well be no need to examine the question of motive or intent. He would like to know the type of situation which constituted a clear case of aggression in the view of the sponsors of the six-Power draft. He agreed that frontier incidents involving the use of force did not necessarily constitute aggression. A solution to the problem could be found without introducing the concept of aggressive intent, which was not mentioned in the Charter as a condition of general application in the determination of all acts of aggression.

The six-Power draft was silent on the subject of the territorial aspect of aggression, an aspect covered in operative paragraphs 2, 5(b) and (c) and 8 of the thirteen-Power draft and in operative paragraph 4 of the USSR draft. The sponsors of the six-Power draft had explained their omission of that serious form of aggression on the grounds that military occupation and annexation of the territory of a State did not relate to a definition of aggression, but were rather the consequences of aggression, a question which was dealt with elsewhere. He could not accept those arguments. The military occupation by a State of another territory was not merely a consequence of aggression but was itself aggression. It remained so as long as it lasted, for it was the gravest violation of the victim State's territorial integrity. Every moment of occupation was in itself a renewed act of violence against the territory of the victim State. It was true that military occupation and annexation were inconceivable without invasion, but that did not alter the fact that such acts were aggression in its most serious form and should not be omitted from a definition of aggression. Indeed, an act of annexation, or the refusal to withdraw from occupied territory, threw additional light on the character of an initial act of invasion and made it indisputably clear that it had been committed for aggressive purposes. Its inclusion in a definition would

conform with the principle of the inadmissibility of territorial expansion resulting from the use of force. Aggressors generally sought to deceive public opinion by alleging that they had acted in self-defence, but their subsequent behaviour revealed the true aims of their resort to force.

No State using force in self-defence, whether rightly or wrongly, had the right to make territorial gains; that should be clearly stated in a definition of aggression. It would be of benefit to all concerned, and in that connexion he referred to an article in the April 1970 issue of the American Journal of International Law entitled "What weight to conquest?", in which Israel's war of aggression was described as a defensive war. The writer distinguished between what he called "aggressive conquest" and "defensive conquest" and having classified Israel's aggression as defensive, reached the amazing and unjustifiable conclusion that Israel was entitled to territorial gains. Such statements contributed to the credibility gap which the Committee was seeking to narrow by a definition of aggression.

The second reason given by the co-sponsors of the six-Power proposal for not referring to territorial acquisition and military occupation as forms of aggression was that they were dealt with in the draft Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States. But that was no reason why the definition of aggression should be silent on those serious forms of aggression, even if there was an academic difference of opinion in the Committee as to whether they constituted aggression or the consequences of aggression.

Another serious omission in the six-Power draft related to the international responsibility of the State committing aggression and the criminal responsibility of the persons guilty of the crime.

Turning to the question of indirect aggression, he said there was little to add to the French representative's statement at the 57th meeting. His delegation had been doubtful from the outset as to the advisability of using the terms direct or indirect aggression.

Even if some members maintained that armed aggression was not the same as the "armed attack" mentioned in Article 51 of the Charter, the safeguards provided for in that Article must not be weakened. The Norwegian representative had drawn attention to the possible danger arising from an extension of the scope of the right to self-defence due to the enlargement of the concept of aggression. The six-Power draft was unsatisfactory in that it treated acts of intervention as acts of aggression by making it possible to regard certain acts which were admittedly illegal, such as subversion, as armed attack.

It was not the first time that a committee on the question of defining aggression had been faced with such a difficulty. In 1956 a draft definition dealing with that type of activity had been put forward and the United Kingdom representative had at the time been of the opinion that it would be difficult and dangerous to include subversive activities in the definition of aggression. The Special Committee on Principles of International Law Concerning Friendly Relations and Co-operation Among States had refrained from including subversion under the principle prohibiting the threat or use of force, and had dealt with it under the principle of non-intervention, which also qualified acts of indirect use of force as acts involving a threat or use of force. That important qualification, included in the USSR draft, was missing from the six-Power draft.

The inclusion in the six-Power draft of a reference to indirect armed aggression raised problems in connexion with the struggle of peoples denied their right to self-determination. In certain situations where colonial or racialist authorities resorted to force to repress the legitimate demand of a people for self-determination, the people in question had no alternative but to launch an armed struggle. In their struggle, they were likely to receive support from neighbouring or sympathetic States. Such support had often been regarded by colonial régimes as support for subversive and terrorist acts. For that reason, many members of the Special Committee on Principles of International Law Concerning Friendly Relations and Co-operation Among States had insisted on the need to include in the draft Declaration adequate safeguards for national liberation movements and States supporting them. The solution agreed upon in that Committee was reflected in various places in the draft Declaration and, in particular, in the fifth paragraph under the heading "Principle of equal rights and self-determination of peoples". As had been suggested by many representatives, the question of indirect aggression had better, he thought, be left until a definition of direct aggression had been formulated.

Lastly, the six-Power draft had introduced a number of controversial or ambiguous phrases and terms, some of which, like "internationally agreed lines of demarcation" and "other political entities" were out of place in a definition of aggression. Some of the questions that occurred to him were whether the phrase "territory under the jurisdiction of another State" had a different meaning from the term "the territory of a State", what was meant by "the fundamental conditions of permission" for the presence of the armed forces of a State in another State, and whether the words "overt" and "covert" meant anything different from the words "direct" and "indirect" in relation to the use of force.

Mr. JELIĆ (Yugoslavia), referring to the six-Power draft, said it was encouraging that its sponsors had decided to collaborate in the work of seeking a definition of aggression. There were, however, certain aspects of the draft which he could not accept. For example, it regarded the use of force as aggression only in certain specified cases. He had nothing to add on that subject to the statements of the representatives of France, Guyana and Iran, who had made a close analysis of the criterion of aggressive intent, other than to say that under the Charter no intention could justify the use of force. Apart from measures employed by the United Nations, the only use of force provided for was under article 51 of the Charter.

Paragraph II of the draft mentioned aggression by a political entity delimited by international boundaries. The Charter did not cover such a case either explicitly or implicitly. The "political entities" were well known, as was their military power and the danger they represented to world peace. The problem was theoretical and of marginal interest, but it was given a very important place in the draft. It would be better, in his view, to follow the suggestions made at the 55th meeting by the United Kingdom representative and avoid accusations and counter-accusations concerning special cases.

Paragraph III of the six-Power draft needed clarification. Under the Charter, regional organizations could use force only with the authorization of the Security Council.

The draft included as aggression acts which did not involve the use of force, such as, for example, supporting civil strife or subversive activities. Supporting civil strife and subversive activities might be a violation of international law, but he did not feel that it could be considered as aggression in the same way as invasion and bombardment. Support might be political or moral, or take the form of the provision of medical supplies, and it would be unreasonable to allow the exercise of the right of self-defence in reply to such acts.

On the question of self-defence, he recalled the statement by the United States representative at the Committee's 31st meeting regarding the use of defensive measures in proportion to the action taken by the aggressor. He fully supported that view, but found no trace of it in the six-Power draft. On the contrary, it would be legitimate under the terms of the draft for a State to respond to political support of civil strife by nuclear bombardment. Moreover, civil strife in a small State could be supported by a larger State. There was little the small State could do to exercise the right of self-defence outside its frontiers. On the other hand, if it was accused of the same action

by a large State it could be in real danger from an aggression launched by the larger State on the pretext of self-defence. An unrestricted right of self-defence was far from being a protection for small States; it was a further threat to their independence.

The USSR draft was closer to the thirteen-Power draft, but what he had said with reference to the six-Power draft, concerning the scale of reaction in the case of self-defence and of indirect aggression, applied equally to the USSR draft. He accepted the criterion of priority in principle, but it was formulated in the USSR draft in a way which could lead to undesirable interpretations. The criterion was expressed in a more flexible manner in the thirteen-Power draft, but there the wording could be improved by incorporating some of the ideas proposed by the French representative.

The fourth paragraph of the preamble to the USSR draft could be interpreted as meaning that the use of force was not incompatible with the principle of peaceful coexistence if the States did not have different social systems. Perhaps the USSR delegation would be able to delete the words "with different social systems".

In conclusion, he expressed the hope that the Committee would be able to submit a draft definition to the General Assembly in time for the twenty-fifth anniversary session.

The meeting rose at 5.30 p.m.

SUMMARY RECORD OF THE FIFTY-NINTH MEETING

held on Wednesday, 22 July 1970, at 10.15 a.m.

Chairman: Mr. FAKHREDDINE Sudan

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTIONS 2330 (XXII), 2420 (XXIII) AND 2549 (XXIV)) (agenda item 5) (A/7620; A/AC.134/L.22) (continued)

Mr. BADESCO (Romania) said that his delegation hoped the Committee would go at once to the heart of the problem before it, since all delegations had had an opportunity at the earlier sessions to express their views on the general aspects of defining aggression. As to procedure, which was of minor importance, the Committee should be able to adopt any of the customary methods used in United Nations bodies.

His delegation attached special importance to the Committee's present session, since it came on the eve of the twenty-fifth anniversary of the United Nations, whose purpose was the maintenance of international peace and security; the Committee should take the chance to do its utmost to reach and adopt a definition of aggression, the importance of which in buttressing international law had been sufficiently stressed by most delegations. Romania, in line with its foreign policy principles, was still in favour of defining aggression, as was demonstrated by the note which the Romanian Government had sent to the Secretary-General in accordance with the recommendations contained in General Assembly resolution 2606 (XXIV) of 16 December 1969. His country considered 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. His delegation had already had occasion at the Committee's earlier sessions to state what elements it thought were calculated to make the definition as versatile an instrument as possible and to give it the necessary teeth to back efforts to prevent and combat violence in international life.

Accordingly, the definition of aggression must be an important element in the system of standards by which peace and security could be maintained and law and international legality made more efficacious. Certain draft proposals that had been submitted formed a good basis for discussion towards reaching a definition. His

delegation intended to take an active part in analyzing those proposals, in the hope that a draft definition would emerge wide enough to be approved, not only by the States members of the Committee, but also by other States. With regard to the connexion between the draft definition of aggression and the draft Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, his delegation considered that the Committee should ensure the harmony of each with the other. The task would of course entail difficulties, but surely not insuperable ones.

His delegation considered that the list of acts of aggression to appear in the operative part should not be looked on as limitative, as there would then be a danger of leaving unpunished acts which were not mentioned. On the other hand, the definition would have to delimit precisely the cases and conditions in which international law and the Charter of the United Nations permitted the use of force, in order to quash pretexts used to justify certain acts of aggression. In that respect, his delegation considered that the definition must allow for, as legitimate, national struggles for liberation from the colonial yoke, and individual or collective self-defence as covered by Article 51 of the Charter; the omission of those basic elements would leave a serious gap and would set the definition at variance with the relevant provisions of the Charter. The definition must also stress that the United Nations bodies responsible for maintaining peace and security, and particularly the Security Council, must strictly observe the provisions of the Charter; similarly, as a general regulation, the definition must clearly state that regional organizations were not authorized to resort to force except as provided for in the Charter. Lastly, the definition should state explicitly that no political, military, economic or any other consideration concerning the internal or external policy of a State could be invoked by another State to justify the use of force against the first.

His delegation agreed with all those that had proposed the elimination from the definition of any subjective idea, any term incompatible with the Charter and any question having nothing to do with a definition of aggression. What was wanted of the Committee was that it should define aggression as an international crime of exceptional gravity and not as a mere "term". Lastly, his delegation noted the absence from all the drafts submitted 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, although that was an act of aggression which merited inclusion in the list of acts of aggression which the definition would contain.

Mr. SCHWEBEL (United States of America) said that his Government would welcome any definition of aggression which seemed sound, in its view, and was generally accepted. That did not mean that the United States and the five other sponsors of the six-power draft definition had no further doubts about the impact of a definition of aggression on the behaviour of States. But a generally accepted definition of aggression might provide guidance in ascertaining whether an act of aggression had been committed, provided that the question was considered in the light of all the circumstances of each particular case. Such a definition might accordingly facilitate the processes of the United Nations and encourage States to fulfil their obligations under the Charter in good faith.

For the definition to be meaningful, both legally and politically, it must be generally accepted. And if it was to be generally accepted, that was to say, accepted by the sponsors of the six-power draft, among others, it should be consonant with the Charter - which meant, inter alia, as already pointed out by the other sponsors of the draft, that any definition of aggression must preserve intact the Security Council's discretionary power to find aggression or not. There should therefore be nothing "automatic" about an acceptable definition. Again, the definition should deal with what the Charter provisions covered on the subject: the use of armed force. The definition need not extend to conduct, however deplorable or even illegal, not involving the use of force. While the definition should not widen the concept of aggression as found in the Charter, it should nevertheless not narrow it either. There should, in particular, be no emphasis on certain aspects of the aggressive use of force, which some called "direct aggression", or omission of other aspects which had been designated as "indirect aggression". Again, the definition of aggression should not extend to the use of force justified under the Charter, as, for example, 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.

In replying to criticisms of the six-Power draft, he would confine himself to questions of substance, as his delegation did not insist on preserving the form in which the draft was presented. As the representative of Guyana had observed, the Committee had to identify a phenomenon, and not to undertake a drafting job. His delegation would therefore not oppose changes of form, provided that the spirit of the six-Power draft remained and that the terms used were consonant with the Charter.

In operative paragraph II of their draft, the six Powers defined the term "aggression" as applicable to the use of force in international relations, "overt or covert, direct or indirect, ...". While the words "overt or covert" had aroused little criticism, there had been explicit criticism of the words "direct or indirect" from several Committee members, and implicit criticism in the relevant provisions of the thirteen-Power draft, which were in flat contradiction with the six-Power draft. In that regard, he 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. For that reason alone, the thirteen-Power draft could not be the one to rally general support.

Explicit criticisms, still of "indirect" aggression, were three in number. One was that the draft Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States[5/] dealt with the principle of non-intervention, that "indirect" aggression was equivalent to intervention and that, accordingly, such forms of aggression need not be dealt with in the definition under preparation.

That draft Declaration did indeed contain a few paragraphs on acts which were apparently in the "indirect aggression" category. But, if the Special Committee was to cut out of its definition all that that draft Declaration said about aggression, it would find it very hard to frame any definition. "Indirect" aggression might certainly be termed interference in a State's affairs, but it was none the less aggression. The matter demanded judgment, to exclude from the draft Declaration on friendly relations those elements that had no place in a definition of aggression, but boldly to retain those elements which were applicable.

The second criticism of the concept of "indirect aggression" was that it was difficult to prove responsibility in a particular case. Questions concerning proof of responsibility for aggression did not belong in the definition. And, in any event,

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5/ A/AC.125/L.86

proof might be still more difficult in the classic case of bombardment or invasion than in cases where the use of force was less direct. It was said that the aggressor was the one who fired first or who crossed the frontier first. Yet either occurrence might have lasted only a moment, with the parties to the conflict the sole witnesses, and be forthwith no longer susceptible to reliable checking methods. It might be relatively easier to determine responsibility for an invasion by irregular forces answerable to a third party.

The third criticism was that there would be no point in defining "indirect" aggression immediately, since it was not the main element in the definition. That suggestion was unacceptable to his delegation. It was not possible to define some forms of aggression and to postpone the definition of others. The definition would be inaccurate and misleading, which might be both harmful and unrealistic. Again, present-day aggression was as often as not indirect - a form the Committee should beware of appearing to approve. If aggression was to be defined in two stages, the indirect kind should be defined first. The principle involved was simple and familiar, and was one of "the general principles of law recognized by civilized nations", as applied by the International Court of Justice. He who by the act of another procured a result was held responsible for the result; the principal was held to be responsible for the act of his agent. That principle should attract the support of all members of the Committee.

Another element of the definition contained in operative paragraph II of the six-Power draft that had also drawn a series of criticisms concerned the second sentence of that paragraph, relating to political entities whose statehood was challenged.

Those criticisms were he said, that the Charter referred to States, not to other entities, and, if the six Powers meant to abide faithfully by the Charter, they should not introduce a concept it did not mention; that only States could be victims of aggression or, of course, aggressors; and that the reference in a definition of aggression to a "non-State entity" would be confusing and even dangerous.

To the first objection there were two answers. One was that the Charter spoke of an "act of aggression" and did not specify acts of aggression by States or by entities recognized to be States. When it referred to a State in that connexion, it was an "enemy State" in the very special clause which was Article 53. The other answer was 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 spoke of "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 accordingly an entity whose statehood was disputed could not be covered by Article 2, paragraph 4. In fact, the Members of the United Nations had interpreted "all Members" in Article 2 as meaning all States. There was nothing to prevent them from interpreting States as including entities whose statehood was disputed; on the contrary, there was every reason to do so.

As to the argument that only States could be victims or perpetrators of aggression, it was self-evidently wrong. He nevertheless gave a few examples: if an entity not recognized by any States as being a State, but exercising governmental authority, however unlawfully, attacked one of its neighbours, would it be said that there was no aggression because the aggressor was not a State. If a State in the Middle East, a Member of the United Nations widely recognized as a State, were to attack its neighbours which had not recognized it as a State, would those neighbours be stopped from alleging aggression because of their non-recognition?

As to those who argued that it would be confusing and dangerous to introduce the concept of political entities not always recognized as States, he wished to hear their reasons. In his opinion, the concept introduced helpful precision. And what would in fact be dangerous would be a definition of aggression which did not cover entities whose statehood was in dispute. To prepare a definition of aggression which excluded the conflicts which had so often involved the violation of internationally agreed lines of demarcation would be to ignore both history and current events.

He wished to take up the criticisms directed at operative paragraph III of the six-Power draft. There was general agreement in the Committee that legitimate self-defence was not aggression. Members' views differed as to the scope of legitimate self-defence. His delegation believed that those differences would not easily be reconciled. Accordingly, the six-Power draft endeavoured to avoid it, without prejudice to any State's position, by providing that the use of force in the exercise of the inherent right of individual or collective self-defence did not constitute aggression. Similarly, the six Powers 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". The United States and some other 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 the practice of the General Assembly, Security Council and the Organization of American States. Other Members of the United Nations held different views about that competence, and a few of them even denied it altogether. The phrase "consistent with the Charter of the United Nations" had, among its other virtues, a measured recognition of 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.

Turning to the question of intention, he observed that many speakers had criticized the provisions of operative paragraph IV (A) of the six-Power draft. The main criticisms were (a) that to employ the criterion of aggressive intent put the burden of proof on the victim even if the latter was helpless; (b) that to prove the subjective fact of intention would often be impossible or very difficult; and (c) that it was unthinkable that, if the "objective" acts listed in paragraph III(B) were committed, at any rate those listed in sub-paragraphs 1-5, the intention to commit aggression must also be established if there was to be a finding of aggression; a benevolent intent would not suffice to absolve the author of such acts from a charge of aggression.

Before dealing with those criticisms in turn, he wished to make a preliminary remark. Obviously, a use of force declared illicit under the Charter might constitute a threat to the peace or a breach of the peace without amounting to aggression, as witness the practice of the Security Council, or the frequent frontier incidents that were not regarded as "aggression". Moreover, Article 39 of the Charter, referring to "threat to the peace" and "breach of the peace", included "act of aggression". As it was obviously necessary to distinguish between those three terms, a criterion must be found whereby 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. Again, if, as some Member States urged, aggression was to be defined as a crime involving international criminal liability, the element of "intent" could hardly be ignored. Under the general principles of law recognized by civilized nations, intent and criminal liability were inextricably interwoven.

His answer to the first of the criticisms levelled at the criterion of "aggressive intent", namely, that the burden of proof would fall on the victim, was that, as already observed by the French representative, the victim did not need to wait to defend itself

until the Security Council had established an act of aggression, including the aggressor's intent to commit an aggression. It was clear from Article 51 of the Charter that, until the Security Council had taken measures necessary to maintain international peace and security, a State undergoing an armed attack could exercise its inherent right of self-defence.

The second criticism could likewise be briefly answered. Contrary to what had been claimed, proof of "objective" facts was not always easy. Proof of intent should, as a rule, be even more difficult; but that was no reason to deny the relevance of the criterion. There were very easy cases at the two ends of the spectrum in which aggressive or non-aggressive intent was clearly established by the obvious facts. But there was no certainty that cases would not occur towards the middle of the spectrum where it might be vital to establish intent.

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 before the Committee. Was intent not a circumstance to be examined? Did not the Security Council's discretionary power, which no member of the Committee disputed, include the right to study the factor of intent?

The six-Power draft in no way required intent to be proved for a finding of aggression to be reached. Paragraph IV began by stating that the uses of force which might constitute aggression included, "but are not necessarily limited to", a use of force by a State for the purposes set out under sub-paragraph A and by the means set out under sub-paragraph B.

In saying so, he had in some measure answered the third criticism, that some of the acts listed in paragraph IV(B) should be viewed as acts of aggression without obligatory demonstration of intent.

It had, for example, been argued that the best intentions in the world did not justify the slightest interference with the territorial integrity or political independence of another State. That argument confused 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 a neighbouring State from the rule of an oppressive government.

Regarding a further criticism, namely that the sponsors of the six-Power draft had committed a sin of omission by not including in their definition the concept of "first use", the thirteen-Power draft gave great importance to that concept. The USSR draft gave the principle of "first use" a decisive role in defining aggression. In the view of the six Powers, "first use" might be 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. He referred the Committee, on the point, to the United States representative's statement at the 1969 session.

Some Committee members thought that the six-Power draft was wrong not to characterize 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, could that country be accused of an act of aggression?

The six-Power draft had also been criticized for omitting references to the principle of self-determination. Both the Soviet and the thirteen-Power drafts did refer to it; but would they, without such a clause, be impairing the principle of self-determination? As to the six Powers, nothing in their draft did impair the provisions of the Charter concerning the exercise of self-determination, and they saw no need to say so.

It was also alleged that the six-Power draft made no mention of certain consequences of aggression, like territorial aggrandizement or other advantages. That omission, too, was deliberate. The United States, of course, did not recognize territorial gains flowing from aggression. It was no accident that the "Stimson doctrine" bore the name of an American Secretary of State; but those principles had no place in a definition of aggression. The Committee did not have to catalogue the results of aggression, still less to stress one of them to the detriment of others.

Having reviewed the criticisms made of the six-Power draft, he would revert to the fact that the Committee must arrive at a generally accepted definition. The view had been expressed that the definition need not be agreed unanimously, in particular that there would be no point in requiring the agreement of all the permanent members of the Security Council, thus extending the veto covering security questions to the progressive development of international law. On that point, he wished to be clear and categorical. The Committee's task was to draft a definition which, once adopted

by the General Assembly, would be an authoritative statement of existing law and an authoritative interpretation of the Charter. Well, the General Assembly could not legislate, not having the power. All it could do was to declare what the law was, assuming its declaration had legal weight only if accurate. In the case in point, if the General Assembly adopted a resolution it regarded as declaratory of international law and if, for example, the sponsors of the six-Power draft 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 two permanent members of the Security Council would make it an a fortiori case. How could the Security Council be expected to be guided by a definition when certain of its permanent members made it clear from the outset that they would not follow a resolution which they regarded as an erroneous rendering of the law? Accordingly, the Committee must succeed in drafting a definition which reflected a consensus.

Mr. ALLAF (Syria) said that he was not convinced by the United States representative's explanations and wished to make certain comments.

