



Chairman: Mr. Paul Bamela ENGO (Cameroon).

AGENDA ITEM 87

**Report of the Special Committee on the Question
of Defining Aggression (continued) (A/8019)**

1. Mr. GIMER (United States of America) said that the Special Committee on the Question of Defining Aggression had made progress at its 1970 session and that, despite certain doubts and reservations, his delegation had participated in its work actively and in good faith. It had joined with five other delegations in submitting a draft definition (see A/8019, annex I, draft proposal C) and was ready to continue to play an active part. He was therefore gratified by the constructive efforts made by members of the Special Committee to reach agreement and to avoid recrimination. It was generally acknowledged that a definition of aggression must be capable of attracting overwhelming support among the Members of the United Nations; in short, it must be a consensus definition. The process of working by consensus might be slow, but it could have rewarding results as demonstrated in the case of the draft Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

2. The task of the Special Committee was to propose a definition of aggression that, when approved by the General Assembly, would be of use to the Security Council in exercising its primary responsibility in that area. If a definition were to be adopted by the General Assembly over strong and persisting objection, the guidance it furnished to the Security Council would be practically meaningless.

3. His delegation had been pleased to note that during the 1970 session almost all the members of the Special Committee had shown a willingness to consider intent as an important element in the definition. While only the six-Power text had made intent an indispensable element of an act of aggression, by the end of the session a general feeling had begun to emerge that, in determining whether an act of aggression had occurred, the Security Council should consider the apparent and latent intentions and purposes motivating the State or States involved. Largely for lack of time, the Working Group's report (*ibid.*, annex II) did not fully reveal the growth of this shared viewpoint, but he hoped that all delegations would in due course agree to the relevance of the factor of intent.

4. A further example of progress was the changed attitude of the United States and the other sponsors of the

six-Power text towards the principle of priority. Both the thirteen-Power (see A/8019, annex I, draft proposal B) and the USSR (*ibid.*, draft proposal A) draft proposals maintained that the State that "first" used armed force of a specified character was to be deemed the aggressor. His own Government had long emphasized that a simple and unvarying priority principle would be wrong in law and harmful in application, but during the 1970 session it had for the first time agreed that among the elements that the Security Council might properly wish to consider in any particular case was the identity of the State that first resorted to armed force. Much work remained to be done on that aspect, but progress was possible if all participants showed a willingness to move forward in a joint search for mutually beneficial and agreed conclusions.

5. A number of difficult issues lay ahead and a great deal of discussion and effort would be needed if agreement was to be reached. One such critical issue was the inclusion in the definition of aggression of such acts, often clandestine, as stimulating civil strife and organizing terrorism against other States. Acts of aggression had ranged from the invasion and occupation of the territory of a neighbouring State to less usual but equally serious forms such as the use of agents of one State to foster conditions of instability in a neighbouring State by means of explosives, funds, etc. The labels "indirect aggression", for covert forms, and "direct aggression" for overt armed attack and invasion were at variance with the Charter. Only the six-Power text fully covered all forms of aggression. To the victim, infiltration of terrorists and armed bands and acts of sabotage and murder were no less direct, no less illegal and no less a breach of the peace than the same acts when committed overtly by regular military forces. Since the Charter made no distinction between kinds of aggression, the United States was not prepared to agree to a partial definition covering only so-called "direct" aggression, which would be intellectually and historically without foundation, a distortion of the law of the Charter, and a burden on world peace.

6. The United States supported the continuation of the work of the Special Committee during 1971. At the twenty-fourth session of the General Assembly his delegation had felt obliged to vote against the relevant draft resolution¹ because of excessive and unrealistic emphasis on the "urgency" of a completed definition, but it hoped to be able to support the draft resolution to be prepared at the current session. Since the 1968 and 1970 sessions of the Special Committee had been held at Geneva, he hoped it would be agreed that the 1971 session should meet at Headquarters.

¹ Adopted by the General Assembly as resolution 2549 (XXIV).

