# UNIVERSITY OF GLASGOW

# THE DEVELOPMENT OF A DEFINITION OF AGGRESSION IN INTERNATIONAL LAW


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# INTRODUCTION

When will war end ? When will all human beings taste peace ? When shall we see the day, when the law of force changes to the force of law ? When will brotherhood and justice flow like water and prevail on the Earth? Will this remain as a dream ? This question can be read in the feared eyes of the millions of old people and the anxious eyes of the billions of the young. Those who like to live in justice and peace and far from the inhumanities ,those who feel the suffering of direct and indirect types of aggression.

One of the most obvious kinds of aggression is the use of force. Lack of a supranational power and the less developed legal system of international law causes states to use many ways (of which one is force) in order to achieve their aims. The use of force by the states in their international relations may be different from case to case and in varying degrees. These include the use of the army against the territories of other States, by deploying troops along the fronts, giving support for internal groups against their states, or assistance to one state against another or it may be done by retaliation.

War usually begins by an aggression of a state against another one and may have an historical background or a special target of a government in another territory. States use the term "just war" in contrast with "unjust war". Although there are big differences between them, it is very difficult to recognize them from each other. When war was recognized legal for the purposes as "self-defence" or "self-safekeeping" there was not a precise distinction between them and diplomatic relations. It was easy to find a case by the governments, as a threat or interest to begin an aggression without any special limit. In history, as far as can be considered, the use of force and aggression has been more common. Recently it was used during the Second World War by Germany against Denmark and U.S.S.R against Finland. Therefore, in international society it became necessary to deny the right of the use of force entirely, then end the disputes peacefully.

To obtain it, the main element of war, aggression must be defined and the use of the force be known illegal. Without an obvious definition of aggression, from the legal point of view, it was very difficult to determine which case is an aggression or not. Besides, in this century aggression has caused two terrible world wars which have provoked the conscience of human beings twice, every time besieged nations have to search a way to prevent it so that it will not be repeated again. The huge damages caused by war compelled the governments to become more sensitive on these matters.

At the end of the the Second World War, after trying the war criminals, everybody thought that war ended forever. The United Nations was established with the purpose of maintaining international peace and security and to take effective measures for the preventing and removal of threats to peace and for the suppression of acts of aggression. Afterwards, in many different occasions the United Nations has been addressed with this matter, thereby showing its great importance. The existence of the United Nations, as was expected could not prevent war entirely. Conflicts in Korea, Vietnam, Middle East, Cyprus, Congo and and other conflicts made the people lose hope in peace again. It made evident an increased need for maintaining peace. The bellegerant sides accused each other of aggression and gave some reasons to explain their action, meanwhile, none of them accepted that she has aggressed against the other. There is no case that a state has confessed that aggression was committed by her and from the legal point of view, it has not been easy to distinguish even by the capable international institutions. The current utterance of the term of aggression propounds such a concept which mixes with its legal concept. When it is used, everybody understands what has happened, but does not know what is the reality. There has been much effort to hand a definition of aggression and the most condensed work has been since the establishment of the first committee of the General Assembly of the United Nations on the definition of aggression. Different systems and tendencies, with varied interests and policies made many tensions and difficulties, so that after an extended

period of about 30 years negotiations the General Assembly of the United Nations gave a definition of aggression and determined the norms. By the acceptance of the resolution of aggression in 1974, there arose more confidence that the states will avoid aggression against each other. But the incidents after that illustrated that, while the definition of aggression is important, it is not the only determinant to prevent aggression.

If the international law can be regarded as a complete law, besides of contradictions in it, it has become clear that the procedure of its enforcement is not complete to prevent wars between states. It is the duty of international lawyers to consider the problems and suggest such a pragmatic procedure that fulfills the needs of the international society and removes the motives of the international aggressors. It is desired that someday international law and international institutions be kept far from the influence of political, economic and military abilities and a powerful supranational institution be established based on justice, equality and basic values of humanity, managed by a world vast minded specimen person, out of the self interest tendencies so that security and peace extend far and wide.

In the course of this study, efforts will be made to trace briefly the development of the concept of aggression chronologically and its legal concept throughout history. We will consider the positions of states in different conditions, the effect of incidents on their positions and accounting for the growth factors involved, and also the efforts made to define the aggressor in international society. An analysis will be given of the legal effect and the significance of the achievements in international law. The principles which have been created for relations between states, as rule of law will become clear in the following chapters and the most important principle, the legal restraints on the use of force in inter state relations which demonstrates in the dangerous form of aggression will be handled.

H. Taleghani

## CHAPTER ONE

## HISTORY OF AGGRESSION UNTIL WORLD WAR I

At about 400 years before Christ, Moti, the chinese philosopher, insisted that international aggression be abandoned and that wars be outlawed as the greatest of all crimes.[1] However, the history of men is full of bloodshed and war. The ancient Greek city states, the most civilized nation at that time clashed and destroyed themselves in the Pelopennesian wars.[2] The Empire of Alexander The Great was torn apart by conflicting Hellenistic rulers. In Europe of the Middle ages the use of force was an instrument of national policy and was also the absolute right of the rulers.[3] War was a common and lawful method of resolving disputes.

Grotius in his "De jure Belli ac pacis" inspires the love of peace and considers whether any war is just and lawful.[4] He considers military conventions and methods by which peace is to be secured. He knew a kinship among men established by nature and sees in this band a community of rights. Upon the nature of man as a rational intelligence, Grotius found his system of universal law and believed that it is universally binding whenever men exists. Mere circumstances of time and place can not change it.[5] He abjured those not directly involved to do nothing whereby he who supports a wicked cause may be rendered more powerful or whereby the movements of him who wages a just war may be hampered.[6]

This is now reflected in Article 2(5) of the Charter of the United Nations as "refrain from giving assistance to any state against which the United Nations is taking preventive or

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1- Defining international aggression.B. B. Ferencz. vol.I p. 4.

2- The concept of aggression in international law, Dj Momtaz,Tehran 1987,p. 4. and changes in the conception of war A. J. I. L.(1924),p. 755.

3- International law and the use of force by states,Ian Brownlie,Oxford Uni. 1963, p. 4.

4- The rights of war and peace, Hugo Grotius, pp. 31-2.

5- Mafhoum tajavouz dar houghoug bein al mallal, J. Momtaz , pp.1-5

6-I bid.B. B. Ferencz vol. I p. 4.

enforcement action." The policy which is intended as neutrality, indiscrimination, non-intervention, uninterested etc, later was advanced as helping to the victim of the aggression. This change occurred during two hundred years.[7] Grotius in order to limit the conflicts which harassed Europe, also urged that disputes should be settled by judgement or arbitration.[8] This concept was accepted three centuries later, while the compulsory judgement was not accepted and repeatedly rejected. Increase in commerce, the rise of colonialism, and growing nationalist feeling, the inadequacy of the existing methods soon become apparent. A number of thinkers in various parts of the world began to outline a better system.[9] George Fox (1660) in declaration from the harmless and innocent Quakers against all plotters in the world, as its principles named the seeking of peace and in doing that which tends to the peace of all, and all bloody principles and practices were denied, with outward wars and weapons for any end or under any pretence.[10]

William Penn, (1644-1718) the british quaker, urged that a "sovereign court" be established to deal with disputes between states. If any state reformed to submit its dispute or accept the decision of the court, all of the other states would unite against the recalcitrant one which would also have to pay reparations and all the expenses incurred in mounting the allied armies. Jean Jack Rouseau (1712-1778) proposed international federation in 1761.[11] Immanuel Kant (1724-1804), with insistence on peace keeping, did not validate the treaties of peace reserve secret matters for future war. The idea which later entered the law of treaties.[12] he also believed that any state of whatever extent should never pass under the dominion of another state and the standing armies should in time be totally abolished. He denied the right of any state to interfere in another states' affairs by force. He also abjured

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7- Ibid. the concept of aggression in I. L. p. 4.

8- the law of war and peace, Grotius , sec. 3.

9- Ibid. Brownlie, pp. 7-10.

10- Quakers and peace , G. W. Knowles, th e Grotius society publications N.4, pp. 21.

11- Ibid. Ferencz p. 5.

12- Article 80 of the law of treaties in basic documents ,Brownlie p. 383.

that, states during war, not to increase hostilities such as employing assassins, poisoness, violation of capitulation or covert instigation to rebellion of a nature that, would render reciprocal confidence in a succeeding peace impossible. In the second section of his work, he advises that the public right ought to be founded upon a federation of free states, he also supported a federal union of nations.[13]

In 1838, Jeremy Bentham proposed that there be a common court of judicature for the decision on the differences between several nations, and to punish the authors of the war. He knew the example of non-punished authors of war as a honest error in judgement that encourages impolitic and unjust wars.[14]

In 1895 the Tsar of Russia faced the fact that France and Germany had equipped their armies with new artillery pieces. Unable to bear the balance armament, he convened the first Hague Peace Conference of 26 states for the friendly settlement of international disputes to extend the empire of law.[15] That disarmament efforts failed, but the machinery of the permanent court of arbitration was set up.[16] This conference and the Hague conference in 1907 produced a new concept of mediation and the new rules for the pacific settlement of international disputes and conducts of war were widely accepted. It was an advance related to the circumstances with character of advice and not enough binding force.[17] Explicitly, the states were not prepared to accept it as a compulsory arbitration and practically it was a third party mediation rather than compulsory jurisdiction of an international court.[18]

In 1873, the three Emperors of Germany, Austria-Hungary and Russia made an

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13- Kant , perpetual peace, pp.1-37 and Grotios society publication D. C. Jure Belli Aerreis by W. S. M. Knight, passim.

14-Plan for an universal and perpetual peace, Jermy Bentham, pp.33-4. and in ibid. Ferencz, p. 5.

15- An international criminal court, Ferencz, vol. I, pp. 104-111.

16- International law and the use of force by states,Brownlie, p. 23.

17- Ibid. the concept of aggression,pp. 5-6.

18- Text illustrating the constitution of the supreme court of the U. S. A. and the permanent court of international justice, pp. 20-23 and ibid. Ferencz, pp. 5-6.

alliance system, the famous "The Three Emperors' League" according to it the states would maintain friendly neutrality or even aid each other actively in the event where any one of them would be attacked by another power.[19] As a result of the decline of the Ottoman Empire and the balkan conflicts the powers agreed to meet in Berlin to reconsider the provisions of the Sah-Stefano and in 1879, 1881 and 1882 and during 1890-1914, many conferences were set and Alliances and Ententes were signed. The alliance system resulted that Europe be divided into two camps and contributed to transform Austria's war to General World War.[20] Millions of soldiers and civilians had perished in the battles. Many millions more had been wounded or succumbed to epidemics or famine. To face such disasters, there arose a universal call for a new system by which might put an end to armed conflicts. President Wilson became the most articulate spokesman for a new organization to guarantee peace and justice throughout the world.[21] According a joint session of Congress on January 8, 1918, President Wilson outlined the basis for peace. His 14 point,[22] culminated with a call for a general association of nations under special covenants for the purpose of affording mutual guaranties of political independence and territorial integrity to great and small states alike on the basis that coercion should be summoned not to the service of a political ambition or selfish hostility, but to the service of a common order, a common justice and a common peace. The world had grown weary of aggression and its consequences.[23]

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19- The origin of world war I, Remak,p. 5.

20- Ibid. pp. 13-16.

21- The league of nations and the role of law, 1918-1935, Zimmorn, part two , the element of the covenant,chapters 3,4,passim. and Guilt at Versailes, Lentin,chapter 2,p. 30.

22- The text is available in "some aspects of the covenant of the league of nations" Fischer William, appendix I, p. 243.

23- Ibid. Ferencz, p. 6.

# CHAPTER TWO

# THE LEAGUE OF NATIONS AND AGGRESSION

## Section One

## Attempt of states to prevent war and define aggression

## ( 1919-1939 )

### I- Attempt of states in the league of nations- (1918-1920):

After the First World War, the leaders of the superpowers with the purpose of settling a new international system to prevent another war, assembled in the Versaille Palace in Paris.[24] They intended to prove that the enormous losses of the war were not in vain.[25] Millions of peoples had perished, huge damages had remained, destruction, epidemics, famine and a dozen of other disasters impelled the social leaders and scientists to create a new condition, by which not only to compensenate for the past, but also prevent a new war and can maintain harmony and peace in the world. For this purpose it was necessary to establish a new international order by which nations could co-operate and solve their problems.[26]

The League was supposed to enact, develope and enforce international law. It would impose whatever sanction that might be required to enforce the judgements by a new institution. Several special commissions were designated to deal with the problems.[27] One of the committees was to study the responsibility of the authors of the war, concluded that the Allied Powers, Germany and Austria, as well as Turky and Bulgaria had declared war, "in pursuance of a policy of aggression."[28]

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24- short history of the world, 1918-1928, Burns, pp. 29-32.

25- A hand book to the league of nations, G. C. Butler, chapter VI, the league of nations,pp. 28-35.

26- It was shaped in article XI of the covenant, the text in ibid, a hand book, appendix c pp. 154-5. And Versailles and after, 1919-1933, Henig, p. 8, the impact of the U. S.

27- Short history of the world,1918-1928,Burns, chap. XVI, pp. 275-281.

The treaty of Versailles called for the surrender of William 2 of Hohenzollern, the Kaiser of Germany for trial. According to it, Germany should compensate all damages due to the aggression of Germany and her Allies.[29] Articles 228-230 called for establishing a high tribunal to try the leaders of the Axis parties for aggression and acts which had caused the war. It was the foremost collective agreement in the concept that aggressive war was a crime against peace and the Authors of the war had international criminal responsibility.

There was a serious movement to try the German Emperor.[30] England and France urged that, but the U.S.A. led by the article 227 of the treaty of Versailles, argued that, it is not explicit and sufficient to charge the Heads of state to crimes against humanity.[31] According to the other states, the emperor was to be tried on account of the "violation of international morality" (and not legality) and sanctity of treaties. The trial was to be conducted "according to the highest motives of international policy" (and not justice).

Therefore, when the decisive element was the danger rather than the guilt, where the criminal was regarded as an enemy rather than a villain, and where the punishment emphasised the political measure rather than the judicial retribution, the result would be a deviation from the direction of international law and it sustained the movement of international law in the direction of making aggressive war a real crime which was understood after the Second World War.[32]

The concept of the league of nations imagined an association of members to meet in a democratic process to co-operate in order to maintain peace in the world, in the interest of all nations. To this purpose, a commission was established by the conference to prepare the draft of the league. The commission after 4 months finished the work. The covenant of the league was adopted in April 28, 1919. In fact, the league of nations was an instrument of

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28- Ibid., Ferencz, p. 7.

29- the consolidated treaty series,Parry, vol. 225, 1919, maintext articles 227 and 231-241.

30- I. Aggression, A.M. Refaat, P. 34

31- Ibid, Ferencz, P. 7 .

32- Survey of international affairs,1920-1923, Arnold J. Toyenbee, pp. 96-97.

co-operation and was determined by the degree of will and the contribution from the individuals.[33]

**2- The League of Nations and war:**

From hindsight, the league could not prevent war and maintain international peace. It included some disadvantages, but war was recognized as an international problem. War became global rather than conflict between two or more states. So, the violation of peace affected international peace. Article 11 of the league said, "any war or threat of war whether immediately affecting any of the members of the league or not, is hereby declared a matter of concern to the whole league "[34]

The members accepted the obligations not to resort to war in the general preambular provision, however, war was recognised as legal.[35] It was left to the members, themselves to decide whether a dispute was suitable for submission for arbitration.[36]According to the league, resorting to war in four cases were illegal:

1- when it had not submitted to arbitration, judgement or referring to the League of Nations.[37]

2-Resorting to war until three months after the award by the arbitrators or the reports by the Council.[38]

3- War against a member of the League which complied with the award that had been rendered by League.[39]

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33- The league of nations and the rule of law, 1918-1935, Zimmern A, pp. 303-309.

34- The text of the covenant is available in"some aspects of the covenant of the league of nations, Fischer William, appendix II, p. 247.

35- Ibid., 2nd preambulary paragraph.

36- Ibid. articles 12, 16.

37- Ibid. art. 12(1).

38- Ibid.

39- Ibid. art. 13(4).

4- A state which was not a member of the League began a dispute against a Member of the League.[40]

The League of Nations had many similarities to previous conventions such as 1899 and 1907 treaties. But it was distincted from them due to the provisions which states complied with before any conflict was to be resolved by accepting, mediation, arbitration and judgement.[41] The Covenant predicted a permanent court of international justice, and that it was up to the Members to submit to the Court or not.[42] The provisions of the Covenant explicitly expressed:

"if the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, the Members of the League reserve the right to take such action as they shall consider necessary for the maintenance of right and justice."[43]

It was the biggest loophole through which war could easily resume. The League set two ways to prevent war. The first was the obligation of the members to end disputes by pacific solution.[44] The second way was the punitive measures to be implemented against the state which began hostilities furthermore regarding the articles 12, 13 and 15, and resorted to war. The three mentioned articles account for some measures that the state should implement in regard with the dispute, otherwise "it should ipso facto be deemed to have committed an act of war against all other members of the league."[45]

**3-The Draft Treaty of Mutual Assistance:**

The temporary mixed commission for the reduction of armaments which consisted of a comity of experts charged with responsibility for submitting plans for disarmament and

40- Ibid. art. 17-18 (3).

41- Treaty of international law, W. E. Bulter,p. 50.

42- Ibid. art. 14.

43- Ibid. art. 15(7).

44- Ibid. art. 12 (1).

45- Ibid. art. 16 (1).

security in 1922.[46] It was requested to prepare a treaty of mutual guarantee, embodying certain principles for submission to the respective governments. The treaty in the first article declared that the contracting parties declared that aggressive war was an international crime and undertook that no one of them would be guilty of its commission.[47] Moreover, while many elements may intervene in a conflict and that the claims for war might be completely different from the motives; there were not any norms by which an aggressive war could be distinguished from a defensive one. Hence, the political and economic relations of the states made it difficult to get a consensus or any just decision.[48] The draft treaty was to cover the weaknesses of the league to maintain peace and security through the mutual assistance of the contracting parties.[49] They also undertook to furnish assistance to any one of the members which might be the object of a war of aggression. If a party was threatened by an aggressive policy it could call the council to solve it and if it was referred to the permanent court of international justice, the parties were obliged to the jurisdiction of the court.[50] Collective defence was dependent on determining the aggressor by the council in a consensus and it was not easy to achieve that. Besides, there was set an exception to the aggression that, "A war shall not be considered as a war of aggression if waged by a state which is party to a dispute and has accepted the unanimous recommendation of the council, the verdict of the permanent court of international justice or an arbitral award against a high contracting party which had not accepted it, provided, however, that the first state did not intend to violate the political independence or the territorial integrity of the.....party.[51] The content of the article 1 was the same as in the league which accepted the legality of war as an instrument of use.[52]

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46- Short history of the world, Burns, pp. 281-2.

47- The text of the treaty of mutual assistance in Ferencz, vol.I pp. 77-80.

48- Neutral Europe between war and revolution 1917-23, Hans A. Schmitt,pp. 176-199, passim.

49- Ibid. international law and..., Brownlie, p. 68.

50- Ibid text in Ferencz,art. 2,3,and 15.

51- Ibid. treaty of the mutual assistance.., art. 1.

Proceedings did not satisfy the parties. Some states like Belgium, Brazil, France and Sweden in regard to this matter expressed that any system which did not immediately confront the aggressor with force, superior to his own would be fundamentally unsound. Their claim implied that, the system should be such that the aggressor could not even imagine the possibility of coming into conflict with it and that mutual assistance must also be given in every sphere should the war be carried on. They regarded in this respect of the definition of aggression. Regarding the difficulty, accounted the following cases as the sign of aggression:

1- Organization on paper of industrial mobilization.

2- Actual organization of industrial mobilization.

3- Collection of stocks of raw materials.

4- setting on-foot of war industries.

5- Preparation for military mobilization.

6- Actual military mobilization.

7- Hostilities.[53]

Some non-military factors such as political attitudes, propaganda of the aggressor, the attitude of her press and population and her policy on the international market were also measures that an aggressor was to be recognised.[54]

The Special Committee believed that theoretically, it was favourable to give the definition of aggression to be used by the council. Yet, they found it impossible regarding the view point of the permanent advisory commission and other delegates.[55] It was supposed that the state which attacked the other was considered as the aggressor. This

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52- Ibid. Brownlie, (international law....)pp. 68-9.

53- Mafhoum tajavouz dar hughough bein al-melal J.Momtaz p. 17.

54- Text of opinion of the permanent advisory commission regarding Assembly resolution XIV and XV in Ferencz vol. I, pp. 71-3.

55- Ibid. treaty of mutual assistance, replies from governments,pp. 92-104.

doctrine was later accepted by others. Accordingly, it was supposed firstly the state responsible as an aggressor. The committee later accepted that it was not useful, because when the forces approached, it was difficult to distinguish which one resorted to war.[56] Ultimately the committee accepted that a big military operation of one party/parties against another one/ones was the best means to distinguish aggression. The committee concluded that it was not possible to give a precise definition of aggression and that the council would have to confront the problem of interpretation in some conditions. In this notion they announced that "it is clear that no simple definition of aggression can be drawn up."[57] It indicated the following factors as the traces of aggression:

1- Actual industrial and economic mobilization carried out a state either in its own territory or by persons or societies on foreign territory.

2- Secret military mobilization of the formation and employment of irregular troops or by a declaration of a state of danger of war which would serve as a pretext for commencing hostility.

3- Air, chemical or naval attack carried out by one party in the territory of another.

5- refusal of either of the parties to withdraw their armed forces behind a line or lines indicated by the council.

6- A definite aggressive policy by one of the parties towards the another.....[58]

**4- The Protocol for the Pacific Settlement of International Disputes**

**- Geneva Protocol (1924):**

The plan for mutual assistance failed, but in 1924 an American group drew up a new plan in which the aggressive war was denounced as "an international crime" unless it was for the purpose of defence against aggression or the protection of human life, it was considered as an aggressive war.[59] The protocol implied that, the parties should settle their

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56- Ibid.

57- Ibid. Mafhoum tajavouz..., pp. 18-19.

58- Commentary on the definition of a case of aggression, in Ferencz, pp. 82-83.

disputes through the permanent court and it needed not be referred to the council.[60] The protocol was merged into a protocol drawn up by G. Britain and France and is known as the Geneva Protocol. Contrary to the league of nations, the protocol was based on the compulsory judgement. The contracting parties accepted not to resort to war against each other and do not use force except in agreement of the council or the assembly of the League or in the case of self-defence.[61] They undertook not to resort to an aggressive war and those which did, should be applied sanction against them.[62] If any party did not accept to leave the war and submitted to the arbitration, would be known as an aggressor. Therefore, according to the conditions, should be punished in terms of economic or military sanctions.[63] Anyway, to recognised the aggressor depended on two matters. Firstly, defining aggression and secondly, proving the act of aggression. In fact, it was difficult to prove that this was the case. It was supposed that the member which did not follow the special procedures complied by the pact, would be recognised as the aggressor. The protocol was signed but not satisfactory enough to be enforced.[64]

## Section Two

### The League of Nations

### and the Attempts to Defining International Aggression

The vital importance of the peacekeeping and prevention of war encouraged the states to continue their attempts to hand a definition of international aggression. The French government in 1932 in the conference of disarmament gave a draft which purposed to limit the dangerous altillaries, except for defence. By another draft, she suggested that the

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59-A. J. I. L. ,19 1925, P. 126. A.

