

THE QUESTION OF DEFINING AGGRESSION

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1. In spite of the sincere and continuous efforts in the international organizations for half a century, the question of defining aggression has not yet been solved. The United Nations adopted a number of resolutions concerning this matter since 1950. Under resolution 2330 (XXII) of 18 December 1967, the General Assembly established the "Special Committee on the Question of Defining Aggression" composed of thirty-five Member States and instructed this Committee to consider all the aspects of the question so that an adequate definition of aggression might be prepared and to submit a report to the General Assembly.

Pursuant to this resolution, the Special Committee met at the Palais des Nations, Geneva, from 3 June to 6 July 1968.** After the general debate, the draft proposal was submitted by Algeria, Congo, Cyprus, Ghana, Guyana, Sudan, Syria, Uganda, and United Arab Republic (App. I). Latin American States—Colombia, Ecuador, Mexico, and Uruguay—countered their own proposal (App. II). As a result of the coordinating talks among the sponsor States of these proposals, the third draft proposal was prepared, and submitted jointly by Colombia, Congo, Cyprus, Ecuador, Ghana, Guyana, Indonesia, Uganda, Uruguay, and Yugoslavia (App. III). But the Committee was drawing to a close, and could not afford time to discuss fully this draft proposal. Thus the 1968 Special Committee failed to adopt a report containing an agreed definition of aggression, but it was understood to resume its work in the near future.

Though the Committee failed, some tendencies were noticeable in the atmosphere of the meetings. First, the debate revealed the desire of the majority of its Members to make haste their work. Especially, the Afro-Asian and Latin American States insisted on the urgent need to expedite the definition of aggression. Second, it was almost unanimously agreed that the definition should be confined for the time being to "armed aggression" as used in the United Nations Charter. The other concepts of aggression—economic or ideological—were reserved for future consideration. Third, the controversial aspects of defining aggression were thus far manifested in the choice of formulating alternatives, but the majority opinion in the Committee was in favor of the mixed formulation combining the so-called general and enumerative definitions. Probably these tendencies will survive in the future discussion of this question. This paper was written not to examine in detail the above-mentioned draft proposals, but to elucidate some basic issues underlying in the definition of aggression.

2. First of all, a preliminary question is raised as to in what context the term of aggression should be defined. The term of aggression appears in the various contexts: in the bilateral or multilateral conventions, international criminal law, and also in ordinary parlance.

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Strictly speaking, it is the question of each instrument to define the meaning of aggression. Here we concern the concept of aggression as used in the law of the United Nations Charter. The law of the Charter embodies the major principles having acquired the character of general international law. There is no doubt that the principle of non-aggression falls within this category. Defining the Charter term of aggression, therefore, is also the question of general international law.

Per contra, "possibility" of defining aggression is not really a preliminary question. In the law of the Charter, aggression constitutes an illegal act, to which a measure of reaction is envisaged as a consequence. It is evidently impossible to take the measure without giving a decision as to whether the act is aggression or not. This presupposes the defined concept of aggression. Therefore, the definition of aggression—however difficult it may be—must be possible, because it is a *sine qua non* for the application of the law of the Charter. It is argued that the definition is extremely difficult, if not impossible. It is also pointed out that perplexities may not infrequently arise with respect to the application of definition in a concrete case: who is an aggressor? But this is a matter of application, not that of definition. Further, the difficulty of application is not encountered solely with the case of aggression. Thus the only question consists in whether the definition of aggression should be generally pre-determined or should be left to the discretion of the competent organ (e.g., the Security Council) in each case. In other word, the question is whether and to what extent the competent organ should be regulated by the pre-determined general definition of aggression. This is the problem of "desirability" of defining aggression. Prior to this aspect of the question, however, we should attempt to ascertain the meaning of aggression as used in the law of the Charter.

The term of aggression is not explicitly defined in the language of the Charter. Filling in the gaps, however, should be basically within the existing framework of the Charter, without prejudice to the powers of the competent organs. What is required, then, is to clarify the essential features of aggression, specifically in contrast to the similar Charter concepts, such as breaches of the peace, use of force, armed attack, etc. Further, such a definition of aggression must be consonant with the effective functioning of the present system of peace and contribute to furthering the aims of the United Nations Organization.

