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SUMMARY RECORD OF THE 47th MEETING

Chairman: Mr. GOERNER (German Democratic Republic)

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The meeting was called to order at 11.25 a.m.

AGENDA ITEM 130: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS THIRTY-SIXTH SESSION (continued) (A/39/10, A/39/412 and A/39/306)

1. Mr. MAHMUD (Bangladesh) said that his delegation attached importance to all the work of the ILC, but was particularly interested in the law of the non-navigational uses of international watercourses because of its vital importance to the harmonious development of relations between States and the maintenance of international peace and security.

2. Any study of the topic was beset with many problems because of the length, location, origin and hydrography of various watercourses and the wide variety, and often inconsistency, in the customs and practices of riparian States. His delegation agreed with the Special Rapporteur that the unity of an international watercourse and the interdependence of its parts and components were beyond question and firmly believed that the definition of the "international watercourse" given in revised draft article 1 was a negation of any absolute or monopolistic use or control of an international watercourse by a particular country. The definition of the term "international watercourse", which took into account the volume of water that flowed into and through the watercourse, must also take into account the economic realities of riparian States. While agreeing that the replacement of the words "international watercourse system" by "international watercourse" was basically a change of terminology, his delegation considered that the explanation given in the commentary to the first version of article 1 was still valid. The definition of the international watercourse was based on the very nature of things, which, in the opinion of his delegation, meant that the definition was, in the final analysis, anchored in the unity of the hydrological cycles.

3. Paragraph 286 of the report (A/39/10) had particularly attracted the attention of his delegation. In the opinion of the Special Rapporteur, the general framework agreement could also contain guidelines and recommendations for watercourse States which might be adapted to specific watercourse agreements. In that connection, his delegation wished to point out that since the guidelines and recommendations to be set forth in the framework agreement were intended to provide modalities for co-operation between riparian States, it was logical and natural that the framework agreement should provide a basis for the rights and duties of riparian States in the absence of a specific agreement concerning the use of the waters of a particular international watercourse.

4. The revised version of draft article 6 referred to a "reasonable and equitable share of the uses of the waters of an international watercourse". In the opinion of his delegation, determination of reasonable and equitable use would depend on various factors, particularly the cost of alternative projects. It had already indicated that the capital costs of such projects should be included among the factors listed in draft article 8, because the question of cost was related to the concepts of "efficiency of uses" and "optimum utilization". In addition, the concept of "reasonable and equitable" share was also related to the unity of the hydrological cycles peculiar to each watercourse.

(Mr. Mahmud, Bangladesh)

5. With regard to draft article 9, his delegation believed that the prohibition not only of uses or activities which might cause "appreciable harm" to the rights and interests of riparian States, but also of those which might have an adverse effect on those States should constitute the basis of any agreement on the non-navigational uses of international watercourses. His delegation had already suggested that the draft article should contain a list of factors liable to cause appreciable harm to and have an adverse effect on the territory of a riparian State. In that connection, draft articles 6, 7 and 8 were closely linked to draft article 9 because any uses or activities causing appreciable harm to or having adverse effects on a riparian State could not be considered as reasonable and equitable. The siting of factories along the watercourse should also be taken into consideration in assessing the harm caused because, in general, the lower downstream the factories were sited the more lethal their effects, particularly in densely populated deltaic flood plains such as those in Bangladesh.

6. Lastly, his delegation had noted that the report had failed to comment on the question of the legality of massive diversions and violations of natural flows of an international watercourse, to which it had already drawn the attention of the Sixth Committee. Such diversions and violations harmed good relations between States and caused appreciable harm to the principle of the reasonable and equitable use of an international watercourse. His delegation would therefore once again request the Commission to examine that aspect of the question.

7. Mr. ROSENSTOCK (United States of America) recalled the position often stated by his delegation on the draft code of offences against the peace and security of mankind: consideration of the topic was not likely to produce useful results for the progressive development of international law or the international community, and the Commission's time might more profitably be devoted to other more promising topics on its agenda.