7. Mr. BIGOMBE (Uganda) thought that the Special Committee's report might give a wrong impression by devoting too much space to minority views. His delegation was in favour of working for unanimity and fully recognized the value of a mutually agreed text, but it nevertheless believed that the chief task of the Special Committee was to produce a generally accepted definition of aggression. Therefore, if unanimity could not be achieved, his delegation would be forced to press for the adoption of a draft definition that commanded an overwhelming majority in the Special Committee. It had tried to show flexibility in its approach and hoped that other delegations would follow suit. In that connexion he was pleased to note that encouraging progress had been made at the previous session and he thought that the Special Committee should be given more time to complete its work. He therefore hoped that the Sixth Committee would endorse the Special Committee's recommendation (see A/8019, para. 147) and renew its mandate.

8. In connexion with the main issues raised in the report, he believed that the principle of priority was the cornerstone of any definition of aggression. By the end of the Special Committee's 1970 session all its members had come round to the view that the priority principle had a place in the definition, even if it was not the sole determining factor. As the representative of Guyana to the Special Committee had stated,² the priority principle raised a rebuttable presumption that the State which attacked first was the aggressor. The question of intent could be relevant in rebutting that presumption. The Security Council seemed the obvious body for examining intent or motive. In his view, the question of intent could not be inserted in a definition of aggression without providing shelter for the aggressor. One of the problems of the modern world was that States were always able to explain away the presence of their armies outside the borders of their own territory.

9. The only way of obtaining a comprehensive definition of aggression was by dealing with the question in stages, starting with direct armed attack and systematically proceeding to other forms. Many crimes had been committed in the name of self-defence and it was urgent to ascertain which acts entitled States to engage in armed attack in its name. Without attempting to provoke a debate on Article 51 of the Charter, he wished to point out that not all breaches of the peace gave a State such entitlement.

10. The question of political entities created difficulties for his delegation. It was clear that the term "States" as used in the Charter covered both Members of the United Nations and non-member States. Even some Members of the United Nations found their statehood disputed. He therefore could see no reason for bringing into the definition the question of political entities other than States. As he had already had occasion to point out in the Special Committee,³ the whole question had been deliberately introduced as a subterfuge.

11. On the tenth anniversary of the Declaration on the Granting of Independence to Colonial Countries and Peoples, there should be no curtailing of the right of

peoples to self-determination. Therefore the definition should in no way restrict the right of peoples for whom recourse to peaceful means had brought no fruitful results to use force in order to exercise their inherent right to self-determination in accordance with the Charter.

12. The definition could discourage expansionist ambitions if it stated clearly that any territorial gains resulting from the use of force, whether aggressive or defensive, should not be recognized. That was the only way of counteracting the danger of a strong State overwhelming its neighbours on the slightest pretext.

13. Mr. GONZALEZ GALVEZ (Mexico) said he had been gratified to note the draft proposal submitted to the Special Committee by Australia, Canada, Italy, Japan, the United Kingdom and the United States. Although it left much to be desired, it showed that all the members of the Special Committee were now ready to begin negotiations leading to an accepted definition of aggression. The Special Committee's report contained positive elements to which he wished to draw attention.

14. In the first place, he believed that a joint text could be prepared on the basis of the alternative versions of the basic definition, once it had been decided whether or not to include the question of indirect aggression.

15. All members were agreed that the definition should include the principle of priority, which established a presumption of guilt for the party which "first" committed a particular act. In that connexion, he wished to reiterate a query already raised by his delegation in the past, namely, whether or not a distinction should be made in the definition between acts of aggression and so-called border incidents. Certain historical cases would perhaps explain his delegation's concern. At the Tokyo trials after the Second World War, for instance, various Japanese leaders had been found guilty of aggression in respect of border incidents that had occurred in 1938 and 1939 at Noman Han and Lake Kassar and had been the subject of negotiations between the Soviet Union and Japanese Governments. Again, in the 1925 conflict between Greece and Bulgaria, as a result of which Greece had been obliged to indemnify Bulgaria for an act of armed invasion, one of the factors taken into account had been a prior Bulgarian attack on a Greek frontier post. Those and many other more recent examples, including one involving an important State Member of the United Nations and a non-member State, demonstrated the importance of allowing a State to regard that type of aggression as a mere incident which did not entail the reaction appropriate to an armed attack on its territory. For that purpose, the Special Committee should examine the possibility of defining the term "armed attack" as used in Article 51 of the Charter. He also suggested that it might be useful to introduce the words "in an international conflict" before the word "first" in the relevant paragraphs of the Soviet Union and the thirteen-Power draft proposals.