60- A. J. I. L., 19 1925, suppt., p. 10 art. 3 of the general protocol.

61- A. J. I. L., 19, 1925, SUPPT., P. 10,ART. 2 OF The Geneva Protocol.

62- Ibid. pp. 13-14, art. 10.

63- Ibid. pp. 14-16, art.s,10,16.

64- Ibid. Ferencz, pp. 14-18,and 132-137.and ibid mafhoum tajavouz pp. 20-24.

members break economic relations with the aggressor and help the aggressed state.[65] The economic disturbances of those years resulted in many different viewpoints which reduced the chance for success.[66]

In the thirty-first meeting of the conference in February 6th, 1933 the Soviet Union delegation criticised the French draft and Briand-Kellogg pact. He believed that, tribunals even on the basis of exact laws were not always to pass just decisions and it was not expected that tribunals passed fair decisions when they were not bound to obey any law or guiding lines. To cope with this matter she suggested, "we shall have to give it (international organ) instruments for its guidance and that means, first of all defining war and aggression and the distinction between aggression and defence."[67]The Soviet delegation gave a draft declaration which defined international aggressor, included preamble and 3 articles. In the preamble it mentioned, to remove any possibility of its justification by necessitating to define aggression. It also recognized the right of all states to independence, security and self-defence.[68] It declared that the aggressor involved in an international conflict was the state which was the first to take any of the five following actions:

1- Declaration of war against another state.

2- The invasion by armed forces of the territory of another state without declaration of war.

3- Bombardment of the territory of another state by its land, naval and air forces or knowingly attacking the naval or air forces of another state.

4- The landing in, or the introduction within the frontiers of another state of land, naval or air forces without the permission of the government of such a state, or the infringement of

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65- Agreements for arms control: A critical survey, J. Goldblad, pp. 7-11.

66- Survey of international affairs, 1933,A. J. Toyenbee, p. 226, and arms control agreements,J. Coldblat, pp. 7-11.

67- General discussion of the memorandum by the french delegation, November 14th, 1932, in Ferencz,pp. 201-203.

68- The concept of aggression in international law, N. Mosaffa, A. Alem.....,p. 31.

the conditions of such a permission particularly as regards the duration of surjourn or extension of area.

5-The establishment of a naval blockade of the coast or ports of another state.[69]

In the second paragraph took into account many different situations which usually are used as a pretext for aggression including political, strategic or economic interests especially the internal situation and acts, laws or regulations of a state.

The next step to defining international aggression was the report of the Politis, the chairman of the committee which composed of 17 states. It dealt with security questions established by the political commission of the disarmament conference. In debates about the Soviet Draft, the viewpoints of the states were noted and two other suggestions were made by Belgium and Britain, on a fact-finding body to investigate alleged acts of aggression and was accepted by consensus.[70]

Two chapters of the European Pact also devoted to the obligation not to resort to war and the subject of mutual assistance. In Politis act on definition of the aggressor, the party which firstly used military force was recognized as aggressor.[71] He stated that the effect and practical advantages of the definition would be that it warns states of the acts they must not commit if they did not wish to run the risk of being declared aggressors. Public opinion would be able, when a grave accident occurred in international relations to form a judgement as to which state was responsible, above all, it would facilitate the work of the international organ called upon to determine the aggressor. Furthermore, when that organ had before it sufficient definite rules to facilitate its task, it would be less tempted to incur danger of excusing on political grounds, the act of aggression which it was called upon to judge.[72] different view points of the states made it difficult to get consensus, so the

69- Text of the"definition of aggression" draft declaration in Ferencz, pp. 202-203.

70- General discussion on the Draft Declaration proposed by the delegation of the Soviet Union, in Ferencz, pp. 205-214.

71- Ibid. Draft Declaration, art.1.

attempts to define aggression remained fruitless[73] and the gap remained, to guarantee the security of states and maintain peace. So the states tried to get the guarantee in other ways out of the league. The treaty of mutual guarantee between Germany, Belgium, France, Britain and Italy done at Locarno in October 16, 1925 was the act by which the signatory powers concerned supplemented guarantees within the framework of the Covenant of the League of Nations. They undertook to respect the territorial *status quo* and also agreed that, in no case attack or invade each other or resort to war against each other, except in the case of the legitimate defence, action in pursuance of article 16 of the convention of the League of Nations and action as the result of a decision taken by the assembly or by the Council of the League and article 15 of the League.[74] In this treaty and the treaties of December 1, 1925 they accepted the compulsory reference of disputes between the Parties to an arbitral tribunal or the Permanent Court of International Justice. It provided that this disputes must be submitted with a view to amicable settlement; to a permanent conciliation. Disputes were to be submitted by special agreement either to the Permanent Court of International Justice or to an arbitral tribunal. Other political disputes were to be solved by the Council of the League.[75]

The League of Nations on September 24th, 1927 adopted a declaration concerning wars of aggression which emphasised on the solidarity of the community of nations and that a war of aggression could never serve as a means of settling international disputes and this kind of war was recognized as an international crimes. All wars of aggression were prohibited and that the Members should settle disputes of every description which might arise by pacific means. According to the declaration, the Members of the League were

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72- Report of the committee on security questions; statement by Politis, in Ferencz, pp. 238-241 and in ibid. mafhoum tajavouz, pp. 33-36.

73-Ibid.

74- League of Nations, treaty series, treaty of mutual guarantee between Germany, Belgium, France, G. Britain, Italy in locarno Oct. 16, 1925, in Ferencz, vol. I, pp. 157-160.

75- Oppenheims, international law, Lautherpacht, vol. II, Disputes, War and neutrality.....,seventh edition, pp. 89-90.

under an obligation to conform to this principles.[76]

Another proceeding out of the League, to prevent war and maintain peace was the "General Treaty for Renunciation of War as an Instrument of National Policy" signed in Paris on August 27, 1928. Firstly, 15 states agreed upon the treaty which declared, "the parties.....condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another." (article 1). They also agreed that the settlement of all disputes or conflicts of whatever nature or of whatever origin shall never be solved except by pacific means. (ART. 2). The Treaty was open for other states to join. During one decade 48 other states joined it.[77] Some lawyers have denied the legal characteristic of the Treaty and said that the expressions like "condemn" and "renunciation" have ethic characteristic rather than legal . The other problem was that there was no guarantee to prevent the violator.[78] Both the Treaty and criticism of it may be considered as idealism in the sense of the time and the degree of the development of international law. Although some writers have doubt in legal effect of the pact, contrary to the League of Nations, the treaty denied the right of war as an instrument of national policy and made a new norm in international law.[79] The main point relating to the Treaty is that the Axis States in the Second World War, despite their undertaking, resorted to war. Later the Leaders of those states were charged with violation of the Treaty in the Neuremberg and Tokyo Courts. The Treaty for renunciation of war..... had a great role to draft the principles of the post Second World War Courts and today it is also one of the sources of international law.[80]

Besides, the conferences for the reduction and limitation of armaments in 1932 -

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76- The text of the declaration 1927,in Ferencz p. 161.

77-The text of the General Treaty.....in Ferencz, pp. 190-193.

78- Ibid. Mafhoum Tajavouz....p. 41.

79- Ibid. Brownlie,p. 83.

80- Ibid. Mafhoum Tajavouz..., p. 43.

1933, states out of the League tried to make bilateral and multilateral anti-war and aggression treaties and to define aggression.[81]

Convention for the definition of aggression between 8 states in London, in July 3, 4, 5, 1933, may be the first treaty which includes a definition of aggression.[82] In the provisions of the treaty, pointing to the Briand-Kellogg pact, it deemed that necessary to define aggression so as to obviate any pretext that might used to justify it. It was also noted that, all states have the right to defend their territory.[83] By the Convention, the contracting parties accepted a definition of aggression in which the aggressor would be considered the state which firstly declared war upon another state, launched armed forces into territory of another state, attacked the territory of another state by its land , naval and air forces and provided support to the armed bands formed in its territory against other states.[84] The Convention also implied that, no political, military, economic or other conditions might serve as an excuse or justification for the aggression.[85]

Another main treaty relating to aggression was the Treaty of Non-aggression between Afghanistan, Iraq, Iran and Turky in July 8, 1937, signed in Tehran. With some differences, it contained the same above mentioned points in the treaty of 1933 in London. Moreover, in this convention, the acts of aggression and non-aggression was more precisely stated.[86]

In sum, despite the efforts within and without the framework of the League of Nations, through the different conventions and treaties to prevent war and maintain peace, the economic conditions and international disturbances highlighted its inability to enforce international law. It became more sever when Japan violated the rules of the League of

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81- Ibid Brownlie, pp. 95-97 and 102.

82- Ibid. Mafhoum Tajavouz, p. 44 and ibid brownlie, p. 104.

83- League of Nations, treaty series, 147-148, 1934, no. 3391, convention for the definition of aggression, preamble, p. 69.

84- Ibid, convention, art. 2, pp. 71-3.

85- Ibid. art. 3 p. 73.

86- The treaty of non-aggression between....., in Ferencz pp. 267-269.

Nations and Briand-Kellogg Pact by attacking Manchouri.[87] The league of Nations by the request of China considered the matter and subsequently Japan was condemned as the aggressor. Japan reacted to the decision of the League by withdrawing its membership.[88] Germany which sought for equality in armament or disarmament also left the League in 1933.[89] In 1935 Italy also attacked Ethiopia. The Council declared that she was the aggressor and advised on some punitive measures, but it did not prevent Italy to continue its occupation there.[90] A civil war began in Spain in 1936 and Germany annexed Czechoslovakia in 1939 in either case the League of Nations turned a blind eye.[91] In September 1, 1939, Germany attacked Poland and it was also ignored by the League.[92] U.S.S.R. aggressed in Finland in December 1936, however ,the League used its authority, causing the expulsion of the Soviet Union for the violation of the bilateral treaties between the two countries and article 12 of the League and violation of Briand- Kellogg Pact.[93] But this action came too late to prevent the escalation of this conflicts and the Second World War. The states concerned in this huge conflict were so engaged in offensives and counter-offensives that the definition of aggression was to be forgotten for the time being.[94]

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87- W. W. II, Almanac, 1931-45, p. 2 and ibid mafhoum tajavouz, pp. 52-55.

88- Ibid Ferencz, pp. 26-27.

89- Aconcise history of W. W. II, Vincent J. Esposito, p. 8.

90- Ibid. pp. 12-13.

91- Ibid. pp. 17-18,23-25 and I. C. C., Ibid Ferencz PP. 54-7.

92- Ibid. pp. 33-34.

93- Ibid. pp. 42-46.

94 _ Ibid. Mafhoum Tajavouz ....., pp. 52-57.

# CHAPTER THREE

## SECTION ONE

### Second World War and Definition of Aggression

During the years of 1939 to 1945 human beings suffered in the most bitter and bloodiest chapter in history. Countless millions of people either perished in the war or died from famine. Tens of millions were uprooted from their homelands . Huge number of families were disrupted and swept from their moorings or were broke out, And many millions of refugees lost their families, homes and jobs.[1] The Allied Statesmen during the Second World War continued their attempts to determine those responsible for the War and managed plans and agreements to restore international peace.[2] Several official declarations referring to the treatment of War Criminals preceded to the London Agreement[3]. The United States of America, G. Britain and U.S.S.R. repeatedly announced that, retribution would follow in the wake of crimes done by the Axis Powers and was an illustration of the fact that the action of them was at the very list customarily known as a crime deserved some kind of punishment.[4] The principles of the declaration was also accepted by the Government of China. On January 13, the representative of the nine European Powers adopted the declaration of St. James' Palace which stated:

"Whereas Germany, since the beginning of the recent conflict which arose out of her policy of aggression, has instituted in the occupied countries a regime of terror characterized by among other things by imprisonment, mass expulsions massacres..... affirm that act of violence thus perpetrated against the civilian

1- The Meaning of the Second World War, Grnest Mandel, 18, the legacy, pp. 169-172.

2- An International Criminal Court, Vol. 1, Ferencz, pp. 56-7.

3- Ibid. p. 57.

4- Ibid.

populations are at variance with accepted ideas concerning acts of war and political offenses, as there are understood by civilized nations..... Place among their principal war aims the punishment, through the channels of organized justice, of those guilty or responsible for those crimes, whether they have ordered them, perpetrated them or participated in them..... ."[5] Later, on October 14, 1942 the Soviet Government subscribed to them.

The Leaders of the U. S. A., G. Britain and the Soviet Union repeatedly warned the Axis Powers that the time will come when the Criminals will have to stand in the Courts of law to answer for their acts.[6] The Overrun Countries stated, as the aim of declaring war against them was that, the Authors of the War as war criminals who should stand up before Tribunals.[7] On October 7, 1942, seventeen nations decided to form a united nations commission for the investigation of war crimes.[8] The Heads of the United Powers, on November 1, 1943, in Moscow issued a declaration which stated that, "..... those German officers and men and members of the Nazi party who have been responsible for or have taken a consenting part in the atrocities, massacres and executions, will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished..... ."[9]

Yalta Conference on February 11, 1944, confirmed the decision of the Three Powers and stated that they strongly proposed to bring all war criminals to justice and swift punishment, and at Potsdam, they declared that, " stern justice shall be meted out to all war criminals....."[10] During the Second World War until 1945, it was apparent that there

5- The Nuremberg Trials in international law, R. R. Woetzel, p. 4.

6- Ibid . An I. criminal court, Ferencz, p. 57.

7- Ibid.

8- Ibid. p. 61 and Every man's U. N., 8th edition, U. N. publication E. 67, 102, pp. 7-8.

9- The nuremberg Trials in international law, R. R. Woetzel,pp. 4-5.

10- U. S. Depart. of State Bulleten,1945,pp. 137-138,art. 3.

was a definite intention to punish war criminals who had violated the laws and customs of warfare[11] and at Yalta Conference they decided to send delegates to San Francisco, in U.S.A . Delegates suggested that waging of an aggressive war by using armed forces or military treatment or initiate war by violating international treaties was considered as a crime. It was accepted by the foreign affair ministers of Britain, U.S.S.R. and France. The Four Powers gathered in London from June to August 1945 and according to this suggestion set up the Charter of the International Military Tribunal.[12] Under the Charter, the tribunal was to try a cross-section of German Statesmen, Bankers, Administrators, Industrialists, military Leaders, Educators and Propagandists on four counts: 1- The crime of being party to a common plan or conspiracy to wage wars of aggression. 2- Crimes against peace i.e. planning, preparing, initiating or waging wars of aggression or in violation of international treaties. 3- War crimes. 4- Crimes against humanity.[13]

Nineteen other nations, subscribed to the principles of the Charter and a common indictment for twenty three nations was presented at Nuremberg. That was the first time that any international court was assembled to pass upon the question of guilt because of the planning and waging of aggressive war.[14] The Allied Control Council Law number 10 was agreed to be established on 11 July 1945 in order to give effect to the terms of the Moscow Declaration of 30 October 1943 and the London Agreement of 8, August 1945. It was to establish a uniform legal basis to prosecute the War Criminals and other similar offenders,[15] The Council recognized the following acts as a crime:

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11- Statements singed by the heads of states of U. S. A.,U.S.S.R. and U.K., op. cit. ,in I. criminal court, Ferencz,Doc. 12, pp. 443-449.

12- Ibid. the Nuremberg Trials in I. L. ,R. R. Woetzel, p. 3,the background to the trial. And ibid I. Agg. , A. M. Rifaat, pp. 140-1.

13- Art. 6 of the charter of the I. M. T. at Nuremberg, cited in ibid Woetzel, pp. 274-5.

14- Ibid. An international criminal court, B.B. Ferencz, pp. 70-1, and ibid. mafhoum tajavouz, p. 59.

15- Ibid D. of I. Agg. B.B. Ferencz, pp. 40,372-3.

1- Initiation of invasions of other countries and wars of aggression in violation of international law and treaties, including..... .

2- Atrocities of offences against persons or property, constituting violations of the laws or customs of war including..... .

3- Atrocities and offences, including but not limited to murder, extermination, enslavement, deposition, torture, rape or inhuman acts committed against any civilian population or ..... .

4- Membership in categories of a criminal group or organization declared criminal by the International Military Tribunal.[16]

The Council determined some punishments for convicts including death, imprisonment for life, fine and imprisonment.

From the first days, there was the question that whether there was a sufficient groundwork in international law to make this acts criminal to make them punishable. At that time it might be claimed that Versailes Treaty was unfair which was singed under duress and there was not a definite rule to determine conduct of states in that condition.[17]

In Briand-Kellogg, war between nations was renounced, and implicated that all Disputes should be solved by pacific means but as it was seen in previous chapter, war was not banned completely.[18] States were allowed to use force to defend themselves, when they felt danger, which could be easily used to initiate a war. Robert Jackson, the representative of President Troman, as judge in I.M.T. (International Military Tribunal) stated that, in order not to allow the German authorities to defend their war as a just war, the Charter of the Tribunal should include an agreed definition of aggression.[19] He

16- Allied control council law, no. 10.20 Dec. 1945, Art. 2,cited in ibid. I.C.C., p. 489.

17- Law Quarterly Review, 64, 1948, p. 104. And in military tribunals and international crimes J. A. Appleman,p. 22.

18- League of Nations, treaty series, no. 2137, general treaty for renunciation of war as an instrument of national policy, Aug. 27, 1928, Art. 1.

19- U. N. Yearbook of the international law commission, 1951, vol. II, p. 66, and ibid. D. I.

favoured the definition of aggression signed in London on June 3, 4, 5, 1933. Professor Gros, the Ferench delegation in the conference did on definition of crimes on July 19, 1945, in the statute of the I.M.T. as a landmark which might set a motion some criticisms. He added that the launching of a war of aggression was not considered as a criminal violation. It was further than the actual law and it could not be considered as an international crime.[20]

In relation to the I.M.T, there have been some questions and problems. the first question is that, had it a characteristic of an international tribunal? While it was established for the specific purpose to try the German War Leaders. Another question is the title of military, while the majority of the Judges and Accused were civilians.[21] In the Charter of the I.M.T. it was explicitly declared that tribunal was to try German Statesmen, Bankers, Administrators, Industrialists, ..... and Propagandists as well.[22] Customarily, these groups were not and are not considered as military authors. therefore, contrast to the title of the Tribunal, all persons which somehow helped to proceed the War were to try in I.M.T. Another question was the sanction of the Tribunal decisions which was not legally determined and the Commission was not to create law.[23] The other question which until now has not been considered and discussed due to the positive action of the states is that, I.M.T. declared that the Allied Powers had a right under international law to institute the war crimes as a result of German's surrender and the assumption of supreme authority by the Four States.[24] What is to be mentioned here is that Germany did not surrender by client of submitting to international law or accepting that they are guilty,

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Agg. Ferencz, vol.I p. 40.

20- Minutes of conference, session of July 19, 1945,in Ferencz op. cit. p. 382.

21- War criminals, S. Clueck, pp.121-2, and the Nuremberg trials, R. Woetzel, p. 45.

22- Articles 6,7 and 9 of the I. M. T. at Nuremberg, cited in Woetzel, pp. 274-5.

23- Ibid. Woetzel, pp. 49-55. and ibid D. I. Agg. Ferencz, vol. I, p. 43.

24- Ibid. R. R. Woetzel p. 58. and ibid. S. Glueck, pp. 91-4.

but the surrender was due to the defeat of that State in War, and it is difficult to say that the sense of supreme authority gives the right to the author to do something or refrain from that, or she is right or wrong. For, if these are accepted as criteria, there would be the question that, if the Axis States were the victors of the war , then would they have the right to do the same to the Allied States? Besides, the mere assumption of surrending as evil doing and supreme authority as the rightful implies the concept of " might is right ", what is more progressively renounced than accepted.[25] Therefore, the necessity of the establishment of I.M.T. must be considered in relation to the nature of the behavior and the crimes of the War Authors.[26]

U.S.A. believed that, states were more immune to being tried for crimes and this viewpoint was kept until the beginning of the Second World War.[27] In this sense, it was believed that prosecution of an individual by a court of the injured state is not permitted by international law. Judicial exercise over another state is a violation of the rules of international law. It excluded the acts of espionage or war treason, punishable as criminal. However, the general international law excluded individuals who violated the rules of warfare committed as acts of states to be punished for such acts by a national court of the enemy or by an international court without the consent of the home state of the delinquent.[28]

I.M.T, had no root in international law and after World War I the Commission of fifteen found the former Kaiser, Wilhelm 2 and other high placed personages guilty, but concluded that no criminal charge could be brought, although the outrages should be the subject of a formal condemnation by the Conference. They emphasised it to be desirable that for the future penal sanctions should be provided for such grave outrage against the

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119- Different pacts like Briand-Kellogg, U.N. charter, Resolution 1615, 2625,3314 are some samples of this expression.

26- The establishment of the tribunal itself denies this principal.

27- Ibid. S. Glueck, p. 95.

28- War criminals, S. Clueck, pp. 121-123 and Ibid. Woetzel, pp. 69-71.

elementary principles of international law. But this recommendation was not implemented until the Second World War.[29]

The norms created by the establishment of I.M.T, were accepted internationally and positively, and became a part of international law.[30] As Robert H. Jackson, the chief of the U.S.A.Council stated, "international law.....is an outgrowth of treaties or agreements between nations and of accepted customs. But every custom has its origin in some single act..... unless we are prepared to abandon every principle of growth of international law. we can not deny that our own day has its right to institute customs and to conclude agreements that will themselves become sources of new and strengthened international law."[31] Jackson in the opening statement gave assurance that, the fundamental purpose of the prosecution was the advancement of international law and justice.[32] Aggressive war was denounced as the greatest menace of the time, and accuseds were guilty of waging aggressive war.[33] It was felt compelled to close the gap in the criminal indictment by a recital from the London Convention of 1933, what the common sense of mankind demanded to be done and not stop with the punishment of crimes by a few people. Although the establishment of I.M.T. was controversial, the indictment of the Tribunal was full of references to treaties like the Hague, Paris and Geneva Pacts, which outlawed war and had laid down binding rules for the conduct of hostilities recited in many international declarations that, aggressive war was a crime.[34]

In the indictment of the Nuremberg Tribunals, the major Nazi War Criminals were accused of a common plan or conspiracy to commit crimes against peace, war crimes and

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29- Ibid. Glueck, p. 37.

30- The Tokyo War Criminals, C. Hosoya, N. Ando, p. 35-39.

31- Ibid. I. L. and use of force ..... Brownlie, p. 162.

32- Ibid. An I. C. C. vol. I, Ferencz, p. 71.

33- Ibid A.M. Rifaat, pp. 150-1.

34-Ibid AN I. C. C. , Ferencz, vol. I, pp. 71-3.

crimes against humanity.[35] As defined in the Charter, mobilization for aggressive war and the initiation of aggressive war were the charges too. The president of the I.M.T. , Lord Justice Lawrance on the occasion of the institution of the trial on November 20, 1945 called the trial as an unique event in the history of jurisprudence in the world and is of supreme importance to millions of people all over the globe.[36]

I.M.T. sentenced the war criminals, accused them of aggression but did not give a clear definition of aggression. In the court the only exception was the liability that the Authors of War showed that their war was not war of aggression or in violation of the previous international agreements and declarations.[37] Sentencing the major Nazi criminals and the subsequent proceedings recognized by the Charter of the I.M.T. served to clarify and create additional precedents for the important concerts of international law which were being developed.[38] The judgement made it further clear on the acts which would be punishable as the crime of aggressive war and how far responsibility for crimes against peace could descend down the government's bureaucratic ladder.[39] In aggression against Austria the court knew it a crime of aggressive war even if no shot was ever fired. In one of the cases, it was further more proceeded and included crimes against German nationals. It was reasoned that: "..... it can no longer be said that violations of the laws and customs of war are the only offenses recognized by common international law. The forces of circumstances, the grim fact of world wide interdependence, and the moral pressure of public opinion have resulted in international recognition that crimes against humanity committed by Nazi authority against German nationals constituted violations not alone of statute but also of common international law."[40]

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35- Military Tribunals and International Crimes, J. A. Appleman, pp. 89-94.