8. The London and Tokyo Charters and the consequent judicial actions thereunder were, of course, singular achievements in that field. But it must be borne in mind that a central element in those achievements was, in both cases, a tribunal, without which those Charters would not have come into being despite the exceptional degree of international agreement then obtaining. And even with the commitment from the very beginning to establish a tribunal, that necessary element would not have been sufficient without the equally necessary degree of international agreement. In the case of the draft code currently under discussion, those necessary elements were lacking. Although it was true that there had been no decision to exclude the idea of a tribunal, many delegations seemed to consider that it was prudent or possible to contemplate the draft code without a commitment to at least consider the question of a tribunal. His delegation did not share that view. To press for progress on the topic in the absence of the necessary level of international agreement could jeopardize the consensus that existed with regard to the achievements of the 1940s. When work was conducted in a manner which, because of lack of precision, risked converting legally important conclusions into political slogans, however popular, the risk of undoing existing achievements was all the greater and all the more disturbing.

(Mr. Rosenstock, United States)

9. That having been said, his delegation approved of the decision of the Special Rapporteur and the Commission to limit the content ratione personae of the draft code to the criminal responsibility of individuals, excluding that of States. Only thus could progress be made once the other necessary conditions came into being, namely a commitment to consider an international judicial organ and, above all, a measure of international consensus on the offences to be covered.

10. Apart from the encouraging decision he had already mentioned, his delegation considered that there were a number of flaws in the Commission's approach to the subject. It noted with surprise and disappointment that the Commission appeared to have departed from the intention stated in paragraph 67 of its 1983 report (A/38/10) of elaborating an introduction as a first step. Yet common sense and the resolution adopted on the topic by the General Assembly at its thirty-eighth session suggested that it would be appropriate to begin with the formulation of general principles that were generally accepted. The Commission seemed, instead, to have embarked immediately on the compilation of a specific list of offences. The unsatisfactory nature of the work on that list was an inescapable result of attempting to draw up a list before deciding upon criteria. It was probably also a function of the mixed collection of instruments listed in paragraph 50 of the report, which went far beyond any notion of acts that could be regarded as international crimes. The list of offences covered an assortment of acts considered legally indefensible, acts considered morally unacceptable, acts too imprecise to form any basis for criminal legislation, and acts relevant to the political debate on arms control currently taking place elsewhere. Not only was there an absence of any introduction which could give guidance for the compilation of a list of offences, but there was an absence of coherence in the list. It was replete with political slogans such as "colonialism", but devoid of alternative formulations couched in neutral terms, such as the denial of fundamental human rights, including the right to self-determination. Moreover, the list placed an attack on a diplomatic agent on the same footing as the planning of a war of aggression, used the term "mercenarism" - a neologism already largely discredited in the Ad Hoc Committee on that subject, ignored debates and discussions in various forums concerning arms control and simply leaped to conclusions concerning certain weapons. It was misleading to use the terms "maximum content" and "minimum content" with regard to a list at so unsatisfactory a stage of its development. That was not how law could be made and such an approach was far more likely to exacerbate international tensions, by raising questions concerning existing norms, than to contribute to the evolution of new norms.

11. If the Commission was determined to continue its work on that topic, it must ground its work firmly and define universally accepted principles. It must recognize that consideration of a tribunal was an indispensable part of meaningful consideration of the topic. Only on such a basis could the Commission maintain the possibility of making a meaningful contribution in that particular field.

12. Mr. YANKOV (Chairman of the International Law Commission) thanked the members of the Sixth Committee for their valuable contribution to the work of the Commission during the consideration of its report and for the encouragement that they had given to the Commission, while providing a critical analysis of its work. The role of the Sixth Committee as a unique and highly representative international body in the field of the elaboration of international law, should be evaluated both quantitatively and qualitatively.

13. It was important to note that there had been 75 statements on the report of the International Law Commission; that large number of statements reflected the importance States attached to the Commission's work and to the law-making process within the United Nations system. The fact that, of those 75 statements, 36 had been made by representatives of developing countries was worth emphasizing as proof that those countries were taking that law-making process very seriously.