3. In defining aggression, various methods of formulation have been proposed: general, enumerative, and mixed definitions. A general definition is couched in terms which cover the entire class of instances to be included. For example, a general definition may be framed: "aggression consists of any use of armed force by one State against another State for purposes other than self-defense or execution of a decision by a competent organ of the United Nations." An enumerative definition gives a list of concrete acts regarded as acts of aggression: declaration of war, invasion by the armed forces, military occupation, bombardment, naval blockade, etc. A mixed definition contains, both a general definition and a list of specific instances. A general clause is followed by a list of a number of specific cases to which the concept is applied.

The first formulation invites criticism that it adds nothing to the existing provisions of the Charter. It merely represents the vague residuary concept. The second formulation is also held to be unacceptable, because enumeration cannot be exhaustive, and any omission will be very dangerous. Conversely, it may go to the extreme of including minor illegalities

under the definition. The negative attitude toward these methods of definition was summarized in the following short sentence: "A general definition will be of little value because it is too vague, an enumerative definition will be dangerous because it may contain too much or too little, and a mixed definition is apt to combine the disadvantages of the other two types."

Technically, these criticisms may not be decisive. For instance, we can plug the so-called "loophole" of enumerative definition by some device in drafting, i. e., by including the provision authorizing the organ entrusted with applying the definition to add new categories of aggression. More importance must be given to a general concept representing not a mere catch-all, but a framework of reference for the factual and normative judgment of aggression. Hence the issue does not exist in the merits or demerits of drafting alternatives. What it really matters, is to clarify a complex of relevant tests, and underlying principles governing the ascertainment of the existence of aggression.

It is indisputable that aggression is, in terms of the Charter, an act of breach of the peace, hence an act incompatible with the maintenance of peace. Article I (1) of the Charter reads: "...the suppression of acts of aggression or other breaches of the peace." Correlatively, Article 2 (4) provides the obligation of all Members to refrain in their international relations the threat or use of force against the territorial integrity or political independence of any State. Article 51 stipulates, in derogation of this principle, the right of self-defense in the case when "an armed attack occurs against a Member of the United Nations." Article 39 empowers the Security Council to determine the existence of "any threat to the peace, breach of the peace, or act of aggression." From these provisions, it may be inferred that the concept of threat to the peace including the threat of aggression, is distinct from that of aggression. While the concept of breach of the peace includes that of aggression, there is no reason why all the cases of breach of the peace should be treated as aggression. Aggression is apparently a special type of breach of the peace.

4. As stated above, the Charter does not explicitly or elaborately define the term of aggression. Can we give effect to the term, construing it according to its "ordinary meaning" or "natural signification"? In this respect, we may recall the "natural notion" or "ordinary meaning" theories of aggression put forward by some distinguished authors.

Mr. Spiropoulos, in his report on the Draft Code of Offences against the Peace and Security of Mankind (1950), asserted as follows: If we study the international practice, we are led to the conclusion that whenever governments are called upon to decide the existence or non-existence of aggression under international law, they base their judgment on criteria derived from the "natural notion" of aggression. The natural notion of aggression, as applied by governments in international practice, is composed of objective and subjective criteria. There are two objective criteria: first, aggression presupposes some kind of violence—even if this violence may be an indirect act. The second objective criterion is the time element: the State to be considered as responsible must be the first to act. The mere fact that a State acted as first does not *per se* constitute aggression as long as its behaviour was not due to aggressive intention. That the *animus aggressionis* is a constitutive element of the concept of aggression needs no demonstration. It follows from the very essence of the notion of aggression as such. According to Mr. Spiropoulos, the notion of aggression is a concept *per se*, which is inherent to any human mind and which, as a primary notion, is not

susceptible of definition. Consequently, the behaviour which is to be considered as an aggression under international law has to be decided not on the basis of specific criteria adopted *a priori*, but on the basis of the above notion which, to sum it up, is rooted in the "feeling" of the Governments concerned.

Main objection to this theory is that this formula will give a State which committed an aggression the opportunity of escaping the legal consequences of its action by pleading the absence of *animus aggressionis*. The point is—it is said—that the act of using force reveals the intention by itself. However, this objection seems not to be valid. The element of intention is necessary to except the cases of genuine error or accidental outbreak of hostilities in the frontier. Objection is also presented against the possibilities of abuse historically evidenced, but as a matter of law, it is beside the point. The presence or not of aggressive intention in a concrete case shall not be made dependent upon the unilateral allegation of the interested States. The problem must be finally decided by the international competent organ. It may be also referred that in the law of State responsibility, intention is taken into account as a pertinent factor aggravating the responsibility of State.