36- American Journal of International Law, vol. 43, 1949, auppt. p. 223.

37- Ibid. M. T. and I. Crimes, J. A. Appleman, p. 23.

38- Ibid. I. L. and use of force, Brownlie, p. 191.

39- Ibid. Military Tribunals, subsequent Nuremberg proceedings cases, pp. 139-229.

40- Trials of war criminals before the Nuremberg M. T.s, vol. III, p. 979.

Except for the place and the crimes that had been committed, another matter relating to I.M.T. which must be considered is the kind of acts affecting war of aggression. The act of the authors of Axis countries varied according to their responsibilities. Participation in the planning of specific wars were par-excellence a basis of guilt, and attendance at the conferences at which Hitler revealed his plans on 5 November 1937 and 23 November 1939 was a decisive factor in the conviction of Goering, Readar and Von Neurath. Planning of specific aggressive war both originators and supporters of plan created responsibility.[41] What was used by the tribunal referring to the cases of the invasion of Norvey, Denmark, Holand, Belgium, Greece and Yugoslavia. Some of defendants were convicted, accused of the above mentioned crimes.[42] The tribunal recognized this crimes as par excilence as participation in the decisions apart from Hitler himself only Readar and Rsenberg Vonneurath are referred to in the judgement for specifications.[43] Accusations further included more cases. The tribunal convicted Hess relying on the fact that, he as personal confident of Hitler must have known of Hitler aggressive plans and he took action to carry them out. The over mentioned acts which were catalogued were chiefly speeches approving aggressive acts, formal participation in the incorporation of territories by the signing of decrees, his high position and wholehearted support for German aggressive actions.[44] The foreign affairs minister was accused of..... a particular significant role in the diplomatic activity which led up to the attack on Poland.[45]

Most of the major criminals were arrested and punished through I.M.T. and those who were not arrested, the General committee of the United Nations on February 2, 1946 recommended to the Members and called upon the Non-members to take necessary

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41- Ibid. Brownlie, pp.196-8.

42- Ibid .J.A. Appleman, pp. 159-162.

43- Ibid. p. 163.

44- Ibid. Brownlie, p. 198.

45- Ibid. Brownlie, pp. 195-200.

measures to cause the arrest those criminals and cause them to be send back to the countries in which the crimes had been committed for the purpose of trial and punishment.[46]

Nuremberg Tribunal ended the trial on October 1, 1946. 22 persons were tried, 12 of them were sentenced to death, 3 of them were sentenced to prison in life, 2 to prison in 20 years, 1 person in 15 years, 1 other to prison in 10 years and three defendants were acquitted of all charges. Totally, ten of the principal criminals including Hitler's deputy, Martin Barmann were tried in absentia and condemned to death.[47]

A number of accused criminals were sent back to the scene of their crimes to be tried before the national or military courts of Poland, France, Belgium, Holand, Greece, Norway, Yugoslavia, Russia, Czechoslovakia and other lands occupied by the Germans during the war.[48]

**The Tokyo War Criminals:**

While the trial of major Nazi offenders was in progress at Nuremberg, at the other side of the world ,General Douglas Mac Arther proclaimed the establishment of an I.M.T. for the Far East (IMTFE). The Charter of the Tribunal was similar to the London Charter of the I.M.T. , authorising International Court to try the Far Eastern war criminals on charges of similar as in the Nuremberg trials, including crimes against humanity.[49] The tribunal members were appointed by the supreme commander for the Allied Powers who also designated the president of the court.[50] Article 6 of the tribunal determined that neither the official position of the accused nor the fact that he acted according to government or superior orders would excuse a crime, but it could be considered in mitigation of

46- Ibid. Woetzel, pp. 232-238.

47- Ibid. Mafhhoum Tajavouz, p. 65.

48- War criminals, Glueck, chapter 5, pp. 77.

49- Ibid. An I. C. C. , Ferencz, pp. 77-8.

50- Victors' justice, the Tokyo war crime trial, Minear, pp. 20-1.

punishment if the tribunal determined that justice required it.[51] The tribunal was given power to impose sentences of death or such other punishment as should be determined by it to be just.[52] Eleven judges from countries with which Japan had been at war heard the indictment, accused the twenty eight defendants of war crimes against humanity, conspiracy and thirty six counts of crimes against peace.[53] A list of all the treaties and international agreements which had been violated by Japan and war crimes were appended to the indictment.[54] The trial lasted from April 29, 1946 to November 12, 1948. All of the defendants were convicted. Seven of them were sentenced to death by hanging, 16 to imprisonment in life, 1 to 20 years and one other to 7 years imprisonment.[55] It was evinced that a party of military man in Japan had decided to expand their country's power by the use of force. They conspired to wage war against China for the conquest of Manchouria and then against the U.S.S.R. to seize its territories. As part of their design against East Asia they planned conquest against the interest and territories of G. Britain, France and the Netherlands as well as against the Philipines and the United States.[56] The far reaching Japanese plans for waging wars of aggression were seen by the court as not the work of one man but the prolonged and intricated preparation by many leaders who were embarked on a criminal object. The court said that no more grave crimes could be conceived of then a conspiracy to wage a war of aggression. Those who were parties or those who with guilty knowledge played a part in its execution were guilty.[57]

The tribunal tried each defendant in conspiracy of furtherance of war and in commission of conventional war crimes. They were charged of failing to take adequate

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51- Cited in ibid.Appendices, p. 187.

52- Ibid. definition of aggression, Ferencz, vol. I, Doc. 23(a), pp. 522-527.

53- Ibid. Victors' justice, pp. 33-6.

54- Ibid. Mafhoum Tajavouz, p. 63.

55- Ibid. p. 165.

56- Ibid. Victors' Justice, the judgement,pp. 26-33.

57- Ibid. p. 30.

steps to secure the observance and prevent breaches of conventions and laws of war in respect of prisoners of war and civilian internees.[58] As for the Nuremberg tribunals, the same questions were for the Tokyo tribunals that the Charter enacted by military conquerors and could only have binding validity as international law if it was supported by international law itself, even if war is and always has been a crime in the eyes of reason and universal conscience.[59]

Justice Robert V. A. and his colleague were in doubt about the authority of the supreme commander to impose on the court any obligation to be bound by a charter which did not reflect the existing international law. He believed that, the charter could not determine whether any act or failure to act was a crime. It was also his view that personal criminal responsibility for "omission" went too far and has his doubt regarding the criminality of crimes against peace. He noted that in the era before the League of Nations the waging of war was not regarded as crime but rather as a sovereign right of states.

League of Nations and other treaties and declarations had failed to specify any penalties for aggressive war. The idea of personal criminal responsibility only began to be accepted after the outbreak of the Second World War. Justice Roling believed that if international law was to develope to meet the needs of the future, changes in the law would be required. Dr. Exner, counsel for Jodl challenged the authority of the Victors to create new law to punish the military men for illegal acts. His view was that only the court could decide on the political leaders and whether international law had been breached.[60] Justice R. B. Pal, after long deliberation concluded that as a matter of law, aggressive war had neither been defined nor made a criminal offence for which individuals could be held culpable and no category of war became a crime in international life up to the date of World War II.[61] Justice Pal sought the formation of an international community under the reign

58- Ibid. Appendice 2, judgement of the I. M. T., for the Far East, pp.193-9.

59- Ibid. Woetzel, pp. 55-7.

60- An international criminal court, vol. 1, B. Ferencz, p. 81.

of law and gave a recommendation for the future. He wished that mankind should rapidly mature to a stage that could win the race between civilization and disaster.[62]

## Section Two

### United Nations

### and the development of the concept of aggression

As a result of the Second World War, the League of Nations was resolved. The major parties left the League or were expelled before the war and some of them were forced to surrender or were occupied by the Allied Powers,[63] in which case, their legality was not recognised by them. Moreover, the Victors were to establish an international organization to cover the weaknesses of the League and also to prevent aggressive war more resolutely from their experience and the lessons learnt from history.[64] Firstly, those states which declared war on the Axis Powers were invited to the founding conference. Many governments regarded the war against Germany and her allies as a war of collective defence and sanction against a source of aggression and lawlessness, that had constituted a common danger. With this spirit, they signed the United Nations Declaration on January 1, 1942 in Washington.[65] In that declaration the Atlantic Charter was endorsed and annexed to the declaration. The Allied Powers in Washington planned to bring before the bar of justice, those who had been responsible for the war crimes committed.[66] From August 21

61- Ibid. Appleman, pp. 40-1.

62- Ibid. pp. 82-3.

63- The ivolving U. N. a prospect for peace, K. J. Twitchett, p. 4.

64- Legal controls of international conflicts , J. Stone, pp. 212-4. London, 1945, and Everyman's U. N., p. 5. and the U. N. ,London 1960, L. M. Goodrich, p. 24.

65- League of Nations, treaty series, 1941-1943, Declaration by U. N., pp. 282-4. and ibid. An I. C. C. Ferencz, p. 57.

to September 28, 1944, the Four Major Powers met at Dumbarton Oaks in Washington D. C. and considered the proposals for the structure of the new international organisation,[67] which proposed, "..... to maintain international peace and security and to that end to take effective collective measures for the prevention and removal of threats to the peace and the suppression of acts of aggression or other breaches of the peace and to bring about by peaceful means adjustment or settlement of international disputes which may lead to breach of the peace.....to strengthen universal peace .....to afford a centre for harmonizing the actions of nations in the achievement of these common ends."[68]

It also implied that the Organisation is based on the principle of sovereign equality of all Parties.[69] All Members undertook to fulfill the obligations assumed by them in accordance with the Charter and should settle their disputes by peaceful means in such a manner that international peace and security were not endangered.[70] At any rate, they should refrain from the threat or use of force in their international relations.[71] They should also give every assistance to the organisation to keep peace and refrain from giving assistance to the guilty state or states.[72]

The heads of the governments of the U. S. A., the U.K. and U.S.S.R. met in Yalta from February 4th to 11th, 1945 and decided to establish the proposed World Organisation. To this end, those states which existed in the conference of February the 18th, 1945 were invited to San Francisco to prepare a charter for a general international organisation for the maintenance of international peace and security. It was made public on October 1945 as the result of the Dumbarton Oaks Conference.[73]

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66- Ibid. Ferencz.

67- Ibid. Mafhoum Tajavouz, p.70.

68-Ibid. D. of Agg. Ferencz, Doc. 17, pp. 285.

69- Ibid. p. 286,chapter 2, principle 1.

70- Ibid. principles 2,3.

71- Ibid. principle 4.

72- Ibid. principles 5,6.

During the days following Yalta conference, Latin American states gathered in Mexico City conference to discuss security and the organisation's international affairs. In the conference a draft resolution, by Colombia proposed that: "an act of aggression committed by one American or Non-American state against another would have been considered an act against all of them and they should jointly agree on the measures to be applied against the aggressor state." The fourth paragraph of the resolution said, "In any event, an invasion of the territory of a state by the armed forces of another state by crossion frontiers established by treaties in force, constitutes an act of aggression which makes mandatory immediate action against the aggressor by the signatory nations."[74] A definition of aggression was revised from the original Colombian draft proposed was annexed to the resolution which declared, "in any case invasion by armed forces of one state into the territory of another trespassing boundaries established by treaties and demarcated in accordance therewith shall constitute an act of aggression." Uruguay gave a proposal which sought to bind all American states in a pact to renounce all use of force in settling disputes except in self defence or collective resistance.[75]

San Francisco Conference was established from April 25 to June 26, 1945 with the presence of 50 delegates. It was the plan of the conference to enforce peace and security by assuring the speedy assembly of forces of such amount as to deter or suppress any aggression which might arise. At the meeting of the heads of delegations on 27 April, it was agreed that the agenda would be the Dumbarton Oaks proposals.[76] On 30th April, an American memorandum, presented by Jackson to the conference of San Francisco,

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73- The Yalta agreement, Zygmunt C. Szkopiak, pp. 23-24.and the U. N. and the control of international violence, Murphy, p. 11.

74- Text of the draft declaration of solidarity against all aggression ,in delegation report, pp. 185-7.

75- A history of the U. N. charter, Russel and Muther, pp. 551-569.

76- Ibid. U. N. Goodrich, pp. 22-25,28.

supported a formal trial, based on criminal responsibility[77] including: invasion by force or threat of force of other countries in violation of international law or treaties, initiation of war in violation of international law or treaties, launching a war of aggression and recoursing to war as an instrument of national policy or for the solution of international controversies.[78]

The most intensive discussion at San Ferancisco Conference centered on the system of security and that the Great Powers reserved the prerogative of the right of veto. Off course, the lesser states were deprived of this right and they generally, meekly accepted it. What aroused considerable trepidation, was the point that there would remain the danger that the Permanent Members might be in a position to prevent the Organisation from operating in any dispute concerning themselves and hence threaten the very foundation of future peace. Therefore, this particular aspect of the veto power came under a heavy criticism at the conference.[79] In relation to the authority of the Security Council, the smaller States demanded that even if a Permanent Member could prevent enforcement action against itself, it should not be able to block Resolutions proposing peaceful settlement procedures, even concerning herself.[80] The Permanent Members had originally felt the same and were prepared to go to some length to meet this demand.[81] It was observed that there was dangerous to allow the Council to have complete discretion. Then, it was proposed that the definition of aggression be inserted in the Charter of the United Nations.[82] The San Francisco Conference formula was not only a controversial one, but

77- For more details look at the Dumbarton Oaks proposals for a General international Organisation in ibid Ferencz, Doc. 17(a-g) pp. 285-344.

78- Ibid. I. L. and use of force, Brownlie, pp. 161-2.

79- Ibid. Dumbarton Oaks proposals.

80- Ibid. U. N. , Goodrich, p. 27.

81- Ibid. Dumbarton Oaks proposals, amendment proposed by sponsoring powers,pp. 342-3.

82- Ibid. proposals of Czech., Philipine. Governments, Doc.s, 17(b,d) pp. 307,322 and in ibid Rifaat, p. 114.

also was still held to be unclear and imprecise.[83] Therefore, in the committee of the Third Commission many delegations supported the idea of the delegation of Philipine to insert a definition of aggression in the Charter. While the other delegations favoured submitting definitions as models to be used.[84]

For dealing with more serious situations, threats to the peace, breach of the peace and acts of aggression, the Council already had ample powers in the Dumbarton Oaks Proposals. It could issue orders which every members would be obliged to obey. It could decide on enforcement action against a Member state and it could make use for this purpose, the forces already made available to it by members under special agreements. All of these were accepted meekly without question by the smaller States.[85] It was authorised to take provisional measures to deal with a threat to peace before reaching a final decision on enforcement action. There were other proposals including a definition of aggression or preserving the territorial integrity and political independence of other states that failed to obtain the necessary majority.[86] However, there was included a general prohibition of the use or threat of force which was placed in the provisions of the Charter.[87]

Chapter 8 section B of the Dumbarton Oaks Proposals charged the Security Council with responsibility for determining the existence of aggression, and the means necessary to restore peace.[88] But very soon it became clear that without a definition of aggression it is difficult. A Czechoslovakian delegate expressing full agreement with the Dumbarton Oaks Proposals concerning peace and security drew attention to the convention on the definition of aggression which his government and others had signed in July 1933, stressed close and

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83- Ibid. Rifaat, p. 109.

84- Ibid. Rifaat, p. 108.

85- Enforcing international law , Ferencz, vol.II, PP. 431-5, and Ibid. Twitchett, p. 8, the security functions of the U. N.

86- A history of U.N., vol. I, Lund, pp. 37-54, passim.

87- U. N. charter, article 2(4).

88- Ibid. proposals, Doc. 17(a).

continuing collaboration of all peace loving peoples to prevent aggression and to remove the political, economic and social causes of war.[89] Czechoslovak government also declared that they have concluded with several other governments a convention for the definition of the term "aggression". Article 2 of the convention mentioned, "the aggressor in an international conflict shall be subject to the arrangements in force between the parties to the dispute that one considered to be that state which is the first to commit any of the following actions:

1- Declaration of war upon another state.

2- Invasion by its armed forces with or without declaration of war, of the territory of another state.

3- Attack by its land, naval or air forces, with or without declaration of war, on the territory, vessels or aircrafts of another state.

4- Naval blockade of the coasts or ports of another state.

5- Provision of support to the armed bands formed in its territory which have invaded the territory of another state or refusal, not withstanding the request of the invaded state take in its own territory all the measures in its powers to deprive these bands of all assistance or protection.[90]

The Bolivian representative in a similar declaration considered that the efficacy of the security machinery is directly related to the need of designating the aggression as such and defining what is meant by "aggressor state", he called a definition of aggression absolutely essential in order that states composing the international community may recognize what they should avoid in their international conduct so as not to give occasion for collective sanctions. He also saw the need for a mechanism of international justice which would take into account the economic and social wellbeing of the great masses of the peoples.[91] The definition which Bolivian proposed in order to be written into the Charter,

89- Ibid. Rifaat, p. 110.

90- Ibid. D. of Agg. B.B. Ferencz, vol. I, pp. 310-311.

listed acts as aggression: invasion by armed force of a foreign territory, declaration of war, attack by land, sea or air forces, aid bent to armed bands for the purpose of invasion, the intervention of a state in the internal or external policy of another state, refusal to submit the cause of belligerence to the procedures of peaceful solution or refusal to comply with a decision pronounced by a court of international justice.[92]

The Greek delegation, on May 4, 1945 proposed an amendment in which maintenance of international peace and security should be considered in regard to contractual obligations and the generally accepted principles of international law, justice and morality. In determination of an aggressor or a threat to peace, the right of veto should be ignored and instead the Security Council should determine it by an affirmative vote of seven Members, not necessary including all of the Permanent Members.[93] Iran and Egypt agreed that the Charter should include a clear and exact definition of the term of aggressor. The Philipine delegation proposed that the definition of aggression and constitution of international court of justice should be a part of the Charter of the Organisation. They suggested compulsory jurisdiction for the court.[94] Ultimately, the proposals of the Four Major Powers were accepted in which the Security Council could determine which state was an aggressor and take any measures necessary for the maintenance of international peace and security.[95] It partially implied that failure to accept the Council's recommendation might lead to the conclusion that the recalcitrant state was the aggressor.[96] Other delegates had other suggestions but for the political, economic and military domination , the Four Powers' suggestion were either accepted or probably

91- U.N. conference on international organisation, 2, G14(r), (577-8), May 5, 1945.

92- Ibid. (579).

93- UNC 10, Doc. 2 G 14(i), May 4, 1945, p. 533.

94- Ibid. UNC 10, Doc. 2 G 14(R) and 2 G/17 (q)(1), May 5, 1945.

95- Ibid. Enforcing I. L., Ferencz, pp. 431-3.

96- Ibid. pp. 436-7.

imposed.[97] On June 26, 1945 the San Francisco Conference ended and the United Nations Charter was born,[98] but the aggression remained undefined, mostly because the founders of the United Nations did not feel it necessary to need any finding of aggression before the Security Council could act.[99] The later problems made clear its necessity to be given the strict norms and make it easy to recognize the aggressor from defendant.[100]

## Section Three

## The United Nations And The Use Of Force

For the nations which during the two World Wars had experienced the most bitter ends, nothing could make them more happy than the establishment of an organisation which proposed to, "save succeeding generations from the scourge of war.....and establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained....."[101]

United Nations was established to prevent breach of the peace and maintain international peace,[102] that is possible until international peace has not been violated. But when it is broken, it can not be maintained, but only restored. Peace can be maintained by removal or suppression of aggression and the actions whose continuance endangers international peace.[103] By suppression of acts of aggression peace is adjusted. The conditions before the act of aggression varies from those after aggression as much as

97- The Evolving U.N., prospect for peace?, J.Twitchett, p. 5.

98- Ibid Mafhoum , p. 78 , and the U.N. Goodrich, pp. 20-1.

99- Conflict through consensus, J. Stone,p. 7.

100- Cases on U.N. law,Sohn, 2nd edition , pp. 491-862, passim.

101- Preamble of the U. N.

102- Article 1 of the charter of the U. N., para. 1.

103- Ibid. U. N., Goodrich, p. 34.

international law and justice has been violated. What the sponsors of the Charter experienced before and had in mind at the time.[104] Then, it was declared as the purpose of the Organization, collective measures for the prevention and removal of threats to the peace, suppression of acts of aggression or other breaches of the peace and facilitating settlement in conformity with justice and law.[105] Totally, it was supposed that the Organization is a centre that will deny its Members from any act which causes international conflicts that might lead to the breach of the peace, and tried to harmonize them and encourage them to fully co-operative in all aspects such as economic, social, cultural and humanitarian, and human rights characters including fundamental freedom in all societies without distinction as to race, sex, language or religion.[106] To prevent international disputes and aggression, the Charter has set three main procedures which are common in aims and all of the Members should follow and solve the problems through them:

1- All of the Members should settle their international disputes by peaceful means and do not endanger international peace and security.[107]

2- All Members should fulfil in good faith the obligations assumed by them in accordance with the Charter.[108]

3- They should refrain from use of force against other states in their relations.[109]

The sponsors of the Charter have had in mind that maintenance of peace and settlement of disputes by peaceful means have a close relation with the feeling of international security. It is based on international justice and therefore without security, nations can not get tranquility, and injustice vanishes the friendly relations among nations.

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104- Ibid. cases on U. N. law,pp. 148-159, Spanish question.

105- Ibid. preambulary paragraph.

106- Preamble and article 1 of the charter of the U. N.

107-The charter of the U.N., article 2 (3).

108- Ibid., Art. 2 (2).

109- Ibid., art. 2 (4).

Therefore, it is implied that all Members shall settle their international disputes by peaceful means.[110] The provisions of the Charter has set the pacific solution of international disputes as the first purpose of the United Nations,[111] and to that end has implied two ways:

1- Effective collective measures for the prevention and removal of threats to peace and suppression of acts of aggression.

2- Pacific settlement of international disputes according to the principles of justice and international law. International disputes are usually from two categories: legal disputes in which the parties are in conflict as to their respective rights under the existing rules of international law, and political disputes.[112] Legal disputes usually come to solution through international organizations more easily than political disputes, what dominates the long range interests of states and in large scale overlaps international law.[113]

The provisions of the Charter has also confirmed regional arrangements through which the Members are encouraged to make every effort to achieve pacific settlement of local disputes before referring them to the Security Council initiatively by states themselves or by reference from the Security Council.[114] It is granted as the duty of the United Nations to maintain international peace and security. So, all of the Members should co-operate and collectively confront any threat to the peace and if any aggression has happened, assist its suppression by all means.[115]

According to international law, aggression and threat to international peace and breach of the peace are illegal and United Nations should adjust them in conformity with the principles of justice and international law.[116] It is reflected in the Charter of the United

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110- Ibid. art.s 2 (3,4).

111- Ibid. art. 1 (1).

112- Building peace, Reports of the commission to study the organisation of peace, 1939-1972, vol. I, pp. 363-6.

113- Ibid. Building peace, p. 358.

114- Charter of the U. N. ,Art. 52.