14. Qualitatively, the debate in the Sixth Committee on the Commission's report had been of a high intellectual and technical standard. The wealth of ideas and suggestions presented would be an invaluable asset for the further work of the Commission. The process of codification and development of international law would derive new impetus from the fruitful exchanges of ideas between the members of the Commission and the representatives of various States, as those exchanges made it possible to pin-point the particular problems relating to the main topics considered. There was no doubt that the Commission and its Special Rapporteurs would derive great benefit from those discussions through a careful study of the summary records and the topical summary that would be prepared by the Secretariat. He wished, in particular, to thank the Codification Division of the Office of Legal Affairs for its helpful collaboration.

15. The broad range of opinions to be reconciled in the multilateral process of development and codification of law in the United Nations called for moderation on the part of the Commission and a realistic approach to the study of the main topics. It was to be hoped that the special rapporteurs could attend the next session of the Sixth Committee so that they could have a better idea of the full range of constructive comments put forward during the debates and thus enrich the work of the Commission.

16. It was encouraging to note that the Sixth Committee on the whole supported the methods and programme of work adopted by the Commission. The Commission would try to take account of the different points of view expressed regarding the degree of priority to be allocated to certain items on its agenda, but the important consideration was that the programme presented in paragraph 387 of the report had received the general approval of the Sixth Committee. It was particularly desirable to make progress as quickly as possible on the draft articles during the remaining two years before the five-year term of the members of the Commission expired. Two of its special rapporteurs on particularly important topics had to be replaced and that could involve some delay, but as a result, the Commission would have more time to devote to the consideration of other topics.

(Mr. Yankov)

17. The Commission awaited with keen interest the adoption at the current session of the General Assembly resolution on its further work and it would do its utmost to overcome difficulties, with the ever-efficient assistance of the Secretariat.

AGENDA ITEM 125: DRAFT CODE OF OFFENCES AGAINST THE PEACE AND SECURITY OF MANKIND: REPORT OF THE SECRETARY-GENERAL (A/39/439 and Add.1 to 3, A/39/306, A/39/360)

18. Mr. FLEISCHHAUER (Under-Secretary-General for Legal Affairs, the Legal Counsel), introducing the report of the Secretary-General on agenda item 125 (A/39/439 and Add.1 to 3), recalled that in its resolution 38/132, the General Assembly had requested the Secretary-General to seek the views of Member States and intergovernmental organizations regarding the questions raised in paragraph 69 of the report of the International Law Commission on the work of its thirty-fifth session (A/38/10) and to include them in a report to be submitted to the General Assembly at its thirty-ninth session. The report contained the text of replies received from Botswana, Czechoslovakia, Denmark, Peru, Suriname and the Union of Soviet Socialist Republics. A new addendum containing the views of the Government of Guatemala would be issued shortly. The comments and observations received during 1982 and 1983 had been issued as documents A/37/325 and A/38/356.

19. Mr. de PAIVA (Brazil) said that his delegation agreed with the course of action taken by the Special Rapporteur and the Commission in deciding that efforts should be devoted exclusively to the criminal responsibility of individuals until clear instructions were formulated by the General Assembly with regard to the content ratione personae of the draft code, and that they should be limited at the current stage to elaborating a list of offences considered to be crimes against the peace and security of mankind. That approach corresponded to the spirit and the letter of General Assembly resolution 38/132. However, in the not too distant future the Assembly should take a decision on the basic political questions to be considered in the elaboration of a draft code, namely those described in paragraph 69 of the Commission's 1983 report (A/38/10). Once the list of offences and the introduction to the draft code had been completed, there would be more elements on which to base answers to such questions. In any case, it should be borne in mind that the premises on which the current work was based were, in a sense, provisional and that more definite guidelines would have to be given to the Commission.

20. His delegation considered the preliminary approach adopted by the Commission for the preparation of the list of offences, as described in paragraph 40 of the report (A/39/10), to be quite satisfactory. In fact, the Commission was following the conclusion reached at its thirty-fifth session that the criterion to be used to define the offences was that of "extreme seriousness". To be precise, only crimes as defined in article 19 of the draft articles on State responsibility were to be considered and, among those crimes, only the most serious were to be selected. Despite the subjectivity of such a criterion, his delegation did not see any alternative. It recognized that attempts had been made to identify more precise methods (A/39/10, para. 34), but at the same time it agreed with the view that none of the suggestions made was satisfactory or sufficient.

