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DRAFT CODE OF OFFENCES AGAINST THE PEACE AND SECURITY OF MANKIND

Report of the Sixth Committee

Rapporteur: Molefi PHOLO (Lesotho)

I. INTRODUCTION

1. The item entitled "Draft Code of Offences against the Peace and Security of Mankind: report of the Secretary-General" was included in the provisional agenda of the fortieth session of the General Assembly pursuant to paragraph 3 of General Assembly resolution 39/80 of 13 December 1984.
2. At its 3rd plenary meeting, on 20 September 1985, the General Assembly, on the recommendation of the General Committee, decided to include the item in its agenda and to allocate it to the Sixth Committee.
3. In connection with the item, the Sixth Committee had before it the report of the International Law Commission on the work of its thirty-seventh session 1/ (paras. 11-101) and the report of the Secretary-General (A/40/451 and Add.1-3) submitted pursuant to paragraph 2 of resolution 39/80, containing comments and observations submitted by Member States under the same paragraph.
4. The Committee also had before it the following documents:
 - (a) Letters dated 21 May and 21 October 1985 from the Permanent Representative of Democratic Kampuchea to the United Nations addressed to the Secretary-General (A/40/331-S/17209 and A/40/786-S/17584);

1/ Official Records of the General Assembly, Fortieth Session, Supplement No. 10 (A/40/10).

(b) Letter dated 20 November 1985 from the Permanent Representative of Oman to the United Nations addressed to the Secretary-General (A/40/911-S/17644).

5. The Sixth Committee considered the item at its 23rd to 36th and 50th meetings, held between 28 October and 12 November and on 2 December 1985. The summary records of those meetings (A/C.6/40/SR.23-36 and 50) contain the views of representatives who spoke during the consideration of the item.

II. CONSIDERATION OF DRAFT RESOLUTION A/C.6/40/L.15

6. At the 44th meeting, on 21 November 1985, the representative of Egypt introduced a draft resolution (A/C.6/40/L.15) sponsored by Algeria, Angola, Benin, Bolivia, the Congo, Cuba, Egypt, Equatorial Guinea, Gabon, the German Democratic Republic, Kenya, Mali, Mongolia, Morocco, the Philippines, Poland, Qatar, Rwanda, Senegal, Sierra Leone, the Sudan, Thailand, Tunisia, Uganda, Viet Nam, Zaire and Zambia, later joined by Cyprus.

7. At its 50th meeting, on 2 December, the Committee adopted draft resolution A/C.6/40/L.15 by a recorded vote of 98 to 6, with 8 abstentions. The voting was as follows: 2/

In favour: Afghanistan, Algeria, Angola, Argentina, Australia, Austria, Bahrain, Bangladesh, Benin, Bolivia, Brazil, Brunei Darussalam, Bulgaria, Burundi, Byelorussian Soviet Socialist Republic, Cameroon, Central African Republic, Chad, China, Colombia, Congo, Costa Rica, Cuba, Cyprus, Czechoslovakia, Democratic Kampuchea, Denmark, Djibouti, Ecuador, Egypt, Equatorial Guinea, Ethiopia, Finland, Gabon, German Democratic Republic, Greece, Guyana, Hungary, Iceland, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Ivory Coast (Côte d'Ivoire), Jordan, Kenya, Kuwait, Lao People's Democratic Republic, Lesotho, Liberia, Libyan Arab Jamahiriya, Madagascar, Malaysia, Maldives, Mali, Mexico, Mongolia, Morocco, Mozambique, Nepal, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Peru, Philippines, Poland, Qatar, Romania, Rwanda, Saudi Arabia, Senegal, Sri Lanka, Sudan, Swaziland, Sweden, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago, Tunisia, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Republic of Tanzania, Uruguay, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia.

Against: Chile, France, Germany, Federal Republic of, Israel, United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstaining: Belgium, Canada, Italy, Japan, Netherlands, Portugal, Spain, Turkey.

2/ The representatives of Burkina Faso and Democratic Yemen stated that, had their delegation been present during the voting, they would have voted in favour of the draft resolution.

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8. Statements in explanation of vote before the vote were made by the representatives of the United Kingdom, Portugal, the United States, France, Israel, Australia, Norway (on behalf of the five Nordic countries), Ireland, Turkey, Italy and Chile. Statements in explanation of vote after the vote were made by the representatives of Spain and the Federal Republic of Germany.

III. RECOMMENDATION OF THE SIXTH COMMITTEE

9. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolution:

Draft Code of Offences against the Peace and Security of Mankind

The General Assembly,

Mindful of Article 13, paragraph 1 a, of the Charter of the United Nations, which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,

Recalling its resolution 177 (II) of 21 November 1947, by which it directed the International Law Commission to prepare a draft code of offences against the peace and security of mankind,

Having considered the draft Code of Offences against the Peace and Security of Mankind prepared by the International Law Commission and submitted to the General Assembly in 1954, 3/

Recalling its belief that the elaboration of a code of offences against the peace and security of mankind could contribute to strengthening international peace and security and thus to promoting and implementing the purposes and principles set forth in the Charter of the United Nations,

Recalling also its resolution 36/106 of 10 December 1981, in which it invited the International Law Commission to resume its work with a view to elaborating the draft Code and to examine it with the required priority in order to review it, taking into account the results achieved by the process of the progressive development of international law,

Bearing in mind that the International Law Commission should fulfil its task on the basis of early elaboration of draft articles thereof,

3/ Official Records of the General Assembly, Ninth Session, Supplement No. 9 (A/2693).

Having considered chapter II of the report of the International Law Commission on the work of its thirty-seventh session, 4/ in particular paragraph 43 of the report, containing the outline proposed by the Special Rapporteur to the future Code, and paragraphs 99, 100 and 101 of the report, containing the conclusions of its discussions,

Taking note of the report of the Secretary-General on the topic, 5/

Taking into account the views expressed during the debate on this item at the current session,

Recognizing the importance and the urgency of the subject,

1. Invites the International Law Commission to continue its work on the elaboration of the draft Code of Offences against the Peace and Security of Mankind by elaborating an introduction as well as a list of the offences, taking into account the progress made at its thirty-seventh session, as well as the views expressed during the fortieth session of the General Assembly;

2. Requests the Secretary-General to seek the views of Member States and intergovernmental organizations regarding the outline proposed by the Special Rapporteur to the future Code contained in paragraph 43 of the report of the International Law Commission on the work of its thirty-seventh session, 4/ along with the conclusions contained in paragraphs 99, 100 and 101 of the said report;

3. Further requests the Secretary-General to include the views received from Member States and intergovernmental organizations in accordance with paragraph 2 above in a report to be presented to the General Assembly at its forty-first session with a view to adopting, at the appropriate time, the necessary decision thereon;

4. Decides to include in the provisional agenda of its forty-first session the item entitled "Draft Code of Offences against the Peace and Security of Mankind", to be considered in conjunction with the examination of the report of the International Law Commission.

4/ Ibid., Fortieth Session, Supplement No. 10 (A/40/10).

5/ A/40/451 and Add.1-3.