The Syrian Arab Republic had been one of the sponsors of the twelve-Power draft definition submitted to the Committee at the beginning of its 1968 session (A/AC.134/L.3 and Add.1[6]). It had not joined the sponsors of one of the drafts at present before the Committee, not because of any weakening of its desire to see aggression defined but because it believed that those drafts either lacked certain important provisions or, on the other hand, contained superfluous ones.

Nevertheless, his delegation had so much preference for the thirteen-Power draft definition that it would be prepared to join its sponsors if certain minor amendments were made thereto.

He had also found many positive elements in the USSR draft definition and he felt sure that the many similarities between that draft and the thirteen-Power draft would enable the respective sponsors finally to agree upon a joint text.

6/ See Official Records of the General Assembly, Twenty-third Session, agenda item 86, document A/7185/Rev.1, para.7.

He could not say the same for the six-Power draft, which not only differed completely from the two others but had two serious defects. First, it lacked some of the elements and criteria most essential to any definition, such as the "first-use" criterion. Secondly, it introduced unfamiliar and vague elements which were not only unsuitable but tended to distort the criterion for determining the aggressor by making determination subject to concepts as vague as "intent".

Since the elements missing from the six-Power draft appeared in the thirteen-Power and the USSR drafts, and would be discussed later, he would not dwell on them but would rather concentrate on what he considered to be the innovations in the six-Power draft.

As other representatives had pointed out, the sponsors of the six-Power draft presented a definition of aggression which was more grammatical than legal. According to operative paragraph I, aggression was a mere "term" to be applied by the Security Council when appropriate. In operative paragraph II aggression was still described as a "term", to be applied occasionally and subject to many pre-conditions that might result in the same acts being described as a threat to the peace rather than aggression. In addition to those examples of vagueness, the draft implied that the use of force against the territorial integrity or political independence of a State, though contrary to the purposes of the United Nations, might only be labelled as an act of aggression if that use of force was intended to achieve certain aims listed in paragraph IV A of the draft. In that case the use of force might, but not necessarily, constitute an act of aggression. The criterion of intent was both vague and dangerous because aggressors never admitted their evil intentions; on the contrary, they were always ready with an excuse or pretext. In 1956 the British and French forces were not pursuing any of the aims listed in paragraph A of the six-Power draft when they occupied Suez. When they attacked and occupied a considerable part of the territory of Egypt they proclaimed their noble and benevolent intention of separating Egyptian and Israeli adversaries. Similarly, Israel had manifested no evil intent when it invaded the territory of the three Arab countries on 5 June 1967. Its intention had been merely to prevent possible aggression by those Arab States which had been the victims of aggression.

It was very difficult, if not impossible, to know what intentions really were; it was something that even the permanent members of the Security Council could not know. The list in the six-Power draft definition of the different kinds of intention a possible aggressor might harbour was not, of course, exhaustive; but it might permit an aggressor to avoid being condemned as such if he merely stated that he had none of

the intentions listed in the draft. One aggressor might claim, for instance, that his intention was to protect minorities, another that his intention was to obviate a danger that might arise in the territory attacked. Such intentions were not mentioned in the draft, and it would be very difficult for the Security Council met in emergency session to determine the existence of an act of aggression, to equate them with the intentions mentioned in the six-Power draft.

He agreed with other representatives that the criterion of intent placed the onus of proving the existence of an act of aggression on the victim, instead of demanding justification from the aggressor. Moreover, there was no mention of intent in either Articles 39 or 51 of the Charter, although those two Articles were fundamental in determining whether the use of force was legal or acceptable.

In addition to all those shortcomings, the six-Power draft was somewhat lacking in severity in ascertaining the aggressor. Paragraph IV B (5) contained a list of the means employed. Attacks on the armed forces, ships or aircraft of another State not only had to be carried out with one of the intentions mentioned in A, but they also had to be "deliberate" to be finally labelled as acts of aggression. The "civil strife" mentioned in sub-paragraph 7 was qualified by the word "violent". The same idea of violence occurred again in sub-paragraph 8 in connexion with the overthrow of a government.

With regard to the innovations in the six-Power draft, he called the Committee's attention to its paragraph III. Among cases where the use of force was considered legal and permissible, the sponsors of the draft quoted the use of force pursuant to a decision or authorization by a regional organization. By thus placing the regional organizations on the same footing as competent United Nations organs in the field of enforcement action, the sponsors were contradicting the United Nations Charter, for which they repeatedly professed respect. Article 53 of the Charter permitted the Security Council to utilize regional arrangements or agencies for enforcement action under its authority, and stated clearly that no enforcement action should be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against a former enemy State, as defined in paragraph 2 of that Article. In its operative paragraph III the six-Power draft implied that regional organizations could use force pursuant to their own decision or authorization. Such action on the part of regional organizations could not, however, be accepted or authorized in accordance with the Charter except in the circumstances specifically indicated in paragraph 4 of the thirteen-Power draft.

The six-Power draft completely ignored the principle of "first-use" recognized in the thirteen-Power draft and the USSR draft. Yet it was a logical criterion in determining who was responsible for the first acts of violence or war. It was accepted in both international and national law. It had been alleged that it was not a wise criterion to apply in determining the aggressor, first because it was often difficult to know with certainty who had been the first to use force, and secondly because it was not a criterion that could be applied automatically.

The United Kingdom representative had said that the criterion of "first-use" was not and could not be the only determining criterion. It could be misleading, he asserted, unless due regard was also paid to other factors like motivation and intent. The speaker himself had already proved that intent alone was a useless criterion. As far as motivation went, there was little variation. If the act of aggression was committed in legitimate self-defence, Article 51 of the Charter only recognized such action if an armed attack had been made on the party exercising self-defence. If that was so, that party was not the one which had initiated the use of force but the one that had merely reacted to an act of aggression; so the "first-use" principle would not be invoked against that party.

No other motive could justify the initiation of the use of force, whether on the pretext of so-called preventive measures or protection of interests or minorities.

Although the "first-use" criterion could not be applied before the reason why the act of force was committed was established, it was still a basic criterion and its omission by the sponsors of the six-Power draft was regrettable.

In practice, world public opinion and certain great Powers had used the "first-use" criterion in determining the aggressor. France had based its attitude to Israel in 1967 on that criterion; and the USSR, the socialist countries and most of the countries in the Third World had adopted a similar attitude.

The discretionary powers of the Security Council in determining the existence of an act of aggression had been reaffirmed in the draft definitions. That meant that such powers were recognized not only by those who earnestly advocated a definition of aggression, but also by those who doubted its usefulness and claimed that it was for the Security Council alone to determine the existence of an act of aggression under Article 39 of the Charter. In his view, the discretionary powers given to the Security Council under Article 39 did not authorize it to define aggression. In other words, the Security Council was like a court judge who determined whether a crime had been committed but did not define the crime in criminal law.

In the exercise of its discretionary powers, the Security Council based its action on the Charter of the United Nations, international law, and the judgements and proceedings of various international organizations; it applied the rules derived therefrom but it did not make them. As its composition changed periodically, the Security Council could not be expected to define an act of aggression in legal terms, when several United Nations bodies had tried and failed to do so over two decades.

It had often been said that the definition of aggression must be consistent with the Charter, and he thought that the thirteen-Power draft and the USSR draft met that requirement. The same applied to the six-Power draft, except for the references to intent, regional organizations and political entities. In fact, nothing was said in the Charter concerning intent; the regional organizations were not permitted to use force except with the authority of the Security Council; nor did the Charter mention political entities in the sense used in the six-Power draft.

The sponsors of the six-Power draft also criticized the inclusion of some of the consequences of aggression in the other two drafts, because they were afraid it might hinder the Committee's progress and distort the definition of aggression itself. He failed to see how that definition could be distorted by the mention of the non-recognition of the acquisition of a territory occupied or annexed by force as the result of an act of aggression. On the contrary, its specific mention should increase the effectiveness of the definition and deter potential aggressors. The United Nations and the international community as a whole had often failed to apply the principle that the aggressor should not be permitted to reap the fruits of his aggression. At present the occupation of territories in the Middle East had created a situation which was a source of anxiety to the whole world and a threat to international peace and security. The aggressor in that case had not only been able to keep the fruits of his aggression, but was repeating daily acts that were mentioned in all three drafts in their lists of acts of aggression. It was acting without attempting to conceal its intentions, which corresponded exactly to the list in paragraph IV A (1) to (5) of the six-Power draft. His delegation therefore believed that the inclusion of the principle of the non-recognition of the consequences of aggression was as important as the inclusion of the list of acts of aggression leading to those consequences.

The three drafts before the Committee dealt in one way or another with some aspects of indirect aggression. For small nations, indirect aggression in all its forms was as dangerous as direct aggression. It could take such complex and varied shapes, however, that Syria had always insisted that any definition thereof must be so formulated as to prevent its abuse in masking the enslavement of dependent peoples.

Some representatives had insisted on including in the forms of indirect aggression a reference to the arming of bands, encouraging terrorism, fomenting civil strife, etc. It was true that the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States had referred to such acts in its recent draft Declaration, but it had been dealing, not with a definition of an act of aggression, but only with general principles governing relations between States. It had, moreover, added a safeguard clause reserving the right of peoples under colonial rule or foreign domination to seek and receive assistance and support in their struggle for freedom, independence and self-determination.

His delegation was prepared to consider a similar approach to the definition of indirect aggression, but, like most members of the Committee, thought that, if speedy agreement was to be reached on a draft definition before the twenty-fifth anniversary of the United Nations, the definition would in practice have to be confined to direct armed aggression. It would be preferable therefore to make some reference in the preamble to the limited scope of the definition, rather than to spend time on defining indirect aggression.

He was convinced that the definition of aggression should contain a safeguard clause protecting the right of peoples to self-determination, if the United Nations wished to honour its Declaration embodied in General Assembly resolution 1514(XV) on decolonization. He thought that safeguard as necessary and important as the safeguard in Article 51 of the Charter concerning the right of self-determination, or the safeguard concerning the use of force pursuant to a decision or authorization of a competent United Nations body.

He considered it desirable that such a basic definition as that of aggression should be unanimously approved. If that aim could not be achieved, it would be better to have a definition accepted by a large majority of the members of the United Nations

than to have no definition at all. He held the same view with regard to the acceptance of the definition by all the members of the Security Council. He thought that the right of veto enjoyed by the permanent members of the Security Council should not be extended to cover draft declarations or international instruments of such importance, which were supposed to be adopted primarily by the General Assembly, the supreme authority of the United Nations.

Finally, his delegation had concluded that the thirteen-Power draft definition was the one which should be used as a basis for the Committee's work. It was largely in harmony with the USSR draft declaration and they could be usefully merged into a single document. His delegation had no objection to taking from the six-Power draft certain elements or original ideas, if there were any, but it found the six-Power draft definition as a whole unacceptable.

Mr. YASSEEN (Iraq) did not feel that it was absolutely necessary to define aggression in order to apply those Charter provisions containing the term "aggression", since any law or regulation had to be interpreted by the organ empowered to enforce it. However, the international community had decided to define aggression because of the United Nations organs' inability to perform the task assigned to them under the Charter. A definition was meant to be not creative, but declaratory - it had to say what actually was. Hence the definition to be worked out could not be ignored, even by the Security Council, since it would amplify the objective content of the Charter. In short, the definition would not affect the Security Council's powers under the Charter, but would be aimed at preventing 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 the draft definitions before the Special Committee, his delegation supported the USSR and the thirteen-Power drafts as a whole, subject to certain improvements in form, and provided that questions pertaining to so-called "indirect" aggression were avoided at the present stage.

Remembering that the definition must not run counter to the Charter provisions, he would refer to certain especially important aspects. He felt, for instance, that the principle of "first use" was fully justified by the letter and spirit of the Charter, since the latter authorized the use of force in the international community under United

Nations auspices in only two cases: that of action by the Security Council - which was straightforward - and that of self-defence as laid down in Article 51, which sanctioned the "first use" principle, since it authorized a State against which armed attack occurred to exercise its inherent right of self-defence. Clearly, an armed attack must precede the exercise of the inherent right of self-defence; those who wanted to dispute the "first use" principle were therefore up against the Charter itself.

The introduction of the "intent" criterion, as set forth in the six-Power draft might well raise many difficulties on account of the institutional inadequacy of the international law machinery. Patently difficult as it was to determine intent in national law, it was even harder in international law to determine whether there had been intent to commit an act of aggression. In view of the difficulties, what had to be established was not the intent, but the nature of the acts committed, which was in itself revealing. He therefore preferred "imputability" to "intent" as a criterion; for thereby it was easy to solve the problem of error, which had been raised by several delegations. An act committed by mistake could involve a State in liability, but could not be imputed to it. By introducing the "intent" criterion the six-Power draft therefore merely still further complicated the already difficult question of defining aggression. The United States representative had of course tried to draw a subtle distinction between intent and motive; in national law, however, that distinction was very fine and some jurists even refused to entertain it.

He would also like to remind the sponsors of the six-Power draft that they had not answered the French representative's question as to what attitude should be adopted where acts enumerated in paragraph IV B of the draft were committed with an intent not mentioned in paragraph IV A - as might arise, say, in the case of aggression designed to enforce a decision by an incompetent authority or to forestall a probable attack.

To sum up, his delegation thought that the "first use" principle and the criterion of the nature of the act committed, taken together, should help to control certain evil practices at variance with the principles of the Charter that had been condemned by the international community. He was thinking in particular of the "defensive" attack and the "defensive" acquisition of territory.

He noted that several delegations had mentioned the principle of proportionality, which was, however, not recognized in international law, though relevant regulations based on the Charter might be envisaged, since the right of legitimate self-defence was a limited one lasting only until the intervention of the Security Council, or until the State suffering aggression could be sure that it would be defended.

Regarding the competence of regional organization, the sponsors of the six-Power draft had tried to justify the formula set out in their operative paragraph III on the grounds that it eliminated all doubts. But his delegation thought that, to dispel any misunderstanding, much greater explicitness was needed; for Article 53 of the Charter was perfectly clear: "no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council". Moreover, the United States representative had held that the formula followed in the six-Power draft reflected certain international practices. He himself knew of no such practices and, even if measures of the type mentioned by the United States representative had been adopted, they could not constitute a "practice", since downright violations of the Charter were involved. In that connexion, he would point out that United Nations bodies sometimes violated the Charter, as had been the case when the General Assembly had decided to partition Palestine, in violation of a rule of jus cogens, namely, the principle of self-determination. That particular decision had been null and void.

His delegation considered that the definition of aggression should mention, as did the USSR and thirteen-Power drafts, the non-recognition of certain situations resulting from acts of aggression, such as the occupation or annexation of territory; there lay the dynamic aspect of the principle of respect for the territorial integrity of States. Furthermore, it could be said that the occupation of the territory of another State constituted permanent aggression.

He also thought it worthwhile to proclaim the principle of the penal liability of States committing acts of aggression; that element, while not strictly pertaining to the definition of aggression, was nevertheless closely bound up with it.

Lastly, he would repeat what he had already said at the Committee's 1969 session, namely that, despite the desirability of a consensus, 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. As he saw it, if unanimity proved impossible, there should be no baulking at a majority decision, such as was provided for in the rules of procedure of the General Assembly. It had also been said that, to be effective, the definition would have to be accepted by the permanent members of the Security Council. That would of course be an advantage; but it was in no wise 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, and the right of veto was an exception there was no question of extending. There could be no right of veto on the development of international law. His delegation, like that of Syria, preferred a definition that was not quite effective to 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.

The meeting rose at 1 p.m

SUMMARY RECORD OF THE SIXTIETH MEETING

held on Wednesday, 22 July 1970, at 3.20 p.m.

Chairman: Mr. ALCIVAR Ecuador

In the absence of the Chairman, Mr. Alcivar (Ecuador), Vice-Chairman took the Chair.

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTIONS 2330 (XXII), 2420 (XXIII) AND 2549 (XXIV) (agenda item 5) (A/7620; A/AC.134/L.22) (continued)

Mr. SIDIK (Indonesia) said he preferred the twelve-Power proposal (A/AC.134/L.3 and Add.1) and the original thirteen-Power proposal (A/AC.134/L.6 and Add.1 and 2[7]) to the texts that had been submitted later, as they stated the essential elements of the concept of aggression more explicitly. Many of the principles enunciated in the USSR proposal were, however, acceptable to his delegation, which recognized, for example, that armed aggression could be direct or indirect, and that there should be a distinction between the use of armed force for aggressive purposes, for self-defence and in the exercise of the right to self-determination of dependant peoples in accordance with General Assembly resolution 1514 (XV). It also accepted the principle of priority, but thought that the method of applying it should be clarified. He shared the views expressed by the French representative on the subject (57th meeting), but considered that it would be better to omit or reword the fourth preambular paragraph; the statement that the use of force was incompatible with the principle of the peaceful coexistence of States with different social systems might be interpreted as condoning the use of force in other cases.

The thirteen-Power proposal submitted at the 1969 session was not as clearly worded as the original thirteen-Power draft and at first glance might be interpreted as restricting the application of the term "aggression". The statement in preambular paragraph 2 was therefore essential. Referring to a previous statement made by the Indonesian delegation (during the Committee's 1969 session in New York), he clarified Indonesia's position on the principle of the non-recognition of territory gained by aggression: since aggression constituted an international crime, it was self-evident that any gains obtained by aggression should not be recognized by the international community. Although he considered reference to that principle in a definition as rather superfluous, he did not have any objection to the substance of it being incorporated, as was the case in operative paragraph 4 of the thirteen-Power proposal and in the eighth preambular paragraph of the USSR proposal.

7/ Ibid. para. 9.

Despite the references to the possible usefulness of a definition of agression in the preamble to the six-Power proposal, the doubts expressed earlier by the sponsors themselves concerning the value of the definition were implicit in operative paragraph I, which referred to aggression as a "term to be applied by the Security Council when appropriate". The Security Council's efforts to deal with issues involving the maintenance of international peace and security had all too often ended in deadlock because solutions to international disputes were sought solely on a political basis, or to be more precise, on a basis which did not conflict with the respective vested interests of its permanent members. The existence of a definition of aggression would facilitate the Security Council's task, in that it would provide the Council with objective legal guidance. In determining whether or not an act constituted aggression, the Security Council would no longer have the same latitude in respect of acts specifically mentioned in the definition as in the case of those not covered by it.

While he agreed that aggression should include overt or covert, direct or indirect uses of force, as stated in operative paragraph II, he considered that the provision should not be confined to the use of armed force in international relations but should specify that the use of armed force by dependent peoples in the exercise of their right to self-determination in accordance with the Charter constituted an exception, as had been done in the other two proposals before the Committee. He could not accept the concept of demarcation lines introduced in that paragraph, because such lines might be disputed on the basis of the principle of the non-recognition of territory gained by aggression. While recognizing the right of individual and collective self-defence, he thought that operative paragraph III should be amended to avoid giving the impression that regional organizations could have the same status as the Security Council in the matter of authorizing the use of force. His delegation agreed with the enumeration of acts in paragraph operative IV, since it specified that the list was not exhaustive. He believed that the Committee's work had reached the stage at which positive results could reasonably be expected.

Mr. SEPULVEDA (Mexico) said that, as his delegation had indicated on a number of occasions, it considered that a definition of aggression should consist of a theoretical statement together with a number of actual examples of what constituted aggression. 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, the adoption by the Committee of a definition of that nature would dispel much of the imprecision associated with the

concept of aggression and would help to deter potential aggressors. The definition 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, and the basis for acts of self-defence by States.

International law should be codified on a solid and realistic basis and not in purely theoretical terms. The definition of aggression as an academic exercise yielded little practical result because the fundamental political factors involved in international relations were disregarded. If such a definition was not to be utopian, it should have the support of all members of the international community, and if it was to be of immediate practical value, it should have the approval of all the permanent members of the Security Council.

The responsibility of the Security Council for the maintenance of international peace and security was paramount and it was its function to determine the existence of an act of aggression. It had been said on many occasions that the Council's prerogative was discretionary and that it had complete latitude to decide when an act of aggression had been committed. He did not entirely agree with that view, which would render the Committee's work to some extent superfluous. The existence of a definition of aggression would remove the subjective element from the Council's deliberations when it was called upon to take action under Chapter VII of the Charter and, in particular under Article 39. That did not mean that the definition of aggression should be automatically applied by the Security Council. He was not proposing a cause and effect relationship between the definition being prepared and a particular act with which the Security Council might be confronted; there was no intention of imposing a certain line of action upon the Council.

With regard to the question of direct aggression, the Committee should, in his opinion, first evolve a satisfactory definition of direct aggression and then proceed to examine other less obvious forms of aggression. In view of the difficulty of deciding what was to be understood by "force" in the context of Article 2, paragraph 4, of the Charter, the Committee should limit the concept to armed force, leaving aside other forms of illegal coercion for the time being.

If a link was to be established between the provisions of Article 2, paragraph 4, of the Charter concerning the use of force and those of Article 51 concerning the right of self-defence in case of armed attack, the concept of aggression should be limited

to situations in which it took the form of the use of armed force. Other illegal means of pressure against a State, such as economic coercion and diplomatic or indirect military pressure, 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 adopted at its recent session. A State's reaction to indirect aggression could not be the same as its reaction to an armed attack, since, in the latter case, it would be authorized by the Charter to repel the aggression by exercising the right of self-defence. In his opinion, the Committee was not empowered to enlarge the provisions of Article 51 of the Charter, which authorized the exercise of that right solely in the case of an armed attack. A State which was the object of indirect aggression should take all the necessary domestic measures to safeguard its political institutions. If those measures proved inadequate, it could, under Chapters VI or VII of the Charter, request the United Nations to intervene if it considered that there was a threat to peace. It would then be for the Security Council to decide what action should be taken to deal with the situation.

The thirteen-Power proposal corresponded to his view that the Committee's work should for the present be confined to the definition of direct aggression. He hoped that the Soviet delegation and the delegations which had sponsored the six-Power proposal would agree to defer the discussion of indirect aggression until a conclusion had been reached on direct aggression.

There had been differing opinions in the Committee on what constituted aggression. The six-Power proposal was based on the premise that aggressive intent was fundamental, whereas the USSR proposal and the thirteen-Power proposal, with certain differences, upheld the view that the basic criterion was first use. His delegation had serious doubts about the use of intent as a criterion. To endow a political institution with the power to divine a State's intent would be to introduce a form of extrasensory perception into international relations. Moreover, if aggressive intent were to be the criterion, it would be possible for a State to claim that its actions had not been prompted by such an intent and thus to prevent them from being qualified as aggressive. A State could argue that its act had not been illegal and that if it had produced a certain effect, that was due to error or miscalculation. It could similarly attempt to justify acts which violated international law by claiming that its use of force had

not diminished the territory or altered the boundaries of another State, altered agreed demarcation lines, interfered with the conduct of affairs of another State, secured changes in the government of another State, inflicted harm or led to its obtaining concessions of any sort. 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.

On the other hand, his delegation considered 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. Moreover, in such a case it was for the apparent aggressor to prove that the use of force was in accordance with the provisions of the Charter and that it had acted in conformity with Article 51. But if intent was the criterion for establishing the existence of aggression, the burden of proof would fall unjustifiably on the victim State, which would be required to prove to the international community that it was the victim of a crime and to produce adequate evidence that the illegal act had not been committed inadvertently or by error. His delegation was, therefore, of the opinion 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. An attack might, for instance, be maliciously provoked. Although the principle of first use was fundamental to the determination of the aggressor, there could be exceptions. For that reason, his delegation had sponsored a proposal which it thought was more satisfactory than the USSR proposal, because the latter adopted an inflexible position on the question of first use.