115- Ibid. Art.s, 1, 2(5).

Nations as the main purpose of the organisation that all the Members, in their international relations are not only obliged to refrain from the use of force against the territorial integrity or political independence of other states, but also avoid from the threat of force and any other manner inconsistence with the purposes of the United Nations.[117]

Although force is inescapable in human affairs and can not merely be abandoned, but it can be controlled and used like fire. It may be mercilessly destructive, but it may be immeasurably useful when brought under control and properly directed, not to use against others but to suppress aggression and restore international peace.[118]

Therefore, the Charter of the United Nations has restricted the use of force only to two cases:

1- When a Member of the United Nations is attacked directly by armed force, it is the right of the Member to defend herself individually and other Members are to help her against the aggressor state. This act is permitted until the Security Council takes measures necessary to restore international peace and security.[119]

2- Security Council of the United Nations is the only organ which has the right to determine the existence of any threat to the peace, breach of the peace, or act of aggression. It will decide for the recommendations or measures which are necessary to prevent an aggravation of the situation.[120] Security Council may call upon the Parties concerned to comply with provisional measures. It tries to provide measures not involving or involving the use of armed force to be employed to give effect to its decisions.[121] But the question is that effective functioning of an international force would depend on formulating clear rules of international law to govern the force. If the force is authorized to come to the aid of a

116- I. M. T. and U. N. charter, art. 1(1).

117- Ibid. Art. 2(4).

118- Ibid. Building Peace, pp. 40-1.

119- Ibid. charter, Art. 51.

120- Ibid. Art.s 39-43.

121- Ibid. Art.s 41-2.

nation against which aggression has been committed, a careful definition of aggression would be needed. For, there would be the danger that the force would not act properly or would take when it should assist a nation or would take an unauthorized step in a situation not actually involving aggression.[122] Perhaps, it has been regarded that the principles would prevent any use of force rather than suppress it.[123] So, it was accepted to remove the danger of use of force intiatively by states in any excuse like self-defence, threatened and so on.[124] Besides, the Members are obliged to settle their disputes peacefully and refrain from the use of force.

The main difference between the League of Nations and the United Nations is that, in the League the States themselves could judge that they are threatened or not, and use force to remove it.[125] As it was mentioned before, it was very easy to find an excuse and begin a war.[126] Before the Second World War happened, the most succeeding was the Briand-Kellogg Pact in which Parties condemned recoursing to war for the solution of international disputes and renounced it as an instrument of national policy,[127] but they were not denied to use it to remove the threats that might exist. The United Nations sponsors, in addition to renouncing war, obliged Members to refrain from the threat of force against other states.[128] More over, it was considered that international peace may be threatened by non-members of United Nations, so this obligation was extended to them. This direction is clear of the Charter which states that, " the organization shall ensure that states which are not members of the United Nations act in accordance with these principles."[129], so far as it

122- Ibid. Witchett, chap. 4, U. N. peace keeping, D.W. Bowett, pp. 71-4.

123- Charter of the U. N., Art.s 2(3-4).

124- Ibid. Art. 39.

125- Article 15(7) of the League.

126- Suppra, p. 13.

127- Ibid. Briand-Kellogg pact, Art. 1.

128- Ibid. U. N. , Art. 2(4).

129- Ibid. Art. 2(6).

is necessary for the maintenance of international peace and security.

It is supposed that article 2(4) of the Charter includes only the use of force against territorial integrity and political independence and states can use force in cases other than those mentioned in the Charter. But the attitude of international law since 1919 illustrates that matters manifested in article 2(4) covers a vast area and the use of force is totally forbidden. To confirm that, in the preamble of the Charter, the Members have accepted that armed force should be only used in the common interests and that the Security Council or General Assembly would determine it.[130]

From 18th March 1946 to 6th July 1961, 49 treaties were signed among the Members of the United Nations to reaffirm of and adhere to the principles of the United Nations Charter, in particular the obligations of the article 2(4) of the Charter.[131]

In exception to article 2(4), provisions of the Charter admit the Security Council to decide what measures are to be employed to give effect to its decisions.[132] The Security Council may call upon the Members to apply such measures. If it considers those measures inadequate, they also admit the Security Council to take action by air, sea or land forces as may be necessary to maintain or restore international peace and security.[133]

All Members of the United Nations have undertaken to make available to the Security Council, on its call armed forces, assistance and facilities necessary for the purpose of maintaining international peace and security. The Security Council can utilize regional arrangements or agencies for enforcement action under its authority.[134] These regional agencies may not act independently and they should do their enforcement actions

130- More information in "the use of force by states", Skubiszewski K. pp. 744-747.

131- The list of the treaties in "international law and the use of force by states", Brownlie, pp. 127-129.

132- Ibid. charter, Art.s 39,40,43,44,45,106.

133- Ibid. Art. 42.

134- Ibid. Art. 43(3).

with the authorization of the Security Council. In other words, the United Nation has the authority of supervision in all cases and it has been tried and tested that only the United Nations Organization is capable to use force in order to maintain peacekeeping or restoring it. Therefore, according to international law, even if the States have legal claims, intent or right which may cause some collision, they are not allowed to use force against other states.[135] But as long as, it is in theory and that international society does not give any sanction to the great job of peace and coercive settlement of disputes, more and more possessions and properties of the nations, which should be used to improve social welfare will become allocated to destruction and force will be use by powerful states against less powerful ones, eventhough, these actions are considered illegal, according to international law.[136]

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135- Ibid. Brownlie, p. 333.

136- Legal control of I. conflicts, Stone,chap. VII, p. 185.

# CHAPTER FOUR

## DEFINITION OF AGGRESSION IN THE UNITED NATIONS

### I- Chronological Approach to the Definition of Aggression

When the last effort started in 1967, which ended to the definition of aggression, it had saw the culmination of nearly 45 years of fruitless attempts at defining international aggression. There were a variety of reasons for this failure. Perhaps the first major reason was the ambiguity of the word "aggression" especially when applied to the behavior of a state in that regard.[137] The next more significant reason was the attitude of some states who intentionally refrained to give norms or standards which they saw as potentially limiting them in their international affairs and also their ability to protect or support their long and short term interest; whereby their usage attributed to other regional agreements in order to counter any perspective threat.[138]

A mixture of optimism and apprehensim loomed among the delegates whom each represented a fine and delicate balance of interests which could easily be upset: (which were expressed from the first Special Committee debates); over a period until 1974.[139]

Finally the General Assembly approved a definition of aggression through a consensus by Resolution 3314(XXIX). A compromised text expressing the conviction to contribute to the strengthening of international peace and security. The main efforts of the United Nations were done through the Special Committees, chronologically as follows:[140]

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137- legal controls of the international conflicts, J.Stone, p. 330.

138- Landing of U.S.A. and other Caribian states in Granada in October 1983, defence the legal implication, Peter Poue, p. 98.

139-United Nations Bulletin, 1952, no. 12, p. 179.

140- Ibid. international aggression, A. M. Rifaat, p. 264.

## Section One

### The FIrst Special Committee on the Question of Defining Aggression (1953-1954)

The First Special Committee was established according to the on going work of the International Law Commission on the Draft Code of Offenses against the Peace and Security of Mankind,[141] following the Resolution 688(IV) of the General Assembly on the question of defining aggression.[142] In regard to the resolution 599, at the sixth and seventh session of the General Assembly has revealed the complexity of the question and the need for a detailed study of the various forms of aggression and its effect on the international peace and security. The obstacles were raised in order to be formulated and their application within the framework of international criminal jurisdiction and various other organs of the United Nations, and therefore, also dealing with any other problems which might be raised by a definition of aggression. The Committee composed of 15 States were appointed in 1952 and was referred to the International Law Commission. A U.S.S.R proposal to define the concept of aggression as accurately as possible was according to the General Assembly directive, formulated a definition of aggression. From the beginning, it was not overlooked that the crime of aggression may be inferred from the circumstances peculiar to each case. The sponsors of the Committee regarded the definition useful in ensuring international peace and security and developing international law. Further to its important

141- According to it, the Special Committee was to assemble in 1953, with the membership of the Bolivia, Brazil, China, the Dominican Republic, France, India, Iran, Mexico, the Netherland, Norway, Poland, Syria, the U.S.S.R., U.K and U.S.A.

142- Ibid. Y.U.N., para.s 1 and 2.

political aspects, it would formulate directives for the guidance of the international organs as are called upon to determine the aggressor.[143] The Committee listed aggression as a crime against the Peace and Security of Mankind. However being unable to recouncil many of the differences and to reach an agreement on a definition, decided that aggression could not be defined more specifically than to say that it was the use of armed force by one state against another , other than for purposes of national or collective defence or pursuant of to competence of the United Nations' Organs.[144] Nevertheless, the General Assembly declared that it was possible and desirable to define aggression further and appointed the First Special Committee of 15 states. The Special Committee discussed various forms of aggression, Code of Offences against Peace and an international criminal court. One of the suggested texts was the U.S.A. one, that referred to the fact that the Security Council be given a list of factors to be taken into account when deciding a given case. But the argument came to focus on specific resolutions submitted by the U.S.S.R, China, Mexico and Bolivia. Some countries argued that a complete definition of aggression was not legally possible or desirable and recalled that the San-Francisco Conference had decided not to include a definition of aggression in the Charter and that it could not include all the situations that an aggressor might desire. They believed that the concept of aggression was not purely a legal matter but more military and political. Another argument advanced, as used in the Soviet Union proposal labelled certain acts, as being inherently aggressive regardless of circumstances. French delegate said that the definition of aggression could be used in addition to the use of the political organs of the United Nations. It would also serve to clarify the international crime of aggression from the point of view of international criminal jurisdiction.[145] Meetings of the First Special Committee lasted from 24 August to 21 September 1953,during which the most conspicuous draft of the U.S.S.R suggested,

143- U.N. Bulletin , N. 12, 1952, p. 178.

144- Aggression and world order, J. Stone, p. 48.

145- U.N. Bulletin, N. 12 (1952), p. 179.

specified acts which when first committed by a state would constitute attack.[146] It included declaration of war, invasion, bombardment, landing or leading of armed forces into the boundaries of another state without the permission of its government, violation of conditions of such permission, naval blockade and support of armed bands organized in its own territories which invaded the territory of another state.[147] The Latin American states imposed the pressure to insert some acts of indirect, economic and ideological pressure as forms of aggression.[148] In debates of the First Special Committee, it was much to show how indirect economic and ideologic aggression should be adopted in the U.N. Charter, specially article 39 which the U.S.S.R and the Eastern European Block believed in its favour, but the Western Block including the U.S.A rejected it [149]

The Committee reported the various texts and comments to the General Assembly without any proposed resolution. The Assembly considered the connection between the Draft Code and the question of an international criminal jurisdiction and definition of aggression and decided to defer any further consideration of the international criminal court and the Draft Code of Offences until the new Special Committee submitted its report.[150] It was accepted through the Resolution 897(IX) by the General Assembly.

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146- Y.U.N., 1953,P. 681.

147- Ibid. Y.U.N, 1951, P. 841. and Draft Res. submitted by the U.S.S.R, (A/AC. 66/L. 2Rev.1).

148- Ibid. Rifaat, p. 231 and Y.U.N, 1953, P. 682.

149- Ibid. Y.U.N and Report of the Special Committee on the question of defining aggression, in Ferencz, pp. 191-7.

150- Defining of international aggression, Ferencz, Vol.II, p. 5 and Res.898(IX), U.N. Res.s series Vol. V,p. 166.

## Section Two

### The Second Special Committee on the Question of Defining Aggression (1956-1957)

In pursuance of Resolution 895(IX) of the General Assembly, the Second Special Committee of 19 members was established. It worked especially on a series of 19 meetings after the incident of the Suez crisis from October 8 to November 9, 1956. It was nearly contemporary to the invasion of the Soviet Union and its Satellites to Hungary and the intervention of the French and the United Kingdom in the Suez Canal. On the other side of the world, the United States of America was involved in the war in Vietnam,[151] so that the General Assembly considering the International Law Commission's reports at the sixth, seventh and ninth Assembly sessions on its discussions of the question of defining aggression, report of the Secretary General and views of governments and the report of the 1953 Special Committee,[152] decided to defer consideration of the definition of aggression for another year. There were different views on the acts other than armed attacks constituting aggression. Various proposal drafts were considered. A joint draft by Iran, Panama, Perue and Iraq submitted to the Committee, containing a general definition of aggression.[153] The new Special Committee had been established according to a recommendation of the Sixth Committee, adopted as the Resolution 895 (IX) on December 4, 1954. The 19 States which were named as the members of the new Special Committee are: China, Czechoslovakia, the Dominican Republic, Paraguay, Perue, the Philippine, Poland, Syria, The U.S.S.R, the U.K, the U.S.A and Yugoslavia.[154]

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151- Ibid. Mafhoum Tajavouz dar Hughough Bein al melal, Dr. Momtaz, pp. 110-1, and ibid, Ferencz, p. 6.

152- Y.U.N 1956, Question of Defining Aggression, p. 385.

153- Ibid. and M. J, Dr. Momtaz, p. 112.

154- Res.895 (IX) on the question of defining aggression, U.N. Res. series, Vol.V, G.A, (1955-6), p. 165.

While, it appeared that the growing international tensions and the increasing armaments race required a clear definition some other States believed it, as a restriction to the flexibility of the United Nations, and most of them including the U.S.A. favored postponing the question.[155] They did not consider it as a compromised solution and thought that, it is necessary to wait until circumstances were more favourable. They argued that, it would in fact enhance the possibility of arriving at a definition.

The Sixth Committee finely agreed to the procedural Seven-powers draft resolution as amended by the U.S.A[156] and the General Assembly in Resolution 1181 (IX) called the Special Committee's report in 1956 on the question of aggression as an important study based on the views expressed by the States, members of the United Nations up to the date and called it valuable work done. General Assembly asked the Secretary General to refer the replies of Member states to a committee composed of the Member states, to determine when it shall be appropriate for the General Assembly to consider again the question of defining aggression.[157] The resolution was adopted by simple majority.[158] Soliciting the views of the 22 new Member states caused the extra extension of the postponement. The Committee Members during this session were deeply divided so that by the end of the 1957 very little progress had been made.[159]

Report of the Special Committee was debated in the Sixth Committee. To some Members, it appeared that the growing international tensions and the increasing armaments race required a clear definition of aggression more than ever before. Others, such as the U.S, the U.K, Japan, China and Canada argued that a definition might make peace more

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155- Y.U.N. 1957 - office of the public information U.N, New York, the question of defining aggression, p. 373.

156- Ibid.

157- U.N. Resolution, series 1, G.A, Vol. VI, 1956-58, p. 243.

158- Ibid. p. 79.

159- Defining I. Agg., Ferencz, Vol. II, P. 6.

difficult by restricting the flexibility of the United Nations.[160]

The gist of the Second Special Committee report was that its Members were unable to agree either on the question, whether it was desirable to define aggression or whether it would be feasible to define it.[161] Therefore, the Sixth Committee recommended that the question be referred to the Assembly's General Committee which would report to the Secretary General when it considered that the time was appropriate to take up the subject again. So, it was deferred for two years by Resolution 1181 (XII).[162] It was also decided to postpone the related questions of the Draft Code of Defence against the Peace and Security of Mankind and the establishment of an international criminal court until the General Assembly took up again the question of defining aggression.[163]

## Section Three

## The Third Special Committee on the Question of Defining Aggression (1959-1967)

Disagreements which emerged during the Second Special Committee's work, affected the General Assembly so that when it established its Third 21 Members Special Committee in 1957, it essentially imposed the task that to determine the time it shall be appropriate for the General Assembly to consider again the question of defining aggression.[164]

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160- Doc. A/3756, G.A, Report of the 6th committee, pp. 2-3, available in Ferencz, p. 250.

161- Conflict through consensus, J. Stone, p. 17.

162- Y.U.N., 1957, PP. 371-5, and ibid. Ferencz, pp. 6-7, and ibid. mafhoum tajavouz, pp. 112-3.,

163- Resolutions 1186 (XII), 1187 (XII) of G.A, U>N> Res.s, Vol. VI, 1956-8, pp. 243-4

Acting on the Sixth Committee's recommendation, the General Assembly decided by Resolution 1181(XII) of 29 November 1957 to invite the views of the 22 States admitted to the United Nations since 14 December 1955 and to renew the request for comments of Members who had not submitted comments as requested by Resolution 688(VII). After a communication of March 10, 1958 to the Member states of the United Nations, the Secretary General received the replies of fourteen governments which according to Resolution 1181(XII), were to be referred to the Committee.[165]

The Committee which was composed of the head of the General Assembly, His 13 Assistants and Heads of the Seven Committees of the United Nations, had its first session at the United Nations Headquarters in April 1959. It studied the replies received from the governments to decide on the appropriate time for the General Assembly to reconsider the question of defining aggression.[166] An examination of the received replies indicated that there was no change in the attitude on the part of Member States. Therefore, the Committee decided to postpone further consideration of the question until April 1962, except if an absolute majority of its Members favoured an earlier meeting.[167] Until then, there was no call for the meeting. So, the Secretary General requested the Members of the Committee to begin its second session on 2ed April 1962 at the United Nations Headquarters in New York.[168] However, at its twelfth meeting on April 1962, on the proposal of Cypros, the Committee adopted a draft resolution which produced that, "there have not been sufficient indications of the attitudes of Member States to allow the determination of any particular time as appropriate for the General Assembly to consider again the question of defining of

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164- U.N. Review, 1957-8, 4, 58, January 42.

165- Ibid. Resolution 1181(XII), para. 3., see also in international agg., Rifaat, p. 247.

166- Ibid. Mafhoum Tajavouz, p. 113.

167- Y.U.N., 1959, office of public information U.N, New York, Legal Questions , P. 420.

168- Y.U.N., 1962, " " " " " " " " " " "" "" " " " " " " " " " " ", legal matters, question of defining aggression, pp. 506-7.

aggression" decided to adjour further consideration of the question until April 1965, unless an absolute majority of the Members of the Committee request the Secretary General to convene it.[169]

Meanwhile, under the terms of the Resolution 1181(XII) the Committee was directed to make its determination in the light of replies received from all of the Members including the new Members of the United Nations. Nveretheless, when it met in April 1962, it had before it a note by the Secretary General that the comment of only 14 governments had been received. The Committee asked the Secretary General to renew his earlier request for the views of the Members and request also the new States admitted to the U.N. since 1959 session to submit their views not later than 1 November 1964.[170] No request for earlier consideration of the matter was received and the third session of the Committee was held at the U.N. Headquarters in April 1965, lasted from 5 to 16 1965. It resulted in ten meetings.[171] Violence in Cypros in 1963, the dispute between the Turkish minority and the Greek majority, battle in Congo and Combodia, complains of the U.S.A for aggression, military involvement of the U.S.A in Vietnam were of elements which affected the work of the Committee on defining aggression, as well as the work of the Special Committee on Principles of International law governing Friendly Relations and Co-operation among States and defer it for a long time.[172] This vexation continued for around 10 years and when, in May 1967, the Committee met again, it was still debating whether the time was appropriate for further Assembly action. At the time, it had two draft resolution before it. The first draft presented by Bolivia and U.S.A, to adjourn further consideration for an indefinite period, until in the light of the situation prevailing in international relations be prepared to convene the Committee.[173] In contrast, the second

169- A/AC. 91/C, Draft resolution, available in Ferencz, D. Agg., vol. II, Document 11, p. 263.

170- Y.U.N, 1962, Legal matters, Q. D. Agg., p. 507.

171- Y.U.N. 1965, " " " " " " " " " " " " " " " , p. 647.

172- Ibid. D. I. Agg. , B.B.Ferencz, Vol. II, pp. 7-8.

173- U.N monthly chronicle, 4, 1967, May, p. 51.

draft was to ask the Secretary General to inscribe on the Assembly's provisional agenda the item of the question of defining aggression. The United States representative said that, under condition of modern warfare, it was impossible to decide what constituted an act of aggression. The Committee finally found that the time was not yet ripe.[174] The U.S representative argued that the existing international conflicts were not the reason of the failure of the General Assembly to draft a definition of aggression, but from the failure to live up to the obligations derived from the Charter. He said that, difficulties were not due to the lack of a clear understanding of what constituted aggression. In fact, a definition of aggression might actually detract from the Organization's peace keeping effectiveness. The U.S.S.R representative criticised the Committee for not fulfilling its task and believed that the U.S.A and Western Powers were the main obstacle for the formulation of the definition of aggression reiterating a negative stand with unconvincing artificial and invalid arguments.[175] The representative of the U.K said that a definition of aggression would be neither practical nor useful. For, the progress lasting over thirty years had been so little and that direct armed aggression was not the only form of aggression. Moreover, he believed that, under the Charter it was the task of the Security Council to determine the existence of a threat to the peace, breach of the peace or act of aggression. He argued that, the Assembly should be advised that it was unwise and unnecessary to attempt to define aggression at that time.[176] The representative of Cypros and Czechoslovahia referring to Resolution 1181(VI), discussed that it could not have been the intention of the Assembly that the Committee delay its work for ever. Because, in Resolution 599(VI), in the final preambular paragraphs, the Assembly had stated that, it was possible and desirable to give a definition of aggression.[177] Representative of Iraq expecting the Committee to determine the time

174- Ibid. pp. 51-2.

175- Ibid. U.N. Monthly chronicle, 4, 1967, May, p. 52.

176- Ibid. pp. 54-5 and Y.U.N, 1967, P. 754.

177- Y.U.N, 1965, PP. 55-7.

appropriate for the Assembly to consider again the question of defining aggression, concluded that both the Assembly and the Committee had emphasised the need for, and the importance of defining aggression. He challenged the view that the time were not appropriate for defining aggression. He believed that the definition of aggression would help to cope with the troubled world situation and would enhance the effectiveness of the United Nations in maintaining peace so that, it would have great moral impact in all aspects and would help to discourage aggression. He finally added that it was not only desirable, but mandatory for the General Assembly to define aggression in order to combat it more effectively.[178]

On September 22, 1967 the Soviet Union directly requested the General Assembly, at its 22ed session to include an item entitled, "need to expedite the drafting of a definition of aggression in the light of the present international situation", in the agenda of that session as an important and urgent matter.[179]

During the plenary debates of the General Assembly many Countries supported that idea to draft the Resolution and the Assembly considered that, it was necessary for aggression to be defined. So, most of the representatives in the Sixth Committee agreed that a definition of aggression was both possible and desirable. Some draft resolutions and amendment to them were submitted that, on contents and measures necessary to be taken into account.

After nearly a decade, the result was not satisfactory. But it was not an inaction, or as the result showed, was not merely for propaganda advantage or an exercise in futility. But the doubts and hostilities were from the sensibilities which existed since 1924 in the Preparatory Commission for a disarmament conference.[180]

The approaches to the issue were different, but the effects were serious. Some

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178- Ibid. pp. 57-8.

179- Ibid. U.N, pp. 753-4.

180- American Journal of International Law, 62, 1968, pp. 701-2.

States sought much more than the Resolution required. Others envisaged the Special Committee's work as primarily an examination of the question to draw up a draft definition. While, some Others considered the Special Committee as a study group devoted to the problem.[181] Finally, a text submitted by 26 Members and after approvement by the Sixth Committee and amendment, the Assembly on 18 December 1967 adopted it as the Resolution 1330(XXII),[182] in which affirmed the need to expedite the definition of aggression, implied the establishment of a special committee on the question of definition of aggression. It composed of thirty five Members to be appointed by the President of the General Assembly in regard to the equitable geographical and legal systems representatives of the world. The Special Committee was instructed to, " having to the present Resolution and the international legal instruments relating to the matter and the relevant precedents methods, practices and criteria and the debates in the Sixth Committee and in the plenary meetings of the Assembly to consider all aspects of the question, so that an adequate definition of aggression might be prepared and submitted to the General Assembly."[183] During this session an intensive debate also developed and various draft Resolutions were put forth by various combinations of States.

