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DRAFT CODE OF OFFENCES AGAINST THE PEACE AND SECURITY OF MANKIND

Report of the Secretary-General

Addendum

CONTENTS

	<u>Page</u>
REPLIES RECEIVED FROM GOVERNMENTS	
Byelorussian Soviet Socialist Republic	2
Ukrainian Soviet Socialist Republic	3

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

[Original: Russian]

[4 November 1987]

1. The following information is communicated in addition to that submitted on this subject at the forty-first session of the General Assembly (A/41/537).
2. The draft articles contained in the fifth report were considerably recast in the light of the discussion of this topic at the thirty-eighth session of the International Law Commission, the views expressed in the Sixth Committee at the forty-first session of the General Assembly and the written comments by States Members of the United Nations.
3. In our view, the new versions of a number of articles submitted by the Special Rapporteur correspond to a greater degree with the aims of the Code, with the interests of strengthening law and order in the world and with fundamental trends in the development of international law.
4. Nevertheless, some of the provisions of the draft articles require further consideration and more precise formulation. In analysing these articles we proceed from the assumption that the Code should reflect more clearly the contemporary international legal concept of the criminal responsibility of individuals for the most serious and most dangerous crimes against peace and mankind. That is why it is important to provide in the draft Code a general definition of crimes against the peace and security of mankind, a definition which would contain the main criteria for such crimes. Such criteria could include threatening the existence of mankind and modern civilization, violating the fundamental human right - the right to life - and violating the basic principles of international law.
5. Crimes against peace and security are characterized by their serious or dangerous nature or the scale of their consequences or their vile and cruel motives; they touch upon the very foundations of the existence of human society. Thus the current level of recognition of international law renders possible a clear-cut definition of the main characteristics of such crimes.
6. The Byelorussian SSR considers that the provisions of articles 9, 10 and 11 of the draft Code allow the possibility of evading responsibility for crimes against the peace and security of mankind under various pretexts. In the light of articles 7 and 8 of the Charter of the Nürnberg Tribunal, these provisions should completely preclude such a possibility.
7. The Code must ensure the inevitability of punishment for crimes against the peace and security of mankind. To some degree this is guaranteed by articles 3 and 5. Thus, for example, article 3 provides for responsibility and punishment for such crimes irrespective of any motives invoked for committing them, while article 5 reaffirms the non-applicability of statutory limitations. These provisions could be strengthened still further.

8. In our view, no motive can serve as a justification for crimes against the peace and security of mankind and no statutory limitations are applicable to such crimes.

9. Persons who have committed crimes against the peace and security of mankind are liable to prosecution and punishment in the countries where they committed those crimes. States must assume the relevant obligations in matters regarding the extradition of such persons. The principle of punishing criminals at the place where the crime was committed is laid down in a number of international legal instruments such as the 1943 Moscow Declaration, the 1945 London Agreement and the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. This approach is also embodied in the "Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity" adopted by the General Assembly on the proposal of the Byelorussian SSR on 3 December 1973.

10. With a view to enhancing the effectiveness of the Code, States could take the necessary legislative, judicial and administrative measures for the prosecution, extradition, bringing to trial and severe punishment of persons guilty of crimes against the peace and security of mankind.

11. The Byelorussian SSR views the preparation of the Code as a priority item on the International Law Commission's agenda and considers that it should remain one of the main separate items before the Sixth Committee of the General Assembly.

UKRAINIAN SOVIET SOCIALIST REPUBLIC

[Original: Russian]

[3 November 1987]

1. The position of the Ukrainian SSR on the question of the draft Code of Offences against the Peace and Security of Mankind is stated in documents A/37/325, A/39/439/Add.5, A/40/451/Add.3 and A/41/537/Add.2. In addition to the considerations set out in those documents, the following comments are submitted.

2. The wording of some of the articles submitted by the Special Rapporteur in his fifth report to the International Law Commission (document A/CN.4/404) represents an improvement of the draft Code. At the same time, the provisions require further discussion and reworking so that they may reflect more closely the current views of States on this issue.

3. Thus, in particular, article 1 of the draft Code contains only a formulation of a general nature relating to the definition of the concept of a crime against the peace and security of mankind. In commenting on one of the previous drafts of articles of the Code (document A/41/537/Add.2), the Ukrainian SSR proposed that it should reflect the criteria of offences against the peace and security of mankind. Concretely, it would seem appropriate to consider threats to the existence of mankind and of contemporary civilization and violations of the fundamental principles of international law to be such criteria.

4. As regards draft article 4, the Ukrainian SSR confirms its view expressed previously in documents A/40/451/Add.3 and A/41/537/Add.2 to the effect that the draft Code should embody the principle that criminals should, as a rule, be punished in accordance with the laws of the country in whose territory the offences were committed. This principle has been formulated in many international legal instruments. In cases where crimes have been committed in several territories or in relation to a number of States, the punishment should be effected on the basis of appropriate agreement between those States. The State in whose territory the perpetrator of a crime against the peace and security of mankind is found is duty-bound, without any exception and irrespective of whether the crime was committed in its territory, to co-operate in matters regarding the extradition of such persons. To that end, States must take all necessary steps of a legislative or other nature that will provide, in accordance with international law, the conditions necessary for the extradition of the above-mentioned persons. Accordingly, draft article 4 should be formulated in the light of these proposals.

5. The Ukrainian SSR has previously expressed itself in favour of the reaffirmation in the draft Code of the principle of non-applicability of statutory limitations in respect of crimes against the peace and security of mankind (A/37/325), and welcomes the text of article 5 of the draft Code.

6. The texts of draft articles 9, 10 and 11 submitted by the Special Rapporteur do not preclude the possibility that the criminal may, under various pretexts, evade responsibility for crimes against the peace and security of mankind. In the view of the Ukrainian SSR, these articles must be drafted in such a way as to ensure the inevitability of the punishment of persons guilty of committing such crimes. The model for the formulation of these articles should be the Charter of the Nürnberg Tribunal and, in particular, its articles 7 and 8. In this connection, special emphasis should be placed on the provision concerning the fact that the motives for committing the crimes may not be invoked to exonerate those who committed crimes against the peace and security of mankind.