The Charter recognized that force might be used in measures authorized by a competent organ of the United Nations, in self-defence, and in the event of an illegal act. There was, therefore, legitimate and illegitimate uses of force. The use of force permitted by the international community was use in collective measures based upon a decision by the United Nations; provision was also made for collective measures by a regional organization with the authority of the Security Council. The use of force in self-defence was a privilege granted by international law and an

exception to the illegality of the use of coercion by States. Its purpose was to protect certain fundamental rights and repel armed attack. Those two exceptions to the prohibition of the use of force were clearly guaranteed in the first five operative paragraphs of the thirteen-Power proposal.

Mr. ZAFERA (Madagascar) said he was glad to see less pessimism at the present session and a more general recognition of the need to define aggression. The submission of the six-Power proposal was an important step towards the accomplishment of the Committee's task. However, the reference to aggression as a "term" in the operative part of that proposal seemed to belittle the importance of the definition. Aggression was more than a "term"; it was an international crime whose definition had important implications.

The phrase "political entity delimited by international boundaries or internationally agreed lines of demarcation" in operative paragraph II of that proposal introduced a vague concept, which might lead to confusion. He could not agree to provisions which did not conform to the Charter; the word "State" should be used in all cases. The proposal made no reference to the legitimate use of force by nations exercising their right to independence and self-determination, a point which was covered in the other two proposals. It also contained no provision concerning the responsibility of States guilty of aggression. The argument that consideration of such a matter was outside the Committee's terms of reference was contrary to the principle of nulla pena sine lege. Aggression could not be defined without consideration of its consequences.

The USSR proposal which was closer to the thirteen-Power proposal contained much constructive material, but unfortunately made no mention of the principle of proportionality. It was natural for a State to defend itself if attacked, but the scale of the defence should never exceed that of the attack. That principle was of cardinal importance in a definition of aggression.

His delegation shared the view that an armed attack on the territorial integrity and political independence of a country was the most serious and dangerous form of aggression, and the only form which justified the use of force in self-defence in accordance with the Charter. There were, of course, other forms of aggression of a more or less indirect character, but the Committee should proceed cautiously, stage by stage, and concentrate initially on the definition of armed aggression. The definition must be compatible with and based on the Charter.

He did not wholly share the view expressed by some delegations that, in order to be acceptable, the definition should have the approval of the permanent members of the Security Council. The Committee had received its mandate from the General Assembly not the Security Council. Moreover, such a condition would be contrary to the principle of the sovereign equality of States enshrined in the Charter. A definition which had the approval of the members of the Security Council was, of course, desirable, but the ideal definition would be one which obtained the unanimous approval of States Members of the United Nations. The progress made so far suggested that a compromise text could be produced.

Mr. ROSSIDES (Cyprus) said that the dispassionate approach of those who had spoken during the debate and the fact that there was now general agreement on the desirability of defining aggression encouraged him to believe that the Committee would succeed in fulfilling its task. The three proposals before it reflected all the shades of opinion expressed in the Committee, and since there was now a common purpose, it should be possible to work out a single text which was strictly in accordance with the Charter and hence acceptable to Members of the United Nations and to the world community as a whole.

A definition of aggression was long overdue; it was needed, not only as a guide to the Security Council and as a guide to countries 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, and many international instruments on matters of security, including the Charter of the United Nations. The psychological effect of success in defining aggression was no less important, since it would demonstrate to the peoples of the world that there was a will to replace the arbitrariness of force and war by a world legal order.

For the purpose of commenting on the proposals before the Committee, he intended to take one, the thirteen-Power proposal, and compare its provisions with those of the other two proposals. Operative paragraph 1 of the thirteen-Power proposal contained a statement which was fundamental to all the purposes and principles of the Charter of the United Nations and which was relevant to the definition of aggression. The wording was based on the principle that "armed force shall not be used, save in the common interest", which was enshrined in the Preamble to the Charter. It was on that principle that Article 2, paragraph 41 and Articles 39 and 51 of the Charter were founded. The inclusion of a similar statement at the very beginning of a definition of aggression was thus appropriate. He had noted the comments made by the USSR

representative on the wording used in the thirteen-Power proposal; he would be prepared to consider any amendment suggested, so long as the principle stated in the paragraph remained intact.

Operative paragraph 2 of the thirteen-Power proposal was very similar to operative paragraph 1 of the USSR proposal. He noted that the words "direct or indirect" had been left in parentheses in the USSR text, which he took to mean that the USSR delegation had no strong views about their inclusion or omission. In his delegation's view, they were redundant. What the Committee was trying to do at the present stage was to define aggression; the question of indirect aggression would have to be considered and a definition found, but that was a task to be undertaken later.

He had some difficulties with the six-Power proposal. In the first place, the reference in operative paragraph II to political entities delimited by international boundaries or internationally agreed lines of demarcation introduced a new concept which might well lead to confusion. No such reference was contained in the Charter and as there seemed to be no cogent reason for including it in a definition of aggression, the sponsors of that proposal might be prepared to dispense with it, particularly as that would not detract from the principle involved.

In the second place, there was a basic difference in approach to the definition of aggression itself. In his view, aggression was the "armed attack" referred to in Article 51 of the Charter, an act which called for action by the Security Council and authorized the victim State to take counter military measures in self-defence. Article 39 of the Charter drew a careful distinction between an act of aggression, a threat to the peace and a breach of the peace. An act of aggression was considered the most serious offence, since it was the offence against which specific action was provided for in Article 51. There was no doubt that infiltration and subversion violated the Charter, but they could not be termed aggression in the sense of the armed attack for which provision was made in that Article; in other words, they could not be countered with military action by the victim State. One reason why the right of self-defence under Article 51 was granted only in the case of armed attack was because such an attack posed an immediate danger and there was no time for deliberation or action by the Security Council. The United States representative had asserted that large-scale infiltration by armed bands constituted armed aggression: that, of course, might be true, but not every kind of armed aggression or sabotage would make it necessary for the victim State to take direct military action before appealing to the

Security Council. 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.

From the point of view of preventing war, the six-Power proposal left much to be desired. The fact that the uses of force which might constitute aggression were listed, even if not exhaustively, gave the impression that there were cases other than self-defence in which the use of force would not constitute aggression. Moreover, if the element of intent or motive was to be taken into account, an act would be termed aggressive only if the motive was bad. Even if an exhaustive list could be given of the uses of force which constituted aggression, the introduction of the concept of a good motive would entitle States to use force in circumstances other than in self-defence, a situation which would be in violation of Article 2, paragraph 4, of the Charter. The introduction of such a concept would have the effect of inviting rather than preventing war; it would put the clock back to the days of just and unjust wars and would make the use of war a legal right. It would also encourage war to give the right to use force to the victims of the activities described in paragraph IV B (8).

With regard to the reference to regional organizations in operative paragraph III of the six-Power proposal, it should be remembered that such organizations had the right to make arrangements for military action following a decision to that effect by the Security Council. They were subordinate to the Security Council and should not be placed on the same footing. Indeed, to mention them at all was to give the impression that a right was being conferred upon them which they did not already possess.

A provision relating to the non-recognition of territorial acquisitions obtained by force was appropriate in a definition of aggression, since occupation of the territory of another State following aggression was tantamount to continued aggression.

The principle of proportionality, which was included in the thirteen-Power proposal, was one to which he attached importance. It was in the interests of all that the use of force to repel armed attack should be commensurate with the armed attack itself.

Mr. EL REEDY (United Arab Republic) said that there was one point in the statement made by the United States representative at the 59th meeting upon which he would like some further information. If he had understood him correctly, the United States representative had said he did not believe that territorial acquisitions resulting from aggression were permissible, but it was not clear whether he considered that territorial acquisitions were permissible in any circumstances. A situation

might arise, for example, where State A, in repelling an armed attack by State B, crossed the frontiers of State B and occupied part of its territory. If State A then took steps to annex that part of the territory of State B which it had occupied while repelling the aggression, would the United States representative consider such a territorial acquisition as permissible?

There were some points in the six-Power proposal upon which he was not quite clear. For example, he did not fully understand the significance of the expression "overt or covert" coupled with the expression "direct or indirect". As a distinction was apparently made between the two, he assumed that, in the minds of the sponsors, there could be covert, indirect aggression, and he would like to know what type of act would be so described. He also had doubts about the introduction of the element of intent, and would like to know whether the sponsors of the proposal considered that the onus of proof of aggressive intent should be on the victim of an act of aggression. His impression was that the concept of self-defence in the six-Power proposal extended far beyond that in the Charter, and he would like to know if that was the intention of the sponsors.

The meeting rose at 5.5 p.m.

SUMMARY RECORD OF THE SIXTY-FIRST MEETING

held on Thursday, 23 July 1970, at 3.20 p.m.

Chairman: Mr. ROSSIDES Cyprus

In the absence of the Chairman, Mr. Rossides (Cyprus), Vice-Chairman, took the Chair.

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTIONS 2330 (XXII), 2420 (XXIII) and 2549 (XXIV)) (agenda item 5) (A/7620; A/AC.134/L.22 (continued)

Mr. EL REEDY (United Arab Republic) proposed that the Committee should consider the operative paragraphs common to all three drafts, beginning perhaps with the one giving a general definition of aggression: paragraph 1 in the USSR draft, paragraph 2 in the thirteen-Power draft and paragraph II in the six-Power draft.

Mr. STEEL (United Kingdom) said there was much to commend such a procedure, but wondered whether it would be wise to discuss the alternative texts before examining in detail the concepts underlying them. Progress might otherwise be halted by involved drafting discussions. Although major principles had been considered on a general level, some basic concepts had not yet been touched upon. It might therefore be useful to explore the possibilities of agreement on such points as the essential nature of aggression, the concepts of intent and priority, how and by whom aggression could be committed, the political response to aggression, the consequences of aggression, and the role of the United Nations. A detailed discussion of those points, which need not be taken up in that order, might then be followed by the establishment of small drafting groups.

Mr. WIREDU (Ghana) thought that little would be gained by a discussion of aggression without reference to the actual text of the operative parts of the drafts, and to the relevant articles of the Charter.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) recalled that at its 1969 session the Committee had concluded the general debate and had agreed that it should not be reopened. As a concession, his delegation had agreed to the request of the United States that five days of the present session should be allotted to a further general discussion. The Committee was now being asked to embark on a discussion of basic principles. His delegation could not agree to reopen such a general discussion, which would amount to an admission of failure. The decisions taken at the previous session should be respected, and the drafting work begun in the Working Group of the

Whole should be resumed. Agreement had been reached on some of the preamble, and the Committee should now begin consideration of the text of the operative parts of the drafts not yet agreed upon, following the same procedure in a working group of the whole without summary records. The USSR did not wish to start from the beginning again.

Mr. SCHWEBEL (United States of America) agreed that it would be pointless to reopen a general discussion of basic principles. To judge from the results, however, the procedure adopted at the 1969 session had not been entirely satisfactory and might not be the most appropriate at the present stage. The establishment of a working group of the whole had perhaps been premature. It had become involved in disputes over minor drafting aspects of the preamble instead of dealing with the substance of the definition. The tone of the general discussion so far had been encouraging, but he had gained the impression that the work had not yet reached the stage at which useful results could be obtained by adopting the procedure favoured by the USSR representative. The most constructive course would be to take up issues which offered the possibility of compromise. The United Kingdom was not proposing a general debate but an examination of the substantive issues underlying certain operative parts of the drafts. While he agreed with the representative of Ghana that the pertinent provisions of the Charter should be borne in mind, he thought it would be wiser to proceed as suggested by the United Kingdom representative than to begin an examination of the actual wording of the drafts. Little progress would be made if the Committee's efforts were diverted to drafting details.

It might therefore be best to continue to hold plenary meetings of the Committee, draw up a list of points on which opinions were divided, determine the order in which they should be considered, take them up one by one and identify areas of agreement and disagreement. A working group or drafting committees could then be established to prepare texts reflecting the agreement reached on principles.

Mr. CHAUMONT (France) said that the Committee should not consider itself tied to a procedure which had been used at a previous session and which had not proved very satisfactory. The outcome of the Working Group's efforts had been one preambular paragraph consisting of a sentence taken verbatim from the Charter. It had taken several meetings to achieve even that meagre result. It was on the operative part, however, and not on the preamble that the Committee was divided. He therefore supported the proposal of the United Arab Republic, as elaborated by the United Kingdom representative. The paragraph which the United Arab Republic had proposed for

consideration in fact involved the first principle mentioned by the United Kingdom representative. The discussion would be more useful if based on the texts already before the Committee and would be less likely to revert to a general debate.

Mr. STEEL (United Kingdom) explained that he was not proposing a resumption of the general debate, but consideration of the drafts submitted to the Committee and the principles underlying them, to determine the extent to which they could be reconciled.

Mr. YASSEEN (Iraq) said there were three major differences between the three drafts. The first concerned the scope of the definition: whether it should also include indirect aggression. The second concerned the question of intent. In fact, the concept as interpreted by its proponents was not intent but motive, which in jurisprudence should never be considered in the judgement of criminal intent. The third difference concerned the principle of priority. Those differences could only be narrowed by direct negotiation. A working group could then be established to work out suitable texts, which presumably would ultimately be voted upon.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) supported the suggestion that the Committee should begin forthwith its consideration of the first operative paragraph giving the general definition of aggression in each of the three drafts, and agreed with the enumeration of the three points at issue given by the representative of Iraq. He took it that the Committee was not reopening the general discussion, but would prepare, as a working group without summary records, a draft for submission to a plenary meeting for formal approval. He assumed that the measure of agreement on the preamble, however modest, reached at the previous session was still recognized.

The CHAIRMAN recalled the Committee's decision that the agreement reached on the preamble at the 1969 session should stand. The text of the preamble might be completed by a separate working group. The Committee had also decided that summary records should continue to be provided, as they were useful for the preparation of the Committee's report.

Mr. ALLAF (Syria) said that the question of the consequences of aggression should be added to the three controversial issues mentioned by the representative of Iraq as arising out of the general definition of aggression. His Government attached particular importance to that issue. It might be difficult to consider the actual text of provisions before discussing the principles underlying them, as some principles

were embodied in one draft and not in another. In such cases the Committee would have to decide, before making a comparative study of the relevant paragraphs in the respective drafts, whether or not the principle should be included.

Mr. ALCIVAR (Ecuador) pointed out that another important principle arising out of the operative paragraph giving a general definition of aggression was that of the centralization of the use of force.

Mr. POLLARD (Guyana) said that the controversial question of non-State entities would also arise in that connexion.

Mr. SCHWEBEL (United States of America) thought it might be wiser to proceed subject by subject than to consider the three drafts together, since the corresponding paragraphs in them raised different issues. The issues mentioned by the representatives of Syria and Ecuador might be grouped under the general heading "legitimate use of force", which would cover the authority of the United Nations, authority to exercise the right of self-defence, non-State entities and the powers and duties of the Security Council.

Mr. EL REEDY (United Arab Republic) agreed that, when the paragraphs under consideration raised issues of principle, those principles should be discussed, but it seemed unpractical to take up all the principles involved in the definition of aggression in considering the paragraph he had mentioned. The procedure he had proposed was intended for the present meeting, and he reserved the right to suggest changes in it if it proved unsatisfactory.

The CHAIRMAN said he took it that the Committee would begin by considering operative paragraph 1 of the USSR draft, operative paragraph ... of the thirteen-Power draft and operative paragraph II of the six-Power draft, proceeding principle by principle, the first principle being whether or not the definition should cover indirect as well as direct aggression. After considering those paragraphs, the Committee might take up operative paragraph 1 of the thirteen-Power draft.

Mr. KOULICHEV (Bulgaria) thought that the Committee should discuss the three drafts before it and not discuss principles without reference to actual texts.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) felt that the Committee's method of work should be as suggested by the Chairman. As to the question of direct or indirect aggression, his delegation was prepared to exclude indirect aggression at the outset and concentrate on direct aggression. That also appeared to be the view of the sponsors of the thirteen-Power draft. The question of indirect aggression could then be discussed at a later stage. He would therefore delete the words "direct or indirect" in operative paragraph 1 of his delegation's draft.

Mr. WIREDU (Ghana) said that operative paragraph 1 of the USSR proposal, operative paragraph 2 of the thirteen-Power proposal, and operative paragraph II of the six-Power proposal, all provided a draft definition of aggression. The definition the Committee was seeking must be consistent with the relevant Articles of the Charter, and he therefore proposed that each suggested definition should be examined in the light of those Articles.

Mr. ALCIVAR (Ecuador) thanked the USSR delegation for deleting the words "direct or indirect" from its draft, which was now much closer to the thirteen-Power draft. The object was to focus attention first of all on direct aggression. He wished to know whether the sponsors of the six-Power draft were prepared to delete the words "overt or covert, direct or indirect" from operative paragraph 11 of their draft.

Mr. BAYONA (Colombia) pointed out that if no reference had been made to indirect aggression in the thirteen-Power draft that did not mean that it had been forgotten.

Mr. SCHWEBEL (United States of America) said that the sponsors of the six-Power draft were unwilling to delete the words "overt or covert, direct or indirect" from their text. They attached the greatest importance to the inclusion of the reference to indirect as well as direct uses of force; 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, to the direct use of force. The Charter prohibited aggression by any means whatsoever. Since the Committee had initiated its discussions on the subject, nothing had happened in the world to suggest that indirect aggression was something that could be ignored. Both direct and indirect aggression had occurred in recent years. If a choice had to be made, he would propose that the Committee should begin by discussing the more difficult aspect of aggression, namely the indirect, and leave the subject of direct aggression to a later stage.

The CHAIRMAN drew attention to the fact that the deletion of the words "direct or indirect" from the USSR draft meant that the Committee would in fact be defining the term "aggression" as used in the Charter.

Mr. SCHWEBEL (United States of America) said that to define aggression meant to give fullness of meaning to the term. At the outset, therefore, mention should be made of the essentials of aggression, among which were overt or covert, direct or indirect, means.

Mr. ALLAF (Syria) stressed that his delegation attached as much importance to indirect as to direct aggression, but in order to achieve agreement it seemed preferable to begin with direct aggression. There was also widespread feeling that armed direct aggression was the more serious and dangerous form of aggression. What the Committee should attempt to define were the types of armed attack justifying the right to self-defence under the terms of Article 51 of the Charter.

There was clearly no point in trying to persuade the sponsors of the six-Power draft to change their views on the question of the inclusion of indirect aggression. He proposed, therefore, that the words "overt or covert, direct or indirect" in the six-Power draft should be placed in brackets, and that the Committee should proceed to discuss the next paragraph in the three drafts. If there were further disagreements on certain words or phrases, those words or phrases could all be placed in brackets in the various drafts. The words or phrases in brackets in each draft could then be reviewed at the end of the discussion.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) said, to avoid any misunderstanding, he wished to make it quite clear that in agreeing to the deletion of the words "direct or indirect" appearing in parenthesis in paragraph 1 of the USSR draft, his delegation had been prompted solely by the desire to meet the views of the majority, who were striving to obtain a unanimously acceptable text. 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 there was no need to define such aggression. On the contrary, it attached great importance to the task of defining indirect aggression, which he was sure the United Nations would undertake at a later date. Having accepted that view, his delegation would be consistent and would oppose any reference to indirect aggression elsewhere in the draft definition.

As to the arguments adduced by the United States representative in replying to the question by the representative of Ecuador, neither direct nor indirect aggression was mentioned in the Charter, so the first argument was not well founded. So far as the second argument was concerned, he had just explained the reason for deleting the reference to indirect aggression in the USSR draft. That deletion did not imply, moreover, that the USSR draft constituted a positive abandonment of a definition of indirect aggression.

Mr. SMITH (Australia) said that his delegation could not agree to excluding indirect aggression from any definition of aggression. The Charter clearly prohibited the use of force, and aggression amounted no less to the use of force if undertaken by indirect means. The use of force by indirect means was a present-day reality, which must be recognized as an essential element of aggression in any definition of aggression.

Mr. ALCIVAR (Ecuador) said he thought it would be pointless to continue discussing the question whether or not indirect aggression should be included in the draft definition at the present stage. What the Committee had set out to do was to compare the three texts before it and to identify areas of agreement and disagreement. The views of the sponsors of the six-Power draft on the inclusion of indirect aggression had just been stated, and their position in respect of the principle of priority and of the element of intent should now be ascertained. If it appeared that there was agreement on basic questions of principle between the sponsors of the thirteen-Power draft and the USSR delegation, a single working document should be prepared by them, and then direct negotiations could be undertaken between them and the sponsors of the six-Power draft.

Mr. WIREDU (Ghana) said that if the Committee concentrated on the features common to all three drafts, as he had suggested earlier, some progress could be made. All three drafts envisaged aggression in reference to Articles 39 and 51 of the Charter, and that was "armed aggression". The Committee could therefore start by defining armed aggression and that definition would form the first paragraph of any text. 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.

Mr. BADESCO (Romania) said he agreed that there would be little point in discussing the question of direct and indirect aggression further at the present stage. With the deletion of the words "direct or indirect from paragraph 1 of the USSR draft, the text was consistent with the provisions of the Charter. The same thing could be said of paragraph 2 of the thirteen-Power draft. The only difference between paragraph 1 of the USSR draft and paragraph 2 of the thirteen-Power draft was one of terminology and that could be dealt with by a drafting committee.

In reply to a question from Mr. BILGE (Turkey), Mr. KOLESNIK (Union of Soviet Socialist Republics) 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.

Mr. STARACCE (Italy) said he objected to the procedure being followed. The Committee would have done better to start compiling a list of points to be debated than to discuss what points to include in the definition. He could not agree that there should be no further discussion of whether or not indirect aggression was to be included in the definition; only general views had so far been expressed on the subject and specific details had not yet been considered.

The move to omit indirect aggression from the definition was somewhat surprising. It had been included in all three drafts, from which it would appear that there was a general consensus that it was a form of aggression. In fact, all had agreed that indirect aggression was one of the most serious forms of aggression at the present time. If he had understood correctly, the main concern was whether the right of self-defence should apply in cases of indirect aggression, but that was a matter that could be left until later. In other words, indirect aggression might be included as a form of aggression in the draft definition at the present stage and questions relating to its precise scope could be discussed later.

Mr. ALLAF (Syria), speaking on a point of order, said he did not consider that the representative of Italy had the right to re-open the question of substance at the present juncture. Many delegations wanted to confine the definition to direct aggression, the USSR representative had agreed to that as a compromise, and the question put to the sponsors of the six-Power draft had been answered. If every delegation spoke now to defend its point of view the Committee would get nowhere.

Mr. STARACCE (Italy) exercising his right of reply, said he had not understood that the debate had been closed on the question of including indirect aggression in the definition. All he had been suggesting was that the Committee should agree that indirect aggression was a form of aggression and leave aside the question of exercising the right of self-defence in cases of indirect aggression for the time being.

The meeting rose at 6.20 p.m.

SUMMARY RECORD OF THE SIXTY-SECOND MEETING

held on Friday, 24 July 1970, at 10.15 a.m.

