



General Assembly

Distr.
GENERAL

A/39/439/Add.1
18 September 1984

ORIGINAL: ENGLISH

Thirty-ninth session
Item 126 of the provisional agenda*

DRAFT CODE OF OFFENCES AGAINST THE PEACE AND SECURITY OF MANKIND

Report of the Secretary-General

Addendum

CONTENTS

Page

REPLIES RECEIVED FROM GOVERNMENTS

Czechoslovakia	2
----------------------	---

* A/39/150.

REPLIES RECEIVED FROM GOVERNMENTS

CZECHOSLOVAKIA

[Original: English]

[5 September 1984]

1. The Czechoslovak Socialist Republic considers the elaboration of a draft Code of Offences Against the Peace and Security of Mankind a priority issue on the agenda of the International Law Commission. It is convinced that in the interest of achieving progress and speedy concrete results in this issue, the Commission will proceed on the basis of the positions presented by Member States in the course of the discussion in the Sixth Committee of the General Assembly, which must maintain this question on its agenda as a separate item, or positions submitted in writing, and it will also use the experience gained in the work on the Draft Code of 1954.
2. Czechoslovakia has already on previous occasions explained its fundamental position on questions contained in paragraph 69 of the report of the International Law Commission on the work of its thirty-fifth session. 1/
3. In the problem of determining to which subjects of law international penal responsibility may be attributed for committing offences against the peace and security of mankind, we hold the view that penal responsibility should be attributed only to individuals, physical persons. The concept of penal responsibility of individuals under international law should constitute one of the basic principles of the Code. This approach is also in keeping with the principles on which the Statute and the judgement of the Nürnberg Tribunal were based. This, however, does not deny the close interrelation with the international responsibility of States, because certain acts representing offences against the peace and security of mankind (particularly those of an individual acting as head of State, Government or State representative) will at the same time have the characteristics of an international crime under article 19 of the Commission's draft on State responsibility for internationally wrongful acts. State responsibility in international law, however, is not of a penal nature in the sense of international national law. The question of State responsibility for internationally wrongful acts, including the question of the varying degree of that responsibility for international delicts and international crimes, is the subject of a separate study. It would not, therefore, be appropriate to take the problem of State responsibility for offences against the peace and security of mankind out of the overall context of the problem of State responsibility for internationally wrongful acts. Proposals have already been submitted for the solution of the question of the relationship between the penal responsibility of individuals under the Code and the international responsibility of States. (For example, the position of the German Democratic Republic, published in document A/37/325, according to which the Code could stipulate that the determination of the penal responsibility of individuals is separate from the international responsibility of States, could well serve as a solution of the question.)

4. In Czechoslovakia's view, the 1954 draft, which did not cover the questions of implementation, was to serve as a basis for the elaboration of the Code. Czechoslovakia's position concerning the establishment of international penal jurisdiction was based on that assumption. Since, regardless of the original mandate, positions of States on the implementation of the Code are being requested, we wish to emphasize that jurisdiction in the application of penal responsibility under the Code should, as a matter of principle, be entrusted to national courts regardless of whether offences against the peace and security of mankind were committed by persons who are nationals of that or another State or are stateless, or whether these offences were committed in that State or on the territory of another State, or in an area which is not subject to any national jurisdiction. This does not exclude the possibility to set up in the future an ad hoc international criminal court, similar to the Nürnberg and Tokyo tribunals, should circumstances demand it.

5. The national courts would adjudicate in accordance with the material and legal provisions of the Code, the application of which in the internal penal law, including the passing of sentences, would constitute an obligation on the part of States Parties to the Code, the non-fulfilment of which would result in international responsibility of such State.

6. Support for this solution can be found in already adopted international conventions.

7. For instance, in the International Convention on the Suppression and Punishment of the Crime of Apartheid, dated 30 November 1973, in article IV, the States Parties to the Convention undertook to adopt legislative, judicial and administrative measures to prosecute, bring to trial and punish in accordance with their jurisdiction persons responsible for, or accused of, the acts defined in the Convention, whether or not such persons reside in the territory of the State in which the acts are committed or are nationals of that State or of some other State or are stateless persons. Under article V, persons charged with the acts enumerated in the Convention may be tried by a competent tribunal of any State Party to the Convention which may acquire jurisdiction over the person of the accused or by an international penal tribunal having jurisdiction with respect to those States Parties which have accepted its jurisdiction.

8. As for the idea of establishing a permanent international penal tribunal, Czechoslovakia believes and not only because of the unsuccessful attempts undertaken in the past, that such a solution is not in keeping with the nature of the relations among States in the present conditions and with the principles of international law, such as the principle of the sovereign equality of States.

9. In accordance with the spirit of the relevant resolutions of the General Assembly on the elaboration of a Code of Offences against the Peace and Security of Mankind, Czechoslovakia believes that currently the most urgent task is to elaborate the draft articles that would precisely define the individual offences against the peace and security of mankind.

Notes

1/ Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 10 (A/38/10).