

breach of the peace if they were of such intensity as to necessitate recourse to self-defence, in which case they would pose an imminent danger to life and property as well as to the existence of a State. The French representative proposed that the definition contain a list of the most serious kinds of aggression, i.e. those contemplated in Articles 39 and 51 of the Charter.<sup>3</sup> He felt that the sending of armed bands by one State into the territory of another might be included in the list, but that unduly vague concepts, such as support for acts of subversion, should be excluded, since a State might use them as a pretext for aggression under the guise of self-defence.

Other representatives, including those of Canada, Israel and the United States, maintained that the definition of aggression should cover any illegal use of armed force, whether direct or indirect.

The United States representative held that a definition of aggression must be exhaustive and not partial and that attempts to draw a distinction between "direct" and "indirect" aggression sometimes served as an excuse for accepting a partial definition; such a distinction had no basis in the Charter, where the various kinds of illegal force or aggression were not differentiated.

The representative of Israel contended that indirect aggression was probably the most serious contemporary manifestation of aggression and that any enumeration of acts of aggression which overlooked that particular form would have no great practical value. It was common knowledge that current violations of the provisions of the Charter were due as much to indirect as to direct aggression and that certain States had used force through the agency of terrorists or armed bands or had permitted such groups to operate from their territories against the territorial integrity and political independence of other States, the Israeli representative added.

Chile, Cuba and India were among those holding that the definition should not be limited to armed aggression; for example, it was noted by Cuba, France and Zambia that the Special Committee should consider including in the definition a reference to economic aggression as one of the most serious forms of attack or challenge.

The notions of declaration of war, occupation and annexation were among the specific acts mentioned for enumeration in the definition as examples of aggression. The Canadian representative noted that a view seemed to be emerging that a declaration of war did not necessarily constitute aggression but was an important element in determining an act of aggression, because of its inherent seriousness and the formal juridical consequences that followed from it.

Egypt felt that the most serious act of aggression

was occupation or annexation of the territory of a State by force.

Romania held that the definition should include cases in which a State made its territory available to another State so that it could commit aggression against a third State.

#### PRINCIPLE OF PRIORITY

No basic objection to the inclusion of the principle of priority in the definition of aggression was expressed. Several Members, including Bulgaria, Hungary and Iraq, felt that the principle must be retained as being a basic and determinative criterion. Hungary noted that the principle of priority made it impossible for an aggressor State to plead innocence on the grounds that it was conducting a preventive war: the burden of proof was placed on the State that first resorted to force.

Others, including Canada, Italy and the United States, were of the opinion that the principle of priority could not in itself constitute a determining factor and should figure in the definition as only one element among others. The Canadian representative suggested that the question of priority might be solved by postulating that the Security Council should determine, in each case, which party first used force and treat its finding as a fact of considerable significance but without prejudice to the ultimate consequences of the finding.

#### AGGRESSIVE INTENT

In the view of some Members, including Burma, El Salvador, the USSR, the United Kingdom and the United States, the element of intent should be a fundamental ingredient of any definition of aggression.

The USSR said that if the definition did not include the element of intent, its sphere of application would be limited; in particular, it would not apply to cases where exercise of the right of self-defence developed into actual aggression.

The United States considered that *animus aggressionis* was an essential element of a definition of aggression.

Others—France, Ghana, Iraq and Israel, for instance—were opposed to including the element of intent in the definition. Since aggressive intent was necessarily implied in any act of aggression, Ghana said, it was not necessary to include the principle in the definition; the inclusion of the element of intent in a definition would in fact permit an aggressor State to seek to justify its action, but the burden of proof should always be on the aggressor and not on the victim State.

The representative of Israel felt that the question of aggressive intent should be left to the

<sup>3</sup> For text of Articles 39 and 51 of the Charter, see APPENDIX II.