Chairman: Mr. FAKHREDDINE Sudan

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTIONS 2330(XXII), 2420 (XXIII) AND 2549(XXIV)) (agenda item 5) (A/7620; A/AC.134/L.22) (continued)

The CHAIRMAN recalled that, at its 61st meeting, the Committee had considered operative paragraph 1 of the USSR draft and the corresponding operative paragraphs of the other two drafts. He suggested that when the eight members wishing to speak on the question of direct and indirect aggression had spoken, the Committee should continue its discussion, taking up the other points in the corresponding provisions in the three drafts.

Mr. ALLAF (Syria) said it was essential not to reopen the general debate. Regarding the question of direct and indirect aggression, he recalled that at the 61st meeting those who wanted the definition to deal only with direct armed aggression had persuaded the Soviet Union to delete the words "direct or indirect" from operative paragraph 1 of its draft; on that occasion, the USSR delegation had stated that at the present session it would be better to define only direct armed aggression. The USSR draft had thus been brought considerably closer to the thirteen-Power draft in that respect. However, the sponsors of the six-Power draft had refused to delete the reference to indirect aggression in their draft. The position was perfectly clear and the Committee should now take up the second point in operative paragraph 1 of the USSR draft and the corresponding paragraphs in the other two drafts: the principle of priority. He therefore hoped that those who wished to make statements would deal with that principle and not with the question of direct and indirect aggression.

Mr. SCHWEBEL (United States of America), speaking on a point of order, said that the Syrian representative had by no means clarified the debate; at the 61st meeting, that representative had made a suggestion, but that suggestion had not been adopted. In the opinion of the United States, indirect aggression was an essential aspect of the Committee's task and therefore agreement had to be reached on that point if a satisfactory and acceptable definition was to be produced.

The CHAIRMAN suggested, in the light of the United States representative's remark, that the eight representatives who wished to speak should be allowed to deal either with the question of direct and indirect aggression or with other points, on the understanding that, when that list of speakers was exhausted, delegations could only discuss the other points.

Mr. ALLAF (Syria) said he feared that, if those eight delegations were allowed to speak again on the question of direct and indirect aggression, other delegations might wish to reply to them and much time would be wasted.

Mr. KOLESNIK (Union of Soviet Socialist Republics) expressed concern at the direction the discussion had taken. He pointed out that, at the 61st meeting, the Committee had listed the basic issues to be considered: the question of direct and indirect aggression, the principle of priority and the criterion of intent. He feared that if the discussion of those issues proceeded in the way some delegations wished, there might be a repetition of the debate which had already taken place at the Committee's previous sessions. As the representative of Syria had pointed out, the arguments were well known and the Committee's present task was to clarify the position of the sponsors of the three drafts by concentrating on the basic principles; the three texts should be compared with a view to identifying possible areas of agreement.

Mr. VALERA (Spain), speaking on a point of order, said that the USSR delegation had made it possible to reach a compromise, at the 61st meeting, on the question of direct and indirect aggression. It had been argued, however, that if the Committee decided to omit any reference to indirect aggression, the seventh preambular paragraph of the thirteen-Power draft would have to be deleted. As a co-sponsor of that draft, his delegation could not accept that; it believed that the Committee should reconsider the question of direct and indirect aggression, with specific reference to that paragraph, which dealt with legitimate self-defence.

Mr. SCHEBEL (United States of America), speaking on a point of order, said that, as far as he was aware, the list of speakers on the question of direct and indirect aggression was not closed; his own delegation also intended to speak in that debate and wished to be added to the list. At the 61st meeting, the Committee had agreed to explore point by point all possibilities of reconciling the views of delegations. That should be the basic task of the Committee, which could not evade those issues. The Committee had decided not to compare the corresponding provisions of the respective drafts, but to compare the underlying principles in the light of the drafts; it should not become involved in phraseology but should, on the contrary, consider the substance of the points on which the Committee's members agreed or disagreed.

The CHAIRMAN said he understood that the Committee wished to consider the drafts paragraph by paragraph in order to identify the points they had in common or

the points which needed to be reconciled. The first of those points was the question of direct and indirect aggression. He again suggested that the speakers on the list should be allowed to speak either on that first point, or, if they considered that the subject had been exhausted, on other points. He proposed to close the list of speakers after adding to it the United States of America.

Mr. ROSSIDES (Cyprus), speaking on a point of order, said that the Committee had indeed decided to consider principles, as the United States representative had observed, but to consider them only in relation to paragraphs under discussion; the Committee would therefore consider the principle of priority or the question of political entities in the context of the paragraphs which invoked those concepts.

The CHAIRMAN agreed with that interpretation of the Committee's decision.

Mr. WIREDU (Ghana) asked the Chairman whether, when he had spoken of closing the list of speakers, he had meant that delegations not on that list could not speak about the principle of priority and the question of political entities.

The CHAIRMAN agreed that the representative of Ghana had raised a cogent point and that it would be unfair to close the list of speakers. He therefore appealed to the speakers on the list not to reopen the question of direct and indirect aggression.

Mr. SCHWEBEL (United States of America) said he believed the Chairman had not described quite accurately the decision taken by the Committee at the 61st meeting. The Committee had decided to concentrate its attention successively on three issues - the direct or indirect use of force, the principal of priority and the question of intent - in the light of the drafts submitted, exploring the possibility of agreement. That procedure should now be followed. Moreover, if he remembered rightly, the list of speakers had not been closed at the 61st meeting.

Mr. ALCIVAR (Ecuador) said that the agreement reached at the 61st meeting had been quite clear; the Committee had decided to consider the drafts paragraph by paragraph, beginning with operative paragraph 1 of the USSR draft and the corresponding paragraphs of the other drafts, i.e. paragraph 2 of the thirteen-Power draft and paragraph II of the six-Power draft, taking into account the various issues arising out of those provisions: the question of the direct or indirect use of force, the question of intent and the principle of priority. The Committee had first taken up the question of direct and indirect aggression, but it could not go on discussing that subject indefinitely; if the views on that issue were to be reconciled it would have to be taken up in informal negotiations and not debated in a plenary meeting. He therefore proposed that the list of speakers on the question of direct and indirect use of force should be closed.

The CHAIRMAN observed that the proposal of the representative of Ecuador had the same purpose as the appeal he had just made.

Mr. JELIC (Yugoslavia) observed that, before the Committee could continue and conclude the discussion on the question of direct and indirect aggression, it was essential to determine what was being discussed; the USSR draft referred to armed aggression, in the meaning of Article 51 of the Charter, whereas the thirteen-Power and six-Power drafts referred simply to aggression, in the meaning of Article 39 of the Charter, i.e. a much broader meaning; that concept had been further broadened by the reference to direct or indirect aggression. It was therefore essential for the Committee to know exactly what it was discussing.

Mr. ROSSIDES (Cyprus) agreed that at the 61st meeting there had been no question of closing the list of speakers; the Committee had simply decided to consider operative paragraph 1 of the USSR draft and the corresponding paragraphs of the other two drafts, concentrating on the question of direct and indirect aggression. It would now be desirable to extend the discussion to other issues, i.e. the principle of priority and the question of political entities; as a compromise, however, he suggested that speakers should not be precluded from referring to the question of direct and indirect aggression, on the understanding that consideration of that subject was almost completed; the speakers should be asked not to make unduly long statements on the subject. It would only be fair to allow delegations still wishing to speak to be added to the list of speakers.

The CHAIRMAN said he shared the desire of the representative of Cyprus for fairness. To meet his request, he would postpone closing the list of speakers until 1 p.m.

Mr. ALLAF (Syria) said that he could not agree to that procedure, for, if the Chairman extended the time limit for entering names on the list of speakers in that way, there might be far too many speakers. According to the spirit of the procedure adopted at the 61st meeting, the general debate should be closed and the Committee should now turn to the basic principles, namely the question of direct or indirect aggression, the question of intent, the principle of priority and the question of the consequences of aggression. In his delegation's view, the Committee should decide to discuss each principle once only, so that the agreement or disagreement that emerged would be valid for all the paragraphs of the drafts.

The CHAIRMAN said that he would ask all those delegations which wished to discuss the question of direct or indirect aggression to indicate whether they desired

to be put on the list of speakers, after which the Committee could decide to close the list of speakers on that subject.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics), speaking on a point of order, said that members of the Committee should not reopen the decision taken the day before concerning the question of direct and indirect aggression. However, the issue of political entities should be dealt with.

Mr. WIREDU (Ghana), taking up a point made by the Yugoslav representative, said that the discussion of direct and indirect aggression must be related to Articles 1, 39 and 51 of the Charter, all of which contained the term "aggression". If it concentrated on the concept of aggression as contained in the draft definitions, the Committee might give the concept a narrower meaning than did the relevant articles of the Charter.

Mr. EL REEDY (United Arab Republic) said that the Committee had decided at the 61st meeting to examine the three drafts, paragraph by paragraph, which presupposed a consideration of the principles they contained, and that would be done with reference to Articles 1, 39 and 51 of the Charter. He did not think the representative of Ghana needed to have any fears on that score.

Mr. ROSSIDES (Cyprus), speaking on a point of order, pointed out that the question of direct and indirect aggression would arise again in connexion with paragraph IV of the six-Power draft. The decision on closing the list of speakers should therefore apply only to the discussion on the concept of aggression in the sense of paragraph 1 of the USSR draft and not *in abstracto* nor in the sense of paragraph IV of the six-Power draft. It was still too early to determine the meaning of the concept of aggression in that latter provision.

Mr. SCHWEBEL (United States of America) said that he agreed with the representative of Cyprus regarding the procedure to be followed in examining the concept of aggression.

Several speakers, including the representatives of Equador and Syria, had recalled that it had been decided at the 61st meeting to examine certain points, including the question of intent, and they had added that it had also been decided to study the three drafts paragraph by paragraph. He would be glad if those speakers could indicate to him where the concept of intent was to be found in paragraph 1 of the USSR draft or in the corresponding paragraphs of the other two drafts.

Mr. ALLAF (Syria) said that he disagreed with the view expressed by the representative of Cyprus and supported by the United States representative. If their

suggestion was followed, at least two meetings would be devoted to considering direct and indirect aggression within the meaning of paragraph 1 of the USSR draft and that question would subsequently give rise to further general discussion. The same thing would happen in the case of any principle, such as the principle of priority, that appeared in several provisions of the drafts. Such a procedure was inacceptable. The Committee should not waste its time on points which were perhaps only matters of drafting. He recalled that he had opposed consideration of the drafts paragraph by paragraph so long as the differences on certain basic principles and criteria had not been settled.

Replying to the United States representative, he said that the question of intent would arise when the Committee took up the provision of the thirteen-Power draft in which that question was mentioned. The criterion of intent was in fact linked with the different forms of aggression.

Mr. CLARK (Canada), speaking on a point of order, said that the present discussion was concerned solely with procedure. He proposed that the meeting should be suspended to enable informal consultations between the Chairman and certain delegations to take place. The Canadian delegation would agree to any procedure that was generally acceptable and likely to speed up the work of the Committee.

The CHAIRMAN, under rule 119 of the rules of procedure put that motion to the vote immediately.

The motion was adopted by 22 votes to 3, with 2 abstentions.

The meeting was suspended at 11.30 a.m. and resumed at 12 noon.

The CHAIRMAN announced that the suspension of the meeting had been useful because, as a result, delegations had more or less agreed on the course to be followed. The comparative table prepared by the Secretariat showed the comparable provisions of the three draft proposals side by side. The normal method of work was to identify and discuss the principles which emerged from paragraph 1 of the USSR draft and from the corresponding paragraphs of the other two drafts, and so on, paragraph by paragraph.

Mr. ALLAF (Syria) said that he could agree to the Committee taking up the principles in paragraph 1 of the USSR draft in the order in which they appeared, but he was against reopening the discussion later if the same principles were found in other provisions of the drafts.

The CHAIRMAN observed that the Committee might have to re-examine a principle later, if it appeared in a different context.

Mr. WIREDU (Ghana), taking up the point raised by the representative of Syria, said that the question of priority would inevitably give rise to problems of interpretation at some stage. Consequently, the Committee should agree, within the framework of paragraph 1 of the USSR draft, on an interpretation of that concept which was generally acceptable no matter where it was placed in the drafts. The procedure to be followed should therefore be made perfectly clear before it was adopted.

Mr. ALCIVAR (Ecuador) said that he did not object to the suggested procedure. He thought, however, that only the morning meetings should be devoted to statements by representatives, the afternoons being reserved for informal contacts. He was convinced that, for delegations which genuinely desired to define aggression, private consultations would be the only means of achieving a positive result.

The CHAIRMAN said he did not think it was possible to take a final decision on the lines indicated by the representative of Ecuador, but he would bear the latter's suggestion in mind.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) said he was against unnecessarily prolonging the general debate, since he believed it would not produce any result. The Committee had begun discussing the day before the substance of paragraph 1 of the USSR draft and of the corresponding paragraphs of the other drafts. Certain representatives, those who did not want to define aggression, were trying at the present meeting to disrupt the work of the Committee by raising questions of procedure. The USSR delegation considered that the Committee should abide by the decision taken the previous day and turn to the consideration of other principles. He was surprised that a minority should be able to paralyse the work of the Committee in that way.

The CHAIRMAN observed that the USSR representative's remarks did not conflict with what he himself was proposing, namely that consideration of the question of direct or indirect aggression should be concluded, that the Committee should move on to the criterion of priority and that it should then look for the comparable principles in the following paragraphs of the drafts and examine them in turn. He invited the Committee to adopt that procedure.

It was so decided.

The CHAIRMAN invited members of the Committee wishing to be placed on the list of speakers on the question of direct and indirect aggression to so signify immediately.

Mr. ROSSIDES (Cyprus) requested that his name be added to the list of speakers.

The CHAIRMAN proposed that the list of speakers should be closed.

It was so decided.

Mr. MUTUALE (Democratic Republic of the Congo) said that, for the last two meetings, the Committee had been swamped by points of order. He hoped that the serene atmosphere which was so necessary for negotiations had now been restored.

He wished to reiterate his delegation's position regarding the distinction to be made between direct and indirect forms of aggression. Since the twenty-second session of the General Assembly, both at meetings of the Special Committee on the Question of Defining Aggression and in the Sixth Committee, the Democratic Republic of the Congo had maintained that aggression itself should be defined, after which attention should be given to classifying the various forms it could take. There should be no hesitation between the principal and the accessory, between the principle of aggression and what was merely an example of aggression. If the elements that constituted a theft or a murder were present, a murder or a theft was inferred, irrespective of the method used by the author of the action. The Committee's task was to define aggression, and not the forms it took, because the latter were related to the methods or circumstances in which the aggressor actually committed an act of aggression.

Nevertheless, when he had upheld that viewpoint at the 1968 session of the Committee, he had been told that a compromise had already been reached in the Committee and that the general view was that the first step should be to define the direct forms of aggression, in other words the use of armed force. Desiring the work to be done in an orderly manner, he had accepted that the Committee should first define armed aggression on the understanding that it was only a start, for by defining armed aggression the Committee would have formulated only part of the definition it had been asked to prepare. It should be perfectly understood that the distinction between direct and indirect forms of aggression was extra-juridical; it was a matter of method and there could be no question of defining aggression in its direct forms without completing the definition by a study of the indirect forms.

Consequently, a sentence should be inserted in the preamble of the future definition explaining that the Committee had begun by defining direct forms of aggression but that that did not constitute its whole task.

Mr. STEEL (United Kingdom) said that he fully supported the remarks made by the representative of the Democratic Republic of the Congo, except with regard to the procedure to be followed.

The members of the Committee were certainly almost unanimous in thinking that aggression could be committed either by direct means or by indirect means and that the indirect use of force was at least as dangerous to international peace and security as aggression committed by obvious means. In his view, indirect aggression was undoubtedly more dangerous than direct aggression, at least nowadays. Direct aggression, committed when armed forces crossed a frontier or when the territory of another State was bombed, was obvious and incontrovertible. Indirect aggression, on the other hand, gave room for argument, and there was always argument, because the aggressor denied the facts and his argument was not easy to rebut. It was generally recognized, moreover, that indirect aggression was the most frequent form of aggression in the world today.

In the circumstances, would the Committee be doing anything useful by providing the world with a definition which merely stated the obvious and left the real problem unsolved? And, more serious still, would not such a definition be dangerous?

In any event, a definition concerned with direct methods of using armed force and which left unsettled, in other words, subject to dispute, the question whether the indirect use of force did or did not constitute aggression would not be a satisfactory definition.

The discussion at the 61st meeting had been concerned with the possibility of the Committee leaving that question aside for the moment and dealing with a simpler, clearer, concept in the three paragraphs under consideration, namely paragraph 1 of the USSR draft, paragraph 2 of the thirteen-Power draft and the first paragraph II of the six-Power draft. That was not, in his view, a sensible method. He had not heard a single argument to convince him of the advantage of that procedure, other than that it would be a way of avoiding the difficulty. But nothing would be solved by avoiding difficulties. Sooner or later it would be necessary to come to the point.

The USSR representative had explained at the 61st meeting why he would be prepared to omit the words "direct or indirect" qualifying armed aggression in paragraph 1 of his draft, but he had given no explanation of the reason for omitting the qualification. He, for his part, would endeavour to explain why those qualifying words should be retained, and he would like those holding the opposite view to explain why they should be deleted.

The first paragraphs in the three draft definitions stated what constituted, in his view, the core of the definition of aggression. The remaining provisions of each of the drafts only elaborated on that central element of the definition, with qualifications and exceptions. Since it was the central idea that was being studied it should be formulated completely and without distortion.

To begin with, from the viewpoint of that central idea, the three drafts were very close to one another; they all were based on Article 2, paragraph 4, of the Charter.

His delegation, however, and the other delegations sponsoring the six-Power draft, had feared that the wording of the Charter might not be clear enough to embrace the essence of aggression in all its practical manifestations, and they had also feared that the wording of the Charter might be interpreted as referring only to the direct use of force. The discussions during the last ten days had amply proved that their fears had been justified.

It was, therefore, desirable and vital, in their view, to state what the principle of the definition of aggression was in a form which left no room for doubt.

If it was in fact generally recognized that the indirect use of force did constitute aggression, he wondered why some were opposed to stating that unequivocally and clearing up, once and for all, any doubts on the subject. If, on the other hand, there were some who were not in agreement with him on that point, then the Committee had to settle a major question of principle and could not proceed further with its work until it had done so.

Mr. EL REEDY (United Arab Republic) recalled that he had proposed to the Committee in a constructive spirit at its 61st meeting a method of work which had given rise to a lengthy procedural discussion. He stressed that if the method now to be adopted would enable some members to try to thwart the desire of many members of the Committee to reach agreement, then other methods could be adopted. The United Arab Republic would oppose any attempt to give a definition of aggression which was not a real definition, or to make it appear to the General Assembly that to define aggression was an impossible task.

With regard to whether or not the words "direct and indirect" should be mentioned, he recalled that those words were alien to the concept of aggression as contained in the Charter. That was the reason his delegation at the Committee's 1968 session had submitted a formal amendment to the original thirteen-Power proposal, for the deletion of those words. It appreciated the fact that the thirteen-Powers had accepted that amendment in their revised draft submitted in 1969.

The use of adjectives such as "direct or indirect" and "overt or covert" would tend to dilute the very concept of aggression and consequently dilute the concept of self-defence. Such a result would be unwelcome, because it might help aggressors, who usually gave their acts of aggression the label "self-defence".

Article 51 of the Charter had been wisely drafted. It restricted the application of the resort to force in self-defence to the cases where armed attack occurred. That

restriction might be endangered if the concept of aggression were falsely expanded through the use of such ambiguous terms as "direct or indirect" and "overt or covert".

The United Kingdom representative had said that the six-Power draft was based on Article 2, paragraph 4, in defining aggression as the use of direct or indirect force. He disagreed strongly, since the Charter contained no qualification of the "use of force" mentioned in Article 2, paragraph 4.

If the concept of the use of force was to be understood, reference should be made to the work of the Special Committee on Principles of International Law Concerning Friendly Relations and Co-operation among States; after several years of work the Special Committee had drafted a Declaration dealing, among other principles, precisely with the principle prohibiting the threat or use of force. It was noteworthy that in the Declaration no distinction was made between "direct" and "indirect" use of force. The reply therefore to those, and particularly to the United Kingdom representative, who asked why the words "direct or indirect" should be omitted from the definition of aggression was that, basically, the distinction was not there in the first place.

At the 61st meeting, the sponsors of the thirteen-Power draft had persuaded the USSR to omit that phrase in the definition in paragraph 1 of its draft. He had hoped that the United States representative would not have rejected as decisively as he had done the same possibility with regard to the six-Power draft, but he had been disappointed.

The meeting rose at 1 p.m.

SUMMARY RECORD OF THE SIXTY-THIRD MEETING

held on Friday, 24 July 1970, at 3.20 p.m.

Chairman: Mr. FAKHREDDINE Sudan

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTIONS 2330(XXII), 2420(XXIII) AND 2549(XXIV) (agenda item 5) (A/7620; A/AC.134/L.22)) (continued)

Mr. BAYONA (Colombia) said he entirely agreed with the United States representative that indirect aggression was one of the most serious forms of aggression; it was precisely for that reason that his delegation had never entertained the thought that indirect aggression should not be defined. It was solely for procedural reasons due to the difficulties involved in defining indirect aggression that it supported the idea that the Committee should first define direct aggression in the sense of the armed attack which was referred to in the Charter and against which a victim State could exercise the right of self-defence under the provisions of Article 51. To define the conditions under which that right could justifiably be exercised in the face of indirect aggression was a difficult problem which would take time to solve, but no one denied that there might be instances of indirect aggression in which the provisions of Article 51 would apply; a definition to cover indirect aggression would, he was convinced, be prepared in due course. The question whether direct and indirect aggression were mentioned in the Charter or not 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.

What was being said in the thirteen-Power draft was, in principle, that armed aggression was being dealt with first because it represented one of the more serious forms of aggression. He did not think that the failure to include another of the more serious forms of aggression, indirect aggression, would diminish the value of the definition in the eyes of the world, as the United Kingdom representative had suggested (62nd meeting). He doubted very much, moreover, whether the definition would be adopted by the General Assembly at its session that year; if it was adopted in 1971, he would consider that result a magnificent achievement.

Mr. POLLARD (Guyana) said that at the present juncture in the debate, which had been virtually closed when the United States representative had stated his delegation's position in terms suggestive of a categorical imperative, he would merely

say that the psychological and material imponderables surrounding indirect aggression were cogent arguments in favour of deferring its definition until a later stage. He assumed that what lay behind the United Kingdom representative's suggestion that concentration on direct aggression at the present time might lead to an increase in acts of indirect aggression was his fear that the over-all level of violence would thereby be raised. If that assumption was correct, the argument was that a definition of direct aggression might raise the over-all level of violence. That was a non sequitur, and therefore unacceptable.

As for the question put by the United States representative at the 62nd meeting concerning the accommodation of intent under the principle of priority, 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.

Mr. SIDIK (Indonesia) said he had already indicated that his delegation's attitude was flexible in so far as obtaining agreement on the formulation of a definition was concerned. His delegation had also made clear at previous sessions and in the Sixth Committee of the General Assembly its view, based on bitter experience of subversive activities in Indonesia, that indirect aggression could be as dangerous as direct.