16. The proposal to include in the definition the idea that the term "States" included entities whose statehood was disputed required very careful examination. It should be established whether the intention was to include territories having a special status, as had once been the case of Trieste,

² See A/AC.134/SR.56.

³ See A/AC.134/SR.65.

or whether the purpose was to bring in by the back door the highly controversial issue of States which were not recognized by the international community. In that connexion, he wished to point out that Mexico, like many other countries, believed that the existence of a State did not depend on its recognition by other States, and he therefore thought that the definition should refer only to States and not to political entities.

17. His delegation believed that the list of acts constituting aggression should be preceded by a statement to the effect that they were listed without prejudice to the full powers of the Security Council as provided in the Charter—which should not be taken to mean that the Security Council had the right to add other acts to the list. In that connexion, paragraph 3 of the Soviet draft proposal removed any value that the preceding definition might have.

18. The Working Group had agreed that the term “invasion” should be retained and that reference should be made to bombardment, blockade and attacks on the armed forces, ships or aircraft of another State.

19. In addition to the positive elements, there were certain issues on which the Special Committee had achieved no progress. Some delegations had expressed doubts about including in the definition the principle of proportionality, which his own delegation considered essential. The problem could perhaps be solved by re-drafting the text. A further difficulty had arisen in connexion with the definition of the term “direct use of force” and the consequences to which it might give rise as compared with those resulting from “armed attack” as referred to in Article 51 of the Charter.

20. No agreement had been reached on the question of including the concept of aggressive intent, which Mexico found too subjective to be acceptable. Nor had there been any agreement as to whether the illegal annexation of a territory constituted in itself an act of aggression or whether the definition should reflect the concept of the non-recognition of territorial gains and the concept of responsibility for aggression. There had also been disagreement over the notion that repeated violations of the principle of self-determination of peoples might constitute an act of aggression, and the example of Namibia had been cited.

21. Mainly for lack of time the Working Group had been unable to attempt to produce an agreed text on the activities of regional bodies or to reach any agreement on the use of weapons of mass destruction, a subject that had already given rise to a great deal of controversy.

22. His delegation hoped that the present discussion in the Sixth Committee would provide guidance for the future work of the Special Committee. If members made concrete proposals, suggestions and amendments, they could be incorporated in a working paper which would be most useful. He hoped that the draft resolution inviting the Special Committee to resume its work as early as possible⁴ would be adopted and that the session would be held at Headquarters in order to avoid the additional cost of meeting at Geneva. In that connexion he found it difficult

to understand why the increase in expenditure was so considerable when meetings were held away from Headquarters.

Mr. Houben (Netherlands), Vice-Chairman, took the Chair.

23. Mr. SKOWROŃSKI (Poland) expressed disappointment that the Special Committee had not succeeded in producing a consensus text. The problem demanded rapid solution for three main reasons. Firstly, the definition of aggression could further the progressive development of international law and would represent an important step in its evolution, especially with regard to the principle of the non-use of force laid down in Article 2 of the Charter. The solution of the problem of defining aggression would strengthen the validity of that principle. The logic of the progressive development of international law necessitated a precise definition of aggression as a complement to the earlier steps of the prohibition of aggression and the acceptance of the principle of the aggressor's international responsibility. That definition would be an essential element in an effective juridical system based on the non use of force.

24. Secondly, the definition of aggression could help to perfect the mechanism of collective security based on the Charter, a mechanism which turned not merely on the prohibition of the use of force but also on the right of self-defence and the power of the Security Council, both laid down in Chapter VII of the Charter. A clear demarcation between unlawful aggression and the right of self-defence could assist the Security Council in determining the existence of an act of aggression and help to ensure that adequate measures were taken and international disputes settled peacefully as a result.

25. Lastly, a definition of aggression would be a legal instrument conducive to fortifying the rule of law in international relations and to strengthening the fundamental principles underlying those relations, namely, the principles of the prohibition of the use of force, the peaceful settlement of international disputes, non-intervention, the equality of States, and equal rights and self-determination of peoples. Their importance had been emphasized by the approval given by the Sixth Committee to the draft Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,⁵ to which the definition of aggression would form a valuable complement. The principles as a whole constituted a juridical régime of collective security.