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181- Ibid. Report of the S.G, U.N, Doc. A/2211.

182- Y.U.N, 1967, PP. 754-6, AND 1968, P. 831.

183- U.N. Resolution, series 1, G.A, Vol. XI, 1966-68, pp. 324-5, Resolution 2330(XXII), para.s 1,2,3.

## Section Four

### The fourth Special Committee on the Question of Defining Aggression, (1968-1974)

Pointing to the "wide spread conviction that a definition of aggression would have considerable importance for the maintenance of international peace" and that it will give the effective measures for preventing acts of aggression, made it apparent that, there is still no generally recognised definition of aggression.[184]

While there was a lot of works done and a lot others remained to be done, the Fourth Special Committee was established. It was composed of the representatives of 35 Member States, supporting each of the proposed drafts that began to move towards on agreement on some of the points of differences.[185]

The Committee's first session began on 4th June 1968 at Geneva, and continued until the 6th of July of the same year.[186] It elected its officers, adopted its agenda and considered the organization of its work during this session.[187] The discussions of the Committee centered on two specific phases; first, to a general debate including the value, types and contents of the various aspects of the question, and the second was a debate on the draft proposals submitted to the Committee. The incidents like the intervention of the Eastern Block forces in Czechoslovakia produced a deadlock in the debates in such a way that some States believed that any attempts to define international aggression is useless.[188] Despite this pessimissim, the Sixth Committee recommended the Committee to continue its work for the following year.[189]

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184- Ibid. U.N.Resolutions,pp. 324-5, Res. 2330(XXII), preambular para. 4.

185- Y.U.N, 1968, P. 831 (Q OF D. Agg.) and U.N. Monthly chronicle, 1969, 61, March, p. 42.

186- Ibid. Y.U.N.

187- U.N. Monthly chronicle, N. 5, 1968.(Q. of D. Agg.), July, p. 74.

188- Y.U.N, 1968, PP. 298-9.

The Committee in its second session began its substantive exchange of views on 26th February 1969, when the Soviet Union introduced a draft definition of aggression.[190] The Six Powers which in the first session opposed to the proposal draft, gave a joint draft.[191] Another proposal draft was the Thirteen Powers one, which the Special Committee discussion centered on it.[192] In this session some questions arose which essentially highlighted the gravity of the issues such as, should a definition cover acts by or against those political entities which are not universally recognised? Which actions should be considered as aggression? Should acts other than use of force in violation of the Charter be included? Some Members believed that it was dangerous to make a determination of aggression dependent on the intentions of an accused aggressor in the present state of the international community. A number of States argued that the principle of priority of "first use" of armed force should be included in the definition. While the Others considered it incompatible with the Charter. Proper criteria, self-determination and legal responsibility for the act of aggression were the other controversy questions emerged as obstacles to defining aggression.[193]

The Special Committee in its report noted the common will of the Member States to continue consideration of the question of defining aggression. But there was not enough time to complete its task. So, it recommended to the General Assembly to put in its agenda the continuance of its work.[194] The General Assembly adopted it by the Resolution 2549(XXIV) and asked the Special Committee to resume its work in the second half of 1970.[195]

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189- U.N. Resolutions, series1, G.A, Vol. XII, 1968-9, p. 200, Res. 2420(XXII).

190- Ibid. U.N. PP. 831-4 and ibid U.N. Monthly chronicle.

191- The six powers were; Austeria, Canada, Italy, Japan,U.S.A and U.K.

192- The thirteen powers were; Colombia, Congo, Cypros, Equador, Ghana, Guyana, Indonesia, Iran, Mexico, Spain, Uganda, Uruguay and Yogoslavia.

193- Y.U.N., 1969, debates in special committee, pp. 769-770.

194- Ibid. pp.770-1.

In the summer of 1970, from 13 July to 14 August, the Special Committee discussed the three draft proposals.[196] One of the drafts before the Committee was a proposal by the U.S.S.R, according to which, armed aggression ( direct or indirect ) was the first use of armed force against another state contrary to the purposes, principles and provisions of the Charter of the United Nations. The use of armed force by sending armed bands, mercenaries, terrorists or saboteurs to the territory of another state, subversive activities involving the use of armed force with the aim of promoting an internal upheaval in another state were also the acts which were considered as aggression.[197]

The main points considered in these series of meetings by the Special Committee were:

1- Application of the definition of aggression including the definition, the power of the Security Council and political entities to which the definition should apply.

2- Acts , as above mentioned, proposed to be included in the definition.

3- The principle of priority, ( first use of force ).

4- Aggressive intent.

5- Legitimate use of force.

6- Proportionality ( the question of the limits of self-defence ).

7- Acts considered not to constitute acts of aggression, like the right of peoples to self-determination.

8- Legal consequences of aggression, like non-recognition of territorial gains and the question of responsibility.[198]

At its 74th meeting, on 7 August, the Special Committee decided to establish a working group of eight Members, representing the sponsors of the three draft proposals.[199]

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289- U.N. Res.s, series 1, 1968-9, p. 313.

196- Y.U.N, 1970, the question of defining aggression, p. 792.

197- U.N. Monthly chronicle, 6!, 1969,April, pp. 78-9.

198- Y.U.N, 1970, the Q. of D. Agg., pp. 792-3.

Some developments were achieved by the Group, narrowing the gap in regard to some points of differences among its members.[200] Subsequently, its report was submitted to the Secretary General but because of the shortage of time, the Special Committee recommended the General Assembly to agree on the continuation of its mandate in 1971.[201] The General Assembly on 25th November, by Resolution 2644(XXV) decided that the Special Committee should resume its work in 1971. It also included an item on the issue in the provisional agenda of its twenty sixth session.[202] At the beginning of 1971, the fourth session of the Special Committee was held in New York to consider the specific questions mentioned in the 1970 report of its Working Group which was reconstituted to formulate an agreed or general accepted definition of aggression. Thereby, reporting its assessment of the progress made, the Security Council indicated both the points of agreement and disagreement. The Working Group was established and consisted of the same eight Members as in the previous year. They combined the various suggestions into a single text, with phrases found to be unacceptable to all members of the Group.[203] After 23 meetings, two successive reports were submitted, reflecting conclusion and the results of its discussions on the definition and related questions.[204] The Special Committee considered the first report of the Working Group but for lack of time was unable to examine the second report.[205] On 5 March 1971, the Special Committee at its 91st and final meeting adopted a resolution by 35 Powers in which was noted the common desire of the Special Committee

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199- The members of the working group were; U.S.S.R, five representatives from the sponsors of the 13-power draft and two from sponsors of the 6-power draft.

200- Sup. N. 19, 13 July-14 August, the text available in Ferencz, Definition of Aggression, Vol. II, p. 372.

201- bid.

202- U.N Resolutions, series 1, G.A, Vol. XIII, 1970-71, p. 349, Res. 2644(XXV) para. 1,3.

203- U.N. Monthly chronicle, 1971, 8!, 1971 Jan-JUne, March, p. 27 and April, pp. 44-5.

204- Ibid. March, 24-5 and Y.U.N, 1971, p. 597.

205- Ibid.

to arrive at a draft definition. It was recommended that it should be invited by the General Assembly to resume its work in 1972.[206] Subsequently, the Sixth Committee at the General Assembly's twenty sixth session discussed the issue in the period between October 29 and November 18, 1971 in eleven meetings. The debates were divided into two parts; the general aspects of the question of defining aggression and its contents.

In accordance with the procedures of the General Assembly, the views were divided between a consensus definition i,e. a definition to be adopted by a simple majority or a definition in a form of a General Assembly resolution. Under the discussion on contents of the definition, the questions like the definition and the power of the Security Council, political entities which would be covered, the principle of priority, the aggressive intent, the right of self- determination and the legal consequences of aggression were discussed.[207] Results were not productive, but the General Assembly by absolute majority,[208] on December 3, 1971, on the recommendation of its Sixth Committee adopted Resolution 2781(XXVI), considering the urgency of bringing the work of the Special Committee to a successful conclusion and desirability of achieving it, decided that the Special Committee should resume its work as early as possible in 1972.[209]

Following the directive of the General Assembly, the first session of the Special Committee began on 31 January and ended on March 3, 1972.[210] It reestablished its Working Group and instructed it to formulate a definition of aggression. In the case if, it was unable to reach such a definition, it was to report to the Special Committee on the progress it had made.[211] In this session it was a step forward after a brief change of views

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206- Definition of aggression, Ferencz, Vol. II, pp. 450, 485. and U.N. Monthly chronicle, 8<2>, 1971,July-Dec., 149.

207- A/8525, report of the Sixth Committee, pp. 3-8, the text available in Ferencz, pp. 485-892.

208- U.N Monthly chronicle, 9<1>, 1972, Jan-Jun, Jan. 202.

209- U.N. Res.s, Djonovich, series1, G.A, Vol. XIII, 1970-1, p. 493, Res. 2781(XXVI) para. 5,7.

210- Ibid. U.N. Monthly chronicle, Feb. 42, and Y.U.N, 1972, p. 650.

on the general definition of aggression and on the principle of priority was made.

Along the formal debates, the informal negotiations was held, concerning various elements of the definition, and some alternative texts were suggested, among them. Five separate proposals were presented by various representatives implying their previous stands. After 14 meetings, held from February 4 to 29, 1972, the informal negotiating group which composed of the thirty five members of the Special Committee, submitted a report to the Working Group. The report was considered progressive.[212] It was approved by the Special Committee on March 2, 1972 and annexed it to its own report to the General Assembly.[213] By the end of the 1972 session, substantial points of disagreement still remained, but with a reasonable amount of optimism, determination and good will, the differences did not appear to be irreconcilable. Therefore, the fifth (1972) report of the Special Committee was considered by the Sixth Committee at the General Assembly's twenty seventh session between October 31 and November 24, 1972.[214]

All of the representative at the Sixth Committee held that the outcome of the Special Committee's work was positive and successful. Some of them maintained that, if no considerable progress was achieved in 1873, the General Assembly should consider whether to give time to its Members to narrow down their differences through informal negotiation.[215] Until then, it had been generally accepted that, aggression should be defined and there was no conflict regarding the format. All of the Members had given their consent on the context of a preamble, certain generally accepted principles and a brief formulation in

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211- Ibid. U.N.M.C., Feb. 43. THe Working Group was composed of: Cyrop, Czechoslovakia, Ecuador, Ferance, Ghana, Italy, Mexico, Spain, the Syria Arab Republic, the U.S.S.R,the U.K, and the U.S.A.

212- Y.U.N, 1972, P. 651.

213- Ibid. p. 652.

214- International and Comparative Law Quarterly, 22, 1973, p. 408-9 and American Journal in International Law, 66, 1972, pp. 496-7.

215- U.N, G.A, official records, A/8929, report of the Sixth Committee.

general terms of what was meant by aggression including some specific acts which were clearly aggressive. The authority of the Security Council was reaffirmed to determine that the other acts might also be aggressive, and lawful use of force was explained.[216] Therefore, they finished discussion on the preamble and agreed that the definition of aggression should at least include the following text; "aggression is the use of armed force by a state against the territorial integrity or political independence of another state, or in any other manner inconsistent with the Charter of the United Nations."[217]

The problem was that, all the Parties were not of one mind. It was shown that aggression meant one thing to some States and something else to Others, depending upon their values or social systems. Therefore, to get consensus, a compromise was suggested.[218] The compromised definition consisted of a preamble and a substantive definition. In the preamble, it was upheld the fundamental purposes of the Charter and reaffirmed the principles of international law. It referred to military occupation, annexation, subversion, the right of self-determination and non-recognition of territorial gains. It also called the Security Council responsibility, and the usefulness of a definition was outlined.[219]

The substantive definition included the general formulation and enumeration of illustrative acts of aggression. It was understood that minor incidents are not important to be included, but the Security Council might consider other circumstances by which unlawful acts which violated a declared principle of international law as aggression. Lawful use of force recognised in the Charter was reserved inviolable and Security Council in addition would get an open-ended discretion, pursuant to the Charter to determine the act of aggression.[220]

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216- Ibid. I.C.L.Q., pp. 407-8, a proposed..... .

217- A.J.I.L., 66, 1972, PP. 496-7, major points in dispute.

218- Ibid. I.C.L.Q, PP. 410.

219- Ibid. pp. 410-8.

The General Assembly acting on the recommendation of the Sixth Committee, adopted Resolution 2967(XXVII) which was proposed by 21 States.[221] It was approved by 121 votes to none. The Resolution pointed to the limitation of time for the Special Committee to complete its task and the urgency of the issue, decided that the Special Committee resume its work after 1 April 1973.[222]

The Fourth Special Committee had the longest, most diligent, as well as most successful record to 1973, at which point, the prospects of success were still rather uncertain and doubtful.[223] The Committee had already 100 meetings, of which the 100th in May 1973 was at a five week session. At this stage, a working group was established which was open to all delegations with the same rights of participation and decision. The Working Group held 14 meetings between 2 and 25 May 1973 and established 4 contact groups, each with a certain responsibility, to consider the text of the general definition. The Working Group also decided to establish a drafting group with the task of preparing a draft preamble and to consider other drafting questions.[224]

Up to the date, the unsteady delegates which their majority came more or less, if not ignorant of the issues, inexperienced in negotiations which had caused an excessive number of new and false starts, so that up to the conclusion of its work in 1974, the time spent in meetings, if it had been consolidated would be equivalent to a conference lasting without a break nine months.[225] However, before the end of the session , on 25 May 1973, the Working Group submitted a draft, containing a consolidated text of the reports of the contact groups and of the drafting group[226] to the Special Committee.[227] It was after a long

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220- Ibid. pp. 421-426.

221- A/892, Agenda Item, 88, P. 8, available in Ferencz, Vol. II, Doc. 23, p. 517, and U.N, 1972, P. 654.

222- U.N. Res.s, series 1, G.A, Vol. XIV, 1972-74, p. 532, Res. 2967, para. 3,5,7.

223- A.J.I.L, 66,1972, P. 491, and conflict through consensus, J. Stone, p. 18.

224- Y.U.N, 1973, Legal Questions, the D. Agg., p. 780.

225- Ibid. J. Stone, p. 17.

discussion on matters like; how to allocate the relative weight to be given to the fact that one party had struck the first blow, or whether attacks on marine and air fleets should be enumerated among the aggressive acts. The matter of the armed forces overstaying their welcome in another state, using foreign territories for unlawful activities, and struggle for self-determination were also from the most controversial matters during the debates.

The preambular part of the consolidated text was composed of nine paragraphs compromising between the various legal points of views of deferent political schools.[228] In the operative part of the consolidated definition, article one enunciated a general definition according to that," international aggression was the use of armed force , however exerted by a state against the sovereignty, territorial integrity or political independence of another state, or in any other manner inconsistent with the Charter of the United Nations, as set out in this definition."[229]

As the intensive works of the Groups did not move the effective disagreement until May 30, 1973, the Special Committee at its final meetings of the sixth session emphasised that in the absence of agreement on a draft definition each proposed article must be read together with the comments thereon. But the highly efficient device of the Contact Groups[230] and the Drafting Group resulted in enough progress which disclosed continuing conflicts of positions on many fundamental questions, and the Special Committee in May 1973 declared that it was able to submit for further deliberation a single consolidated draft

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226- The drafting group consisted of chairman Broms, Canada, Egypt, France, Ghana, Iran, Spain, U.S.S.R, appointed on 23 May 1973.

227- Ibid. A.J.I.L.

228- Ibid. pp. 780-1.

229- A.J.I.L, 66, 1973, P. 782.

230- The first contact group appointed on May 2, 1973 consisted of 8 states to deal with the general definition, the second contact group appointed on May 8, 1973 consisted of 9 states to deal with the list of acts of aggression, and the third group appointed on May 8, 1973 consisted of 11 states to consider the legal use of force and the legal consequences of aggression.

defining aggression which consisted of a preamble and seven articles. The sixth Committee gave comment on each article of the draft and unanimously concluded that the Special Committee should continue to complete its task as soon as possible. So, a draft resolution submitted by Algeria, Czechoslovakia, Egypt, Iraq, Romania and Syria to the Special Committee and was adopted without objection on the bases of the results attained. The Committee among other things noted the common desire of its Members to complete their work to arrive at a final draft definition, approved it on 23 November by 102 vote to 0, and recommended the resumption of its work to the General Assembly.[231] Accordingly, on December 12, 1973, The General Assembly adopted without objection (119 to 0 ) Resolution 3105 ( XXVII ), decided that the Special Committee should resume its work early in 1974 with a view to complete its work and submit to the General Assembly in 1974 ( the 29th session ) a draft definition of aggression.[232]

## Section Five

### The Shaping of the Definition of Aggression - 1974

According to the General Assembly Resolution 3105 ( XXVIII ) of December 12, 1973, the Special Committee held its session at the U.N. Headquarter in New York from March 11 to April 12, 1974 to resume its work. A working group was established and instructed to base its work on the text of the consolidated draft concluded in the sixth session of the Committee in 1973.[233] At this session, there were established 3 contact

231- Ibid. A.J.I.L, PP. 780-5, Doc. references, A/C. 6/L 957.

232- Ibid. p. 785.

groups. By receiving the reports of the three Contact Groups, the Working Group established another contact group to prepare a new consolidated text on the basis of the reports of the other three Contact Groups.[234] Meanwhile, the text of the draft definition of aggression which was received by the Drafting Group, was considered by the Working Group and by consensus submitted to the Special Committee.[235] The new text consisted of ten preambulary paragraphs and eight articles including explanatory notes on the interpretation of certain controversial words and phrases of the text.[236]

On April 12, 1974, the Special Committee adopted by consensus the draft definition of aggression and the explanatory notes on its text which submitted by the Working Group at the end of its five-week session.[237] At its 2236th plenary meeting, on 21 September 1974, the General Assembly included the report of the Special Committee on the question of defining aggression. Regarding to the Resolution 1186(XII) and 1187(XII), on the agenda of its 29th session, referred to the Sixth Committee, to take up again the question of the Draft Code of Offences against the Peace and Security of Mankind and the question of an international criminal jurisdiction which was postponed to the definition of aggression.[238] The Sixth Committee considered the report and the text of the definition at the meetings held between 8 October and 22 November 1974 and ultimately, on December 14, 1974 there under numerous further meetings and great activity among members of the 35- Member Special Committee, its Working Group and Contact Groups a text emerged which was adopted at all stages by consensus.[239] Despite sharp protests by a number of States concerning non-consultation and disregard of their views, great pressure were

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233- U.N. Monthly chronicle, II!, 1974, Jan-June, Jan., pp. 85-6.

234- Y.U.N, 1974, P. 840, consolidation by the special committee.

235- bid.

236- Ibid. Y.U.N, pp. 84106, and U.N, Monthly Chronicle II!, 1974, May, pp. 86-8.

237- Ibid. p. 86.

238- Ibid. Y.U.N, P. 841 and A/9890, G.A, official records, report of the S. Committee, p. 1.

239- Conflict through consensus, J. Stone, chapter 10, section VI, pp. 164-5.

exerted on Members not to disturb the consensus by even the slightest offer of amendments. So, the General Assembly acting on the recommendation of the Sixth Committee on 14 December 1974, adopted a text produced without a vote in Resolution 3314(XXIX).[240]

Thus, international aggression was defined.[241]

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240- U.N. Monthly chronicle, Jan. 1975, p. 103, and Y.U.N, 1974, P. 846.

241- Annexed II

# CHAPTER FIVE

## SECTION ONE

### Analytical Approach to the Definition of Aggression

The achievement of the definition of aggression was the result of nearly fifty years of intense efforts of statesmen and lawyers. The following terms has been expected while many terms remained vague:[1]

1- Deterring potential aggression.

2- Enlighting states as to the limits of lawful use of force and promoting peaceful co-existing.

3- Assisting the Security Council by its guidance to determine and suppress the aggressor.

4-Providing new impetus for further codification of international law.

5- Facilitate the protection of the victim of the aggression.[2]

6- Making it possible to resume the work of the International Law Commission on the Code of Offences against the Peace and Security of Mankind.

7- Allowing work to be resumed for the establishment of an international criminal court for the trial of offences against such a code.

It is assumed that the conflicts in the positions of States which appeared during the negotiations in the Special Committees have been incorporated in the consensus definition itself.[3]

Disregarding the practice of states and the international organizations, an analysis of the definition will identify the solution, if any, it brought to the conflicts. From here on, there will be an examination of the articles of the definition of aggression in two parts, including the subjects which the key provisions of the definition cover and also its advantages and disadvantages or possible negative interpretations that states may in their

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1- Aggression and world order, 1958, J. Stone, p. 48.

2- Paragraph 9 of the preamble of the definition of aggression Res. 3314(XXIV), 1974, appendix II.

3- Sppra, views of states in debates in the Special Committees.

relations use and international society suffers from them.

The definition of aggression includes the text of the resolution and its annexed. In its Resolution 3314(XXIV) the General Assembly expressed its deep conviction that the adoption of the definition would contribute to the strengthening of international peace and security,[4] and called upon the states to refrain from all acts of aggression and other uses of force contrary to the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States.[5] The General Assembly also recommended to the Security Council to take account of the definition as guidance in determining the existence of an act of aggression in accordance with the Charter of the United Nations.[6]

The annexed definition consists of a preamble and an eight articles main text. The preamble of the definition consists of ten paragraphs; The first paragraph is an extract from article 1 of the Charter. It emphasises that the efforts was based on the Charter of the United Nations and its fundamental purposes to maintain international peace and security, prevention and removal of threats to the peace and suppression of acts of aggression or other breeches of the peace.[7]

It lays down the role of the Security Council in pursuant of article 39 of the Charter. According to it, the Security Council "shall determine the existence of any threat to the peace, breach of the peace or act of aggression." It shall make recommendation or decide the measures that shall be taken in accordance with the articles 41 and 42 of the Charter to maintain or restore international peace and security.[8]

It was recalled that states shall , according to the United Nations' Charter (art. 2<4>) " settle their international disputes by peaceful means in order not to endanger international peace, security and justice."[9] This language was used in the Declaration on

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4- Paragraph 2 of the Res. 3314(XXIV), 14 Dec. 1974, annexed II.

5- Ibid. paragraph 5.

6- Ibid. paragraph 6.

7- Paragraph 1 of the preamble of the definition, annexed II.

8- Ibid. paragraph 2.

9- Ibid. paragraph 3.