Mr. Spinopoulos regards the time element as essential in the definition of aggression. The State to be considered as responsible must be the first to act. Aggression is presumably: acting as first. As a matter of fact, however, it may be frequently hard to ascertain which party is the first to have acted in the occurrence of hostilities. Another point for consideration is the relationship of time element with aggressive intention. When there is an impending aggression, has a State the right to attack first in order to counter the aggressive intention of the other State? Mr. Spiropoulos answers: "If she forstalled it, no one would denounce her as an aggressor." In this last connection, relevancy of the time element will be merged into the "provocation" test of aggression.

At the general debate of the 1968 Special Committee, Sir Bailey, as representative of Australia, stated the position as follows: The concept of aggression, in its ordinary, natural and untechnical meaning, is clear and simple enough. In a word, it is "unprovoked attack." But what a whole world of controversy lies concealed in that adjective—"unprovoked." This is a matter that can be achieved by the exercise of discretion in assessing a total situation, but not by the mere process of definition. According to Sir Bailey, "the priority" or "first in time" principle does not produce an adequate definition. To isolate the single factor of priority in time is a drastic oversimplification. Such a definition would offer a standing invitation to provocation, and in so far as it is acted on it, it would be likely to bind the Security Council to a highly abstract view of any breach of the peace that comes before it. It is essential that the Security Council should be in a position to exercise its discretion and form its judgment on the total situation that confronts it, whenever the peace is threatened or broken.

Sir Bailey asserts that the flexible language of the Charter should be interpreted so as to leave the maximum discretion of the Security Council. This may be right. But he excludes the absolute prevalence of "priority in time" principle, regarding act of aggression essentially "unprovoked attack." What are the acts of provocation? They are categorized by doctrine: (a) acts constituting armed aggression, (b) preparation for aggression, (c) breach of international law involving another State or its nationals, and (d) unfriendly attitude of Governments or public opinion without being a breach of international law. It should be seriously asked whether such a wide notion of provocation will furnish a reasonable basis for the

interpretation of the law of the Charter.

The opponents of this theory emphatically refute that if such a theory is supported, it may be confidently prophesied that an aggressor will never be found in any armed conflict, and that only mutually aggressive-defensive parties will be established, or worse still, the defensive party will be considered as the aggressor. They insist that the controlling test must be "priority in time", rejecting any plea of provocation not amounting to armed attack. They wish to reinforce the position by setting up formula: "No political, military, economic or other considerations may serve as an excuse or justification for the aggression."

5. Aggression is the most serious act of breach of the peace. The act must be reproached and condemned legally and morally. Hence, whether there is really an aggression, and who is an aggressor, may readily excite a grave controversy between the conflicting States. The controversy must be decided by the international competent organ on the basis of fact and law.

There is an element of truth in the statement that in the event of hostilities having broken out, any State concerned shall be presumed to be an aggressor. It is not easily found out who is the first to have attacked. But there may be "core" cases of aggression, which nobody doubts that it is so. If State A used armed force against State B entirely without provocation, State A must be judged as the aggressor. Even here, the ascertainment of facts may be difficult, because the States concerned deliberately conceal the facts, or present them in a false light. In actuality, however, such "core" cases of aggression are rare, and most cases are presented as peripheral situation.

By way of illustration, we may conceive the following situations:

1. State A refuses to submit the dispute with State B to the procedure for pacific settlement, or to comply with the decision of international organ for the settlement of the dispute. If State A or B resorts to forcible measures for the settlement of the dispute, then that State may be regarded to have committed aggression or at any rate illegal act in contravention of the Charter. However, if the "priority" fact is not proved, a presumption, according to one view, may lean possibly against the recalcitrant State A.

2. State A is faced with the threat of armed force by State B, and the hostilities broke out between them. If State A is the first to have attacked, then, according to one view, *cadit quaestio*. According to another view, however, the threat of armed force is illegal and aggressive, therefore the initial act of State A is justified under some stringent conditions, such as that the threat is imminent, and it is directed against the political independence or territorial integrity. In so far as the "priority" fact is not established, a strong presumption will arise against State B—especially, if that State disregarded the provisional measures enjoined by international organ.