(Mr. de Paiva, Brazil)

21. It seemed that there was general agreement that the offences proposed in the 1954 draft should be retained, subject to new wording and some form of classification, if necessary. His delegation understood that the three main categories into which the offences covered by the 1954 draft were separated (A/39/10, para. 42) had been chosen purely for the purposes of analysis and in no way signified a deviation from the basic general criterion of seriousness.

22. His delegation agreed that apartheid and colonialism should be included in the list of offences not covered by the 1954 draft, since they both fell within the sphere of jus cogens and the Commission itself seemed to have recognized the particular seriousness of those crimes, by explicitly mentioning them in article 19 of the draft articles on State responsibility (A/38/10, para. 53). That article also referred to serious damage to the environment, but in a much more specific context than the one which apparently had oriented the most recent debates in the Commission. It seemed evident that not all damage to the environment should constitute an offense against the peace and security of mankind. In fact, not all damage to the environment even constituted an international crime within the meaning of the aforementioned article 19. Under paragraph 3 (d) of that article, for environmental damage to be considered to be an international crime, it must result from a breach of an international obligation and the obligation breached must be of essential importance for the safeguarding of the environment. The question that the Commission should ask itself was whether any crime within the meaning of article 19, paragraph 3 (d), should or should not be considered to be an offence against the peace and security of mankind. His delegation tended to believe that it should, but it also felt that a deeper analysis of existing law in the field could help to clarify the matter.

23. No one could deny that atomic weapons could cause unprecedented devastation. However, as had been pointed out, the question of the use of atomic weapons had not been dealt with in positive international law. It had to be admitted that, in the absence of an express prohibition, an act could not be considered to be a crime within the meaning of article 19 of the draft articles on State responsibility and consequently did not at the current stage have a place in the list of offences. The inclusion of nuclear weapons in the list could be envisaged only through a broad interpretation of the whole legal basis of the preparation of the draft Code. However, since the Commission was working on an international instrument which would define precise and serious legal consequences for certain acts, rigorous criteria should be followed. However, all that should not prevent the Commission from addressing States on the question of atomic weapons and expressing its views on the advisability of the conclusion of an international instrument prohibiting the use of such weapons.

24. The questions of the taking of hostages, violence against persons enjoying diplomatic privileges and immunities, piracy and the hijacking of aircraft should be treated on an equal footing. All those acts were politically motivated and were condemned under positive law or customary law, and there was no doubt that those responsible for them should be punished. If the Commission followed the pattern of the 1954 draft, those acts would be covered in the new draft only to the extent

(Mr. de Paiva, Brazil)

that they were committed or authorized by a State. Acts committed by individuals not acting on behalf of States would be treated in accordance with the provisions of the existing specific conventions. Therefore, the first problem was whether there should be two different régimes to punish the same crimes: one applicable to individuals acting on behalf of a State and the other to individuals acting on their own behalf. His delegation felt that, in principle, two régimes would be justified; otherwise, there would be no real guarantees that the acts committed on behalf of States would actually be punished. The second problem, which was linked to the first, was whether the new draft should make a specific reference to those crimes, which were included in the 1954 draft under the general heading of terrorism. That question was linked to the approach to be adopted by the Commission: if the list of crimes prepared in 1954 was maintained, and it seemed that the Commission had so decided at its 1984 session, it might be argued that there was no real need to specify those offences in the new list. If, however, the Commission adopted a different approach, the whole question would have to be re-examined. His delegation believed that the list contained in the 1954 draft should be revised before a final decision was taken on those new points.

25. The same considerations applied to the question of mercenaries, although positive international law was developing, as the Commission itself had clearly recognized.

26. His delegation believed that the work on the preparation of the draft Code was progressing satisfactorily, but some basic questions such as the approach that the Commission should adopt with respect to the 1954 draft had still to be considered in more detail. The Commission should proceed to a thorough revision of the list contained in the 1954 draft.

27. Mr. ENKHSAIKHAN (Mongolia) said that his delegation had been among the sponsors of resolution 33/97, by which the General Assembly had decided to take up once again the question of the preparation of a draft Code of Offences against the Peace and Security of Mankind.