Principles of Law concerning Friendly Relations and Co-operation among States,[10] and in the Declaration on the Strengthening of International Security.[11]

It was stressed that nothing in the definition should be interpreted as in any way affecting the scope of the provisions of the Charter. This expression followed different interpretations by different groups of States. For some Members (the permanent members), not to limit the existing power of the Security Council, while to others, not to extend that power to decide to exculpate those responsible for clear acts of aggression by granted power to pardon international crimes.[12]

In the following paragraph, manifesting the importance of the definition, aggression was deemed to be as the most serious and dangerous form of the illegal use of the force with catastrophic consequences. It was insisted on the need for a definition of aggression at that time .[13]

In succeed, it was reaffirmed as the duty of states, "not to use armed forces to deprive peoples ( external nations ) of their right to self-determination, freedom and independence or to disrupt territorial integrity of each another.[14] The last phrase of the paragraph comes into sharp focus, which article 7 deals with it, as may be one of the most obvious consequences of aggression be temporary or permanent occupation of land of one country by another one. In this paragraph, it was emphasised that, "the territory of a state shall not be violated by being the object, even temporary, of military occupation or of other measures of force taken by anther state in contravention of the Charter." and in priority, "it shall not be the object of acquisition by another state resulting from such measures or the threat thereof. With a slight difference, it was mentioned in the Friendly Relations Declaration on Principles of International Law.[15] The phrase, "in contravention of the Charter" was mentioned to exemplify the military occupation of West Berlin that was not in

10- G.A. Res. 2625(XXV) 24 Oct. 1970, para. 17(b) of preamble.annexed III.

11- G.A. Res. 2734(XXV), 16 Dec. 1970, principle 2.

12- Ibid. Res. 3314(XXIX), para. 4 of the preamble.

13- Ibid. para. 5 of the preamble.

14- Ibid. para. 6.

15- Ibid. Res. 2625(XXV), para. 11 of the principles.

contravention of the Charter while it might also be required under article 42 authorised by the Security Council or under article 51 in self-defence.[16]

To remind that the main purpose of the United Nations is the maintenance of international peace and that all attempts in international relations should be to identify to that purpose, the preambular paragraph 8 was inserted as a reinforce of the same principle. It reafirmed the Declaration on "Friendly Relations", as an essential instrument that should be highly considered in connection to aggression. To complement this interdependence, the final substantive article was confirmed.

The ninth preambular paragraph outlines usefulness of the definition. It was general agreement which caused deferring the work of the International Commission on the Draft Code of Offences against the Peace and Security of Mankind.[17] It expressed that, "the adoption of a definition of aggression ought to have the effect of deterring a potential aggression."[18] Other than the determination of acts of aggression, the content of the paragraph nine like paragraph four appears to state the obvious and redundant. As they were mentioned in the Charter of the United Nations. Then, the preambular paragraphs mostly reflect the attitude of states rather than what necessary for international law improvement. It reaffirms what international society had expected to achieve, "deterring a potential aggression ..... acts of aggression ..... to suppress them ..... and assistance to the victim."[19] At last, the terms, "the consideration of all circumstances of each particular case of aggression,"[20] is an example which reflects the attitudes of States well. The Western Countries opposed that the act of aggression includes "indirect" and "economic" ones.[21] Besides, they did not like their power and flexibility which existed in the Security Council be limited. At the same time, it was to give support to the view of many smaller States that, the exercise of the Security Council's discretion could not

16- B.B.Ferencz, D. I. Agg., Vol. II, p. 23.

17- Y.U.N., 1953, P. 681. and U.N. Res.s, series1, G.A, Vol. IV, 1952-3, p.148.

18- Ibid. Res. 3314(xxIX), para. 9 of the preamble.

19- Ibid.

20- Ibid. para. 10.

21- Ibid. J.Stone, indirect and economic aggression, pp. 87-106.

be completely arbitrary, and the definition would have to be serve as a guide. Some of the peculiarities appear were not the product of a careful and deliberate design with profound and subtle significance. The preamble was a product of compromise and should be considered in that light.[22] Therefore, in its entirely, the preamble was shaped in a way that mostly emphasised on certain basic principles which are connected with the definition of aggression and its legal effects. First, in the preamble, it was mentioned that the whole enterprise is based on the United Nations' Charter and its fundamental and basic purposes and principles which laid down in article 1 and 2 of the Charter.[23] This makes clear that the definition does not imply any amendment of the Charter provisions. In the second place, the provisions of the definition should be interpreted only within the meaning and scope of the Charter of the United Nations.[24] Giving weight to the purposes and principles of the United Nations which directly were connected to the consideration,[25] the whole work on the definition was grounded by the principle purpose of the United Nations that is, the maintenance of international peace and security by the prevention and removal of threats to the peace and the suppression of acts of aggression or other breaches of the peace.[26]To that end, the Member states were obliged to behave according to the well established principles of the United Nations by settling their international disputes by peaceful means and refrain from the threat or use of force in their international relations within the scope of the article 2(4) of the Charter.[27]

Two particular cases were insisted by the most of the delegates with regard to the definition. The first is, not to deprive peoples of their right to self-determination, freedom and independence by resorting to armed forces.[28] The another is, the non-violability of the territory of a state through military occupation, even temporary, or by other means of force

22- Ibid. Ferencz, Vol. II, p. 26.

23- Ibid. Res. 3314(XXIX), para. 1 of the preamble.

24- Ibid. para. 4 of the preamble.

25- Ibid. para.s 1, 3, 4, 5 of the preamble.

26- Ibid. para. 1.

27- Ibid. para. 4, and art. 1(1) of the U.N. charter.

28- Para. 6 of the preamble and art. 7 of the definition. More information in ibid, Rifaat, pp. 264-6..

in contravention of the Charter and that, the territory of the state should not be the object of acquisition by another state resulting from such measures.[29] It was clearly forward in the preamble that the authority of the Security Council in determining the aggressor under article 39 of the Charter was remained unimpaired.[30] That means that, under the present definition, the Security Council is still the only competent organ to have the authority to determine the aggressor in an international conflict, and make recommendations or decide upon the appropriate measures which should be taken in accordance with articles 41 and 42, to determine measures to restore international peace and security. In this regard, the definition does not limit the authority of the Security Council, but it will stand as a helpful and guiding instrument to the latter in its determination of the aggressor.[31] While the Permanent Members of the Security Council are satisfied from the result, the right of Veto will remain as a big obstacle to agree on issues, specially when the problem of restoring international peace and suppression of aggressor arises. Only in the case of Korea war in some extent, the Security Council could decide to help South Korea, and that was when the Soviet Union was absent and did not use the right of Veto in favour of North Korea. Otherwise it would remain doubtful that the Security Council can suppress an aggressor or help the victim of aggression effectively.[32]

In the substantive definition, it was expressed that, "aggression is the use of armed force by a state against the sovereignty, territorial integrity or political independence of another state, or in any other manner inconsistent with the Charter of the United Nations as set out in this definition."[33] The content of this provision was largely based on article 2(4) of the United Nations' Charter, except the word "threat" that was omitted. It means that aggression only exists when an actual armed force in a large scale is used by a state against

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29- Para. 7 of the preamble and art. 3(a) of the definition. More information in ibid, Dr. Momtaz, p. 128.

30- Ibid. par.s 2 and 4 of the preamble.

31- Ibid. para.s 9 and 10.

32- I.F. Stone, The hidden history of the Koria war, p. 293, and U.N. S.C. official records, 5th year, 1950, 1-36, June, p. 2.

33- Article 1 of the definition, annexedII.

another state. Although, it has been used to justify the hostilities between states, a mere statement, provocation, declaration of war or hostilities between insurgents and their own government would not be aggression,[34] even if a third state provides the arms and the training or support the insurgents. However, when state to state hostilities is considered as an essential element in aggression, the states promoting such hostilities , even though they act through the instrumentality of the rebels are known guilties.[35] The provisions also implies that, political, economic, cultural or ideological forms of pressure, eventhough may be intensified to endanger a regime not less than an armed attack, until they do not involve the use of armed force are not covered by its text then do not constitute aggression. Nevertheless, they are application of force, prohibited in the Charter of the U.N. and international law. Therefore, in this sense, the definition does not promote international law and might even weaken the other efforts to strengthen international peace and security.[36] Meanwhile, it should be considered that international conditions and the attitudes of states did not permit to proceed any further.

In the provisions of the definition, it was added that, the term "state" is used without prejudice the question of recognition or to whether a state is a member of the United Nations.[37] This statement would make the definition impliible and applicable to both Member states of the United Nations and to Non-member states as well. It does not make it clear that, how limited this non-recognition would be. Could it be implied in for a state which probably recognized by no state, and only has been claimed by (a) rebelion group(s)? Might it be applied to the states in which there are undemocratic regimes violate the Human Rights in violation of the principles of universal respect and the provisions of the Charter of the United Nations?[38] How can it be applied to the political entities as a state

34- Guardian, thuesday 3 Nov. 1988, p.5, Who initiated the Iran-Iraq war.

35- A.J.I.L., 78, 1984, PP. 550-765, and I.C.J., order case concerning military and paramilitary activities in and against Nicaragua.

36- The more promoted concept in Res.2625(XXV)ibid, and Draft Code of offences against the peace and security of Mankind.

37- Article 1 of the definition, explanatory note (a).

38- Article 1, 55, 56 of the U.N. charter. see also, the nature of the international obligations in the field of Human Rights, Antonio Cassese, unlaw fundamental rights, pp. 238-240.

in the legal sense, while the issue of recognition itself is somehow a complicated and controversy? It is a little difficult to give a decisive answer to these questions but it is certain that a state should at least find international personality which party is to be able to fulfill her international obligations through effective control in internal affairs.[39]

It was implied that the term "state" includes the concept of a group of states[40] that would be also controversial regarding the issue of self-defence, i.e. whether it is a real self-defence or an act of aggression.[41] Especially, when the inherent right of self-determination of peoples ground a license of the people concerned for use of armed force in struggling for this right, and of any third state to assist in this armed struggle against the target state concerned. Where a third state openly participates in such an armed struggle, it is discussed, on the other hand that, its action is armed struggle or otherwise that it was lawfully using armed force justifiable under "collective self-defence" with the struggling people.[42]

The most complicated and sensitive issue faced the drafters of the definition was the principle of priority and the aggressive intent.[43] According to the article 2, "the first use of armed force by a state in contravention of the Charter shall constitute prima facie evidence of an act of aggression." The disputes in progress, other than armed conflicts, like economic and indirect use of force between states enumerates a lot and makes is difficult to the United Nations and the Security Council to deal with them. It was added in the provisions that, "the Security Council may in conformity with the Charter, conclude that a determination that an act of aggression has been committed would not be justified in the light of other relevant circumstances, including the fact that, the acts concerned or their consequences are not of sufficient gravity."[44] The additional part of the provisions

39- Parliamentary control over foreign policy, A. Cassese, pp. 127-8.

40- Article 1 of the definition, explanatory note (b).

41- Involvement of the U.S.A in Granada.

42- Ibid. J.Stone, pp. 88-100, passim.

43- Comment of the Mexico delegation on article 2, A/9619, available in Ferencz, Vol. II, pp. 593-4.

44- Article 2 of the definition.

demonstrates the discretionary power of the Security Council. It was safeguarded to be flexible rather than rigid authority. In this regard , there remains the possibility that the Security Council may discharge the state which first used armed forces, but the decision should be reached in the light of other relevant circumstances disprovable to the prima facie evidence of aggression, that is the first use of armed force. If the acts committed by a state or the consequences are not sufficient gravity to be considered as aggression, the Security Council may not consider the state which first used force as an aggressor.

International conflicts usually have long term backgrounds that may be economical, political, ideological or minor accidents in frontiers progress in a level that the sides accuse each other of hostility and breach of international law.[45] When a conflict begins, there is no umpire with sufficient authority to oversee the acts of the states in conflict and determine the facts as prima facie especially when the battle has raged.[46] In such a case, it would be difficult to approve the prima facie and discretion bestowed to the Security Council through this provision of the definition brings the issue to a critical situation that makes it possible that the victim of the aggression be recognized as the aggressor and the real aggressor remain safe. specially that, the provision refers to the Charter, accordingly, the Security Council would examine the case and makes its final decision.[47]

It has been supposed that the Security Council carry out its responsibility in determining the aggressor and make the appropriate measures to suppress it,[48] to restore international peace and security. But it has not been always done and in some cases, the decision of the Security Council legally have been appropriate for the situation of keeping international peace rather than restoring it, i.e. it has been more like an advice rather than a legal decision.[49] It is clear that, in an international conflict both sides can not

45- The Times, Sept. 15 and 17, 1988, p. 6 and Guardian, Thuesday 3th Nov. 1988, p. 5.

46- When Battle rages, how can law protect?, Howed S. Levie, p.11.

47- Ibid. I.Agg., A.M.Rifaat, p. 268.

48- Articles 1 and 39 of the charter of the U.N.

49- Some examples are Resolutions 479(1980), 514(1981), 522(1982), 540(1983), 552(1984) of the Security Council.

be the victims of an aggression or both of them be considered as aggressors. The cut- rule of the *prima facie* of act of aggression was set force with regard to the other provisions,[50] to reduce considering the other relevant circumstances other than armed use of force. This norm was supposed to result to prevent states from justifying their use of armed force. Meanwhile, the issue of the nuclear warfare still remains unsolved. Waiting for the launching of a controlled projectile, may well result to lose the capacity of self-defence. In this case, whoever employs his weapon first, may have a pre-emptive advantage which can prove decisive. So, to rule out the anticipatory self-defence, here would require that the victim of a nuclear attack submit to the risk of destruction by a first strike.[51] Thus, if the intent of the aggressor be ignored and the priority principle breaks down in conventional cases of anticipatory self-defence, its application is even more dangerous in a nuclear age, when the victim of an attack can suffer unbearable casualties at the first strike.[52] Yet, in the case of nuclear warfare, arguments have been offered for the absolute exclusion of anticipatory self-defence under the Charter, in debate before the consensus definition came to existence. The consensual definition on the anticipatory self-defence issue, as on so many others, does not advance the search for clarity in the meaning of the aggression,[53] and it was the aim of the sponsors of the definition of aggression to insert the intent of states disconnecting to using of force.

In conclusion, it may be said that, the first use of force constitutes an important and essential piece of evidence, but it is not the sole element of such a determination. Then, it would conclusively establish aggression unless, as an anticipated case, more concrete evidence to the opposite was proved and it should be sufficient and convincing enough to negate the prima facie presumption of aggression.[54] However, article 2 as a two-edged sword, is interpreted as providing the Security Council with flexibility in order to determine the actual aggressor, or as a loop-hole in the definition, if provides the Security Council

50- Article 5(1) of the definition.

51- International law and contemporary naval operation, O.P. O'connell, p.44.

52- S.M. Schwebel, aggression, p. 467.

53- Ibid. conflict through consensus, J. Stoe, p. 50.

54- Ibid. Ferencz, pp. 30-3, 575-6.

with the ability to refrain from making any finding.[55]In the latter case, opposite to the purpose of the United Nations and the aim of the sponsors of the definition, it will reduce the legal and practical value of the definition.

In the definition, seven specific cases of the use of armed force were listed which any of them regardless of a declaration of war, should subject to and in accordance with the provisions of article 2 qualify as an act of aggression.[56]

The first of these acts is, "the invasion or attack by the armed forces of a state of the territory of another state, or any military occupation, however temporary, resulting from such invasion or attack or any annexation by the use of force of the territory of another state or part thereof."[57] In this paragraph, on the one hand, any invasion or attack by armed force of a state against the territory of another state is an act of aggression, either such an invasion may or may not result in the occupation of the territory of the state subject to military operation, these actions by themselves constitute aggression as soon as they take place. On the other hand, any military occupation, even temporary, or any annexation of the territory of one state or part of it by armed forces will be as acts of aggression. While, it is possible that the occupation takes place as a result of an act of conter-attack of legitimate defence. Yet, according to the provisions, even if the occupation of foreign territories would be a result of an act of legitimate defence, the defendant state by occupying the territory of the aggressor or part of it would become an aggressor herself. Accordingly, if the Security Council decides to determine the aggressor and take the appropriate measures to punish the so-called aggressor exceeding defence, it will encourage the aggressors to continue their aggressive actions from the beyond of the borthers, specially when the modern far-reaching weapons are used. The loop-hole would become wider when the former is in the charge of committing genocide or similar crimes which arises the international responsibility of humanitarian intervention.[58] In fact the international

55- The most recent example, the Iran-Iraq War, which the S.C. issued Resolutions 514, 522, 540, 550, 579, 582 and 588 insuffitient for the purpose of determining aggressor and deciding to restore international peace.

56- Article 3 of the definition of aggression. annexed II.

57- Article 3(a) of the definition.

community can not be indifferent for the violation of the Human Rights in the large extent.[59] The other possibility is that the people belonging to the occupied territories according to the principle of self-determination agree and accept freely and by their own will such a new status and the operation be justified under collective self-defence with the inhabitants of the occupied territories. Regarding to the definition of aggression, continuous aggression, the occupation would ceased to exist only by the withdrawal of the military forces of the aggressor or the defendant from the occupied territories. disregard to the attitude of the people of the occupied territories or the operation proceeded to punish the aggressor.[60]

The second action which was deemed as an act of aggression, was the "bombardment by the armed forces of a state of the territory of another state or the use of any weapons by a state against the territory of another state."[61]The first phrase of the paragraph to be recognized as a prima facie of an act of aggression is mostly clear to distinguish as the result of the act of bombardment will be effective enough to be considered as a hostile treatment by a state against another state. But the second phrase of the paragraph only when it is the subject of the mass destructive weapons, can as well be distinguished as prima facie evidence of an act of aggression. Otherwise, many problems as mostly mentioned above will arise, for the use of the conventional weapons, makes it difficult for the United Nations' responsible organ to decide on the prima facie.

The third act of aggression, "the blockade of the ports or coasts of a state by the armed forces of another state", was considered as an act of aggression.[62] The subject of blockade was not debated in the Special committee, while the meaning of the blockade is certainly contentious.[63] Acts similar to blockade, as the United State mining of Haiphong

58- Humanitarian intervention and the United Nations, p. 149.

59- International reaction to the mass killing of the people ih Halabcheh by chemical weapons in Iraq, resulted the Paris conference on the ban of the chemical weapons

60- Ibid. A.M. Rifaat, p.271, see also comments on article 3(a), in Ferencz, Vol. II, pp. 33-4.

61- Article 3(b) of the definition.

62- Article 3(c) of the definition.

Harbor, the U.S quarantine of Cuba during the Soviet Missile crisis and the closing of various access water ways to Israel, disregard of whether it is legal, are some of the instances of contentions.[64]

There were also 30 land-locked countries in the United Nations which were without ports or coasts and cutting off their access to the sea might be just as determinental to a land-locked state as a blockade of the ports of a coastal state. None of the land-locked countries had been directly represented on the Special Committee to define aggression. So, listing the one action and failing to list the other has been seen as an unjustified discrimination, violating the sovereign equality of states. Meanwhile, insertion of the issue of the blockade of the routes of free access to and from the sea of land-locked countries as an act of aggression would make it as violation of the sovereign of the surrounding countries as well.[65] So, this encroachment prevented to grant this right to the Land-locked countries. Consequently, on November 21, 1974 prior to the approval of the draft definition, the Sixth Committee decided to include in its report to the General Assembly a statement to the effect that, "nothing in the definition of aggression and in particular article 3(c) shall be construed as a justification for a state to block, contrary to international law, the routes of free access of a land-locked country to and from the sea."[66]

In subparagraph (d) of the article 3, the "attack by the armed forces of a state on the land, sea, or air forces or marine and air fleets of another state", was considered as an act of aggression. As many states were concerned, the expression, "marine and air fleets" could give rise to unnecessary disputes in the future and prevent legitimate exercise of national sovereignty of a country to protect the resources and shield the marine environment of a broad zone off its coasts or detain and impose penalties, recognized in the law of the sea, upon any foreign vessel or aircraft engaged in unlawful activities within her territorial waters or airspace. Under the provisions of article 3(d), such unlawful measures might be

63- Ibid. Ferencz, p. 35.

64- Ibid. Ferencz, II, p. 66.

65- Ibid. Ferencz, pp. 35, 67.

66- Y.U.N, 1974, VOL. 28, P. 843, on the question of defining aggression.

characterized as an attack, since no distinction was made between measures carried out on the high seas, in the territorial sea, or even in the internal waters of a coastal state.[67] As a result, a coastal state might be condemned as an aggressor for applying the law in an area under its national jurisdiction. Therefore, to avoid any controversy in future in regard to the applying this concept, the Sixth Committee decided to include only as a report to the General Assembly a statement preserving that, "nothing in the definition of aggression and particular article 3(d) shall be construed as in any way prejudicing the authority of a state to exercise its right within its national jurisdiction, provided such exercise is not inconsistent with the Charter of the United Nations."[68]

The fifth act as aggression, dealt with the military bases on a foreign territory. It was stated that, "the use of armed forces of one state which are within the territory of another state with agreement of the receiving state, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement", is an act of aggression.[69] The first consequence of this action is violating the sovereignty of the host state and can be considered as a reflection of article 2(1,4) of the Charter for the states which are considered with such treaties. In such a case, even though the offense might have resulted in no harm done to either person or property, but it would violate the sovereign right of the state, under the strict wording of the article. Therefore, as a violation, it would be included among the limited list of aggressive acts.[70]

In subparagraph (f), "the action of a state in allowing its territory, which it has placed at the disposal of another state, to be used by that other state for perpetrating an act of aggression against a third state" was considered to constitute an act of aggression. According to this provision, assistance of the aggressor by allowing it territorial facilities or advantages is evaluated as committing an act of aggression, even if, that state has not

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67- Ibid. p. 844.

68- Report of the Special Committee, A/9890, 1974, 29th session agenda item 86, pp. 1-3. the text is available in Ferencz, II, pp. 599-601 and ibid. Y.U.N.

69- Article 3(e) of the definitionAnnexed II.

70- Ibid. Ferencz, pp. 37-8.

participated in the actual aggression by the use of armed force.[71] To imply this provision, disregard of the right of Veto uses by the which Permanent Members of the Security Council, it is not always approvable[72], and the countries which would suffer from the acts in question in the subparagraph, may even be limited to defend themselves against such treats. In the position of self-defence, if these countries use force, it is possible, be condemned as aggressor.[73]

Another example of indirect aggression, listed in the definition of aggression was "the sending by or on behalf of a state of armed bands, groups, irregulars or mercenaries which carry out acts of armed force against another state of such gravity as to amount to the acts listed above, or its substantial involvement there in."[74]According to the provisions of this paragraph, the preparatory stages which preceded the carrying of these acts do not amount in themselves to an act of aggression until an actual use of armed force against another state has been attributed to these bands. Both the "Friendly Relations" Declaration and the Declaration on Strengthening of International Security dealt with the question of support for armed bands.[75] By the terms of those instruments, states have been denied to organise or encourage the organization of irregular forces and assist or participate in acts of civil strife or terrorist acts in another state or be involved in a threat or use of force. But, in connection to the contents of the paragraph , makes it difficult to compromise between the provisions of article 1 and 7 of the definition.[76] On the other hand, the nature of the permissible response to various forms of coercion which do not involve the direct use of armed force, will continue to present difficulties to failure observing principle of proportionality as an indicator of aggression, which might lead to the consideration of a

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71- Bombing of Libia by the U.S.A, using British bases, the Guardian, friday, Jan. 27, 1989, p. 1.

72- Doc. S/16585, the letter dated 25 May 1984 from the representative of Iran to the Secretary General, Security Council official records, 36th year, suppliment for April May and June 1984, p. 101.

73- Resolution 552 of the Security Council, (1984), para. 6,7,11.

74- Article 3(g) of the definition of aggression, Annexed II.

75- Article 7 of the definition, Annexed II.

76- Legal order in a violent world....., R.A.Falk, pp. 113-4.

minor incident as act of aggression.[77] The other question is the degree of gravity of these acts mentioned in the provisions, may vary from state to state and it gives the discresion to the Security Council to make different decisions in similar cases. Then, the consequences could be contrary to the purpose of the sponsors of the definition and result more ambiguity in international law.