3. State A is a victim in its own country of subversive and/or terrorist acts by irregular, or armed bands organized by State B. According to one view, this is the "indirect" aggression of State B, unless it is proven that it has not acted with aggressive intention. According to another view, however, State A can take all the reasonable steps to safeguard its existence, but must not go beyond the limit, because there is no armed attack by State B.

Whatever the tests may be adopted, the determination of aggression in a concrete case shall not be left to unilateral statement of one or the other of the conflicting States. Impartial decision requires the adversary procedure, and hearing must be open to the grievances of both party (rule *audi alteram partem*). However, the consideration of the merits before

the competent organ will take much time. Hence, if hostilities should occur, immediate action must be taken by the competent organ to halt them without prejudging any question of the merits of the causes of the conflicting States. At this initial stage, therefore, the determination of aggression will be limited only to "core" or manifest case, for example, armed assistance of the aggressor initially declared as such by the United Nations.

As to the relevant legal assumptions, it is tentatively submitted that the first principle should be the "priority in time". This is not only implicit in the text of Article 51 of the Charter, but also gains strength from the prudential norms of international politics in the nuclear age. Adhering to this position of principle, however, it is also submitted that a certain type of acts violating the obligations of the Charter may create a presumption against the responsible State, in so far as they constitute provocative illegalities in a concrete case. Consequently, it lies on the responsible State to establish its contention on the "priority" fact. If that State does not succeed in establishing its contention, it is possible that unfavourable decision will be rendered against it. Moreover, in spite of the established "priority" fact, the seriousness of provocative illegalities on the side of the attacked State may induce the competent organ not to declare aggression, weighing all relevant equities and degrees of responsibility. In other word, the evaluative power entrusted to the international organ may be taken as inclusive of the power, if the circumstances dictate, to decide *ex aequo et bono*, not on the basis of strict criterion. This being the case, I concur in the statement that the crucial determination is sometimes more political than legal.

6. Advocates of defining aggression insist that acts of aggression should be enumeratively formulated. The enumeration is exhaustive. Accordingly, a State which is the first to have committed the enumerated act is regarded as an aggressor. The chronological factor is decisive, and any other consideration is set aside.

However, it is of importance, in this connection, to bear in mind that the law of the Charter provides the obligation to settle disputes by peaceful means. This obligation, independent of the principle forbidding the use of force, has now been incorporated into the system of general international law. Sometimes it is invoked to the effect that by virtue of the very duty imposed on a State, no consideration of whatever nature may provide an excuse for the use of force by a State against another. But, if the obligation is reduced to the mere non-use of force for the settlement of disputes, the provision is almost otiose, because it adds nothing to the principle forbidding the threat or use of force. I am of opinion that total refusal to settle disputes by peaceful means is not only a violation of the law of the Charter, but also will affect the eventual determination of aggression.

It is taken for granted that resort to force cannot be excused by any violation of international law which does not constitute armed aggression. The resort to force is certainly illegal. But the question remains whether it is characterized as aggression, assuming that it is "unjustifiable illegality." Even though a State regards itself as the victim of a serious violation of international law, it may not resort to the use of force to redress the wrong of which it complains. Nevertheless, it is open to question whether the responsible State, rejecting *tout court* all the available peaceful remedies, is still entitled to request the declaration of aggression against any forcible reaction on the part of the victim State. If the law entitles, it will amount to standing invitation to States to commit illegalities, counting on the declaration that any forcible reaction shall be immediately branded as aggression.

Declaration of aggression is in itself a sanction. Consequently, it is sensibly argued that the relevant framework of reference must be "open at the exculpating as well as the inculcating end". Thus viewed, it is submitted that the principle of non-aggression should be read and applied in conjunction with the no less important principle of peaceful settlement. In this coupled context, non-aggression figures not only as the non-use of armed force, but also as the exhaustion of international peaceful remedies.