26. The solution of the problem of international security entailed a political decision. Also, the strengthening of security could foster progress in other international fields, including the legal sphere, but in considering methods for strengthening security it should be remembered that important decisions were taken outside the political and military arena, particularly in connexion with the progressive development of international law. Consequently, in the draft declaration on strengthening international security (A/C.1/L.513), his delegation along with those of the other

⁴ Subsequently circulated as document A/C.6/L.799 and Rev.1.

⁵ Subsequently adopted by the General Assembly as resolution 2625 (XXV).

socialist countries had proposed various legal measures including the speeding up of agreement on the definition of aggression.

27. As far as the definition itself was concerned, Poland supported the USSR draft proposal as reflecting the needs of the international community and the requirements of the progressive development of international law. The draft embodied several important principles. Firstly, it included the principle of priority, laid down in many international instruments and based directly on Article 51 of the Charter. Secondly, it contained the principle of the non-recognition of territorial gains obtained by force contrary to the Charter. His delegation shared the view that the definition should proclaim the immediate legal consequences of aggression as conceived by the international community in the light of Articles 1 and 2 of the Charter, for potential aggressors would not be deterred if they stood to benefit from their aggression. The legal consequences of aggression had been included, on political and legal grounds, in the formulation of the principle prohibiting the threat or use of force in the draft Declaration on Friendly Relations, and for the same reasons they should be included in the definition of aggression.

28. The last important principle laid down in the USSR proposal was that of the use of armed force by dependent peoples in exercise of their right of self-determination; it had been widely recognized in the discussion on the draft Declaration on Friendly Relations and its inclusion in the definition of aggression would be in conformity with Article 1 (2) of the Charter.

29. The international situation and the demands of the progressive development of international law necessitated speeding up the Special Committee's work. The formulation of a legally precise and generally acceptable definition of aggression would help considerably towards the strengthening of international security. His delegation therefore supported the suggestion that the Special Committee should resume work as soon as possible.

30. Mr. DUPLESSY (Haiti) said that although circumstances had prevented his delegation from participating in the Special Committee's 1970 session, Haiti was keen to take part in its future work, which it was convinced would prove successful. The cautious optimism displayed by the Rapporteur was justified by the divergency of views which existed on the subject. The virtual unanimity of the Special Committee on the need for a definition of aggression was an encouraging sign, but difficulties remained in connexion with the formulation of the definition owing to certain contentions of questionable legal validity.

31. In proving that point, he would unfortunately have to repeat some of the arguments that Haiti had advanced at the 1969 session of the Special Committee,⁶ since those contentions had already been argued then, but in the process he would be able to express his delegation's view on aspects of the draft proposals considered by the Special Committee. The first question was whether in the light of the Charter and General Assembly resolution 2330 (XXII) it was justifiable to claim, as some delegations

did, that if the definition was to be acceptable it should expressly recognize the competence of the Security Council and preserve its powers. The powers and competence of the Security Council derived from the Charter, which was the supreme constitutional law of the United Nations, unalterable except as prescribed in Article 108. Consequently, whatever the definition said, it could not modify the Security Council's powers. In addition, a statement in the definition to the effect that the Security Council's powers were preserved would constitute an exercise of prerogative unwarranted by the Charter, and also any reference to the Security Council's powers would be pointless, being superfluous and irrelevant to the validity of the definition. However, by virtue of the legal maxim *abundans cautela non nocet*, such a reference would be acceptable as long as that was recognized, and Haiti as one of the sponsors of the thirteen-Power draft had accepted a reference of that kind in a spirit of compromise.

32. It was also necessary to examine the mandate which the Special Committee had received in resolution 2330 (XXII). Under paragraph 3 of the resolution it had been instructed to consider all aspects of the question so that an adequate definition of aggression might be prepared; in other words, it had been required merely to state, in a definition, the essential characteristics of aggression and the forms by which it could be identified. Since there was no question under the resolution of the Special Committee's legislating on aggression, the definition it prepared could not affect the Security Council's powers provided the Committee kept to its mandate.

33. The widely expressed fears that a definition of aggression would circumscribe the discretionary power of the Security Council had revealed some confusion, in that the discretionary power had been regarded as embracing the power of determination, whereas the two, although exercised by the same organ, were quite separate. In the first stage of its work, as provided for in the first clause of Article 39 of the Charter, the Security Council exercised its power of determination; there, its function was to classify a situation, and in doing so it could seek guidance from a concept or definition. That was no longer true in the second stage, as laid down in the second part of the Article, in which it exercised its discretionary power as to what action to take; at that point, its sole concern was to restore international peace. The conclusion was that its discretionary power could not be affected by a definition of aggression.