The possibility of enumerating other acts constituting aggression determined by the Security Council, under the provisions of the Charter was the subject of another article of the definition of aggression.[78] It was interpreted that the provision would be flexible enough to make it possible for the Security Council to extent the list of acts of aggression to include other forms of aggression, not involving the use of force.[79] However, regarding to the article 1 and 3 of the definition, it is doubted that the Security Council may according to article 4 determine acts as aggressive which do not involve the use of force, specially as far as the Permanent Members of the Security Council are concerned, they would never condemn themselves, if the decision on aggression is not shared by all States. Besides, addition to article 4, there would be a provision establishing an international penal tribunal having the power attributed to the Security Council on the matter.[80] The determination of what constitutes aggression is not likely to remain indefinitely within the completely unlimited discretion of a political body in which absolute Veto power may be exercised by those who become of their power, may be the most tempted to become offenders. But the Council must be guided by the existing declarations of international law and the agreed standards of international conduct. The definition of aggression, despite its many ambiguities, provided some guide to the permissible limits of the use of armed force, and further guidelines to help differentiate between lawful and unlawful use of force, as well as an indication of some of the consequences which an act of aggression might entail were to be dealt with in the subsequent articles of the definition.[81]The unfettered discretion of the

77- Ibid. article 7.

78- Article 4 of the definition,Annex II.

79- Y.U.N. (1974), p. 845.

80- Ibid. Ferencz, p. 41.

81- Ibid. Ferencz, p. 42.

Security Council to determine what constitutes aggression became increasingly illicit by presenting a safeguard against it by observing the inadmissibility of any justification to use of armed force. So, it was stated that, "no-condition of whatever, whether political, economic, military or otherwise, may serve as a justification for aggression".[82] Accordingly, it is inadmissible for the state which first used force to justify its act by any internal or external non military policy of the victim state.[83] However, the second explanatory note from the report of the Special Committee on the question of the defining aggression, reminded the principle contained in the declaration on principles of international law concerning Friendly Relations and Co-operation among States which renounced the right to intervene, directly or indirectly in the internal or external affairs of any other state.[84] This compromise was to exclude motive as a justification for the use of armed force.

Unrelatively, the next paragraph of the article 5, deals with certain legal consequences of aggression, following the principles of the Nuremberg Trials, expressed that, "a war of aggression is a crime against international peace. Aggression gives rise to international responsibility." The first phrase of the provisions deals with "a war of aggression" while, in the second phrase only aggression was mentioned. The International Military Tribunal had condemned aggressive war and recognized that, such crimes should be punished.[85] It was also stated in the "Friendly Relations" Declaration that, "A war of aggressive is a crime against the peace for which there is responsibility under international law."[86] In the case of the definition of aggression the fact is that, a reference merely to aggression without restricting it to "aggressive war" was objectable.[87] Therefore the only

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82- Article 5(1) of the definition.

83- Ibid. Guardian, p. 5, who initiated the Iran-Iraq War, main paragraphs 1-19.

84- The explanatory notes on the definition of aggression, available in ibid, Rifaat, appendix II, p.326.

85- Enforcement international law, Ferencz, Vol.II, P. 439.

86- Ibid. Declaration on "Friedly Relations", principle 3, Res. 2625(xxv), Appendix III.

87- Ibid. A/9619, P. 32.

responsibility which would remain for the aggressor was compensation. Besides, the question of the process in which an aggression would change to a war of aggression remains to be determined. However, it was supposed that a war of aggression is an act of aggression in its utmost gravity and is a crime against peace that gives rise to international criminal responsibility. Meanwhile, an act of aggression might not be defined as a crime. But it gives only to international responsibility. In this case, it would be an attempt to turn back the clock and reverse the trend of the International Military Tribunal and the thinking of the sponsors of the definition. The trials based on Control Council No. 10, before had held that the invasion of Austria and Czechoslovakia, even though occurred without resistance and therefore was no war, were considered as acts of aggression for which there was personal criminal liability.[88] In article 1 of the Draft Code of Offences against the Peace and Security of Mankind, it had proscribed that for such crimes under international law "the responsible individuals shall be punishable."[89]

The significance of the point is clear, observing that, states always resort to aggressive measures, without admitting the existence of a state of war, the Security Council is responsible to determine whether or not the act in question amounted to a war of aggression.[90] However, this diversity was justified by the explanatory note regarding to this provision, stated that, "the words international responsibility are used without prejudice to the scope of this term."[91]

The last part of the article stated that, "no territory occupation or special advantage resulting from aggression, are or shall be recognized as lawful." The concept was used before by the Security Council in Middle East crisis, emphasizing on the inadmissibility of the acquisition of territory by war,[92]demanded that, withdrawal of Israel forces was to be total and not a subject of negotiation. It was considered as a preliminary condition for

88- I.M.T. the minister case, judgement, p. 2, available in ibid Ferencz, p. 499.

89- Ibid.

90- Ibid. Rifaat, pp. 43, 276.

91- Ibid. A/9619, P. 9.

92- Security Council Res. 242, Nov. 22, 1967, 62, A.J.I.L., (1968), p. 482, para. 2.

negotiation.[93] Disregard of the real motives, the occupation was apparently, in the sense of self-defence by Israel through the operation which Arab countries waged against as an illegal state. The provision declared the relevant principles of the Declaration on Friendly Relations and affirmed the principle laid down in paragraph 7 of the preamble and article 3(a) of the Definition which seams redundant and reflected again the overwhelming concern for territory and national borders.[94]

The inviolability of the Charter and the lawfulness of the use of force in self-defence was also reaffirmed in the Definition. It was stated that, "nothing in this definition shall be construed as in any way enlarging or diminishing the scope of the Charter, including its provisions concerning cases in which the use of force is lawful",[95] that means the Charter of the United Nations was the only legal basis of the Definition. The provision did not create rights or duties, but it was a reaffirmation of certain rules and principles of international law which are not specially dealt with in the Definition. It was indirectly pointed to articles 51 and 53 of the Charter concerning the self-defence and the legitimate use of force by the responsible organs of the United Nations, without referring to the question of the proportionality which is controversial. Specially when the Security Council fails to meet the standards to defend a victim of aggression.[96]

Article 7 demonstrates the right of self-determination and declares that, "nothing in this definition and particular article 3 could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of people forcibly deprived of that right and referred to in the Declaration on Principles of international law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist regimes or other forms of alien domination, nor the right of those peoples to struggle to that end to seek and receive support, in accordance with the principles of the Charter and in conformity with the above mentioned declaration. At the beginning, the right of self-determination was

93- Ibid. para. 3(1).

94- More comments in Ferencz, Vol. II, p. 45 and in Rifaat, p. 276.

95- Article 6 of the Definition.

96- Self-defence in international law, D.W.Bowett, (1958), 269.

not the aim of the United Nations, but it was considered as a means to further the development of friendly relations among States and to strengthen universal peace.[97] The Declaration of the United Nations in 1949 on the right of self-determination, the 1966 Convention on Human Rights and Helsinki Declaration helped to normative development of the Charter.[98] Despite that, the Western Powers considered the problem of self-determination to be outside the ambit of a definition of aggression.[99] It was possible that, those who exercise a right of self-determination, and those who come to help them would be accused of aggression. So, it was very difficult to be properly exposed even using the "forcibly deprived" term in the provision.[100] Nevertheless, regarding the recent trend of the United Nations instruments, under the article 7, armed strrugle of such people and the action of a state to help those people and providing them with any kind of support was considered legal.[101]

In the formulation of the article 7, there is enough ambiguity to justify an assertion that any force may legitimately be applied to overthrow a regime. However, what remained unclear was the meaning of the "peoples", "colonial" and "racist regimes" or "Alien domination" which were left delebrately vague. Giving support regarding article 3(g) which sought to restrict support for armed bands and the explanatory note 1 of the article 1 of the Definition, is equally ambiguous. So, there leaves at least, two questions to be answered. The first is that, what means could lawfully be employed, and what kind of aid could be received? The other is that, against whom might such aid and means be used? However, despite these ambiguities which appear in the terms of the provisions, it was sought to contain the use of violence by referring to the Charter and the "Friendly Relations" Declaration.[102]

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97- Article 1(2) and 55 of the Charter of the U.N.

98- Unlaw/fundamental rights, Cassese A., pp. 138-146.

99- Ibid. A/9619, P. 22.

100- Ibid. p. 32.

101- Res.s 3070(XXVII), 3103(XXVIII), are samples reafirming the legitimacy of self-determination through armed struggle.

102- See more comments on article 7 in ibid Ferencz, II, pp. 47-9 and Rifaat, pp. 276-7.

The last article of the Definition expressed the interrelationship of all provisions in their interpretation and application. The text of article 8 was derived from the Friendly Relations Declaration.[103] All that can be said regarding article 8, is that, it reaffirmed all of the above mentioned contradictions which somehow exists in the provisions of the Definition, and their ambiguity. It also confirmed the general purposes of the Sponsors of the Definition to reduce international conflicts to strengthen international peace and security. Specially that, the Definition should be construed with the relevant articles of the United Nations Charter and the "Friendly Relations" Declarations.[104]

## SECTION TWO

### The Significance of the Resolutions of the General Assembly including Resolution 3314(XXIX)

Within the overall question of what is the legal standing of the resolutions of the General Assembly, a number of other issues can be identified. Some of them are as follow:

1- Precision of terms, as some of them were discussed in brief in the case of the definition of aggression.[105]

2- Constitutional power of the General Assembly to bind Members and Non-members.

3- Constitutional power of the General Assembly to bind the Security Council.

4- Reimportation of the uncertainties of the Charter, even if the constituent of the Definition are sufficiently precise.[106]

However, the most important general question on the Resolutions of the General Assembly, specially, on the Resolution on the definition of aggression which we are considering in this study, is the legal effect or the nature and function of them in

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103- Resolution 2625(XXV) of the G.A., general part, (2), para. 1 and ibid. U.N.Res.s, p. 340.

104- The contradictions would arise in relation to articles 1, 2, 4, 6, 7 of the Definition.

105- Suppra,pp.

106- Conflict through consensus, J.Stone, pp. 25-6.

international community. In connection with the Resolution 3314(xxix), the joining clause of the Resolution expresses that, ".....adopts the following definition of aggression." and not "declares that", which would have given greater strength to the Definition by implying that it was declaratory of existing law.[107] The declarations often precede the adoption of a convention and are the first step toward that end, or as a vehicle for the reformation and adoptation of traditional principles of international law, or the development of new international law. Therefore, the reasoning regards them as a vehicle for making the Charter more answerable to modern conditions through interpretation.[108] This view is articulated in a memorandum of the Secretary General to the Commission on Human Rights on the use of the term, "declaration" and "recommendation" stated that, "in the U.N practice a declaration is a formal and solemn instrument suitable for rare occasions when principles of great and tasting importance are being enunciated, such as the Declaration on Human Rights. A recommendation is less formal ..... However, in view of the greater solemnity and significance of a declaration, it may be considered to import, on the behalf of the organ adopting it, a strong expectation that members of the international community will abide by it. Consequently, in so far as the expectation is gradually justified by state practice, a declaration may be custom become recognized as laying down rules binding upon States."[109] It can be generalized about the value of all the declarations of the General Assembly. A declaration maybe,a recommendation in whole or in part, an interpretation of the Charter, evidence of customary law, or an informal agreement. Although the Assembly is not empowered to legislate, but there are certain circumstances when its decisions are authoritative. moreover, the Assembly is composed of states which are responsible for the creation of international law.The Assembly may act as a forum for agreement on legal principles in the shape of declarations.[110]

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107- Ibid. Ferencz, II, p. 26.

108- The legal significance of the declarations of the G.A. of the U.N., O.Y. Asamoah, pp. 23-4.

109- U.N. G.A., official records, 17th session, 6th committee, 117(A/C,6/SR,757<1962>)

110- Article 59 of the Charter.

On the recommendation Resolutions of the General Assembly, whether or not, they are binding, there are different reasoning, by which, one side, reflecting the third world countries attitude emphasised that, under the Charter of the U.N, the General Assembly totally lacks legislative powers.[111] According to this idea, the General Assembly does have only certain internal and financial powers whose exercise creates legal obligations and includes the election of the Secretary General and the Members of the Security Council.But it is plain that, not a phrase of the Charter of the U.N suggests that the General Assembly is empowered to enact or alter international law. It has the authority to adopt recommendations which may embrace legal as well as other matters.[112] So, States are legally free to adopt the recommendations or disclaim, and the General Assembly has no legal power to legislate or bind its Members by way of recommendations.[113]

Among the sponsors of the Charter of the United Nations, generally, there was not the attitude to permit the General Assembly to enact rules of international law, that would become binding for the Members of the Organization, once they had been approved by a majority vote in the Security Council. Only one state voted in favour of such permission to give legislative power to the General Assembly.[114]

The reasons which prove that the General Assembly's resolutions do not effect the content of customary international law is that, the Member States often vote for much with which they actually do not agree. Their consensus may be not precise specially on the details or even in some cases, they may even be opposite to the content of a resolution or abstain from voting.[115] They may vote in response to more political than legal

111- Definition of aggression, document 8, legal and moral value of a G.A Res., D. Agg., pp. 225 and international ;law in a divided world, Antonio cassese, 1986, p. 198.

112- The problem of sovereignty in the Charter of the U.N, Djura Nincie, p. 108.

113- South West Africa voting procedure, achieving opinion of June 7, 1955, I.C.J.reports, separate opinion of Judge Sir Hersch Lautherpatch pp. 90, 116.

114- R.A. Falk, the status of law in international society, pp. 174-5 and Doc. of the U.N conference on international organisation Vol. 9, Doc. 316(1945), pp. 76, 316.

115- Suppra, debates in the Special Committees on the definition of aggression.

consideration, and surrender to the political atmosphere dominated the General Assembly. In the case of block voting they may submit to the group dictates rather than as an expression of what their government believes that law requires.[116] Accordingly, the General Assembly of the United Nations is a forum in which states can express their views, but their practice is more important than what they say. Specially their view points in the General Assembly, and the huge number of the resolutions accepted by the General Assembly are evidences that Members often do not meaningfully support what a Resolution says to legislate and bind them. Therefore, the General Assembly Resolutions easily achieve the required majority or general consensus.[117] The official position and emphasise of some States including some of the Permanent Members of the Security Council shows that, Resolutions of the General Assembly which treat questions of customary international law, are no more than recommendatory and has been also taken as the evidences that the General Assembly resolutions are not legally binding.[118]

On the other hand, there is the idea that, the United Nations Charter does not authorised the General Assembly to enact or alter international law. Yet, some of the Resolutions are declaratory of international law. For, they are adopted and supported by all of the Members of the United Nations. when they are also observed by the practice of states, it shows that such Resolutions are evidence of customary international law on a particular subject matter.[119] The Resolutions which are adopted and supported by all of the Members (and not by a very large majority or the major groups) are considered to be law-making. Such Resolutions must be also observed in state practice in such amount to be recognized as evidence of customary international law. In practice, some of the Resolutions of the General Assembly including some of them which do not interpret the Charter principles, have effects in and on international law(such as the Nuremberg Principles and outer space Resolutions). This practice justifies the General Assembly power. For

116- The legal effect of the resolutions and codes of conduct of the U.N, M. Schwebels, 7 October 1985, pp. 3-4.

117- The legal effect of the G.A.U.N, S.M. Schwebel, 1979, pp. 301-2.

118- Digest of the U.S practice in international law, (1975), p. 859.

119- Ibid.

example, the International Court of Justice itself has given a certain legal weight to a few Resolutions of the General Assembly in the development of the law of the U.N Charter regarding non-self governing territories.[120] In the very least, the General Assembly Resolutions may authoritatively find what the law is, therefore such Resolutions, as declaration of international law, can have an important effect in crystallizing international rules then, even progressively developing international law.[121]

Generally, in the case of the elaboration of normative Resolutions, the General Assembly has no competence to enact general international law. Nevertheless, States may declare, develop and make law through the Resolutions of General Assembly. At least, Resolutions may reveal and express contemporary tendencies of development of general international law. An agreement expressed by consensus can constitute a stage in the elaboration of a new law. Meanwhile, the normal majority voting of the General Assembly is insufficient.Especially if, there is a valuable number and nature of abstentions and reservations which will detract from the rules so approved, at face value to be a law-stating or law-creating intention. Except that, they display no geopolitical gaps and include the main legal systems. When the Resolutions do not limit the freedom of opposing and abstaining of the Members, States may make such reservations to a Resolution as they wish.[122]

In respect of Resolutions constituting evidence of law, eventhough, the political manner in the General Assembly does not allow for the proper assessment of the state of law, nevertheless, intergovernmental negotiations in the General Assembly can lead to the adoption of Resolutions which constitute evidence of customary international law or its ingredients, (custom creating practice and/or opinio juris). Therefore, where the Assembly affirms rules applied in state practice or judicial decisions, such affirmation by unanimous or nearly so, becomes evidence of universal acceptance of the rules as law. On the other

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120- International Court of Justice, advisory opinion on W. Sahara and S.W. Africa, 1971 and 1975, pp. 68-9.

121- Ibid. S.M. Schwebel, pp. 4-5.

122- The elaboration of general multilateral conventions and of non contractual instruments having a normative function or objection, K. Skubiszewski, A.I.D.I, Vol.61-1, pp. 229-241.

hand, contrary practice of States cancel the evidentiary effect of a Resolution as an exact statement of law. Specially when the Resolution is approved by consensus which creates weaker evidence than unanimity.[123]

A Resolution adopted through a majority vote will be a law-declaring evidence and produces its effect only for those who voted in favor. However, a representative majority may give a Resolution, a status similar to be adopted by unanimity.[124] Therefore, Resolutions may become a means for deducing rules from international law, to articulate such rules and clarify their contents. States which approved the Resolution are barred from challenging the lawfulness of the conduct confirming to it.[125] As an example, in arbitration between Libyan-American oil company V. Government of the Libyan Arab Republic (1977), awarded by Dr. Mahmassani, it was referred to the relevant passage of texts of certain General Assembly Resolutions. It was argued that, the claimant observed that, Resolution 1803 provides for respect for foreign investment agreements and that, this provision was in contemplation of the parties when they entered into the contract at issue in the case. Therefore, the said Resolution and the similar ones, if not be considered as a unanimous sourse of law, are evidence of the recent dominant trend of international opinion.[126] In particular, some of the Rsolutions, inherented great difficulties and to obtain a consensus for a complicated agreement was often under a lot of pressure.[127]

In sum, although the Charter of the United Nations is inconsistent to accord the General Assembly an authority to affect international law through enacting or altering it, nevertheless, certain Resolutions of the General Assembly has crystallized as expressions of the assembled states of the world community,[128] rather than as acts within the constitutional or acquired authority of a quasi-legislative body. Such Resolutions do not treat questions of international law which are not the subject of principles of the United

123- Ibid. pp. 229-241.

124- Ibid. S.M.Schwebel, p.7.

125- Digest of U.S.A practice in international law, 1975, p. 85.

126- International law reports, Vol. 62, pp. 140-149.

Ä V |‹ N » 127- Conflict through consensus, J.Stone, pp. 25-6.

128- Res. 2625 is the best example.

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Nations. So, may be recognized to be declaratory of international law.[129] However, if a Resolution of the General Assembly adopted by more than a two thirds majority which regards the Resolution as re-stating international law is not supported by all Groups in the General Assembly, it can not by definition, be declaratory of international law. To be declaratory, it is to be reflective of the perceptions and practice of the international community as a whole. As, "if the mirror is broken, its reflection can not be unbroken."[130] So, general consent of States creates rules of general application and it can be considered as a statement of principles of international law.[131] It is not always necessary to refer to customs to declare a legal binding rules in international law. As Robert H. Jackson stated, it may be originated from a single act and become sources of a new law to strengthen international law.[132] In this case, it is initially matterial source rather than formal source and illustrats the attitudes of states toward particular rules. Meanwhile there is no obvious distinction made between them and they can be more applicable than treaties in international community.[133] Although the rules of international law relating to aggression has been frequently violated since the Norms have been set up[134], but it is difficult to say that, principles established in Resolution 3314(XXIX) of the United Nations has not become part of international law. It has received a widespread support from States including "Group of 77" and all of the major legal systems have accepted it in a modified versions.[135] Eventhough, it can not be identified in positive actions of states, however, their position of denying the legality of aggression, has brought it into harmony with legal conscience of human beings and fully established it as illegal.[136]

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129- Ibid. the legal effect ..... S.M.Schwebel, pp.11-12.

130- Ibid. p. 12.

131- principles of international law, Brownlie, p. 2.

132- International law and use of force..... Brownlie, p. 162.

133- Ibid. principles, p. 3.

134- Cyprus conflicts, Iran-Iraq war, U.S.A involved in Granada, Falklands conflicts are as samples.

135- It was in the sense on intervention and the use of force and aggression is identified as the most critical aspect of them, Decay of international law, Dr. A. Carty, p. 8.

## CONCLUSION

Since many years B.C, international aggression has been renounced by philosophers and writers. In Medieval Times, different doctrines were presented and has been developed up to present time. In all of the Schools, a border line had been drawn between defensive and offensive wars. The former has been varied in justification of purposes, but its aim must have been the establishment of peace. The latter is the aggressive war which is waged for personal or national glory, political interests, national policy or territorial claiming and is prohibited. Up to the end of the last century and beginning of the present century, the concept of aggression was divided into "just" and "unjust" wars. It was dependent on the agreements, relations and interests of the nations which were involved in those wars. The bilateral or multilateral conventions and agreements were mostly on mutual assistance or neutrality and in the absence of an international organization to enforce the law, war was a means of self-help for giving effect to claims alleged to be based on international law.

A study of the history of international law illustrates the progressive idea that sovereign states are not free to resort to war as an instrument of national policy in their international relations in which, developed the application of legal rules of restraint on the right of sovereign states to wage war, a new political order was established and constitutions and public opinion was created. It also shows that, legislative institutions led to the varied coercive measures different than war in the formal sense, and the concept of aggression developed.

By the end of the nineteenth century and the beginning of the twentyth century, efforts were made to limit the traditional use of force which was still considered as an instrument of law, but did not declare the resort to war as an unlawful procedure nor renounced it in general.

During the period 1800-1914, aggression as an legal concept was increasingly

136- Ibid. Brownlie, p. 402.

employed in conjunction with the term "war" and in the course of the First World War, the term "unprovoked aggression" became familiar. By the end of the War, Germany and its allies were recognized responsible of their aggression. But the responsibility of states was limited to the duty to make reparation for illegally caused damages, and the criminal responsibility of the authors of aggressive war lacked any legal grounds. Up to the creation of the League of Nations which was a part of the Versailles Treaty, the concept of states' responsibility for aggressive policy and the duty to make reparation entered in international law. So, the world entered into a transitional period. It was for the first time that international organizations played a dominating role in world affairs and war became a matter of international concern which affected the whole community. The provisions of the Covenant of the League dealt with the unqualified concept of aggression and was subordinated to the matter of pacific settlement of disputes. In fact, the provisions only operated in commition with "wars" which were prohibited under the provisions of the League. Therefore, the sanctions provided in the Covenant, was not conditional on aggression, but on a covenant breaking state so, became ineffective.