For the sake of expediency, however, and in a spirit of solidarity with certain brother countries, his delegation was inclined to accept the suggestion of the majority that direct armed aggression should be dealt with first. It was in fact prepared to accept the thirteen-Power draft as it stood. It fully agreed with the assertion of the representative of the Democratic Republic of the Congo (62nd meeting), however, that no matter what definition was drawn up, 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.

The deletion of paragraph 2 C from the USSR draft caused difficulties for his delegation. If the qualification of aggression was omitted from paragraph 1, and then if action by armed bands was excluded from the enumeration of acts to be considered as aggression, that could be interpreted as giving licence to States to resort to the use of armed force through the medium of armed bands, mercenaries, saboteurs and the like. Articles 39, 40 and 51 of the Charter did not mention direct or indirect

aggression, but neither did they stipulate that acts by armed bands, saboteurs and the like did not constitute aggression. In fact, no one would deny that such acts could be categorized as aggression, and, in particular, as armed aggression. His delegation 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. As the whole paragraph had been deleted, however, he wondered whether the USSR delegation would be prepared to re-insert the reference to direct aggression in paragraph 1 of its draft, the beginning of which would then read: "Direct armed aggression is the use by a State ....". It would then be unmistakeably clear that the definition did not cover the whole concept of aggression. He was not making a formal proposal in that sense at the present stage, but reserved the right to do so later after hearing the views of other delegations.

Mr. BILGE (Turkey) said he had already stressed the importance his delegation attached to indirect armed aggression, which had attained a scope and significance which almost put it on a par with classic direct aggression. The only difference between direct and indirect aggression nowadays was that in the former case, countries were conquered by direct action and in the latter by the stirring up of civil war and by territorial violation. He hoped that indirect aggression would be included in the Committee's definition. There was no lack of precedent, for in treaties defining aggression that had been concluded in the past there was always a paragraph dealing with support given to armed bands, a paragraph which had been included at the insistence of countries participating in the Disarmament Conference which had had to suffer from the activities of such bands.

It had been argued that in order to achieve the greatest possible measure of support, it would be better for the Committee to limit itself to preparing a minimum definition. His delegation agreed, but 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.

His delegation had not so far commented on any of the three drafts before the Committee. It had an open mind on the subject, but it would not be satisfied with a definition it regarded as inadequate. He would reflect on the Indonesian representative's suggestion, but reserved his delegation's position. The preamble to the thirteen-Power draft was not satisfactory to his delegation in that respect either.

Mr. SCHWEBEL (United States of America) said the United Arab Republic representative had rightly pointed out that the Charter spoke of aggression, the threat or use of force, and armed attack, but made no mention of direct or indirect use of force. From that unquestionable premise, however, he had arrived at a questionable conclusion: that the types of force involved in aggression should not be specified in the definition. The logical conclusion from that premise would be that neither direct nor indirect uses of force should be dealt with, and that would lead nowhere.

He could not see why it should be more reasonable to speak of direct aggression than of indirect aggression. The Charter was concerned with armed attack, and the six-Power draft spoke of uses of force, which was wholly consistent with the logic and intention of the Charter. There was no justification in the Charter for describing aggression by certain means and excluding aggression by other means; arguments to the contrary were untenable. The only point of substance raised by those who favoured the exclusion of indirect uses of force from the definition was that their inclusion raised the question of the scope of the response in self-defence. The United Arab Republic representative had expressed a legitimate concern lest the inclusion of indirect uses of force might unduly dilute the concept of aggression and expand the scope of permissible self-defence. There was, however, 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. He hoped that answer would reassure the United Arab Republic representative and lead him to reconsider his opposition to the inclusion of the use of force by indirect means in the definition.

There seemed to be some confusion about the distinction made by the sponsors of the six-Power draft between the indirect use of force and the covert use of force. The draft Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States threw some light on that. The eighth paragraph in that draft Declaration under the heading "The principle that States shall refrain in their international relations from the ... use of force ..." referred to the duty of every State to refrain from organizing or encouraging the organization of armed bands for incursion into the territory of another State, or, in other words, to refrain from the covert use of force; while the following paragraph referred to the duty of every State

to refrain from organizing acts of civil strife in another State, or, in other words, to refrain from the indirect use of force. The distinction the sponsors of the six-Power draft were making was precisely the distinction made in that text, and he could not understand why delegations which had found it possible to accept the kind of statement contained in the draft Declaration could not accept a similar statement in a definition of aggression when they agreed that aggression was a use of force. There would be a response to such types of aggression, and to say that it would be limited by the Committee's definition would be to make a laughing-stock of the Committee.

The argument that the Committee should restrict itself to defining direct aggression at the present stage because direct aggression was relatively easy to define was derisory; efforts to define it had already lasted for more than thirty years and, moreover, if indirect aggression was a more difficult subject, there was no knowing how long it would take to define. If the Committee meant to define aggression, it must include both direct and indirect aggression in its definition. Many speakers had said that they were not opposed to, or that they were in favour of, defining indirect aggression. His delegation was not attached to any particular form of words, but it considered it imperative that the essential elements of aggression be set out in any definition. The United States Government would oppose any definition of aggression from which indirect uses of force were excluded. The Committee was to contribute to the development of international law and not to its regression; to omit the concept of the use of force by indirect means would be regression.

Mr. GROS ESPIELL (Uruguay) said it had already been made clear that his delegation considered aggression as any use of armed force in violation of the purposes and principles of the United Nations Charter. The Charter did not mention "direct or indirect, overt or covert", so what the definition should do was to enumerate all the illegal uses of armed force.

His Government rejected all forms of armed aggression, but it believed that a distinction must be made between direct and indirect aggression, in particular because of the provision relating to the exercise of the right of self-defence. Under the Charter, that right could only be exercised in response to armed attack, in other words to direct armed aggression.

His delegation had agreed that paragraph 2 of the thirteen-Power draft should be confined to direct armed aggression because it believed that it would be relatively easy to obtain agreement on that aspect and that a second definition could be prepared subsequently to cover indirect aggression. It was convinced that insistence on including indirect aggression in the first definition would condemn the Committee to failure.

In a spirit of compromise, his delegation was prepared to accept a 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 analysed and studied at the Committee's next session. That in no way meant that his delegation believed that direct armed aggression was necessarily the most serious form of aggression; indirect aggression was a very serious form of aggression, particularly in Latin America at the present time. He hoped that other delegations would demonstrate the open-mindedness and spirit of co-operation shown by his own delegation.

Mr. ROSSIDES (Cyprus) said that in his opinion direct and indirect aggression did not appear in the Charter; only "aggression" was mentioned. The six-Power draft, as its protagonists had pointed out, treated aggression as a single concept within the meaning of Article 2, paragraph 4, of the Charter, without introducing the notion of categories of aggression. The definition prepared by the Committee would have to be consistent with the Charter and not with the current interests of individual States; but Article 2, paragraph 4, prohibited also the threat of force and was therefore concerned with a broader concept than the use of armed force. A more limited concept was invoked in Articles 1 and 39 of the Charter, and the still more limited one of "armed attack" in Article 51. Since the purpose of the United Nations was to maintain international peace and security, the Charter wisely restricted, in Article 51, the grounds for exercising the right of self-defence by referring specifically to armed attack, the most serious and dangerous form of the use of force. To be effective in such cases, defensive action generally had to be taken without waiting for a decision by the Security Council. A definition of armed aggression was what was most urgently needed, and it should not be difficult to agree on what constituted armed aggression for the purposes of Article 51. In the case of less direct and less obvious forms of aggression, there was generally time to seek

action through the Security Council. Most instances of such aggression did not warrant recourse to self-defence, i.e. war. Incursion by armed bands, if of such a nature as to create the imminence of danger and emergency contemplated in Article 51, might, however, warrant such action, but that would be for the Security Council to determine. The Committee should first concentrate on defining armed aggression, on the basis of Article 51 of the Charter, and take up the less direct forms later.

Mr. EL REEDY (United Arab Republic) said that indirect aggression was a matter of particular concern to small countries, because of their vulnerability to it. His own country had been the victim of many of the forms of indirect aggression mentioned by representatives during the discussion. It had played an active part in the adoption of General Assembly resolution 2131 (XX) of 21 December 1965, containing the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, and had proposed, together with Chile, the incorporation of the principle of non-intervention in the draft Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States. If, however, the word "aggression" was qualified by such vague terms as "covert" and "indirect", the safeguard in Article 51 might be weakened and give States an opportunity to use force under the pretext of self-defence. The United States representative's reply that the principle of proportionality would be a sufficient safeguard for States against such aggression had not convinced him. The Government of a State subjected to subversion or attempts to overthrow the régime was entitled to take measures to protect itself and its institutions. He therefore agreed with the substance of the relevant paragraph of the thirteen-Power draft. The six-Power draft seemed to be based on Article 2, paragraph 4, of the Charter, which dealt with the use of force but also with other concepts. As the United States representative had stated, the draft Declaration on friendly relations, in which the principle underlying Article 2, paragraph 4, of the Charter was elaborated, also dealt with the use of force, but the general paragraph defining the elements of the use of force in that draft Declaration did not use the words "direct", "indirect", "overt" or "covert".

Some serious forms of aggression, however, mentioned in the draft Declaration as violations of the principle of the non-use of force, and recognized as such by the United States representative in his reply, had unaccountably been omitted from the

six-Power draft. The draft Declaration stated that "The territory of a State shall not be the object of military occupation resulting from the use of force in contravention of the provisions of the Charter"; and that "The territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force". It had been argued that the definition should not refer to the acquisition of territory, as that was a consequence of aggression and not the act of aggression itself. His delegation believed that occupation of the territory of a State was a continuous act of aggression, since it depended on the strength and weight of armed force. Logically, it was no different from the initial acquisition of the territory by force. The United States representative had stated that his Government did not support the acquisition of territory by aggression. The point was whether the acquisition of territory by force was permissible. Aggressor States never admitted that they had committed aggression, but generally claimed to have acted in self-defence. He had put the question whether a State which had repelled aggression and in doing so had entered and annexed part of the aggressor State's territory should be considered as having committed aggression, since its initial use of force in self-defence had been legitimate. That question had not been adequately answered by the United States representative, and he maintained his position on that point.

The draft Declaration also stated that "Every State has the duty to refrain from any forcible action which deprives peoples referred to in the elaboration of the principle of equal rights and self-determination of their right to self-determination and freedom and independence". It had been claimed that such a provision had not been included in the six-Power draft because self-determination had nothing to do with aggression. But, a State which used force against a people in denying it self-determination violated the principle of the non-use of force and therefore committed aggression.

Mr. SCHWEBEL (United States of America) replied that not all the principles invoked in the draft Declaration were relevant to the definition of aggression. The six-Power draft did not contain a reference to the non-recognition of territory acquired by aggression because the acquisition of territory was a consequence of aggression, whereas the Committee was trying to define the act of aggression itself and not to enumerate or analyse the many possible consequences of aggression. Nevertheless, he believed that the latest official statement of the United States concerning

the acquisition of territory by force had been the address of the Secretary of State on 9 December 1969 concerning the situation in the Middle East; in speaking of the armistice lines, he had said that any border changes "should not reflect the weight of conquest".

Mr. EL REEDY (United Arab Republic), speaking on a point of order, said he had avoided referring to questions which concerned the Middle East or his own country, as his Government had not authorized him to raise such questions in the Committee, which was not an appropriate place for their discussion. The questions he had put to the United States representative had been on a point of law and did not refer to any specific situation.

The CHAIRMAN said he had understood that the United States representative had referred to the Middle East only by way of example and he had not therefore brought him to order.

Mr. SCHWEBEL (United States of America) said he had mentioned the Middle East only to identify a statement. He recalled that when other members of the Committee had spoken freely, and at some length, about the situation in the Middle East, neither the Chairman nor the representative of the United Arab Republic had remonstrated. He asked why the United Arab Republic considered that the requirement that a response to the use of force by indirect means be proportionate was an inadequate safeguard.

The CHAIRMAN, replying to a question put by Mr. WIREDU (Ghana), said that when the Committee decided to delete the statement of a principle from a particular paragraph, it would automatically be deleted from any other paragraphs; there would be no need to take it up again when considering other paragraphs if it had already been adequately discussed. As there were no more speakers on the question whether to include indirect aggression in the definition, he took it that the discussion on that subject was concluded.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) asked what result had been achieved by that discussion and whether any conclusion had been reached. His delegation's position on other parts of the definition would depend to some extent on whether or not the definition covered indirect as well as direct aggression.

The CHAIRMAN replied that informal consultations on the subject were continuing, and he hoped that a satisfactory solution would be found.

Mr. ROSSIDES (Cyprus) proposed that the meeting should be adjourned.

The CHAIRMAN put that proposal to the vote.

The proposal for adjournment was adopted by 12 votes to one, with 9 abstentions.

The meeting rose at 5.20 p.m.

SUMMARY RECORD OF THE SIXTY-FOURTH MEETING

held on Monday, 27 July 1970 at 10.20 a.m.

Chairman: Mr. FAKHREDDINE Sudan

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTIONS 2330 (XXII), 2420 (XXIII), AND 2459 (XXIV) (agenda item 5) (A/7620; A/AC.134/L.22) (continued)

The CHAIRMAN invited the members of the Committee to consider the criterion of "first use" invoked in - or omitted from - the first paragraphs of the three draft definitions before the Committee.

Mr. VALERA (Spain) observed that the basic issue was whether the legitimate use of force should be confined to a legally constituted international community, thereby warranting the conclusion that whoever used force first automatically committed an act of aggression, or whether States should be deemed to be entitled to use force legitimately, in which case it would be necessary to seek a completely new definition invoking the concept of the just war, upheld by certain jurists in the sixteenth century.

On that point his delegation unreservedly supported the relevant provisions of the thirteen-Power draft, of which it was a sponsor, since that draft, as was appropriate in the present-day world, permitted only the United Nations to use force, in accordance with the Charter (operative paragraph 1). The concept of "first use" therefore became an essential element in the definition of aggression, and the thirteen-Power draft duly recognized it in operative paragraph 5.

Mr. STEEL (United Kingdom) said he found it encouraging that the proponents of the three drafts were not so widely separated on the question of "first use" as to make early agreement seem unattainable.

The six-Power draft contained no reference to "first use". Its sponsors had not considered it an essential element in the definition of aggression, although he recalled having stated at the beginning of the session that the principle of "first use" was relevant, in their opinion, and sometimes most important, depending on the circumstances in each individual case. The only point on which the sponsors of the six-Power draft could not agree with the advocates of the other two drafts was that the principle of "first use" should be determinative. Their position on that point had not changed.

He noted, moreover, that the sponsors of the thirteen-Power draft also did not treat "first use" as an essential element of the definition, since it was not mentioned in operative paragraph 2o of their draft, but only in paragraph 5, where specific examples of actual aggression were given, showing that, if it should be mentioned at all, the principle of "first use" might be relevant, but not in all cases.

The USSR draft mentioned "first use" in operative paragraph 1, i.e. at the beginning of the substance of the definition. At first glance, the formulation of the definition might suggest that it was a simple and unexceptionable truism. A second reading, however - and he was afraid that was how the USSR draft should in fact be interpreted - showed that for the sponsors of that draft "first use" was the automatic determinant of aggression, to the exclusion of any other explanations.

Neither the United Kingdom nor the other five sponsors of the six-Power draft could accept such a definition. In their opinion, even if it could be established beyond the slightest doubt which side had physically first used force, it did not automatically follow that that was an act of aggression. Such an interpretation made no allowance for special circumstances, which the Security Council would have to consider in each case, or for behaviour preceding the act, or for circumstances which might attenuate or explain the aggressive intent.

The explanations given during the debate by the protagonists of the USSR draft suggested, however, that there was hope of a closing of ranks; in their opinion, the principle of "first use" embodied in paragraph 1 of the draft should be interpreted as leading only to a simple or rebuttable presumption. He had two comments to make in reply. First, that was not what was stated in the draft; for such an interpretation to be valid there would have to be very considerable changes in the wording of the provision. Secondly, it was by no means certain that in practice, the element of "first use" could validly be reduced to a simple presumption.

The Security Council had never proceeded on such a narrow basis and doubtless never would. It should be remembered that the Council did not follow municipal law procedures, under which, for instance, the court could not make a conviction unless the plaintiff had at least adduced technical elements of proof. The Council considered all the relevant facts and sought to establish the whole truth. In a matter as grave as an act of aggression, the Council would certainly not adopt any other procedure.

Nevertheless he would not oppose a reference to the principle of "first use" in the definition of aggression, provided that it was treated in a balanced manner as part of an equally balanced whole.

There was one more point, however: some members maintained that "first use" offered a valid and objective criterion in all cases. But it was not ture that it was easy to say who had struck the first blow. History, especially modern history, abounded in disputes as to who had acted first. In the present context, the objectivity was only superficial and the principle of "first use" would in practice provide no more reliable information than would purely subjective tests.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) said that for the present, he would only reply to the remarks of the representative of the United Kingdom.

The Soviet Union still believed that the concept of "first use" must necessarily be an essential element in the definition of aggression. His delegation was, however, prepared to be entirely flexible concerning the placing of a reference to "first use" in the definition, and if some members believed that it was not appropriate to mention it in paragraph 1, his delegation would consider any suggestions on the subject.

The United Kingdom representative had mentioned the difficulties that would be encountered in establishing who had struck the first blow. It would probably not be easy, but other questions, for example those concerned with security, were much more difficult to resolve but had nevertheless been resolved. It should be borne in mind that, in the present-day world, constant technical progress was helping to solve increasingly complex problems. When only two persons were concerned, modern criminology made it possible to determine who had first used force. All the more was it now relatively easy in the case of States, of military techniques and of movements of armed forces to establish which side had first used force. The argument of the United Kingdom representative was therefore unfounded.

Mr. POLLARD (Guyana) compared the three drafts from the point of view of "first use": the USSR draft treated it as a distinct and precise concept, whereas the thirteen-Power and six-Power drafts treated it as a hypothesis which did not stand out from the context but which could nevertheless not be ignored.

The Charter specified in what circumstances force could be used: when it was used by the Security Council itself. There seemed to be only one situation which warranted the "decentralization" of the use of force and that was "armed attack", covered by Article 51. In such a case, the State using force was manifestly responding to an initial action by another State. The first use of force in circumstances contrary to the Charter was therefore not entirely prohibited, but was strictly speaking authorized only in such a case.

The principle of "first use" was not invoked as such in the thirteen-Power and six-Power drafts. In the thirteen-Power draft it was only validated by the intention. In the six-Power draft it could be invalidated by the intention. Ultimately there was therefore no appreciable substantive difference between the USSR draft and the thirteen-Power draft. Only the six-Power draft diverged on the point by assuming "first use" in paragraph II and by invalidating it in paragraph IV.

Mr. ALLAF (Syria) said that in his view the general rule was that the first use of force was illegal, even in the case of self-defence, as in such a case the party which exercised its right of legitimate self-defence could not be regarded as an aggressor since it was simply acting in reply to a prior use of force. Self-defence apart, the only cases in which the use of force was legitimate were those authorized by the Security Council or where a competent organ of the United Nations took enforcement measures. Even in the latter case, however, the competent organ only resorted to force if there had been a prior aggression and if there was a threat to peace and security. Assuming that an aggressor had occupied a territory, that the Security Council had called upon it to evacuate that territory and that the Council, after a certain lapse of time, considered that the only way to force the aggressor to comply with that decision was to resort to force, then resort to the use of force would be legitimate. The exceptional conditions which would thus make the use of force legitimate in very rare cases demonstrated that the principle of "first use" was a particularly important criterion in respect of aggression.

The United Kingdom representative had argued that it was often difficult to determin who had struck first. In that connexion he himself, like the USSR representative, thought that modern techniques, which were constantly advancing, made matters much easier

But even assuming that the difficulty existed, was that a reason for hesitating to adopt the principle? If the Security Council should find itself unable to determine whether State A had attacked State B, it could not condemn State A. The principle of "first use" could thus not be prejudicial to State A. Moreover, assuming that State A had attacked State B, that State B had successfully exercised its right of self-defence and that State B's armed forces occupied a part of the territory of State A, then only the principle of "first use" would make it possible to know that State A was still the aggressor. In application of the principle of the proportionality of self-defence, it would then be clear that State B must be content to withdraw to its former frontiers and to wait until the Security Council had taken the necessary measures; for the exercise of self-defence could never be more than a temporary measure.

The principle of "first use" was all the more important and relevant in that, when it was possible to determine who had struck first, it could be applied without any risk of error or of injustice to any side. The principle was not dangerous even when it was not possible to say who had struck first, since, as was effectively stated in the USSR draft, the Security Council was not called upon to take its decision on the basis of that criterion alone.

He was gratified to note that the six-Powers now recognized the importance of the notion of "first-use" and would be prepared to take it into account in the draft definition. As for the place to be assigned to the notion, it was equally gratifying to note that the USSR delegation was being flexible on the matter and would be prepared to come to some agreement with the other members of the Committee. The only question remaining was whether the notion should be an element of the general definition or whether it should be mentioned just before listing the means of aggression, as had been done by the thirteen Powers; that, in his view, was the most logical formula.

Mr. ROSSIDES (Cyprus) pointed out that all those who had spoken on the principle of "first use" had expressed their willingness to be flexible; consequently, he suggested that the principle should be the subject of private conversations, so that the Committee could turn immediately to discussing the problem of political entities.

Mr. BAYONA (Colombia) said he was gratified at the spirit of conciliation which seemed to be actuating members of the Committee and which should make it possible to achieve positive results. He stressed the fact that the United Kingdom representative

had just recognized that the principle of "first use" had a place in the draft definition; to bring points of view still closer, he recalled what he had said during the general debate (58th meeting), in particular, 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 that 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. 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. He emphasized that he was trying to make a simple suggestion which might enable agreement to be reached between the sponsors of the USSR and the thirteen-Power drafts, on the one hand, and the sponsors of the six-Power draft on the other.

Mr. ALCIVAR (Ecuador) could not conceal the fact that despite the optimism expressed by certain members of the Committee, and in particular by the representative of Syria, he was deeply concerned about some parts of the statement made earlier by the United Kingdom representative. The latter had said that "first use" could not be the sole criterion for determining aggression and had implied that an unmotivated attack was clearly an act of aggression. But the Equadorian delegation considered that no motive could justify aggression, and that to think otherwise was to take a stand which was contrary to the Charter and a return to an outmoded notion of justice. He recognized that it was not always easy to determine who had used force first, but in making such a determination the Security Council could only follow the legal rules laid down in the Charter. It was true that the Council was not strictly speaking a tribunal, but when it had to determine an act of aggression, it virtually possessed a power of judgement. As for the automatic element in the principle of "first use", objections on that score were 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 element which had to be

appraised by the Security Council; it was the essential element, as it made it possible to determine whether the right of self-defence had been exercised in conformity with Article 51; the principle of "first use" was thus entirely consistent with the Charter.

Mr. JELIC (Yugoslavia) thought that in saying that the principle of "first use" was unacceptable because it pre-supposed automatic application when the Security Council had to retain its discretionary power to appraise the circumstances, the United Kingdom representative had to some extent been playing with words. The definition of aggression was not, in fact, intended simply to serve as a guide to the Security Council in determining who the aggressor was in specific cases of aggression; it had also a preventive character in that it prohibited the commission of the act defined. His delegation considered that nothing could justify the use of armed force. The unleashing of war was absolutely prohibited, for once war had been unleashed, it might result in an irremediable threat to international peace and security. The whole policy of the United Nations was at stake. It was true that the Security Council had to take into account facts that took place after the launching of an attack, but it was not possible to disguise the original fact of such a launching.