34. It was equally true that the Security Council's power of determination could not be affected by a definition of aggression. In the first place, the effect of Article 39 and certain other passages of the Charter taken together was to give the Security Council sole and sovereign competence to determine what Article 39 specified, and to make its finding unappealable. Secondly, the process of determination required the existence of two elements: the thing to be determined and criteria for determination. Without the latter, no valid judgement could be made. However, the Security Council had often been required to pass judgement without being in possession of valid criteria for doing so. In principle, therefore, the preparation of a definition of aggression, far from detracting from the Council's power of determination, would permit its full exercise by providing the Council with the requisite criteria for its task.

⁶ See A/AC.134/SR.36.

35. But, in any case, the definition to be prepared by the Special Committee was not intended solely for the Security Council. The Special Committee would be exceeding its mandate—in fact, dictating to the Assembly—if it stated that the definition was for the use, exclusively or otherwise, of the Security Council. The six-Power draft was at fault in that respect, since its paragraph I defined aggression as a term to be applied by the Security Council. The Special Committee's mandate made no reference to the use to be made of the definition. The words "there is a widespread conviction that a definition of aggression would have considerable importance for the maintenance of international peace" in the fourth preambular paragraph of resolution 2330 (XXII) did not necessarily refer to the Security Council, despite its primary function of restoring international peace, since the main architects of international peace were States and their Governments. The General Assembly itself might therefore wish to utilize the definition.

36. Since the definition was clearly not intended solely for the use of the Security Council, it was surprising to find some delegations claiming that the definition of aggression, to be acceptable, must first be approved by all its permanent members. Nothing of the kind was envisaged in resolution 2330 (XXII), and to allow it would be to infringe the Special Committee's mandate. Only the General Assembly could decide whether that mandate had been correctly fulfilled.

37. A further claim without foundation was that the definition, to be acceptable, must be approved by all the members of the Special Committee. Again, there was no justification for it in the General Assembly's mandate, nor was there any in the Charter or the rules of procedure of the General Assembly.

38. Only direct armed aggression should be defined for the time being; the question of indirect aggression could be taken up later. The principles of proportionality and priority should be included in the definition, as should the principle of the non-recognition of territorial gains obtained by force, but not aggressive intent or the notion of political entities delimited by international frontiers or internationally agreed lines of demarcation. His delegation looked forward to the early resumption of the Special Committee's work.

Mr. Engo (Cameroon) resumed the Chair.

39. Mr. BREWER (Liberia) said that although his delegation considered that aggression should be defined, it felt that the nature of the subject and the present political climate made it advisable to defer the question for a year or two. In any case, it did not think the Special Committee had organized its 1970 session to the best advantage. Its third report reinforced its conviction that further work by it would be fruitless at the moment. Liberia would therefore prefer to see its activities suspended until 1973 and the Secretary-General requested to seek comments and proposals from Member States on the definition of aggression.

40. On the subject-matter itself, his delegation considered that it was desirable to define aggression because the

Charter, while mentioning acts of aggression in Articles 1 and 39, did not state what acts constituted aggression. Also, Article 39 gave the Security Council exclusive jurisdiction to determine the existence of aggression, and it needed guidelines for doing so. That meant that aggression could only be defined by an amplification of the provisions of the Charter. A definition of aggression should command the approval of a large majority of States Members of the United Nations, including the permanent members of the Security Council, but as the Head of the Liberian delegation had expressed in the General Assembly (1856th plenary meeting), the latter should not have the special right of veto. The definition should be concerned principally with all types of aggression as long as they constituted threats to the peace. It should not be restricted to acts committed by full subjects of international law but should include those of any person or group whose acts threatened peace and security. It should also recognize the right of self-defence under the Charter and include the illegal annexation, confiscation or division of any territory.

41. There was no guarantee that the existence of a definition of aggression would prevent a nation from committing aggression, and the readiness of the international community to define the term should therefore be matched by its readiness to impose the penalties of international law on the aggressor.