28. His delegation believed that the elaboration and adoption of a Code were important and most timely, particularly in the light of the current international situation, characterized by the aggravation of international tension and the increased danger of nuclear war, as well as the continuence of explosive and tense situations in the Middle East, southern Africa and Central America.

29. In those circumstances, the elaboration of a draft Code would represent a contribution to the development and stricter application of the principles and norms relating to the responsibility of States, groups and individuals and would be an additional guarantee for the strengthening of international peace and security.

30. Although the 1954 draft covered a number of pertinent acts, it could not currently cover all offences against international peace and security and other crimes against humanity. The new draft should also reflect faithfully the progressive development of international law over the previous 30 years. As was

(Mr. Enkhsaikhan, Mongolia)

clear from paragraph 50 of the Commission's report (A/39/10), since 1954 a large number of international legal instruments had been adopted stipulating that certain acts were international crimes - a fact which should be reflected in the draft Code. His delegation considered that the second report of the Special Rapporteur (A/CN.4/377) was a step forward towards the elaboration of the draft Code.

31. His delegation agreed with the view expressed by the Special Rapporteur (A/39/10, para. 30) that the topic should be limited to less controversial questions until more precise replies were received from the General Assembly and from Governments.

32. With respect to the content ratione personae, his delegation believed that the Commission had taken a correct approach by deciding to concentrate its attention exclusively on the criminal responsibility of individuals and, in that regard, it agreed with the arguments reflected in paragraph 32 of the report.

33. As regards the content ratione materiae, the Commission should follow the provisions of General Assembly resolution 38/132 whereby the Commission had been requested to elaborate as a first step an introduction, in conformity with paragraph 67 of its report on the work of its thirty-fifth session, as well as a list of offences in conformity with paragraph 69 of the same report. The preparation of the introduction should not be unduly delayed and the Commission should already begin to consider the criteria to be used for identifying offences against the peace and security of mankind.

34. With regard to the principles that could be reflected in the introduction, those enumerated in paragraph 35 of the report could serve as a basis for such elaboration: the notion of individual criminal responsibility should be one of the basic principles of the Code; offences against the peace and security of mankind constituted international crimes whose prosecution was a universal duty; the non-applicability of statutory limitation in respect of crimes committed by individuals.

35. With respect to the question whether a distinction should be made between offences against the peace and offences against the security of mankind, his delegation believed that those two offences were organically linked and that it would therefore be extremely difficult to make a clear distinction between them. Furthermore, the value of making such a distinction was not clear.

36. On the question of the choice between a "minimum content" and a "maximum content" (A/39/10, para. 51), the Code should follow the minimum content approach so that it would relate to the most serious of international crimes. Besides those that were already reflected in the 1954 draft Code, the future Code should incorporate the universally recognized international crimes such as apartheid, colonialism, mercenarism and pollution of the environment on a massive scale.

37. As regards the question whether specific provisions on the prohibition of the use of nuclear weapons should be included in the draft, Mongolia supported the view

(Mr. Enkhsaikhan, Mongolia)

that it was inconceivable for a code of offences against the peace and security of mankind to remain silent on the use of such weapons - the most horrible and inhumane of all weapons, posing grave dangers to mankind as a whole (A/39/10, para. 57). The future Code should head the list of offences with the use or threat of use of nuclear weapons. Likewise, the use of any other weapons of mass destruction should be outlawed. The absence of a treaty forbidding the use of nuclear weapons, or arguments that a formal prohibition of their use would deprive them of their deterrent effects, could not serve as a justification for leaving a lacuna in the future Code, since nuclear war had been defined as the gravest of all crimes in many instruments, including the Declaration on the Prevention of Nuclear Catastrophe (General Assembly resolution 36/100). The Declaration on the Right of Peoples to Peace, which had just been adopted by the General Assembly (document A/39/L.14), solemnly proclaimed that the peoples of the planet had a sacred right to peace and that the preservation of that right and co-operation in its implementation constituted a fundamental obligation of each State. In that same Declaration, an appeal had been made to all States to do their utmost to assist in implementing that right through the adoption of appropriate measures at the international level. The express prohibition in the future Code of the use of nuclear weapons would constitute a significant step in that direction by providing a legal barrier which would serve as a deterrent to a nuclear war.