Mr. SMITH (Australia) said he had followed the discussion on the important question of "first use" with interest. He entirely endorsed the United Kingdom representative's view that the Security Council should take that criterion among others into account, but should not consider it as the determining factor or as automatically applicable, which would make the determination of the aggressor too rigid. That was not to say that in certain unambiguous circumstances, it would not be possible to resort solely to the principle of "first use".

He did not share the view of those who had expressed their support for the thirteen-Power draft. According to them, the principle of "first use" had to be taken into account, although it was neither automatic nor determining. His view was that it was only one factor among others which might be taken into consideration.

As had been frequently stressed by members of the Committee, it might be very difficult in practice to determine who had been the first to use force. Several hypothetical situations in which that task would be particularly difficult could be imagined.

If a State B concluded a mutual defence agreement with State C, under which State C would take direct action against State A if the need arose, would State C, which might be the first to use force, be considered the aggressor? That case should be included amongst the exceptions to be inserted in the draft.

It might also happen that in reply to an armed attack of very limited scale, a State committed a disproportionately aggressive act. In such a case, the application of the principle of "first use" would lead to an unjust result.

The automatic application of the criterion of "first use" would be equally objectionable if a powerful State should oblige a weaker State to take action in the interests of the former's security.

A case could likewise be imagined where States A and B attacked each other, each intending to attack the other at the same time. In such a situation, which State would be the first to have used force?

Many of the arguments adduced in favour of the principle of "first use" could be invoked against it. That was so in particular in respect of the scientific and technical advances to which the USSR representative had referred. The Syrian representative had argued that by omitting to mention the principle of "first use" in the definition of aggression, the Security Council would be deprived of a ready means of determining the aggressor. That argument could also be used against those who had advanced it.

Still other situations could be imagined in which the automatic application of the principle of "first use" could give surprising results. The USSR draft referred to the notion of the declaration of war. 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 resort to the use of force. It would also be confusing to apply the principle of "first use" to two States which simultaneously attacked a third, and that was a far from theoretical hypothesis. In conclusion, he said that the principle of "first use" could not be applied automatically, and that it was at the most one of the factors that the Security Council should take into account. His delegation even wondered whether it was desirable to mention it expressly.

Mr. PETIT (France) associated himself with the appeal of the representative of Cyprus to shorten the discussion on matters upon which representatives were prepared to be flexible. The current discussion would, however, render the drafting of the text on the principle of "first use" easier.

He had listened with interest to the statement of the United Kingdom representative, which had certainly contributed to advancing the Committee's work. It was heartening to learn that, apart from the fears expressed by the Australian representative, the sponsors of the six-Power draft were ready to introduce the criterion of "first use" into their text. There thus remained no more than a question of drafting.

The French delegation had already stated its views on the questions of principle and on the automatic character of the principle of "first use". It was clear that in many cases, even in those quoted by the Australian representative, the Security Council retained every freedom to determine who was the aggressor.

His delegation did not want the "first use" principle to be automatically applied, but he feared that in omitting to mention it, the exercise of the right of self-defence laid down in Article 51 of the Charter would be put in doubt. With that in mind, he thought that the principle of "first use" might perhaps appear in the general definition of aggression, as in the USSR draft. In the final resort, however, the question was one of drafting, and he ventured to think that a solution satisfactory to all delgations would be easily found.

He asked leave to revert to another question of drafting to which his delegation had already drawn attention. If the notion of "first use" was deleted in paragraph 1 of the USSR draft, it would nevertheless remain in two other provisions in the drafts before the Committee, namely in paragraph 2 B of the USSR draft and in paragraph 5 of the thirteen-Power draft.

Referring to paragraph 2 B of the USSR draft, he said that if a State A invaded a State B with tanks, for example, and State B reacted by bombing State A, under the present wording State B would be the first to have committed one of the acts listed in the paragraph. There was a problem there that should be cleared up in the course of drafting.

Mr. CAPOTORTI (Italy) recalled that at the beginning of the present session the Spanish representative had asked whether the use of force should be restricted to the United Nations. If the answer was in the affirmative, it could be said that the State which first used force had acted contrary to the Charter; the Italian view was that the use of force could be confirmed only within the context of respect for the provisions of the Charter, a somewhat different formula from that used by the Spanish representative. The Charter envisaged three cases where the use of force was legitimate: first, the Organization might make use of force in accordance with the provisions of Chapter VII of the Charter. That situation had not yet arisen, in fact, as the requisite conditions had never existed. Next, the use of force was legitimate within the context of individual or collective self-defence under Article 51. Lastly, paragraph 1 of Article 53 permitted resort to force in certain conditions which in practice had been sometimes interpreted very widely and in a rather questionable manner.

It was not so much the automatic aspect of the principle of "first use" which should be considered as the possibility of making it a criterion to be generally and constantly applied. Several representatives had already stated that the application of the criterion was sometimes impossible. It might happen for example that the Charter authorized a resort to force and that a State could take coercive measures without itself having been a victim of the use of force. Thus, paragraph 1 of Article 53 of the Charter authorized the Security Council to utilize regional organizations to take coercive measures even if an act of aggression had not been committed. A threat to peace or a breach of peace would be enough.

Collective self-defence should be understood, under the terms of the Charter, as coming to the aid of a State which was the object of armed aggression. A State might exercise the right of self-defence without itself having been a victim of aggression. It would nevertheless be the first to have resort to force. There was also the case where a State intervening at the second stage made excessive use of its right of self-defence, and where its employment of force was not legitimate.

By making the criterion of "first use" the touchstone, the impression was created that the State using force as a reaction did so legitimately, but that was not always the case. A State might have been victim of one of the acts recognized as acts of

aggression and it might have had the possibility of reference to the Security Council. Thus, a State in receipt of a declaration of war was not in a situation where it could use force. It could also happen that a State which had acted at a later stage used force for an excessive period of time or in an improper way. Although it was the second to use force, it would be as guilty as the first.

Turning to the question of intent, he pointed out that the use of certain modern armaments entailed serious dangers for States. What would happen if an accident occurred? As the Syrian representative had stated, bombs might fall accidentally on the territory of a State and cause enormous damage. In such a case, would the State responsible for such bombing be considered as the aggressor through having been the first to use force, or would it be the State which took advantage of those circumstances to launch an attack?

Even if it was in the last resort the Security Council's task to determine the existence of aggression, international public opinion should not receive the impression that the principle of "first use" was to be automatically applied.

It had always been understood that the definition of aggression should, on the one hand, be a guide to the Security Council, which retained its discretionary power at all times, and on the other, facilitate peaceful relations and enable international public opinion to form a correct idea of the concept of aggression. The introduction of a criterion which might be thought to be of automatic application must therefore be avoided. It was clear from the discussion that such a criterion would not be constantly or generally applied. His delegation thought that it should be considered as one of the criteria to be taken into account and that the Security Council would ascertain in each case whether it constituted the determining factor.

Mr. KOLESNIK (Union of Soviet Socialist Republics) pointed out first of all that the present discussion appeared simply to be a repetition of the general debate; in his delegation's view, it was time to move on to the work of drafting.

The principle of "first use" held a very important place in the USSR draft; that principle, enunciated for the first time twenty-five years ago, had been sanctioned by many international instruments; it could be said that it had stood up successfully to the passage of time. In his delegation's view, the two main advantages of that

criterion were the following: in the first place, it was the only objective criterion which could be applied; it was, indeed, for that reason that it had been used first in the Briand-Kellogg Pact and later in the United Nations Charter. Secondly, the principle of "first use" was directly derived from the Charter, particularly from 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.

He went on to review the arguments put forward by delegations who were against the principle of "first use". In the first place, those delegations had stressed that the principle could not be applied automatically, and that even if it was, the question of who had first used force would have to be decided. His answer to those delegations was to ask them to read the USSR draft carefully, particularly the introductory words of operative paragraph 2 and operative paragraph 3; it was clear to his delegation that the principle of "first use" was not the only principle to be applied to determine who was the aggressor, and that the principle could not limit the discretionary power to appraise the circumstances of each case conferred upon the Security Council; moreover, in formulating that principle, the Soviet Union had taken account of the evolution of the system of collective security which had occurred since the Charter was adopted. The second argument used by the opponents of the principle of "first use" was that it might bring about the launching of a war by mistake. His reply to that argument was that an act of aggression was an act characterized by a particular intensity; the Soviet draft referred to acts of such a kind that they could not have been committed by mistake, as could be seen by perusing the list of acts enumerated in operative paragraph 2B of the draft. Lastly, the opponents of the principle maintained that it was difficult to determine who had been the first to use force; that argument had been very convincingly refuted by the Syrian representative and by other members of the Committee: as they had pointed out, if it was too difficult to determine, the Security Council would apply not the principle of "first use" but other criteria. In addition, the Canadian representative had pointed out (56th meeting) that the principle of "first use" condemned the victim of aggression to impotence; it seemed to him that that remark was practically 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. Lastly, the Australian representative had referred to certain hypothetical cases in order to demonstrate that the principle of "first use" often proved to be absurd; he had referred, for example, to the case where State A and State B were bound by a treaty, where State B was attacked by State C, and State A intervened in support of State B. 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". On the other hand, in the case also quoted by the Australian representative where two States attacked each other simultaneously and both had an aggressive intent, the principle of "first use" was of decisive importance.

In conclusion, he wished to draw the attention of the members of the Committee to the discrepancies existing between the content of the six-Power draft and the statements made by some of that draft's sponsors, particularly the United States and the United Kingdom; like the United States representative, the United Kingdom representative had earlier said that he did not reject the principle of "first use", to which he attached great importance. The sponsors of the six-Power draft should now give its rightful place to the principle in the wording of their draft definition.

Mr. WIREDU (Ghana) said that delegations seemed generally agreed in recognizing that any use of armed force in international relations could only be justified on the basis of the United Nations Charter. Consequently, the use of armed force in violation of the Charter would constitute prima facie armed aggression within the meaning of the Charter, and the principle of "first use" was indeed based on that concept. It was an elementary principle applicable by any judicial or quasi-judicial tribunal.

Several speakers had stressed the difficulties encountered when determining which State had first resorted to force. It was a question of proof. To decide upon the existence of an act of aggression, the Security Council had to act like a quasi-judicial body. It had to resolve certain contentious problems between contestant States; among the issues to be resolved was the question of "first use". To do so, it had to give weight to one version or to another. It was therefore a question of fact that the Security Council had to decide and that was dependent on the credibility of witnesses.

He referred to one of the hypothetical cases envisaged by the Australian representative, namely where State A attacked State B, then State C attacked State A by virtue of a bilateral collective self-defence agreement between States B and C. In such a case State C could not unilaterally base its action upon the bilateral agreement it had concluded with State B in order to invoke self-defence, because the latter concept had an essentially subjective element. It was the victim which had decided whether to react in self-defence. In that event, it would be for State B to decide upon the applicability of the treaty and to request State C to intervene. Considering that hypothetical case in that way, he had difficulty in seeing the problem raised by the Australian representative. Similarly, in the hypothetical case where two States attacked each other simultaneously, the application of the principle of "first use" was excluded. There was in that case a contradiction between the simultaneity of the attack and the actual concept of "first use".

As the members of the Committee generally appeared to accept that the principle of "first use" was fundamental, it should be retained and perhaps amplified by the concept of intent. As regards intent, his delegation considered that that principle was not only one of the criteria to be used, but the most important.

Mr. EL REEDY (United Arab Republic) said that he was grateful to the Australian representative for stating the reasons why the sponsors of the six-Power draft were against the principle of "first use". One of the hypothetical cases envisaged by the Australian delegation seemed particularly important because it would in a way justify preventive attacks in contradiction with Article 51 of the Charter. It was the case where a State committed armed aggression and claimed to have acted under pressure from another State.

Mr. KOULICHEV (Bulgaria) considered that the current discussion on the principle of "first use" was very important and very helpful. It appeared, in fact, that the criterion of "first use" and that of intent were not irreconcilable. The authors of the six-Power draft recognized that "first use" constituted a criterion, although not a determining one, which should have its place in the definition of aggression. The representatives who supported the criterion of "first use" agreed that other criteria could be used, notably that of intent.

At the 57th meeting, Bulgaria had taken up a suggestion by France, supported by other delegations, particularly Colombia (58th meeting), in an effort to seek a basis of agreement among all the delegations. The preamble to each of the three draft proposals stated in substance that the determination of an act of aggression should be made in the light of the circumstances of each case. He urged that the members of the Committee should draw the maximum benefit from that identity of views.

For the moment, the question was to decide which criterion was to be given preference. His delegation was in favour of the criterion of "first use" for the reasons just given by the USSR representative, namely that the principle of "first use" was an objective criterion to be preferred to the subjective criterion of intent; Article 51 of the Charter inclined towards the application of the principle of "first use" because it founded the right of self-defence on that criterion. In addition, the principle of "first use" imposed the burden of proof on the State first resorting to force, and that was in conformity with the spirit of the Charter, which forbade resort to force.

With regard to the hypothetical cases put forward by the Australian representative, he agreed entirely with the replies given by the USSR, Ghanaian and United Arab Republic representatives. The first case was concerned with three States, two of which were bound by a defence treaty. That situation came within the context of collective self-defence and was covered in each of the three drafts by the exception relating to self-defence. The second case, namely disproportion between a small-scale attack and armed aggression in response, was covered by the provision in the preamble of each of the three drafts, according to which the Security Council took into account the circumstances of each case. With regard to the third hypothetical case of a State acting under pressure from another, the Charter dealt with it explicitly, without perhaps giving a very equitable answer. He was referring to the general exclusion of all use of force. The fourth case was, in fact, a case of a breach of the peace which was easy to deal with. With regard to the examples given by the Italian representive, they were all covered by the general definition of aggression given in paragraph 1 of the USSR draft.

In conclusion, he felt that the question of "first use" had been sufficiently discussed for delegations to proceed to unofficial consultations with a view to preparing a text capable of receiving general support.

Mr. BADESCO (Romania) recalled first of all that the question of "first use" had already been the subject of extensive discussion during preceding sessions of the Committee and that all the arguments for and against that principle were well known. He wished to stress, however, that the principle flowed directly from the provisions of the Charter itself and in particular from Article 51, under which the exercise of the right of self-defence should follow the act of aggression; moreover, since in addition all the drafts reserved discretionary power to the Security Council to decide in each case if there had been an act of aggression or any other form of the use of force, his delegation continued to favour the principle of "first use" on the grounds that if that principle was not included the definition would depart from the provisions of the Charter.

The CHAIRMAN noted that the majority of the delegations agreed to accept the principle of "first use"; in that case, it would be useful for members of the Committee to spend the afternoon in unofficial contacts on the form of words to be given to the principle in the draft definition; only if those contacts produced no result would the following meeting be given up to further discussion of the principle of "first use".

Mr. ALLAF (Syria), exercising his right of reply, recalled that he had said he was optimistic after hearing the United Kingdom representative; that was why he had thought at first that the Ecuadorian representative's pessimism was somewhat unjustified. However, he was beginning to understand the latter's viewpoint after having heard the Australian and Italian representatives, whose statements pressed for still greater importance to be given to the principle of "first use". In addition, he thought he had refuted all the arguments of the Australian and Italian representatives when he had spoken about the question of intent. He recalled that the Australian representative had referred to the case of provocation; in his delegation's view nothing could justify the launching of an aggression or of an armed attack except in the case where a competent United Nations body was taking measures to implement its decisions. Moreover,

the Italian representative had referred to acts of aggression which might be committed by mistake. But that was a very dangerous idea in the nuclear age in which a case had already occurred of aircraft carrying nuclear armaments belonging to one State dropping those armaments by mistake on the territory of another. In view of the danger inherent in nuclear armaments, mistakes of that character were absolutely inadmissible. On the other hand, he thought that the remarks made by the Australian and Italian representatives regarding the case where a State having received a declaration of war used force first against the State which had declared war on it were relevant; although it was more a theoretical than a practical possibility, he wondered whether the USSR draft could be improved to take that pertinent remark into account; for that purpose, the Soviet Union might consider deleting sub-paragraph A of operative paragraph 2 of its draft and replacing the words "even without a declaration of war" in sub-paragraph B of the same paragraph with the words "with or without a declaration of war".

Mr. SMITH (Australia), exercising his right of reply, pointed out that in referring to a case where one State provoked a neighbouring State so that the latter attacked it, he had not wished to argue in favour of preventive war but simply to describe the hypothetical case of a State with an aggressive intent provoking another State which also had an aggressive intent to attack first, so that the State which had been attacked could invoke the principle of "first use" against the other.

The meeting rose at 1.00 p.m.

A/AC.134/SR.65

SUMMARY RECORD OF THE SIXTY-FIFTH MEETING

held on Tuesday, 28 July 1970, at 10.20 a.m.

Chairman: Mr. FAKHREDDINE Sudan

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTIONS 2330 (XXII), 2420 (XXIII) AND 2549 (XXIV) (agenda item 5) (A/7620; A/AC.134/L.22)) (continued)

Mr. SCHWEBEL (United States of America) said that he had followed with interest the discussion on the principle of priority, and he associated himself with the views expressed by the United Kingdom, Australian and Italian representatives on behalf of the sponsors of the six-Power draft, who were prepared to show a spirit of conciliation and give appropriate weight to the criterion of priority without necessarily for that reason regarding it as determinative.

At the 64th meeting, the Australian representative had referred to the concept of proportionality: unlike the criterion of priority, that was an unvarying principle in matters relating to the legitimate use of force.

It was sometimes difficult to determine who had first resorted to force, and the USSR representative had said that technical advances could facilitate the determination. He himself was very doubtful about that. Take, for instance, an attack perpetrated with conventional means beyond frontiers or demarcation lines. As usual in such cases, the United Nations set up a commission of inquiry to go to the spot and establish which was the aggressor State; the commission's conclusions were accepted by both the Security Council and the General Assembly. Subsequently, however, the present supporters of the criterion of priority denied that the State incriminated was the true aggressor. That showed the difficulties to which the use of the principle of priority could give rise. Some members of the Committee claimed that that principle should be determinative, but they were at the same time opposed to strengthening the control system of the United Nations. The problem would not, he thought, be solved by resorting to technical or scientific methods; the difficulties would arise at another level.

With reference to the statement of the representative of Guyana (64th meeting) that the Charter prohibited the first use of force, he said he would like to know what particular provision was being alluded to. The governing principle in the matter was contained in Article 2, paragraph 4, of the Charter, but first resort to the use of force was not mentioned there.

The Colombian and USSR representatives had stated (ibid) that the principle of priority as enunciated in the USSR and thirteen-Power drafts was not a determining one, and that the Security Council reserved its discretionary power in all cases. Those statements were reassuring, but he felt that if that factor was not a determining one, its consequences should not be accepted in their entirety and other factors should also be considered.

The USSR representative had spoken of certain treaties concluded between the two wars proclaiming the principle of priority, which had resisted the passage of time. He himself was far from being convinced by that argument, and he referred to a big Power which, while not an Axis Power, had been the first to resort to force in at least three situations against three States at present represented in the Committee. The USSR representative would surely not describe that Power as an aggressor.

He felt sure that the Colombian and USSR representatives would allow the Committee's work to proceed by agreeing not to give a determinative role to the principle of priority; but it would be better to modify the wording of the USSR draft, which at present gave the impression that that criterion was determinative. The USSR representative had said that his delegation would be flexible and would not insist on the principle of priority being mentioned in a particular provision. That concession, although a modest one, was appreciable. In general, he was gratified by the spirit of compromise among the members of the Committee.

Mr. ALLAF (Syria) said that, for him, the United States representative's statement gave rise to the same fears he had expressed at the 64th meeting, after the Australian representative's statement. Those who supported the criterion of intent were opening the way to the dangers presented by, in particular, preventive or accidental attacks. The six-Power draft, however, contained some 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, it could render legitimate a form of resort to force which had appeared to be illegal, and vice versa.

In reply to the question addressed to the representative of Guyana by the United States representative, he said that the prohibition of first use of force was to be found in Article 51 of the Charter.

Mr. POLLARD (Guyana), replying to the United States representative, said that the Charter prohibited the first use of force except in certain circumstances. Those exceptions were stated in Article 53, which enabled regional organizations to be called upon, and in Article 107, which concerned a particular case. By trying to centralize the uses of force, the Charter aimed at creating a system of collective security. It was on that idea that Article 53 was based. In addition, the Organization could recommend the use of force under the provisions relating to the maintenance of peace, but that would pre-suppose the existence of a certain de facto situation. As the Syrian representative had indicated, the only example of the decentralization of the use of force was in Article 51, which dealt with self-defence.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) expressed regret that the United States representative should have said that, by accepting the inclusion of the principle of priority in any one of the paragraphs of the draft, the USSR delegation was making only a "modest" concession. He would like to know what concessions, even modest ones, the United States delegation was prepared to make, and he observed that that delegation had not made any so far as indirect aggression was concerned.

Aggression had existed as a concept in Roman law and had been linked to the principle of priority. That principle would be acknowledged by all who knew anything about law.

Mr. SCHWEBEL (United States of America) said he was not convinced by the USSR representative's reference to the antiquity of the principle of priority. The principle should not in any case be considered as generally accepted.

Because it had spoken of the USSR delegation's "modest" concession, the United States delegation had been challenged to make concessions too. In that connexion, he recalled that the United Kingdom delegation, as a co-author of the six-Power draft, had agreed to an important concession the day before. Whereas the "modest" concession by the USSR concerned the wording of the draft definition, the United Kingdom's was a real concession of substance; it consisted in agreeing that the principle of priority should be given due weight, concurrently with other criteria. He appealed to the spirit of compromise of representatives and expressed the hope that the Committee would agree to a generally acceptable draft when the time came.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) said that if the sponsors of the six-Power draft were really in favour of maintaining the principle of priority on condition that it was on the same footing as other principles, their point of view was not different from the USSR's. There had never been any question at any session of the Committee of invoking only the principle of priority to determine an act of aggression. The USSR delegation claimed that that principle must certainly be taken into consideration, in view of its objective character, but it recognized that subjective criteria could also be taken into account.

Mr. SCHWEBEL (United States of America) confirmed that that was in fact the view of the six Powers. He was gratified that the USSR representative had recognized the importance of subjective criteria. It was, indeed, precisely on the grounds that it was subjective that the criterion of intent had sometimes been criticized.

Mr. EL SHEIK (Sudan) said he was not sure that the concession by the sponsors of the six-Power draft was really a concession of substance. The United Kingdom representative had said that the principle of priority was a rebuttable presumption, but that was not clearly brought out either in the USSR draft or in the thirteen-Power draft. If the wording of the draft could be changed so as to make the principle of priority an indisputable presumption, that would amount to a real concession of substance by the six Powers, but their concession did not tend that way.

Mr. STEEL (United Kingdom) said that for the benefit of the Sudanese representative he would like to clear up any misunderstanding about what he had said at the 64th meeting concerning the principle of priority.

