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DRAFT CODE OF CRIMES AGAINST THE PEACE AND SECURITY OF MANKIND

Titles and texts of articles adopted by the
Drafting Committee

DRAFT CODE OF CRIMES AGAINST THE PEACE AND SECURITY OF MANKIND

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PART II

CRIMES AGAINST THE PEACE AND SECURITY OF MANKIND

Article 15

Aggression

1. An individual who as leader or organizer plans, commits or orders the commission by another individual of an act of aggression shall, on conviction thereof, be sentenced [to ...].
2. 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.
3. 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.
4. [In particular] any of the following acts, regardless of a declaration of war, constitutes an act of aggression, due regard being paid to paragraphs 2 and 3:
 - (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;

(h) any other acts determined by the Security Council as constituting acts of aggression under the provisions of the Charter.

[5. Any determination by the Security Council as to the existence of an act of aggression is binding on national courts.]

6. Nothing in this article shall be interpreted as in any way enlarging or diminishing the scope of the Charter of the United Nations, including its provisions concerning cases in which the use of force is lawful.

7. Nothing in this article 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 Cooperation 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 these 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 16

Threat of aggression

1. An individual who as leader or organizer commits or orders the commission by another individual of threat of aggression shall, on conviction thereof, be sentenced [to ...].

2. Threat of aggression consists of declarations, communications, demonstrations of force or any other measures which would give good reason to the Government of a State to believe that aggression is being seriously contemplated against that State.

Article 17

Intervention

1. An individual who as leader or organizer commits or orders the commission by another individual of intervention in the internal or external affairs of a State shall, on conviction thereof, be sentenced [to ...].
2. Intervention in the internal or external affairs of a State consists of fomenting [armed] subversive or terrorist activities or by organizing, assisting or financing such activities, or supplying arms for the purpose of such activities, thereby [seriously] undermining the free exercise by that State of its sovereign rights.
3. Nothing in this article shall in any way prejudice the right of peoples to self-determination as enshrined in the Charter of the United Nations.

Article 18

Colonial domination and other forms of alien domination

An individual who as leader or organizer establishes or maintains by force, or orders another individual to establish or maintain by force, colonial domination or any other form of alien domination contrary to the right of peoples to self-determination as enshrined in the Charter of the United Nations shall, on conviction thereof, be sentenced [to ...].

Article 19

Genocide

1. An individual who commits or orders the commission by another individual of an act of genocide shall, on conviction thereof, be sentenced [to ...].
2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such:
 - (a) killing members of the group;
 - (b) causing serious bodily or mental harm to members of the group;
 - (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
 - (d) imposing measures intended to prevent births within the group;
 - (e) forcibly transferring children of the group to another group.

Article 20

Apartheid

1. An individual who as leader or organizer commits or orders the commission by another individual of the crime of apartheid shall, on conviction thereof, be sentenced [to ...].

2. Apartheid consists of any of the following acts based on policies and practices of racial segregation and discrimination committed for the purpose of establishing or maintaining domination by one racial group over any other racial group and systematically oppressing it:

(a) denial to a member or members of a racial group of the right to life and liberty of person;

(b) deliberate imposition on a racial group of living conditions calculated to cause its physical destruction in whole or in part;

(c) any legislative measures and other measures calculated to prevent a racial group from participating in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group;

(d) any measures, including legislative measures, designed to divide the population along racial lines, in particular by the creation of separate reserves and ghettos for the members of a racial group, the prohibition of marriages among members of various racial groups or the expropriation of landed property belonging to a racial group or to members thereof;

(e) exploitation of the labour of the members of a racial group, in particular by submitting them to forced labour;

(f) persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.

Article 21

Systematic or mass violations of human rights

An individual who commits or orders the commission by another individual of any of the following shall, on conviction thereof, be sentenced [to ...]:

- violation of human rights in a systematic manner or on a mass scale consisting of any of the following acts:

(a) murder;

(b) torture;

- (c) establishing or maintaining over persons a status of slavery, servitude or forced labour;
- (d) deportation or forcible transfer of population;
- (e) persecution on social, political, racial, religious or cultural grounds.

Article 22

War crimes

1. An individual who commits or orders the commission by another individual of an exceptionally serious war crime shall, on conviction thereof, be sentenced [to ...].
2. For the purposes of this code, an exceptionally serious war crime is an exceptionally serious violation of principles and rules of international law applicable in armed conflict consisting of any of the following acts:
 - (a) acts of inhumanity, cruelty or barbarity directed against the life, dignity or physical or mental integrity of persons [, in particular wilful killing, torture, mutilation, taking of hostages, deportation or transfer of civilian population and collective punishment];
 - (b) use of unlawful weapons;
 - (c) employing methods or means of warfare which are intended or may be expected to cause widespread, long-term and severe damage to the natural environment;
 - (d) large-scale destruction of civilian property;
 - (e) wilful attacks on property of exceptional religious, historical or cultural value.

Article 23

Recruitment, use, financing and training of mercenaries

1. An individual who as an agent or representative of a State commits or orders the commission by another individual of any of the following shall, on conviction thereof, be sentenced [to ...]:
 - recruitment, use, financing or training of mercenaries for activities directed against another State or for the purpose of opposing the legitimate exercise of the inalienable right of peoples to self-determination as recognized under international law.
2. A mercenary is any individual who:
 - (a) is specially recruited locally or abroad in order to fight in an armed conflict;

(b) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar rank and functions in the armed forces of that party;

(c) is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;

(d) is not a member of the armed forces of a party to the conflict; and

(e) has not been sent by a State which is not a party to the conflict on official duty as a member of its armed forces;

3. A mercenary is also any individual who, in any other situation:

(a) is specially recruited locally or abroad for the purpose of participating in a concerted act of violence aimed at:

(i) overthrowing a Government or otherwise undermining the constitutional order of a State; or

(ii) undermining the territorial integrity of a State;

(b) is motivated to take part therein essentially by the desire for significant private gain and is prompted by the promise or payment of material compensation;

(c) is neither a national nor a resident of the State against which such an act is directed;

(d) has not been sent by a State on official duty; and

(e) is not a member of the armed forces of the State in whose territory the act is undertaken.

Article 24

International terrorism

An individual who as an agent or representative of a State commits or orders the commission by another individual of any of the following shall, on conviction thereof, be sentenced [to ...]:

- undertaking, organizing, assisting, financing, encouraging or tolerating acts against another State directed at persons or property and of such a nature as to create a state of terror in the minds of public figures, groups of persons or the general public.

Article 25

Illicit traffic in narcotic drugs

1. An individual who commits or orders the commission by another individual of any of the following shall, on conviction thereof, be sentenced [to ...].
 - undertaking, organizing, facilitating, financing or encouraging of illicit traffic in narcotic drugs on a large scale, whether within the confines of a State or in a transboundary context.
2. For the purposes of paragraph 1, facilitating or encouraging illicit traffic in narcotic drugs includes the acquisition, holding, conversion or transfer of property by an individual who knows that such property is derived from the crime described in this article in order to conceal or disguise the illicit origin of the property.
3. Illicit traffic in narcotic drugs means any production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance contrary to internal or international law.

Article 26

Wilful and severe damage to the environment

An individual who wilfully causes or orders another individual to cause widespread, long-term and severe damage to the natural environment shall, on conviction thereof, be sentenced [to ...].