42. Mr. FARTASH (Iran) said that, although the Special Committee had not succeeded in agreeing on a precise and generally accepted definition of aggression, considerable progress had been accomplished and the gap between the various points of view was narrowing. All countries wished to find a satisfactory solution, but because of the difficulty of the task, which had been before the international community since the days of the League of Nations, progress was bound to be slow.

43. Iran had been a member of the Special Committee and was one of the sponsors of the thirteen-Power draft resolution on the subject, and it wished to state its firm belief that the definition of aggression had to be a complete one and could not omit a reference to indirect aggression, even if the words "direct" and "indirect", which had caused such controversy, were not expressly mentioned. The thirteen-Power draft met that condition.

44. His delegation considered that the definition should not contain any provision that would put States and other political entities not universally recognized as States on an equal footing. Such a provision would be contrary to the Charter. The question of intent had a long history, and, as early as the eighteenth century, Frederick II had defined aggression as having an element of intent. Unfortunately, the Special Committee had not been able to produce any firm view on the question.

45. Since it was important to produce a definition of aggression without departing from the principles of the Charter, a provision covering the lawful use of force, based on Articles 42, 51 and 53 of the Charter, would have to be included in the definition. Paragraphs 1, 3 and 4 of the thirteen-Power draft stated who were qualified to use force and stressed the competence of the United Nations.

46. It was difficult to formulate a definition of aggression without referring to the element of priority. Although it was not the only valid principle, it was certainly one of the more important ones to be applied. However, his delegation did not think that the discretionary power of the Security Council to weigh the circumstances in each case should be in any way curtailed. The Council rightly had the power to determine whether there was a right of self-defence in accordance with Article 51 of the Charter.

47. With regard to the principle of proportionality, which was contained in the thirteen-Power draft, it had to be recognized that an unconditional right of self-defence could not be protective, particularly in the case of small States. The legal scope and basis of that principle had been aptly explained in paragraph 131 of the Special Committee's report.

48. No definition of aggression would be complete if it failed to recognize the immediate legal consequences of aggressive action and did not reflect the attitude of the international community towards the aggressor. Paragraph 8 of the thirteen-Power draft stated that "the territory of a State . . . may not be the object, even temporarily, of military occupation or of other measures of force". The draft contained a wide interpretation of the principle of self-determination and referred also to the right to sovereignty and territorial integrity, thus taking account of persons who were victims of neo-colonialism or whose territory was occupied.

49. His delegation expressed satisfaction with the common wish of the members of the Special Committee to continue their work on the basis of the results already achieved, and supported the recommendation that the Special Committee should resume its work as soon as possible in 1971.

50. Mr. BEESLEY (Canada) said that the report of the Special Committee did not do full justice to the progress made at the 1970 session, because movement between opposing positions that had occurred in informal discussions had not always been reflected in the formal positions taken in debate and had consequently been omitted from the record. In his view, there had in fact been greater flexibility in the positions of delegations on a number of issues. One example was that, although there were still differences concerning the extent to which the Security Council's discretion should remain unfettered by the proposed definition, there appeared to be general agreement that the definition should safeguard the authority of the Council as the organ of the United Nations primarily responsible for the maintenance of international peace and security. His delegation had always attached great importance to that point and was encouraged to note that no delegation had suggested that any definition should be applied by the Security Council in an automatic or categorical manner. Another example was the question of including in the definition of aggression indirect armed aggression, which his delegation had always considered a most important component. During the discussions at Geneva, some of those who had shared the Canadian view had agreed that indirect use of force did not necessarily need to constitute aggression. On the other side, it had been conceded for the first time that some of the acts referred to could in fact constitute aggression, either because they were

so serious as to be classified as direct armed aggression or for other legal reasons. It was possible that the application of the principle of proportionality to that issue in its strictly limited sense could provide the basis of a solution.

51. Discernible progress had been made on the question whether or not the use of nuclear weapons constituted an act of aggression *per se*, and the Canadian view now appeared to be more widely shared in the Special Committee that the definition should not rule out the possibility of nuclear weapons being used in self-defence against an attack by an aggressor using conventional weapons. The same could be said of the question of declarations of war. Although the latter did not necessarily constitute an act of aggression, as, for example, in the case of the declarations of war against Nazi Germany by some of the allied Powers, the view was gaining ground that on the grounds of their formal legal consequences and their intrinsically serious nature they should constitute an important element to be taken into account in determining the commission of an act of aggression.