For the first time, the members of the Committee had agreed that the criterion of priority should be regarded only as a rebuttable or simple presumption. He had made two remarks on that subject: the first was that the drafts before the Committee did not present priority as a simple presumption but rather as an automatic and determinative rule; in that respect, therefore, the drafts were defective. The second remark was that if the criterion of priority was considered as a rebuttable presumption, the United Kingdom would have no objection to priority being given a place on that basis in the definition of aggression, due weight being given to other factors of aggression.

He recalled having added that if priority was really only a rebuttable presumption, it was not at all certain that so much importance should be attached to it in practice.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) said he had not received a clear answer to what was a clear question put to the United States representative, namely, whether he agreed to the inclusion in the definition of aggression the factor of priority, provided that it was not the only factor included.

Mr. SCHWEBEL (United States of America), replying to the Soviet Union representative, said he was 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.

The CHAIRMAN invited the members of the Committee to discuss - still within the same group of provisions of the three draft definitions, namely, paragraph 1 of the USSR draft, paragraph 2 of the thirteen-Power draft and paragraph II (first part) of the six-Power draft - another factor to be taken into consideration in defining aggression, political entities whose statehood was challenged.

Mr. STEEL (United Kingdom), speaking on a point of order, recalled that the procedure eventually adopted for the continuation of the Committee's work was to discuss as they came, one by one, in the order in which the comparable provisions of the three drafts appeared, the principles or concepts which those provisions explicitly or implicitly embodied. It had been agreed that in the first group of provisions to be discussed together the underlying principles were direct and indirect aggression, which had been discussed, priority, which had also been discussed, and, lastly, intent.

He had no objection to discussing the question of political entities, but the question of aggressive intent should come first.

The CHAIRMAN said he saw no mention of "intent" in paragraph 1 of the USSR draft, or in paragraph 2 of the thirteen-Power draft, or in paragraph II of the six-Power draft. That factor would be discussed later, at a stage corresponding to the context in which it was undoubtedly relevant, paragraph IV A of the six-Power draft. It was the question of political entities whose statehood was challenged that was mentioned, after the two factors already quoted, in the first group of comparable provisions.

Mr. ROSSIDES (Cyprus), Mr. EL REEDY (United Arab Republic) and Mr. ALLAF (Syria) expressed agreement with the Chairman. In any case, all the factors relevant to the definition would be duly examined sooner or later.

Mr. STEEL (United Kingdom) observed that the factor of intent was implicit in the definition given in paragraph II of the six-Power draft, since it was the presence or absence of an intention which would determine whether or not "the use of force in international relations" was aggression. The element of intent also seemed implicit in the corresponding provisions of the other two drafts.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) warned the Committee against the obstructive tactics which some members resorted to rather too readily. Such tactics never produced useful results.

Mr. CAPOTORTI (Italy) thought it would be logical for the Committee to consider, after the question of direct and indirect aggression and the principle of priority, the phrase immediately following them in each of the provisions under discussion: in paragraph 1 of the USSR draft it was the phrase, "contrary to the purposes, principles and provisions of the Charter of the United Nations"; in paragraph II of the six-Power draft, the phrase: "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"; and in paragraph 2 of the thirteen-Power draft, the phrase: "or when undertaken by or under the authority of the Security Council".

Mr. WIREDU (Ghana) supported the Italian representative's suggestion.

Mr. ALLAF (Syria) said that the representatives of Italy and the United Kingdom were misinterpreting the safeguards embodied in each of those three provisions as flowing from the concept of intent, whereas they related to exceptional cases in which the use of force was legitimate, namely, cases of self-defence or of action by the Security Council or other competent United Nations organ.

Mr. SCHWEBEL (United States of America) asked the Chairman in what order he thought the remaining elements of the definition should be taken up.

The CHAIRMAN said he had drawn up a preliminary scheme along the following lines.

The first group of comparable provisions would give rise to consideration of the principles or concepts of direct and indirect aggression, priority, and the question of political entities whose statehood was challenged.

The second group of comparable provisions, namely paragraph 2 of the USSR draft, paragraphs 1, 3 and 4 of the thirteen-Power draft and paragraph III of the six-Power draft, would give rise to consideration of the legitimate use of force, first in the case of self-defence, and second in the case of the organs authorized to use force.

The third group of comparable provisions, namely, paragraphs 2A and 2B of the USSR draft, paragraph 5 of the thirteen-Power draft and paragraph IVA of the six-Power draft, would provide an opportunity to consider the acts which had been proposed for inclusion in the definition. The concept of aggressive intent would also be considered in connexion with paragraph IVA of the six-Power draft.

The principle of proportionality would be considered in connexion with paragraph 6 of the thirteen-Power draft; the legal consequences of aggression, namely non-recognition of territorial gains and the question of responsibility, in connexion with paragraphs 4 and 5 of the USSR draft and paragraphs 8 and 9 of the thirteen-Power draft; and the right of peoples to self-determination in connexion with paragraph 6 of the USSR draft and paragraph 10 of the thirteen-Power draft.

The various factors in the definitions would thus be considered in the consecutive order of the comparable provisions of the three drafts.

After a procedural discussion, during which Mr. STEEL (United Kingdom) and Mr. SCHWEBEL (United States of America) requested more time to study the scheme, Mr. ALLAF (Syria) said that the discussion should proceed on the basis of the scheme, which did not seem to conflict with the procedural decision adopted by the Committee, Mr. EL REEDY (United Arab Republic) said he would like the scheme to be submitted in writing before expressing an opinion, since territorial acquisition was regarded as a consequence of aggression by some members, whereas for him it constituted aggression itself, and Mr. CAPOTORTI (Italy) expressed apprehension about the consequences of the illogical character of the Committee's original decision, since it was already evident that the concepts under consideration did not have the same meaning for all members, the CHAIRMAN said that the Committee could, if it wished, revert later to the scheme he had outlined. He suggested that, for the time being, the Committee should proceed with the consideration of the various factors in the definition of aggression in accordance with that scheme.

It was so decided.

The CHAIRMAN invited the members of the Committee to consider the question of political entities whose statehood was challenged.

Mr. NADIM (Iran) recalled that his delegation had given in the general debate its views on whether or not the definition of aggression should apply to political entities not generally recognized as States. Since the beginning of the Committee's 1969 session, several delegations had also spoken on the subject, and the arguments

for and against were now well known; it seemed that most of the Committee's members were not in favour of mentioning such political entities in the definition of aggression.

There was only one point he wished to emphasize: if, as nearly all members had said, the Committee wanted a definition consistent with the Charter, it was difficult to see how it could refer to a concept entirely alien to the Charter. Only States or Members of the United Nations were mentioned in Articles 2, 3, 4, 32 and 35. In fact, only States could be Members of the United Nations.

It was true that the Charter, in referring to States, meant both States Members of the United Nations and States which were not Members. The only distinction that should be made, therefore, was the one made in the Charter, namely, the distinction between States Members of the United Nations and non-Member States, according to Article 2, paragraph 6. It would also, no doubt, be appropriate, as the French representative had said at the 1969 session, to interpret the term "State" in the broadest sense, or in other words not to insist that a State should be recognized by all States Members of the United Nations. That, moreover, seemed to be the practice of United Nations organs, which had decided in cases similar to the one before the Committee that, for the application of Chapter VII of the Charter, the State need not necessarily enjoy all the prerogatives or privileges of sovereignty.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) reminded the Committee that a definition which was made to apply to political entities without statehood would be unacceptable to the Soviet Union also, for reasons of principle. The Committee should prepare a definition consistent with international law and the international practice of States. Everyone must be able to apply that definition. The concept of political entities, however, was not sufficiently widely accepted internationally; as the respresentative of Iran had recalled, it did not exist in the Charter and had no basis in other sources of international law. The Committee could not invoke a concept which was not generally recognized.

Moreover, the Soviet Union was aware that the Western Powers, while refusing to recognize certain States whose existence could nevertheless not be denied, wished to impose unilateral obligations on those States. That entirely unjustifiable aim was pursued, under cover of political jargon which was out of place in the Committee's work, in a spirit which showed a supreme contempt for equality. The Soviet Union would categorically oppose any move of that kind.

Mr. POLLARD (Guyana) said his delegation, as a sponsor of the thirteen-Power draft, would have great difficulty in agreeing to the inclusion of the concept of political entities in a definition of aggression, as that would be contrary to operative paragraph 10 of the thirteen-Power draft, which recognized the right of colonial peoples to use force in the exercise of their right to self-determination. That provision was not incompatible with the principle of priority, since the colonization of a country presupposed the use of force by the metropolitan State. If the Committee agreed to include the concept of political entities, it would be sanctioning the use of force in Africa by certain metropolitan States. He welcomed the statement by the sponsors of the six-Power draft that South Africa had no right to intervene in South West Africa, but he was surprised that, in paragraphs II, IV A (2) and (5), and IV B (2), of its operative part, their draft seemed to justify such intervention.

Mr. KOULICHEV (Bulgaria) observed that the problem of subjects of law which might arise in cases of aggression seemed, in the six-Power draft, to have been dealt with in a manner which departed from traditional concepts. He recalled that operative paragraph II of that draft, whose wording incidentally left much to be desired, had caused many delegations to express doubts, which had not been dispelled by the explanations given by the representatives of the United Kingdom and the United States during the general debate; moreover, those representatives had not interpreted their text in quite the same way, since the United Kingdom representative had stated that the text referred to acts committed by political entities other than States, whereas the United States representative had interpreted the same text as referring to political entities whose statehood was challenged. Those divergent interpretations of the same text by two of its sponsors seemed to support what had been said about the ambiguity of the text and the confusion it might introduce into the definition. If the interpretation given by the United States was the correct one, the problem of the more or less general recognition of an entity as a State would arise; but the existence of a State was a question of fact and could not depend on recognition by other States. The term "State", as used in the Charter, should be interpreted in its broad sense, as adopted in practice by the United Nations, which had admitted to membership political entities which had not yet attained independence and whose recognition as sovereign States was far from general. The United States representative had himself accepted that broad

interpretation during the general debate. That interpretation was, furthermore, reaffirmed in the draft Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, and more particularly in the enunciation of the principle prohibiting the threat or use of force, which did not refer to political entities.

He therefore wondered whether it was necessary to abandon the Charter as a basis and to use concepts which only introduced confusion into an already complex issue, especially as the parties to aggression were most often independent sovereign States. Moreover, the inclusion of the concept of political entities in the definition would create a precedent which might lead to the attribution of a more restrictive meaning to the term "State" in all other texts where it appeared. Lastly, the introduction of that concept might make the distinction between international conflicts and civil wars still more confusing. The text of paragraph II also 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. His delegation was not convinced that every violation of a demarcation or armistice line necessarily constituted an act of aggression: it might be a violation of an international obligation or a breach of the peace, but not invariably an act of aggression.

In conclusion, he said that the attempt of the sponsors of the six-Power draft to specify precisely all the subjects of law involved seemed to prove that it was better to leave well alone; in the present case it was preferable to retain the concept of the State as applied in the Charter and in international practice, since that concept was fairly flexible.

Mr. SCHWEBEL (United States of America) said that in his view the supporters of the USSR and thirteen-Power drafts might take up either of two alternative positions in regard to the problem under discussion: that entities whose statehood was challenged could not be the victims or perpetrators of acts of aggression; or, conversely, that 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". Since the two positions were mutually exclusive, he would like to ask the supporters of the USSR and thirteen-Power drafts which one they held. The second, which had been adopted by the Bulgarian representative,

was defensible, but if such was the position of all delegations hostile to the inclusion of the concept of political entities in the definition, he wondered why they had not clearly said so. If, on the other hand, it was the first position which they held, he would point out to them that they were taking absolutely no account of the realities of international life; for, if that position were correct, it would be tantamount to saying that a régime exercising governmental authority in Africa and against which the United Nations had adopted numerous resolutions, had been mistakenly condemned; one might also ask why the Soviet Government was going to negotiate a treaty on the renunciation of force with an entity whose statehood was not recognized by the United Nations, and was challenged by a number of countries.

The Soviet Union representative had said that the provision of the six-Power draft relating to political entities was a political manoeuvre designed to impose unilaterally obligations on States which the sponsors of the draft would not recognize. The Soviet representative was mistaken, however, for the position of the sponsors of the six-Power draft was that entities whose statehood was challenged were bound by the obligations of international life, and in particular by Article 2, paragraph 6, of the Charter. Consequently, an entity not recognized as a State did not have the right to attack a recognized State; conversely, however, a recognized State did not have the right to attack an entity not so recognized. Moreover, many conflicts which had arisen in the world since the adoption of the Charter - often involving entities whose statehood had been challenged - showed how important it was that the definition of aggression should cover such entities. The representative of Guyana had observed that the inclusion of political entities in the definition would favour colonialism, but the United States delegation did not see how he could arrive at that conclusion. In addition, as the Bulgarian representative had rightly pointed out, and as was shown by the resolutions which the Organization had adopted in regard to Katanga and Southern Rhodesia, the United Nations had widely interpreted the concept of a "State" and the obligations incumbent on entities whose statehood was challenged. To the United States delegation, that only went to show that those entities could reasonably be mentioned in a definition of aggression.

In conclusion, he said that the sponsors of the six-Power draft did not absolutely insist on the wording of the second part of operative paragraph II of that text, for that wording was certainly not perfect; but they did insist - and opposition would strengthen their insistence - on the substance of that provision.

Mr. EL REEDY (United Arab Republic) said that, to begin with, he had some difficulty in stating his position, for it was the first time he had seen the expression "political entites" in a legal document; he would therefore be grateful to the sponsors of the six-Power draft if they would clarify some aspects of the text, so that he could explain his position. The argument seemed to centre, in fact, not on the problem of the recognition of States, but rather on that of peoples seeking to obtain their independence. What the sponsors of the six-Power draft had meant was, he thought, that national liberation movements could be the perpetrators or victims of acts of aggression. He had been confirmed in that view by the United States representative's reference to the draft Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, which did not say anything whatever about political entities but contained several references to peoples. His delegation would therefore like to ask the sponsors of the six-Power draft whether they had in fact intended to refer to national liberation movements as possible perpetrators or victims of acts of aggression, for the reply to that question could help certain delegations to take up a position.

Mr. PETIT (France) said it would be for the Soviet Union representative to clarify his position and answer the question put by the United States representative, a question which was of fundamental importance to a solution of the problem. He for his part had the impression that the Soviet representative's purpose had been to criticize the attitude of certain States which were in the habit of refusing recognition to other States, rather than to say that States not recognized by other States could not commit acts of aggression. If that interpretation was correct, agreement on the question of political entities could still be reached. In his delegation's view, entities whose statehood was challenged could nevertheless be the perpetrators or victims of aggression; what had to be decided was whether it was enough to mention States in the definition or whether mention should also be made of those entities. His delegation, for one, did not believe that that was necessary. He noted in that connexion that in his general statement (59th meeting) the United States representative had accepted a broad interpretation of the concept of the State, as the Bulgarian representative had rightly pointed out. The United States representative had indeed uttered a sentence which could be applied word for word to the thirteen-Power draft

and, apparently, to the Soviet draft, too; that sentence showed clearly that political entities were covered by the term "State" as used in the Charter, and consequently also in the definition derived from the Charter. Actually, the United States representative had found only one example of an entity not recognized as a State by any other; that same entity, which was unlawfully exercising governmental authority in Africa, had been recognized by a United Nations organ as involved in a threat to the peace, and the Charter had been applied to it. It would not matter, therefore, if the definition made no mention of political entities. The only possible objection was that mentioned by the representative of Guyana, who had placed the emphasis on the end of operative paragraph II of the six-Power draft, interpreting it to mean that an attack against an entity under the authority of another State would not constitute aggression. If, however, it were recognized that the problem was not a real one, the Committee would soon, he repeated, be within reach of a solution.

Mr. BIGOMBE (Uganda) expressed his concern at the fact that political entities were not a uniform group, since some were parties, in the capacity of States, to international agreements, while others were merely factions in civil wars. It was therefore essential that the Committee should be clear in its own mind as to what specifically was to be covered in a definition of aggression. Moreover, he feared that a provision pertaining to political entities might be used according to the convenience of the moment; thus, in the case of Rhodesia - an entity for which the United Kingdom was responsible under international law - the United Kingdom could exercise its discretion whether or not to invoke the definition if another State sent arms or troops into Rhodesia, and that was something which should not be possible. Moreover, he considered that to include political entities in the definition would put them in a position to plead their cause before the Security Council, which would be in contravention of the Charter. Lastly, certain delegations had shown that the inclusion of political entities might prejudice the freedom of action of national liberation movements; that danger was all the greater since 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 conclusion, he appealed to the sponsors of the six-Power draft, whose opinion that the Committee should not attempt to redraft the Charter he shared, to withdraw the new element - alien to the Charter - which they had introduced.

Mr. MUTUALE (Democratic Republic of Congo) reminded the Committee that its task was to define aggression within the framework of the United Nations Charter; the latter, however, did not distinguish between States and political entities. Moreover, the definition was intended to pertain to Members of the United Nations; whose Members happened also to be States. He recognized, however, that in the present international situation there were entities which, though not States, were nevertheless Members of the United Nations. With reference to the question put by the United States representative whether political entities could be perpetrators or victims of acts of aggression, he said that, in his opinion, if a State was the victim of an act of aggression committed by a political entity, the matter should be governed by the general principles of law - in the case under discussion, the right of self-defence, which was a natural right. Since, however, it was not possible to ignore the question completely, he wondered whether it would not be possible to adopt another approach, as had been done by the French representative, and to consider the notion of a political entity to be included in that of "State". Such an approach should enable the Committee to find an acceptable solution. In conclusion, he expressed the view 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.

Mr. WIREDU (Ghana), replying to the question put by the United States representative, said that the point at issue was not whether a political entity could be the perpetrator or victim of acts of aggression, but rather how to fit the definition to those entities. In the comparative table drawn up by the Secretariat, paragraph II of the six-Power draft was divided into two parts. A perusal of the paragraph as a whole showed that States and political entities were not placed on a footing of equality. In the case of States, the definition referred to the concepts of territorial integrity and political independence. Clearly, a political entity did not possess those attributes, and it was pertinent to ask whether it really came under the definition which it was the Committee's task to elaborate. The question arose how the Security Council could apply the definition to, and, if need be, initiate economic sanctions against, a political entity not enjoying international recognition.

In conclusion, he expressed the view that if members of the Committee wished to act in conformity with the spirit of the Charter, they should not waste time on the question of political entities.

Mr. POLLARD (Guyana) recalled that the United States representative had spoken of the recognition functions of the United Nations. The fact that a political entity had not been admitted to the United Nations did not necessarily mean that all Members had withheld recognition from it, but only that the conditions laid down in Article 4, paragraph 1, of the Charter had not been met.

He asked the United States representative what the internationally agreed lines of demarcation were, in the case of certain African territories, such as Mozambique, Angola and Portuguese Guinea. If, as he supposed, it was not enough that the lines of demarcation should be recognized by the interested parties, that was tantamount to an acceptance of the delimitations made at the Conference of Berlin in 1888 and also to a recognition that those territories were formally subject to Portuguese rule. If such was the case, the text of the first part of paragraph II of the six-Power draft would not imply condemnation of any use of force that might be made in those regions, and the right of their peoples to self-determination would thus be prejudiced.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics), making use of his right of reply, after the United States representative's statement, said that, in indicating the position of the USSR delegation on political entities whose statehood was challenged, he had been careful, in his desire to avoid polemics, to remain on the plane of principle, invoking only the Charter and international practice. The examples adduced by the United States representative, however, compelled him to be more outspoken.

To justify the application of a definition of aggression to political entities, mention had been made of Southern Rhodesia, or of the Federal Republic of Germany, and it had been pointed out that the Soviet Union was in the process of negotiating with the latter a treaty concerning the renunciation of the use of force. Surely it was not feared that Southern Rhodesia or the Federal Republic of Germany would commit, or be victims of, acts of aggression. Care must be taken not to confuse two totally distinct questions - on the one hand, the question of the recognition of States, and, on the other, that of defining aggression.

In fact, those wishing to apply the definition of aggression to political entities not recognized as States were seeking to tie the hands of all peoples fighting for their independence and prohibit them from winning their sovereignty by having recourse to force, as was right and lawful in such cases. No one in the Committee would let himself be led astray by such manoeuvres.

The CHAIRMAN announced that the Committee would broach, at the next meeting, another factor entering into the definition of aggression - namely, self-defence. It was referred to in paragraph 2 of the Soviet draft, paragraphs 3 and 4 of the thirteen-Power draft and paragraph III of the six-Power draft.

Mr. SCHWEBEL (United States of America), Mr. STEEL (United Kingdom) and Mr. BADESCO (Romania) asked that time should be given them in which to reply to certain questions that had been asked regarding political entities, and to pursue the discussion of that factor in the definition.

It was so decided.

The meeting rose at 1.30 p.m.

SUMMARY RECORD OF THE SIXTH-SIXTH MEETING

held on Wednesday, 29 July 1970, at 10.15 a.m.

Chairman: Mr. FAKHREDDINE Sudan

CONSIDERATION OF THE QUESTION OF DEFINING AGGRESSION (GENERAL ASSEMBLY RESOLUTIONS 2330(XXII), 2420(XXIII) AND 2549(XXIV)) (agenda item 5) (A/7620; A/AC.134/L.22) (continued)

The CHAIRMAN invited the Committee to conclude its discussion on the question of political entities (operative paragraph II of the six-Power draft).

Mr. BADESCO (Romania) said that the majority of the Committee were in favour of a definition of aggression that reflected both the letter and the spirit of the Charter. The expression "political entity", however, did not appear in the Charter; it was not an expression accepted by contemporary international law. Since the definition of aggression was to constitute a norm of international law, such expressions could not be used in it. To include the notion of political entity in the definition would give rise to very serious legal difficulties; for instance, it might be asked which such political entities were, what their status was and whether or not they were subjects of international law. Furthermore, it would also give rise to many political problems, as had become clear from the discussion at the 65th meeting.

One point he would like to make, as some delegations had done during the general debate, was that the three texts under consideration all suffered from a lack of precision; in his delegation's view, 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".

Mr. SCHWEBEL (United States of America) said he would reply to the questions which had been put to him by several delegations at the 65th meeting. The representatives of the United Arab Republic, Guyana and Uganda had asked whether the provision in the six-State proposal relating to political entities referred to peoples trying to exercise their right of self-determination. In the United States' delegation's view, that 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 United States delegation considered that the provision in paragraph II did not in the ordinary course of things concern peoples trying to exercise their right of self-determination.

More generally, the United States delegation considered that the prohibition of aggression applied to all international boundaries or internationally accepted lines of demarcation, irrespective of the political régime of the 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 the violation, as the representatives of France and Cyprus had rightly stressed.

Finally, still in connexion with self-determination, the reason the six-Power proposal contained no provision similar to that in paragraph 10 of the thirteen-Power proposal was precisely because the sponsors of the former proposal 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.

He welcomed the very constructive observations made at the 65th meeting by the representatives of France and the Democratic Republic of the Congo that the term "State" as used in the United Nations covered entities whose status as States was disputed. Those observations took the Committee a step forward. But he was very sorry that neither the sponsors of the thirteen-State proposal nor the USSR delegation had replied to the very pertinent and very clear question put to them at that meeting. Failing an equally clear and positive reply to that question, the sponsors of the six-Power proposal would resolutely maintain their position on the question of political entities.

Mr. STEEL (United Kingdom) said he associated himself with the remarks of the United States representative.