From the legal point of view, the changes under the Covenant in the pre-existing law of war was insufficient. War was not completely prohibited and the right of States to wage war as a last resort to settle a dispute still existed. However, it was satisfactory in creating a presumption against the legality of war as a means of self-help and in making any war between states a matter of a concern to the whole community. The dominion of the legal restrictions of resort to force and giving more specific meaning and legal content to the concept of aggression increased by the Draft Treaty of Mutual Assistance of 1933, The Draft Protocol of 1924 and the Locarno Treaties of 1925. Another important improvement in international law was the conclusion of the Kellogg-Briand Pact, which completely renounced and outlawed all wars. Although regarding to the scope of defensive actions, it had permitted to use force without determining the limits of the realm of the use of force. However, it served the development of the concept of aggression and its definition in international law. After 1928, the concept of aggression was greatly discussed in different

Conferences and Pacts. The Doctrine of non-recognition of the fruits of aggression was of the identical ones and illegality of the use of force was the result of these discussions and agreements. It was in 1933 when the Soviet Union proposed a draft declaration on the definition of aggression. In the same year, a similar draft was prepared in the Disarmament Conference and the convention for the definition of aggression was signed in London.

In the period 1933-1939 serious events of armed aggression took place on the international scene. The most important of which were the Japan-China conflict in Manchoria,the Italo-Ethiopian and the Soviet-Finish conflicts, which led to the gradual weakening of the League of Nations so that, by the outbreak of the Second World War in 1939, the League collapsed.

The major legal developments during 1920-1939 can be counted as: prohibition and outlawry of war as a means of obtaining legal rights. Aggression was recognized as the most dangerous form of the use of force in all cases other than self-defence. Collective measures authorised by the League against a covenant-breaking state, contrary to the provisions of the League. The Doctrine was set up to not recognize the territory gains by aggression. It was dependent upon the understanding and interpretation of the States individually to take effective measures, so could be abused. Nevertheless, the incompetence of the League of Nations in performing its functions which resulted in the Second World War opened the way to substantial changes in the legal doctrine and structure of Power. From the legal point of view, the I.M.T Charters and Tribunals were the most prominent of all legal developments concerning the responsibility of the authors of aggressive wars, and it became a "crime against peace." It deserved punishment for the aggressors, and individual criminality was established. The Authors of the Second World War were tried for waging aggressive war, while a definition of aggression was not in hand. The essence of these achievements was reflected in article 39 by which, the authority was given to the Security Council to determine the existence of any threat to the peace, breach of the peace or act of aggression.

In the actual practice of the United Nations, especially in matters concerning the

peace and security of the world and the determination of aggression in international conflicts, the question of defining aggression became essential for the work of the organization. Prevailing political atmosphere among the Big Powers and the right of Veto made definition of aggression central to enable the Security Council to fulfil its task.

Efforts to develop a more precise definition of aggression stated by the United Nations through the Special Committees. From the legal prospective, the debates on the meaning and form of aggression in the Special Committees were different and held a wider sense. Irrespective of opposition by some States, most of the States argued the fact that, there were imperfections in the Charter of the United Nations. So it made it necessary to give a more precise and clear definition of aggression. This would help the Security Council to fulfil its task to determine the aggressor in a particular case. Four Special Committees on the question of defining aggression was established by the General Assembly. In the First Committee, the debate was mainly concerned with the questions of whether the definition was possible or desirable. What acts should be inserted in the definition and whether it should include only direct armed aggression or should also include indirect aggression. The scope of permissible use of force and the legal consequences of aggression namely, the questions of non-recognition of territorial gains and of international responsibility, either of states or individuals were discussed. This work took more than two decades, since 1952 , when aggression was defined by the General Assembly through Resolution 3314(XXIX) of December 14, 1974. The development in the legal regime, regarding the restriction of the use of force by states since the establishment of the United Nations is considerable. The threat or use of force by states except in regard to action in individual or collective self-defence, became illegal and outlawed whether it is directed at the territorial integrity or political independence of any state, or any other manner inconsistance with the provisions of the Charter of the United Nations. The right of self-defence became limited to cases where an armed attack occurred against a Member of the United Nations. It has become a pre-condition to the action of self-defence. Therefore, anticipatory self-defence is prohibited, although in the era of the strategic weapons, it is controversial. But it could not be justified as a legitimate defence.

The Security Council in such cases has the authority and responsibility to make its findings and to decide upon the measures necessary to maintain or restore international peace and security. In the case of self-defence, measures must be proportion only to repel the danger.

In sum, aggression as defined in the Resolution 3314(XXIX) of the General Assembly, is the use of force by a state against the sovereignty, territorial integrity or political independence of another state or in any other manner inconsistance with the Charter of the United Nations. Therefore, only provocation or declaration of war and political, economic, cultural and ideological forms of pressure do not constitute aggression. However, the Security Council may, if convinced that other relevant circumstances exist, in conformity with the Charter of the United Nations adopt other conclusions. If the aggression results in military occupation of territories of another state, it will constitute twofold aggression and If aggression contemplates the annexation of all or part of the occupied territory, constitutes an act of continuous and permanent aggression. Disregard of the use of force as *prima facie* evidence of aggression, assisting the aggressor by allowing its territorial facilities or advantages has been categorized as the principle act itself, i.e. the act of direct armed aggression. The sending by or on behalf of a state of armed bands, groups, irregulars or mercenaries which carry out acts of armed force against another state would give rise to international responsibility as well. Guerilla warfare, resistance movements and the struggle of people for self-determination, freedom and independence could not be considered as acts of aggression, nor the action of the other states supporting them by different means. However, it is conditional to the approving of the United Nations regarding with the lawfulness and justness of that cause. Definition of aggression was necessary, but it is not enough. It is one of the many steps which has been needed to be taken if international community wants to gain real peace. The process started by the I.M.T. Charter should continue and the rule of law be extended into many new fields with the hope that, in the era of nuclear weapons, it can prevent another serious war which will endanger the survival of humanity and civilization.

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# APPENDIX I

## DRAFT CODE OF OFFENSES AGAINST THE PEACE AND SECURITY OF MANKIND

ARTICLE 1. Offenses against the peace and security of mankind, as defined in this code, are crimes under international law, for which the responsible individuals shall be punished.

ARTICLE 2. The following acts are offenses against the peace and security of mankind:

(1) Any act of aggression, including the employment by the authorities of a State of armed force against another State for any purpose other than national or collective self-defence or in pursuance of a decision or recommendation of a competent organ of the United Nations.

(2) Any threat by the authorities of a State to resort to an act of aggression against another State.

(3) The preparation by the authorities of a State of the employment of armed force against another State for any purpose other than national or collective self-defence or in pursuance of a decision or recommendation or a competent organ of the United Nations.

(4) The organization, or the encouragement of the organization, by the authorities of a State, or armed bands within its territory or any other territory for incursions into the territory of another State, or the toleration of the organization of such banks in its own territory, or the toleration of the use by such armed bands of its territory of another State, as well as direct participation in or support of such incursions.

(5) The undertaking or encouragement by the authorities of a State of activities calculated to foment civil strife in another State, or the toleration by the authorities of a State or organized activities calculated to foment civil strife in another State.

(6) The undertaking or encouragement by the authorities of a State of terrorist activities in another State, or the toleration by the authorities of a State of organized activities calculated to carry out terrorist acts in another State.

(7) Acts by the authorities of a State in violation of its obligations under a treaty which is designed to ensure international peace and security by means of restrictions or limitations on armaments, or on military training, or on fortifications, or of other restrictions of the same character.

(8) The annexation;n by the authorities of a State of territory belonging to another State, by means of acts contrary to international law.

(9) The intervention by the authorities of a State in the internal or external affairs of another State, by means of coercive measure of an economic or political character in order to force its will and thereby obtain advantages of any kind.

(10) Acts by the authorities of a State or by private individuals committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such, including:

(i) Killing members of the group;

(ii) Causing serious bodily or mental harm to members of the group;

(iii) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(iv) Imposing measures intended to prevent births within the group;

(v) Forcibly transferring children of the group to another group.

(II) Inhuman acts such as murder, extermination, enslavement, deportation or persecutions, committed against any civilian population on social, political racial, religious or cultural grounds by the authorities of a State or by private individuals acting at the instigation or with the toleration of such authorities.

(12) Acts in violation of the laws or customs of war.

(13) Acts which constitute:

(i) Conspiracy to commit any of the offenses defined in preceding paragraphs of this article; or

(iii) Complicity in the commission of any of the offenses defined in the preceding paragraphs of this article.

ARTICLE 3. The fact that a person acted as Head of State or as responsible government official does not relieve him of responsibility for committing any of the offenses defined in this code.

ARTICLE 4. The fact that a person charged with an offense defined in this code acted pursuant to an order of his Government or of superior does not relieve him of responsibility in international law if, in the circumstances at the time, it was possible for him not to comply with that order.

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# APPENDIX II

## DEFINITION OF AGGRESSION

**(Resolution adopted by the General Assembly on the report of the Sixth Committee (A/9890) A/Res/3314(XXIXX), 14 December 1974)**

*the General Assembly,*

*Having considered* the report of the Special Committee on the Question of Defining Aggression, established pursuant to its resolution 2330(XXII) of 18 December 1967, covering the work of its seventh session held from 11 March to 12 April 1974, including the draft Definition of Aggression adopted by the Special Committee by consensus and recommended for adoption by the General Assembly,

*Deeply convinced* that the adoption of the Definition of Aggression would contribute to the strengthening of international peace and security,

1- *Approves* the Definition of Aggression, the text of which is annexed to the present resolution;

2- *Expresses its appreciations* to the Special Committee on the Question of Defining Aggression for its work which resulted in the elaboration of the Definition of Aggression;

3- *Calls upon* all states to refrain from all acts of aggression and other uses of force contrary to the Charter of the United Nations and the Declaration on principles of international law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations;

4- *Calls the attention* of the Security Council to the Definition of Aggression, as set out below, and recommends that it should, as appropriate, taken account of that Definition as guidance in determining, in accordance with the Charter, the existence of an act of aggression.

### ANNEX

### DEFINITION OF AGGRESSION

*The General Assembly,*

*Basing itself* on the fact that one of the fundamental purposes of the United Nations is to maintain international peace and security and to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace,

*Recalling* that the Security Council, in accordance with Article 39 of the Charter of the United Nations, shall determine the existence of any threats to the peace, breach of the peace or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security,

*recalling also* the the duty of states under the Charter to settle their international disputes by peaceful means in order not to endanger international peace, security and justice,

*Recalling in mind* that nothing in this Definition shall be interpreted as in any way effecting the

scope of the provisions of the Charter with respect to the functions and powers of the organs of the United Nations,

*Considering also*that, since aggression is the most serious and dangerous form of the illegal use of force, being fraught, in the conditions created by the existence of all types of catastrophic consequences, aggression should be defined at the present stage,

*Reaffirming* the duty of states not to use armed force to deprive peoples of their right to self-determination, freedom and independence, or to disrupt territorial integrity,

*Reaffirming also* that the territory of a state shall not be violated by being the object, even temporary , of military occupation or of other measures of force taken by another state in contravention of the Charter, and that it shall not be the object of acquisition by another state resulting from such measures or the threat thereof,

*Reaffirming also* the provisions of the Declaration on principles of international law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,

*Convinced* that the adoption of a definition of aggression ought to have the effect of deterring a potential aggressor, would simplify the determination of acts of aggression and the implementation of measures to suppress them and would also facilitate the protection of the rights and lawful interests of, and the rendering of assistance to, the victim,

*Believing* that, although the question whether an act of aggression has been committed must be considered in the light of all the circumstances of each particular case, it is nevertheless desirable to formulate basic principles as guidance for such determination,

*Adopts* the following Definition of Aggression:

Article 1

Aggression is the use of armed force by a state against the sovereignty, territorial integrity or political independence of another state, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition.

*Explanatory note:*In this definition the term "state":

(a) is used without prejudice to questions of recognition or to whether a State is a Member of the United Nations;

(b) Includes the concept of a "group of states" where appropriate.

Article 2

The first use of armed force by a state in contravention of the Charter shall constitute *prima facie* evidence of an act of aggression although the Security Council may, in conformity with the Charter, conclude that a determination that an act of aggression has been committed would not be justified in the light of other relevant circumstances, including the fact that the acts concerned or their consequences are not of sufficient gravity.

Article 3

Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with

the provisions of article 2, qualify as an act of aggression:

(a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;

(b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;

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

(d) An attack by the armed forces of a \State on the land, sea or air forces, or marine and air fleets of another State;

(e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;

(f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;

(g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

Article 4

The acts enumerated above are not exhaustive and the Security Council may determine that other acts constitute aggression under the provisions of the Charter.

Article 5

1- No consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression.

2- A war of aggression is a crime against international peace. Aggression gives rise to international responsibility.

3- No territorial acquisition or special advantage resulting from aggression is or shall be recognized as lawful.

Article 6

Nothing in this Definition shall be construed as in any way enlarging or diminishing the scope of the Charter, including its provisions concerning cases in which the use of force is lawful.

Article 7

Nothing in this Definition, and in particular article 3, could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist regimes or other forms of alien domination; nor the right of those peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity

with the above-mentioned Declaration.

Article 8

In their interpretation and application the above provisions are interrelated and each provision should construed in the context of the other provisions

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# APPENDIX III

## Resolution 2625(XXV) of the United Nations General Assembly approving the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations

*The General Assembly,*

*Recalling* its resolutions 1815(XVII) of 18 December 1962, 1966(XVIII) of 16 December 1963, 2103(XX) of 20 December 1965, 2181(XXI) of 12 December 1966, 2327(XXII) of 18 December 1967, 2463(XXIII) of 20 December 1968 and 2533(XXIV) of 8 December 1969, in which it affirms the importance of the progressive development and codification of the principles of international law concerning friendly relations and co-operation among states,

*Having considered* the report of the Special Committee on Principles of International Law Concerning Friendly Relations and Co-operation among States, which met in Geneva from 31 March to 1 May 1970,

*Emphasizing* the paramount importance of the Charter of the United Nations for the maintenance of international peace and security and for the development of friendly relations and co-operation among States,

*Deeply convinced* that the adoption of the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in accordance with the Charter of the United Nations on the occasion of the twenty-fifth anniversary of the United Nations would contribute to the strengthening of world peace and constitute a landmark in the development of the international law and of relations among States, in promoting the rule of law among nations and particularly the universal application of the principles embodied in the Charter.

*Considering* the desirability of the wide dissemination of the text of the Declaration,

1- *Approves* the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in accordance with the Charter of the United Nations, the text of which is annexed to the present resolution;

2- *Expresses its appreciation* to the Special Committee on Principles of International Law Concerning Friendly Relations and Co-operation Among States for its work resulting in the elaboration of the Declaration;

3- *Recommends* that all efforts be made so that the Declaration become generally known.

**Annex**

*The General Assembly,*

*Reaffirming* in the terms of the Charter that the maintenance of international peace and security and the development of friendly relations and co-operation between nations are among the fundamental purposes

of the United Nations,

*Recalling* that the peoples of the United Nations are determined to practice tolerance and live together in peace with one another as good neighbors,

*Bearing in mind* the importance of maintaining and strengthening international peace founded upon freedom, equality, justice and respect for the fundamental human rights and of developing friendly relations among nations irrespective of their political, economic and social systems or the levels of their development,

*Bearing in mind also* the paramount importance of the Charter of the United Nations in the promotion of the rule of law among nations,

*Considering* that the faithful observance of the principles of international law concerning friendly relations and co-operation among States and the fulfillment in good faith of the obligations assumed by States, in accordance with the Charter, is of the greatest importance for the maintenance of international peace and security and for the implementation of the other purposes of the United Nations,

*Noting* that the great political, economic and social changes and scientific progress which have taken place in the world since the adoption of the Charter of the United Nations give increased importance to these principles and to the need for their more effective application in the conduct of States wherever carried on,

*Recalling* the established principle that outer space, including the moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means, and mindful of the fact that consideration is being given in the United Nations to the question of establishing other appropriate provisions similarly inspired,

*Convinced* that the strict observance by States of the obligation not to intervene in the affairs of any other State in an essential condition to ensure that nations live together in peace with one another, since the practice of any form of intervention not only violates the spirit and letter of the Charter, but also leads to the creation of situations which threaten international peace and security,

*Recalling* the duty of States to refrain in their international relations from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any State,

*Considering* it essential that all States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

*Considering* it equally essential that all States shall settle their international disputes by peaceful means in accordance with the Charter,

*Reaffirming*, in accordance with the Charter, the basic importance of sovereign equality and stressing that the purposes of the United Nations can be implemented only if States enjoy sovereign equality and comply fully with the requirements of this principle in their international relations,

*Convinced* that the subjection of peoples to alien subjugation, domination and exploitation constitutes a major obstacle to the promotion of international peace and security,

*Convinced* that the principle of equal rights and self-determination of peoples constitutes a significant contribution to contemporary international law, and that its effective application is of paramount importance for the promotion of friendly relations among States, based on respect for the principle of sovereign equality,

*Convinced* in consequence that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State or country or at its political independence is incompatible with the purposes and principles of the Charter,

*Considering* the provisions of the Charter as a whole and taking into account the role of relevant resolutions adopted by the competent organs of the United Nations relating to the content of the principles,

*Considering* that the progressive development and codification of the following principles:

(a) The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations;

(b) The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered;

(c) The duty not to intervene in matters within the domestic jurisdiction of andy State, in accordance with the Charter;

(d) The duty of States to co-operate with one another in accordance with the Charter;

(e) The principle of Sovereign equality of States;

(g) The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter; so as to secure their more effective application within the international community would promote the realization of the purposes of the United Nations;

*Having considered* the principles of international law relating to friendly relations and co-operation among States,

1. *Solemnly proclaims* the following principles:

*The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations.*

Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. Such a threat or use of force constitutes a

violation of international law and the Charter of the United Nations and shall never by employed as a means of settling international issues.

A war of aggression constitutes a crime against the peace, for which there is responsibility under international law.

In accordance with the Purposes and Principles of the United Nations, States have the duty to refrain from the threat or use of force to violate the existing international boundaries of any State or as a means of solving international disputes, including territorial disputes and problems concerning frontiers of States.

Every State likewise has the duty to refrain from the threat or use of force to violate the existing international boundaries of any State or as a means of solving international disputes, including territorial disputes and problems concerning frontiers of States.

Every State likewise has the duty to refrain from the threat or use of force to violate international lines of demarcation, such as armistice lines, established by or pursuant to an international agreement of which it is a party or which it is otherwise bound to respect. Nothing in the foregoing shall be construed as prejudicing the positions of the parties concerned with regard to the status and effects of such lines under their special regimes or as affecting their temporary character.

States have a duty to refrain from acts of reprisal involving the use of force.

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.

Every State has the duty to refrain from organizing, instigation, assisting participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force.

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 Carter. The territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal. Nothing in the foregoing shall be constructed as affecting:

(a) provisions of the Charter or any international agreement prior to the Charter regime and valid under international law; or

(b) the powers of the Security Council under the Charter.

All States shall pursue in good faith negotiations for the early conclusion of a universal treaty on general and complete disarmament under effective international control and strive to adopt appropriate measures to reduce international tensions and strengthen confidence among States.

All States shall comply in good faith with their obligations under the generally recognized

principles and rules of international law with respect to the maintenance of international peace and security, and shall endeavour to make the United Nations security system based on the Charter more effective.

Nothing in the foregoing paragraphs shall be construed as enlarging or diminishing in any way the scope of the provisions of the Charter concerning cases in which the use of force is lawful.

*The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered.*

Every State shall settle its international disputes with other States by peaceful means, in such a manner that international peace and security and justice re not endangered.

States shall accordingly seek early and just settlement of their international disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice. In seeking such a settlement the parties shall agree upon such peaceful means as may be appropriate to the circumstances and nature of the dispute.

The parties to a dispute have the duty, in the event of failure to reach a solution by any one of the above peaceful means, to continue to seek a settlement of the dispute by other peaceful means agreed upon by them.

States parties to an international dispute, as well as other States, shall refrain from any action which may aggravate the situation so as to endanger the maintenance of international peace and security, and shall act in accordance with the purposes and principles of the United Nations.

International disputes shall be settled on the basis of the sovereign equality of States and in accordance with the principle of free choice of means. Recourse to, or acceptance of, a settlement procedure freely agreed to by States with regard to existing or future disputes to which they are parties shall not be regarded as incompatible with sovereign equality.

Nothing in the foregoing paragraphs prejudices or derogate from the applicable provisions of the Charter, in particular those relating to the pacific settlement of international disputes.

*The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter*

No State or group States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law.

No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the

regime of another State, or interfere in civil strike in another State.

The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention.

Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.

Nothing in the foregoing paragraphs shall be construed as affecting the relevant provisions of the Charter relating to the maintenance of international peace and security.

*The duty of States to co-operate with one another in accordance with the Charter*

States have the duty to co-operate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international co-operation free from discrimination based on such differences:

to this end:

(a) States shall co-operate with other States in the maintenance of international peace and security;

(b) States shall co-operate in th promotion of universal respect for and observance of human rights and fundamental freedoms for all, and in the elimination of all forms of racial discrimination and all forms of religious intolerance;

(c) States shall conduct their international relations in the economic, social, cultural, technical and trade fields in accordance with the principles of sovereign equality and non-intervention;

(d) States Members of the United Nations have the duty to take joint and separate action in co-operation with the United Nations in accordance with the relevant provisions of the Charter.

States should co-operate in the economic, social and cultural fields as well as in the field of science and technology and for the promotion of international cultural and educational progress. States should co-operate in the promotion of economic growth throughout the world, especially that of the developing countries.

*The principle of equal rights and self-determination of peoples* enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

Every state has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle, in order:

(a) to promote friendly relations and co-operation among States; and

(b) to bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned;

and bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well a denial of fundamental human rights, and is contrary to the Charter.

Every State has the duty to promote through joint and separate action universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter.

The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.

Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter.

The territory of a colony or other non-self-governing territory has, under the Charter, a status separate and distinct status under the Charter shall exist until the people of the colony or non-self-governing territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles.

Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, conducting themselves in compliance with the principle of equal rights and self-determination of peoples and described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.

Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country.

*The principle of sovereign equality of States*

All States enjoy sovereign equality. They have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature.

In particular, sovereign equality includes the following elements:

(a) States are juridically equal;

(b) Each State enjoys the rights inherent in full sovereignty.

(c) Each State has the duty to respect the personality of other States;

(d) The territorial integrity and political independence of the State are inviolable;

(e) Each State has the right freely to choose and develop its political, social, economic and cultural systems;

(f) Each State has the duty to comply fully and in good faith with its international obligations and to live in peace with other States.

*The principle that States shall fulfil in good faith the obligations assumed by it in accordance with the Charter*

Every State has the duty to fulfil in good faith the obligations assumed by it in accordance with the Charter of the United Nations.

Every State has the duty to fulfil in good faith its obligations under the generally recognized principles and rules of international Law.

Every State has the duty to fulfil in good faith its obligations under international agreements valid under the generally recognized principles and rules of international law.

Where obligations arising under international agreements are in conflict with the obligations of Members of the United Nations under the Charter of the United Nations, the obligations under the Charter shall prevail.

*General Part*

2. *Declares that:*

In their interpretation and application the above principles are interrelated and each principle should be construed in the context to the other principles.

Nothing in this Declaration shall be construed as prejudicing in any manner the provisions of the Charter or the rights and duties of Member States under the Charter or the rights of peoples under the Charter, taking into account the elaboration of these rights in this Declaration,

3. *Declares further that:*

The Principles of the Charter which are embodied in this Declaration constitute basic principles of international law, and consequently appeals to all States to be guided by these principles in their international conduct and to develop their mutual relations on the basis of the strict observance of these principles.

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