52. Another difficult issue on which noticeable progress appeared to have been made was the question of including military occupation and annexation in the proposed definition. Some countries, including Canada, had taken the view that military occupation and annexation were essentially consequences either of the legitimate use of force or of acts of aggression and that they should not therefore be included in the definition. Others strongly disagreed. There had been, however, some progress towards agreement. It had been accepted on the one hand that military occupations resulting from the Second World War were not necessarily aggressive, and on the other that an originally legitimate occupation might be transformed into an aggressive act if it occurred or continued to exist against the will of the occupied State.

53. Another area where progress had been made was in connexion with the principle of priority. Some delegations had modified their original view that first use of force did not carry with it an irrefutable presumption of culpability but had admitted that it was at the very least a most important element to be taken into account in determining whether or not a particular use of force was aggressive. On the other side, it appeared to have been conceded that the principle of first use need not be postulated in such a way as to prejudge an issue provided its importance was duly stressed in the definition; such matters had to be left to the discretion of the Security Council.

54. His delegation had always believed that one of the most important elements in determining aggression was that of intent, while others had expressed the fear that the inclusion of the element of intent might provide an excuse, enabling an aggressor to deny his aggressive intentions. On that point, too, there appeared to be signs of an emerging consensus. He strongly denied that Canada, as one of the sponsors of the six-Power draft, had introduced that element for any reason other than that of covering the situation of aggression by entities that were not universally recognized as States. Even on that issue, however, there was room for accommodation.

55. There were, of course, other unresolved difficulties, but his delegation believed that the progress made by the

Special Committee in the three years since it had been established was extremely good in comparison with the results of decades of earlier efforts, and it hoped that the Special Committee would continue its work in the same spirit of goodwill and co-operation, and eventually emulate the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States and deliver a consensus text to the Sixth Committee.

56. Mr. TERRY (Australia) said that, from the outset, his delegation had been doubtful as to the wisdom of attempting to produce a definition of aggression, which had exercised the minds of international jurists for more than forty years. In Chapter VII of the Charter the emphasis was not on aggression but on the concept of breach of the peace. The Security Council had broad discretionary powers which would not be affected by the fact that it had determined the existence of an act of aggression. In fact, it had made such a determination only once in the course of twenty-five years. However, as a member of the Special Committee, Australia had wished to approach the task in a positive and constructive manner and had therefore sponsored the six-Power draft. Its basic view was that the Special Committee had a duty to interpret rather than amend the Charter language, and that since it was clear that the acts of aggression referred to in Article 1 (1) and Article 39 were limited to acts involving a breach of international peace or a threatened breach of the peace, which inevitably involved the use of armed force, the Special Committee should confine itself to defining aggression which involved the use of armed force and constituted a breach of international peace. His delegation doubted the need to distinguish between direct and indirect use of force because infiltration by armed bands or terrorists was just as much an aggressive act as an invasion by regular forces. That point was reflected in the draft Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations and in the six-Power draft. No

definition would be complete unless it included all forms of infiltration and attack.

57. His delegation believed that the definition should in no way impair the powers of the Security Council and should leave such questions as priority to the discretion of the Council. The six-Power draft met that requirement and did not purport to be exhaustive. It was, in fact, in the nature of a set of guidelines, and he believed that any definition by the Special Committee that went further or which did not have the support of all of the permanent members of the Security Council would not only be *ultra vires*, but would inevitably leave lacunae which might encourage aggression and hamper the Council's efforts to maintain world peace.

58. With regard to the relationship between aggression and self-defence, he recalled that it had been recognized at the San Francisco Conference that the use of arms in self-defence remained admitted and unimpaired and that view had been enshrined in Article 51 of the Charter. Consequently, any definition of aggression should acknowledge that the use of force in the exercise of a State's inherent right to individual or collective self-defence did not constitute aggression. In the same context, he argued that the question of proportionality had little part in a definition of aggression since over-reaction by the victim did not alter the fact of aggression itself.

59. His delegation believed that the use of force by colonial peoples had no place in the system established by the Charter and should be excluded from the definition of aggression. It also believed that any effective definition must have the unanimous support of all States Members of the United Nations and it supported the Special Committee's recommendation that it resume its work as early as possible in 1971.

The meeting rose at 12.50 p.m.