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COMMENTS OF GOVERNMENTS 1/ ON THE REPORT OF THE WORKING GROUP ON THE QUESTION OF AN INTERNATIONAL CRIMINAL JURISDICTION 2/

Addendum

BULGARIA

[Original: English]

[25 August 1993]

1. The Government of the Republic of Bulgaria supports the proposal for the establishment of an international criminal tribunal with jurisdiction over the most serious violations of international humanitarian law and shares the view of the Working Group that the creation of such a court is feasible in practice.

2. The Bulgarian Government is of the opinion that it is most pertinent for the international criminal tribunal to be established under the auspices of the United Nations by the conclusion of a multilateral international treaty, open to international intergovernmental organizations as well.

3. With a view to the universal character of such a court and the need for this court to be approached by the States at any time, as well as for the purpose of enhancing the authority of this legal institution and the continuity

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1/ Submitted further to paragraph 5 of General Assembly resolution 47/33 of 25 November 1992. References to the question of an international criminal jurisdiction are also to be found in document A/CN.4/448 and Add.1 reproducing the comments and observations submitted by Governments on the draft Code of Crimes against the Peace and Security of Mankind adopted on first reading by the Commission at its forty-third session.

2/ Official Records of the General Assembly, Forty-seventh Session, Supplement No. 10 (A/47/10), annex.

as regards its jurisprudence, the Republic of Bulgaria would prefer the international criminal tribunal to function on a permanent basis; however, bearing in mind the realities of the present stage we would support the less ambitious kind of judicial body, set up ad hoc, as long as an effective mechanism is devised for referring a matter to the court and convening the latter in a reasonably short period of time whenever the need arises.

4. It is the view of the Bulgarian Government that it is best for the jurisdiction of an international court competent to prosecute persons responsible for serious violations of international humanitarian law (first and foremost crimes - against the peace and security of mankind) to be compulsory for all States Members of the United Nations, or at least for the States parties to the statute of the court. Before finally deciding on the optional jurisdiction, everything possible should be done, even at the price of adopting compromise approaches, to find a solution in some form of compulsory jurisdiction. The following could be considered as examples of such approaches:

(a) "Selective" jurisdiction: States acceding to the statute are obliged to recognize the jurisdiction of the court as to at least one of the categories of violations of international humanitarian law provided for in it;

(b) "Delayed" jurisdiction: States are obliged to recognize the jurisdiction of the court in the course of a certain period of time (three years, five years, or other) after the entry into force of the statute with respect to them;

(c) Optional jurisdiction under the "contract-out" system: on acceding to the statute, States can declare that they do not recognize the jurisdiction of the court as to all or some of the categories of violations.

The above approaches could be used in combination, as well.

The parallel drawn with the International Court of Justice at The Hague is not a very happy one, since the Statute of the latter is part of the Charter of the United Nations, and on becoming a Member of the United Nations each State becomes a party to the Statute of the International Court of Justice, no matter whether it wishes to do so or not. In the case of the international criminal tribunal, however, accession to its constituent instrument is a matter of an absolutely free sovereign will and is not dependent on such vital State interests as could be relevant to membership in the United Nations.

Besides, the International Court of Justice already represents a past stage in the development of the international legal process, and it is hardly necessary to reproduce its experience now that we have the positive experience of the system of the European Convention on Human Rights and Fundamental Freedoms, as well as of other regional systems for the protection of human rights.

5. The idea for the proposed legal institution to be some sort of court of appeal which will review sentences imposed by a national court is controversial. From the point of view of the effectiveness of the court, as well as the sovereign interests of the States, the concurrent jurisdiction is most

acceptable. It will enable the States which are not parties to its statute to recognize its jurisdiction.

6. The Republic of Bulgaria shares the view that the Code of Crimes against the Peace and Security of Mankind should be considered separately from the proposal for the establishment of an international criminal tribunal. This would make it possible for States which do not wish to accede to the Code to join the statute of the court, and vice versa, which would eventually lead to the strengthening of the international rule of law. At the same time, certain categories of international violations which are not included in the Code should be defined again in the statute of the court so that the latter could be seized of them. In this way the principle of nullum crimen sine lege will be observed in actual fact, since not all States are parties to the same international conventions and therefore it will not be possible to apply the same legal standards as far as they or their nationals are concerned, which would be a departure from the principle of equality in the criminal proceedings. For the same reason we believe that the domestic laws of the States should not serve even indirectly as a basis for subject-matter jurisdiction, since there the crimes and their respective penalties have been defined in a different way and this would again be a serious violation of the principle of equality of all before the court and the law, regardless of the nationality of the defendants. For the principle of equality to be guaranteed during the trial it is necessary that the respective penalties should be defined accurately and clearly in the statute, because otherwise the principle of nulla poena sine lege will not be observed. In this case the domestic laws of the States cannot be referred to, either, since there are considerable differences in this respect as well.

7. The proposed mechanism of establishing the court needs some improvement:

(a) On one hand, it does not seem right for a given State which is a litigant in a trial to appoint the prosecutor in the respective case, because it is not impartial and this would affect his independence of judgement. However, in view of the fact that the prosecutor should act as an independent organ, as should the court itself, the idea of the court appointing the prosecutor in a given case is not a very good one, since it would not be possible to lodge an effective appeal against the actions of the prosecutor. The possibility to establish an independent Office of the Prosecutor, which would appoint the prosecutor in a given case by a certain procedure, could be provided for under the statute of the court. This will make it possible to appeal against the actions of the prosecutor before a jury of the court which will not have the right afterwards to try the case;

(b) The States concerned should be entitled to their "own" national judges in the jury which will hear the case. In this connection we could draw upon the useful experience of the European Convention on Human Rights and Fundamental Freedoms, as well as the practice of the International Court of Justice. Thus, the interests of the State would be guaranteed with maximum objectivity and impartiality on the part of the jury.

8. As far as the financial aspects of the establishment of the court are concerned, the Bulgarian Government believes that, in view of the universal importance of the functions which this court is supposed to perform, its financing should be provided by the United Nations, regardless of whether it

will be constituted ad hoc or as a permanent court, and whether this will be effected by the conclusion of an international treaty or in any other way.