Appendix

I. Algeria, Congo, Democratic Republic of, Cyprus, Ghana, Guyana, Syria, Uganda, United Arab Republic: Draft Proposal

The 1968 Special Committee on the Question of Defining Aggression, pursuant to General Assembly resolution 2330 (XXII), recommends to the General Assembly the adoption of the following Declaration:

Draft Declaration on Aggression

The General Assembly,

Believing that the maintenance of international peace and security may be enhanced by the adoption of a definition of the term "aggression" as employed in the Charter of the United Nations,

Mindful of the responsibilities of the Security Council concerning aggression under Article 1, paragraph 1, and Chapter VII of the Charter,

Bearing in mind also the discretionary authority of the Security Council embodied in Article 39 of the Charter in determining the existence of any threat to the peace, breach of the peace, or act of aggression,

Considering that, although the question whether aggression has occurred must be determined in the circumstances of each particular case, it is nevertheless appropriate to formulate certain principles for the guidance of the competent organs of the United Nations,

Convinced that the adoption of a definition of aggression would serve to discourage potential aggression,

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

Reaffirming as a peremptory norm of international law that only the United Nations has original competence to employ force in the fulfilment of its functions to maintain international peace and security and that therefore the use of force by one State or a group of States against another State or group of States is illegal and violates the purposes and principles of the Charter of the United Nations and contemporary international law,

Reaffirming also that the inherent right of individual or collective self-defence can only be exercised in cases of armed attack (armed aggression) in accordance with Article 51 of the Charter,

Declares that:

1. Aggression is the use of force in any form by a State or group of States against the people or the territory of another State or group of States or in any way affecting the territorial integrity, sovereignty and political independence of such other State or States, other than in the exercise of the inherent right of individual or collective self-defence or when undertaken by or under the authority of a competent organ of the United Nations.

2. In accordance with the foregoing definition, and without prejudice to the declaration of other acts as forms of aggression in the future, the following shall in particular constitute acts of aggression:

(a) A declaration of war made by one State against another in violation of the Charter of the United Nations;

(b) The invasion by the armed forces of a State of the territory of another State, or the military occupation or annexation of the territory of part of it;

(c) Armed attack against the territory, territorial waters or airspace of a State by the land, sea, air or space forces of another State;

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

(e) Bombardment of, or the employment of ballistic missiles or any other means of destruction against the people or the territory, territorial waters or airspace of a State by the land, sea, air or space forces of another State.

3. Any use of force tending to prevent a dependent people from exercising its inherent right to self-determination in accordance with General Assembly resolution 1514 (XV), is a violation of the Charter of the United Nations.

4. No political, economic, strategic, security, social or ideological considerations, nor any other considerations, may be invoked as excuse to justify the commission of any of the above acts, and in particular the internal situation in a State or any legislative acts by it affecting international treaties may not be so invoked.

II. Colombia, Ecuador, Mexico, Uruguay: Draft Proposal

1. The use of force by a State or group of States against another State, other States or another group of States is illegal and violates the Purposes and Principles of the Charter of the United Nations.

2. In the performance of its functions to maintain international peace and security, the United Nations alone has original competence to use force in conformity with the Charter.

3. Consequently, the prohibition on the use of force does not affect the legitimate use of force by a competent organ of the United Nations, or under its authority, or by a regional agency, or in exercise of the inherent right of individual or collective self-defence, in accordance with the Charter of the United Nations.

4. The exercise of the right of individual or collective self-defence recognized by Article 51 of the Charter, is justified solely in the case of an armed attack (armed aggression).

5. A State which is the victim of subversive or terroristic acts supported by another State or other States may take reasonable and adequate steps to safeguard its existence and its institutions.

6. The use of force by regional agencies, except in the case of self-defence, shall require the express authorization of the Security Council, in accordance with Article 53 of the Charter of the United Nations.

7. The use of force to deprive dependent peoples of the exercise of their inherent right to self-determination, in accordance with General Assembly Resolution 1514 (XV) is a violation of the Charter of the United Nations.

8. In particular, the following shall be deemed acts of direct aggression:

(a) a declaration of war by one State against another, in violation of the Charter of the United Nations;

(b) invasion by the armed forces of a State of the territory of another State;

(c) armed attack against the territory of a State by the land, naval or air forces of another State;

(d) the blockade of coasts, ports or any other part of the territory of a State by the land, naval or air forces of another State;

(e) bombardment of the territory of a State by the land, naval or air forces of another State, or by means of ballistic missiles;

(f) the use of atomic, bacteriological or chemical weapons or of any other weapon of mass destruction.