Mr. CAPOTORTI (Italy), exercising his right of reply, said he did not believe that the problem of political entities was one of the most difficult the Committee had to solve. The discussion at the 65th meeting had, however, surprised him for two reasons. First, some delegations had tried to interpret the expression "political entity" as meaning peoples struggling for their independence. In his delegation's view, nothing in paragraph II of the six-Power proposal related to peoples. As proof of that, he would point out that the expression "delimited by international boundaries or internationally agreed lines of demarcation" meant that it related to entities that had effective power over the whole of a territory, so that the expression "political entity" was not applicable to national liberation movements. Moreover, 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. Lastly, 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. All that clearly showed that the sponsors of the six-Power proposal had had no intention of pre-judging the question of national liberation movements, which had nothing to do with paragraph II of the proposal.

Secondly, he had been surprised to hear some delegations ask to what entities the six-Power proposal referred. To answer that question, one need only consider international realities, with divided countries such as Korea, Viet-Nam and China. There were also countries like the German Democratic Republic or Israel which were not universally recognized as States. Finally, there was Rhodesia, which was recognized as a State by no one but still exercised authority over a territory. The representative of France had suggested speaking of States which were not recognized; that might be the best solution, but he wondered if everyone would agree to accept it. It was rather an over-simplification to say that the activities of Rhodesia should be attributed to the United Kingdom, particularly as the United Nations had imposed sanctions against Rhodesia and not against the United Kingdom. Furthermore, it was obvious that the entities in question could not have been envisaged by the Charter, since they had not come into being until after its adoption.

The issue of substance was quite clear: could entities whose status as States was questioned but which exercised de facto authority over a territory - though that authority might be legally disputed - be the authors or the victims of aggression? The answer was assuredly yes; consequently, the definition must be applicable to them in the interests of the international community. That was why he considered that the question raised by the United States representative was of very great importance.

The suggestion put forward at the 65th meeting by the representative of the Democratic Republic of the Congo, that the Committee should give an interpretative definition of the term "State", was very interesting; if the Committee accepted that suggestion, agreement would be possible on the question of entities.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) said that he had already replied, at the 65th meeting, to the question put to him so insistently by the United States representative. He was nevertheless prepared to explain the Soviet Union's conception of a State. According to Marx and Engels, what characterized a State was the concentration of political power in the hands of a specific class, the existence

of a territory, whether or not recognized by other States, and sovereignty, that was to say, the right to independence and self-determination and the exercise by the State of its functions in its own territory. In that conception, territory was broadly understood as meaning the soil, the territorial waters, the subsoil and the air space. Subsequently, Lenin had developed the concept of a State in his famous work "The State and Revolution", where he emphasized the fundamental difference between the new socialist State and the pre-revolutionary bourgeois State.

In accepting the United Nations Charter, however, the Soviet Union had accepted the concept of the State as contained in the Charter, thereby accepting a compromise warranted by its membership of the international community. That was why his delegation could not agree to the introduction by certain members of the Committee of concepts alien to the Charter. As the Soviet Union was not trying to impose the Leninist conception of the State, it saw no reason why other members of the Committee should try to impose theirs. Admittedly the Committee had some difficulties to overcome, but they were nothing like so serious as those which had had to be resolved when drafting the Charter, which defined some highly complex concepts. At that time all the States had worked together in good faith; that was very far from the case in the Committee, since in three years its members had not managed to define a single term.

With regard to the content of the term "political entities", at the 65th meeting he had called a spade a spade and said that the sponsors of the six-Power proposal had not had in mind the States whose existence was disputed, but peoples seeking their independence. That attempted dissimulation would deceive no one. If the sponsors of the six-Power proposal wanted to speak of the States which were not universally recognized, they should say so; that was another question, which had nothing to do with the definition of aggression. In that case, the purpose of the six Powers was to complicate the Committee's work, since all that was needed was to keep to the Charter and to understand the term "State" as meaning what it meant in the Charter. At the 65th meeting, the United States representative had confused certain concepts; in speaking of the Federal Republic of Germany, for instance, he had meant the German Democratic Republic. The difference was that both the United States and the Soviet Union recognized the Federal Republic of Germany, whereas the United States did not recognize the German Democratic Republic, which nevertheless had all the attributes of a State. In conclusion, he must again maintain that the United States representative

was trying to undermine the Committee's work. No member of the Committee should try to impose his point of view on others; the guiding principle for all members should be not to depart from the Charter. There could therefore be no question of referring to political entities in the definition of aggression.

Mr. BIGOMBE (Uganda), exercising his right of reply, said his statement at the 65th meeting had not been properly understood. He had meant that the term "political entity", used in paragraph II of the six-Power proposal, was extremely vague and open to widely differing interpretations; it might, for instance, be used as a cloak for acts of aggression. He had said that South African troops had entered Rhodesia at a time when the United Kingdom was reaffirming, in the United Nations, its responsibility for Rhodesia's external affairs. The United Kingdom had not, however, protested against the entry of South African troops into Rhodesia. He was waiting for the United Kingdom to clarify that point. His delegation also believed that the definition of aggression should proclaim the need to respect the right of peoples to self-determination; it would not be satisfied with a simple assurance on that point by the sponsors of the six-Power proposal. Lastly, his delegation considered that, in the definition of aggression, the term "State" should be given the same meaning as in the Charter; since machinery existed for resolving disputes arising out of the interpretation of that term, it was not for the Committee to decide what the term meant.

Mr. WIREDU (Ghana), referring to his comments at the 65th meeting, said he would have liked some explanations from the United States representative. Did the sponsors of the six-Power proposal consider that political entities possessed such essential attributes for the definition of aggression as territorial integrity and political independence? If not, it would be interesting to know how the Security Council could take action against such entities. With regard to the meaning of the term "State" in the Charter, he would point out that the Charter did not give a definition; international law should provide the answer. He could not agree that the concept of a State, as understood in the Charter, should be extended to include political entities.

He would point out to the sponsors of the six-Power proposal that, in the second part of paragraph II, a distinction was made between States and political entities, showing that they were regarded as two different concepts. He would like the United States delegation to reply on that point also.

Mr. ROSSIDES (Cyprus) said that the Committee's task was to define aggression in accordance with the Charter, without interpreting the terms used in it. Discussions on the concept of political entities had no place in the Committee's deliberations.

Mr. SCHWEBEL (United States of America) assumed that the USSR representative considered that a political entity whose status was challenged was not a State within the meaning of the Charter. Such a notion was unacceptable to his delegation.

To the USSR representative's question as to the grounds on which the sponsors of the six-Power draft had introduced the concept of political entities whose statehood was challenged, he replied that it was sufficient to consider the facts of international life. Contrary to the belief of the USSR representative, the question of States not universally recognized was closely linked to that of the definition of aggression. To revert to the case of the German Democratic Republic, would the fact that it had not been recognized justify aggression against it? That would surely not be the view of the USSR.

The representatives of France and the Democratic Republic of the Congo thought that the term "State", in United Nations practice, included political entities whose statehood was challenged. His delegation believed that in the event of a dispute it would then be useful to be able to refer to precise provisions such as those in the six-Power draft.

He understood that the representative of Uganda was suggesting that the word "State" should be used as in the Charter, thus solving all problems. However, the discussion in the Committee had, in his opinion, given ample proof that representatives were far from agreed on the meaning of the word.

Replying to the representative of Ghana, he said that the question of the attributes of a political entity would always evoke different answers. A political entity whose statehood was in doubt would claim that it possessed the attributes of a State, while those who did not recognize its statehood would claim the contrary. In his opinion, it would be better if all States were obliged in such cases to apply standards which the Committee should try to formulate. The representative of Ghana had also asked why the sponsors of the six-Power draft used the term "political entity". He replied that a clarification was indispensable so long as there was no agreement on the precise concept of a State.

Mr. YASSEEN (Iraq) thought that political entities should not be mentioned in the definition of aggression, for both substantive and formal reasons. However, he would be the last to believe that only States could commit acts of aggression.

Some entities in effect acquired the character of a State, but he thought that in applying general principles of law it was always possible to hold certain States members of the international community responsible for the acts of such entities.

He was not disposed to proceed as the sponsors of the six-Power draft had suggested. Even if it meant provisionally leaving certain major issues aside, it would be better not to try forthwith to define the concept of the State, to discuss the recognition of States or to introduce a concept as complex as that of the political entity. All those problems warranted detailed study, for which the Committee did not have enough time. Moreover, those questions were not related to the definition of aggression. It might be better to follow the method of work adopted by the International Law Commission. On the questions of the law of treaties and of State responsibility, the Commission had decided to confine itself to relations between States and had made an express reservation regarding entities other than States. The Committee's task was undoubtedly to define aggression in the context of inter-State relations.

Mr. POLLARD (Guyana) said that the remarks made so far had led him to the conclusion that there was a general consensus of opinion on the definition. The question raised by the United States representative was in fact purely academic. The membership of the United Nations included States whose statehood was not universally recognized. The recognition of a State, in his opinion, was purely declaratory and not constitutive. The fact that a number of States had recognized the existence of a country was not proof of that State's existence as a State. The way in which the Charter, especially Article 4, was interpreted in practice indicated that the concept of the State extended to political entities whose statehood was disputed. There was therefore, in his opinion, no real problem.

Mr. SCHWEBEL (United States of America) said he found the comments of the representative of Guyana most interesting. He asked whether the other sponsors of the thirteen-Power draft shared that opinion and hoped that the USSR delegation would take a step in the same direction, thereby facilitating general agreement.

The CHAIRMAN invited the sponsors of the thirteen-Power draft to reach agreement among themselves and perhaps consult the sponsors of the other drafts.

Mr. ALCIVAR (Ecuador) reminded the Committee that, in his delegation's opinion, statehood did not depend on recognition. The constitutive features of the State were specific and sufficient to establish statehood. Political entities which possessed all those features were true subjects of law.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) wished to reply to the United States representative in order to have his point of view reported in the summary record. He had indeed said that States whose statehood was disputed could not be considered as States; he had also explained that the Soviet Union had accepted, for the purposes of its international relations and within the terms of the Charter, a concept of the State which was not the same as the concept it applied for internal purposes. It did not, however, introduce into that concept the notion of political entity. The definition of aggression should be based on the concept of the State without invoking the recognition of States as a criterion. The USSR delegation, therefore, clearly rejected the idea of political entities. He cited as illustrations the German Democratic Republic, North Viet-Nam and North Korea, which in his opinion were true sovereign States. On the other hand, he considered South Viet-Nam and South Korea as territories in which part of the population was fighting for its sovereignty. The USSR would never recognize such political entities as States.

Mr. WIREDU (Ghana) suggested that if the term "political entities" should be considered as referring to States whose political sovereignty was questioned, then the sponsors of the six-Power draft should consider either abandoning the term "political entities" or using the phrase "States whose political sovereignty is in doubt". He hoped that his suggestion would be taken into consideration during the informal consultations.

Mr. ALLAF (Syria) wished to declare his position in the light of the many statements that had been made. He fully agreed with those who opposed making any reference to political entities in the definition of aggression. To do so would not only be an innovation in international law but would introduce a concept which, as was evident from paragraph II of the six-Power draft, was far from clearly defined. In that paragraph, "States" were in fact contrasted with "political entities", whence the following alternative became open: if a political entity was a State not recognized by one or more members of the international community, it was unnecessary, as many representatives had pointed out, to dwell at length on the statehood concept in a definition of aggression; if, on the other hand, a government established itself in a certain territory and assumed the attributes of a State, account should be taken of its declaration, at least for the purpose of identifying the act of aggression of which it was guilty. The definition of aggression had therefore to be applicable to it. However, the extension of the political entity concept to cover a territory which had not yet achieved independence, or to an entity subject to the authority of an independent State, would raise

delicate problems of the kind posed by national liberation or self-determination movements, which would play into the hands of those wishing to use the definition to commit aggression. The text of the definition should therefore be very specific.

His delegation considered that the definition of aggression should not involve the criterion of the recognition of States. The fact that a State had not been recognized by other States, as in the case of Israel, should not prevent the application of enforcement action against that State.

He shared the representative of Uganda's view that, if a political entity established on the territory of a State had not yet achieved its independence, that State was responsible for any acts of aggression it committed.

Referring to one of the observations of the representative of Guyana which had been taken up by the French representative, he emphasized that the words "and not subject to its authority" at the end of paragraph II of the six-Power draft constituted a real danger. That wording implied that aggression against an entity subject to an authority was admissible.

Mr. SCHWEBEL (United States of America) thanked the Ghanaian representative for presenting a suggestion which, on examination, would probably prove extremely useful; it consisted in replacing the words "other political entity" in paragraph II of the six-Power draft by the words "a State whose statehood was disputed". At first sight, those terms covered exactly what the six Powers had in mind, and his delegation's initial reaction was highly favourable.

Similarly, the Syrian representative had apparently indicated that he would have no further objection if it was true that the six Powers had exclusively in mind States whose statehood was disputed. It appeared, in those circumstances, that the representatives of the Democratic Republic of the Congo, France, Ghana, Syria and Guyana were in agreement, and that as a result of the discussion, progress had been made.

The representative of the Soviet Union was therefore the only one who did not wish to take the same step; in his view an entity whose statehood was not recognized by the Soviet Union was not a valid entity in international law, so that its political independence and its territorial integrity need not be respected. That view struck at the very foundations of international life and at the principles of the Charter. He hoped that the representative of the Soviet Union would reconsider his position.

Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) sounded a note of caution: if the United States delegation persisted in dealing with matters that were not before the Committee, the Soviet delegation would have to reply in an appropriate manner.

It had not been his understanding that the Committee had endorsed the views of the Ghanaian and Guyanese representatives, or those of the Syrian representative. The latter, in any event, had certainly not associated himself with the arguments presented by the United States delegation, which was probably interpreting the situation incorrectly.

Moreover, even if the delegations referred to by the United States representative were really of the opinion that it would be sufficient to specify that the draft definition covered States within the meaning of the Charter and States whose statehood was disputed, the Soviet delegation would categorically refuse wording of that nature. The Committee had not been authorized to introduce new concepts into, or to revise, the Charter.

Mr. ALLAF (Syria) wished to exercise his right of reply to correct the United States representative's erroneous interpretation of the views he had expressed.

In the opinion of his delegation, it must be determined whether "political entities" meant States whose statehood was disputed by at least one member of the international community, or different entities which were not States.

If the first interpretation was used, it must be stated more clearly, because any authority which publicly assumed the attributes of a State, even if it was not recognized as a State, could, if necessary, be held responsible for any acts of aggression committed by it, and the absence of recognition should not be used by that State as an excuse for possible aggression. It would therefore be pointless and even dangerous to include an interpretation of that nature in the definition of aggression. Similarly, if the second, and not the first, interpretation were used, the apprehensions of those who wanted the clarification to appear in the definition were also unfounded.

In both cases, therefore, all reference to "political entities" should be deleted from the definition. He had not supported the Ghanaian representative's suggestion, and in fact his position was exactly the same as that of the representative of the Soviet Union.

The CHAIRMAN noted that the Committee had reached a stage where unofficial consultations might result in a compromise. He proposed the suspension of the discussion on the question of political entities to allow time for such consultations.

It was so decided.

The CHAIRMAN invited members of the Committee to examine, in accordance with the programme of work drawn up at the 65th meeting for the rest of the Committee's time, the principle of the legitimate use of force, as mentioned in paragraphs 1, 3 and 4 of the thirteen-Power draft, in paragraph III of the six-Power draft and, implicitly, in paragraph 2 of the Soviet Union draft.

Mr. OFSTAD (Norway) was of the opinion that article 2, paragraph 4, of the Charter constituted the basic provision concerning the use of armed force. In that provision, the word "force" meant armed force or military force, and not political or economic pressures. Moreover, the prohibition of the threat or use of force obviously related only to international relations, which meant that that provision 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. By way of example he referred to the conflict that had arisen between the Netherlands and Indonesia in 1947.

Article 51 of the Charter referred to the inherent right of individual or collective self-defence. What was meant by "inherent" right? Two interpretations were possible. The first was that it was a right enjoyed by all States under international law, independently of Article 51, by which it was in no way circumscribed. Article 51 was therefore only an exception to the principle proclaimed in Article 2, paragraph 4. Self-defence was therefore legitimate, not only in the event of armed attack, but also in the event of a threat or a real danger of armed attack. It was for the State concerned to decide whether the situation was such as to justify self-defence.

According to the second interpretation, the Charter had modified the traditional concept of the right of self-defence, and self-defence was truly justified only in the case of armed attack under the conditions indicated in Article 51. In that connexion, he recalled that at the Nuremberg trial, Germany had used the argument of self-defence to justify its invasion of Norway in 1940. The judges had not accepted it.

Neither the Security Council nor the General Assembly had so far taken any decision involving an interpretation of Article 51. However, the principle in question was of such paramount importance that it should be referred to in the definition of aggression. His delegation was entirely satisfied with the way in which that had been done in paragraph III of the six-Power draft.

Mr. ROTKIRCH (Finland) recalled that his delegation had already, at previous meetings of the Committee, emphasized the need to follow the provisions of the Charter in arriving at a definition of aggression. As 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.

Under the Charter, legitimate use could be made of force by the United Nations itself and by States in the exercise of their inherent right of individual or collective self-defence in the event of an armed attack against them, until such time as the Security Council had taken the measures necessary to maintain international peace and security. Those provisions of Article 51 therefore authorized the use of force in certain cases constituting exceptions to the general rule, which was that the use of armed force was illegal. For that reason, those exceptions should be set forth very clearly in the definition of aggression in order to eliminate any misunderstanding.

The Soviet Union draft referred only indirectly, in operative paragraph 1, to the right of self-defence. The two other drafts, on the other hand, referred explicitly to the legitimate use of force. The wording of paragraph III of the six-Power draft, however, was too broadly worded. It would be better, as a matter of substance, to refer specifically to Article 51, as had been done by the sponsors of the thirteen-Power draft in operative paragraph 3.

In paragraph 4 of their draft, the thirteen Powers referred to cases in which force could be used legitimately under Article 53 of the Charter. Paragraph III of the six-Power draft also took that provision into account, but in much more general terms. It was clear that Article 53 of the Charter authorized the Security Council to utilize regional arrangements or agencies for enforcement action, but did not indicate whether such enforcement action went as far as to cover the use of armed force.

As his delegation considered it of the utmost importance that the wording of the definition of aggression should keep as closely as possible to the wording of the Charter, he proposed that the provisions of the thirteen-Power draft and the six-Power draft referring to Article 53 of the Charter should be rephrased in order to bring them more into line with those of the Charter.

Mr. EL SHEIK (Sudan) considered that the criteria that should be used in defining the legitimate uses of force were those set forth in Articles 51 and 53 of the Charter.

It must be borne in mind that, under Article 51, nothing should impair the inherent right of self-defence, which, however, could be exercised only in the case of armed attack. Paragraph 3 of the thirteen-Power draft contained a very specific provision

on the subject, and one which was very close to that in the Charter, whereas the corresponding provision in paragraph III of the six-Power draft was weaker in its effect, in that it did not confine self-defence to cases of armed attack. In their most recent draft, the thirteen Powers had also, in Article 1, specified at the very outset that only the United Nations was competent to use force.

Paragraph III of the six-Power draft associated the provisions of Article 51 and those of Article 53 of the Charter. Article 53 limited the use of force by regional agencies, in that it was subject to the prior authorization of the Security Council. The six-Power draft, however, authorized regional agencies to use force even before it was demonstrated that that use of force was in fact compatible with the provisions of the Charter. On the contrary, paragraph 4 of the thirteen-Power draft clearly stated that enforcement action could be resorted to by regional agencies only under the conditions indicated in the Charter. The notion of authorizing the use of force by regional agencies without any decision by the Security Council to that effect was unacceptable to his delegation.

Mr. POLLARD (Guyana) considered that the wording of paragraph III of the six-Power draft was most unsatisfactory, because its provisions made the United Nations and the regional organizations equally competent to have legitimate recourse to force. Yet surely authorization must first be obtained from the competent United Nations organ; the use of force could not be justified a posteriori.

The six-Power draft, in referring to "decisions of or authorization by competent United Nations organs" was also ambiguous; it implied that organs other than the Security Council would be competent in the matter. If that was really the intention of the sponsors, their wording was not sufficiently clear. The General Assembly could take decisions only in three cases, namely those covered in Article 4, paragraph 2, Article 17 and Article 18 of the Charter. If the six Powers wished to attribute limited competence to the General Assembly in respect of the use of force, they should have used the word "recommendations" in their draft definition.

The thirteen-Power draft set out obligations concerning the legitimate use of force in a much clearer and more specific manner. Yet not even that draft indicated with sufficient clarity that the regional agencies could take enforcement action only after the Security Council had examined the matter and taken a decision.

Mr. ALLAF (Syria) pointed out, like the Sudanese representative, that the provisions governing the legitimate use of force should be based on Articles 51 and 53 of the Charter. The Soviet Union draft did so only indirectly, whereas the two other drafts referred to the question much more directly, although they differed as regards substance and form.

The thirteen-Power draft, in paragraphs 3 and 4, contained provisions which were in complete harmony with the Charter, whereas the six-Power draft, in paragraph III, dealt with the inherent right of self-defence in a way which was flagrantly inconsistent with the provisions of the Charter.

The six-Power draft stated that force could be used pursuant to decisions of competent United Nations organs or regional organizations "consistent with the Charter", whereas Article 53 of the Charter stated quite unambiguously that the Security Council should "utilize" regional agencies, which acted as agents carrying out its decisions, and added in the very next sentence, so as to remove any misunderstanding, that no enforcement action should be taken by regional agencies "without the authorization of the Security Council". The six-Powers would find it difficult not to admit that they were placing the regional agencies on the same footing as the Security Council, which was certainly not "consistent with the Charter". However, they should have no difficulty in correcting that fundamental contradiction.

He drew attention to other discrepancies between the six-Power draft and the thirteen-Power draft which related more to their form or the approach used. The provisions of the thirteen-Power draft dealing with the legitimate use of force were worded in a negative manner, stating, and rightly so when the possibilities of the 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 positive terms, that the use of force in certain circumstances did not constitute aggression. The thirteen-Power draft was therefore preferable as regards form, although that aspect of the problem was of minor importance.

There was no denying that the legitimate use of force was related on the one hand to self-defence and on the other to the use of force by competent United Nations organs. He agreed with the representative of the United Arab Republic that the use of force was also legitimate in the case of national liberation movements or oppressed peoples which had recourse to armed force. Since the adoption of the Declaration on the Granting

of Independence to Colonial Countries and Peoples, and since the publication of the draft Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, it was a generally-accepted principle of international law that the use of force by liberation movements or oppressed peoples was legitimate. It was therefore vital to refer to that third case of the legitimate use of force in the definition of aggression. In his view, however, it was not indispensable to mention it precisely in paragraph III of the six-Power draft, or in paragraphs 3 and 4 of the thirteen-Power draft.

The Soviet Union draft, which did not contain any direct reference to the first two cases of legitimate use of force, was quite specific on the third case in operative paragraph 6. The thirteen-Power draft also referred to the question in paragraph 10. The six-Power draft contained no reference to the matter. If the Committee intended to act in accordance with the decisions already adopted by other United Nations organs, it should request the six-Powers to conform to the general view concerning the right, now recognized, of liberation movements to have recourse to force.

The meeting rose at 12.55 p.m.