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DRAFT CODE OF OFFENCES AGAINST THE PEACE AND SECURITY OF MANKIND

Report of the Secretary-General

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REPLIES RECEIVED FROM GOVERNMENTS

UNION OF SOVIET SOCIALIST REPUBLICS

[Original: Russian]

[6 November 1984]

1. The following information is provided to supplement the comments transmitted to the United Nations by the Soviet Union in 1980 and 1982, which were issued in documents A/35/210 and A/37/325.
2. In current conditions, in which international tension has been seriously exacerbated through the fault of the aggressive forces of imperialism and the threat of nuclear war has increased, the task of preventing offences against peace requires the closest attention. In such conditions, it becomes extremely important to complete work as soon as possible on the draft Code of Offences against the Peace and Security of Mankind, which could be an effective international legal instrument in the struggle to preserve peace on earth and to combat the offences that are the most dangerous for mankind, primarily aggression.
3. As has already been noted, the draft Code prepared by the International Law Commission in 1954, which is based on the principle of individual criminal responsibility for the gravest offences against peace and of the inevitability of punishment for offences of that kind, on the whole provides an acceptable basis for the continuation of work on this topic. This basic idea of the draft should be retained.
4. In order to enhance the preventive role of the Code and to increase its effectiveness, the text should include a general definition of the concept of an offence against the peace and security of mankind, containing precise criteria.
5. The list of offences contained in the 1954 draft needs to be expanded and supplemented with new elements, taking into consideration the international legal norms in force in this area.
6. The comments transmitted by the Soviet Union in 1980 and 1982 indicated the new international legal instruments which have appeared since 1954 and which must be taken into account in work on the Code. The Code must duly reflect the basic idea in the Declaration on the Prevention of Nuclear Catastrophe, adopted by the United Nations General Assembly (resolution 36/100 of 9 December 1981), which states inter alia that statesmen that resort first to the use of nuclear weapons will be committing the gravest crime against humanity. The Code must also take into consideration the provisions of resolution 38/75 entitled "Condemnation of nuclear war" adopted by the General Assembly on 15 December 1983, which resolutely, unconditionally and for all time condemns nuclear war and contains a condemnation of the formulation, propounding, dissemination and propaganda of political and military doctrines and concepts intended to provide "legitimacy" for the first use of nuclear weapons and in general to justify the "admissibility" of unleashing nuclear war.

7. In order to ensure the inevitability of punishment of those guilty of committing offences against the peace and security of mankind, the Code must provide international legal confirmation of the following principles:

(a) Non-applicability of any statutory limitation in respect of such offences;

(b) Applicability of the principle aut judicare aut dedere in all circumstances in respect of persons guilty of committing the offences;

(c) The fact that any person guilty of committing an offence acted on the instructions of his Government or of a superior does not absolve him from responsibility and may be considered only as a ground for mitigation of punishment;

(d) The fact that any person whatsoever involved in the commission of an international offence acted in accordance with the political policy of an offending State or in pursuit of that policy should not justify the granting to him of political asylum by any party whatsoever in any place whatsoever.

8. In addition, the Code should envisage the incorporation by States into their national criminal legislation of a definition of the elements of international offences and the establishment of severe measures of punishment for persons involved in their commission. Thus, through the Code, national legal guarantees can also be established for the prevention and suppression of the very possibility of the commission of international offences.

9. The draft Code of Offences against the Peace and Security of Mankind should remain one of the main questions on the agenda of the Sixth Committee of the United Nations General Assembly.