9. No political, economic, strategic, social or ideological consideration may be invoked to justify the acts referred to in the foregoing paragraphs.

10. This definition shall not affect the discretionary power of competent organs of the United Nations called upon to determine the aggressor.

III. Colombia, Congo (Democratic Republic of), Cyprus, Ecuador
Ghana, Guyana, Indonesia, Uganda, Uruguay, Yugoslavia
Draft proposal

The 1968 Special Committee on the Question of Defining Aggression, pursuant to General Assembly resolution 2330 (XXII), recommends to the General Assembly the adoption of the following Declaration:

Draft Declaration on Aggression

1. Believing that the maintenance of international peace and security may be enhanced by the adoption of a definition of the term "aggression" as employed in the Charter of the United Nations,
2. *Convinced* that armed attack (armed aggression) is the most serious and dangerous form of aggression and that it is proper at this stage to proceed to a definition of this form of aggression,
3. Mindful of the responsibilities of the United Nations Organization for the maintenance of peace and security under the pertinent articles of its Charter and the duty of all States to comply in good faith with the obligations placed on them by the Charter,
4. *Bearing in mind* also the discretionary authority of the Security Council, embodied in Article 39 of the Charter to determine the existence of any threat to the peace, breach of the peace, or act of aggression, and to decide the measures to be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security,
5. Considering that, although the question whether aggression has occurred must be determined in the circumstances of each particular case, it is nevertheless appropriate to formulate certain principles as a guidance for such determination,
6. *Convinced* that the adoption of a definition of aggression would serve to discourage potential aggression,
7. *Reaffirming* the inviolability of the territorial integrity of a State,

Declares that:

1. For the purposes of this definition, aggression is the use of armed force, direct or indirect, by a State against the territory, including the territorial waters or airspace of another State, irrespective of the effect upon the territorial integrity, sovereignty and political independence of such State, other than when undertaken by or under the authority of the Security Council or in the exercise of the inherent right of individual or collective self-defence;
2. In the performance of its function to maintain international peace and security, only the United Nations, and primarily the Security Council, has competence to use force in conformity with the Charter, and therefore the use of armed force by one State against another State, save under the provisions of paragraph 3 below, is illegal;
3. The inherent right of individual or collective self-defence of a State can be exercised only in case of the occurrence of armed attack (armed aggression) in accordance with Article 51 of the Charter;
4. Enforcement action or any use of armed force by regional agencies may only be resorted to in cases where the Security Council acting under Article 53 of the Charter decides to utilize for the purpose such regional agencies;
5. In accordance with the foregoing, the following shall in particular constitute acts of armed aggression:
 - (i) Declaration of war by one State against another State in violation of the Charter;
 - (ii) Any of the following acts with or without a declaration of war:
 - (a) The invasion or attack by the armed forces of a State, against the territory of another State, and any military occupation, however temporary, or any forcible annexation of the territory of another State or part thereof;
 - (b) Bombardment by the armed forces of a State of the territory of another State or the carrying out of a deliberate attack on the ships or aircraft of the latter State, or the use of weapons of mass destruction by a State against the territory of another State;
 - (c) The blockade of the coasts or ports of a State by the armed forces of another State;
6. By virtue of the duty imposed on States by the Charter of the United Nations to settle their disputes by pacific methods and to bring their disputes to the attention of the Security Council or the General Assembly, no considerations of whatever nature, save as stipulated in paragraph 3 above, may provide an excuse for the use of force by one State against another State;

7. Nothing in paragraph 3 above shall be construed as entitling the State exercising a right of individual or collective self-defence, in accordance with Article 51 of the Charter, to take any measures not reasonably proportionate to the armed attack against it;
8. When a State is a victim in its own territory of subversive and / or terrorist acts by irregular, volunteer or armed bands organized by another State, it may take all reasonable and adequate steps to safeguard its existence and its institutions, without having recourse to the right of individual or collective self-defence against the other State under Article 51 of the Charter;
9. Armed aggression as defined herein, and the acts enumerated above, shall constitute crimes against international peace, giving rise to international liability and responsibility;
10. An act other than those enumerated in paragraph 5 above may be deemed to constitute aggression, armed or otherwise, if declared as such by the Security Council.