38. Article 19 of the draft articles on State responsibility recognized that, under certain circumstances, causing serious damage to the environment could be considered an international crime. His delegation concurred with that view. Indeed, one of the reasons for the partial test ban on nuclear weapons was that they caused enormous damage to the environment.

39. War propaganda and incitement to hatred among peoples should also be expressly prohibited, since they constituted a psychological preparation for the commission of grave international offences.

40. Mr. TREVES (Italy) congratulated the Special Rapporteur and the International Law Commission on the progress they had made towards clarifying the issues involved in the draft Code of Offences against the Peace and Security of Mankind.

41. His delegation approved of the decision to organize the work under two headings: the content ratione personae and the content ratione materiae of the draft Code. At the same time, it hoped that the progress made under each heading would be put to use in work under the other heading.

42. The decision to limit the consideration of the question to the international criminal responsibility of individuals seemed to be a wise one. It should form the definitive basis of the Commission's work, not only during its current stage and not only for reasons of expediency. What characterized offences against the peace and security of mankind and made it possible to distinguish them from bordering concepts of international law was the fact that they were acts for which international law provided for the international responsibility of individuals. Although it was true that those individuals might commit such acts while in the

(Mr. Treves, Italy)

position of State authorities (as was the case for most of the acts listed in the 1954 draft Code), that did not exempt them from being responsible as individuals under international law. It was also true that the international responsibility of the State as such was incurred for the breach of international obligations committed by its authorities. That, however, was another matter. It would only create confusion to establish too strict a correspondence between breaches of international obligations entailing the international responsibility of individuals and the above-mentioned breaches of an international obligation entailing State responsibility. Crimes committed by persons who were neither "authorities of a State" nor persons whose conduct could be attributed to the State, did not engage the international responsibility of that State. By way of example, mention might be made of the crimes covered in article 2, paragraph (10), of the 1954 draft Code (A/39/10, para. 17) when they were committed by individuals, as well as various types of terrorist acts when the conduct of the individuals committing them could not be attributed to a State. For example, some of the crimes that could be covered by the label "mercenarism" - the use, recruiting and financing of mercenaries, when committed by a State and if prohibited by a rule of international law in force - must certainly be considered a violation of an international obligation of that State. However, the fact of being a mercenary, as defined in article 47, paragraph 2, of Additional Protocol I to the 1949 Geneva Convention could be attributed only to an individual.

43. In establishing the applicable jurisdiction, it might be useful to draw a distinction between crimes that, while giving rise to individual responsibility for the persons who committed them, necessarily also engendered responsibility for the State, owing to the position occupied by such persons, crimes that either could or could not be attributed to the State, depending on the capacity in which the persons who had committed them had acted, and crimes that, by definition, could not be attributed to the State. Although it seemed necessary to establish an international criminal jurisdiction to try individuals who had committed crimes against the peace and security of mankind while in such a position as to make their acts also attributable to the State (the "State authorities" of the 1954 draft code), individuals who had committed such crimes without being in such a position could be tried by the States concerned. Appropriate rules on jurisdiction, judicial assistance and extradition could be envisaged.

44. With regard to the content ratione materiae, his delegation wished to emphasize the importance of the observation that some breaches might constitute only a minor infringement, reprehensible no doubt, but not falling within the category of offences against the peace and security of mankind (A/39/10, para. 47). Whereas, in the paragraph in question, that observation concerned only acts in violation of the laws or customs of war, it should be applied to the whole subject-matter under consideration. On the other hand, the relationship between offences under the 1954 draft code and new offences called for closer consideration. In particular, careful consideration should be given to serious breaches on a widespread scale of an international obligation of essential importance for safeguarding the human being, which were referred to in article 19, paragraph 3 (c), of the ILC draft on international responsibility (A/38/10,

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para. 53), over and above the examples given in that subparagraph. Torture, in particular, was a question that must be considered in the light of the draft convention that was under consideration. Lastly, while his delegation in no way objected to the inclusion of major environmental damage in the list of crimes against the peace and security of mankind, it wished to sound a note of caution regarding the inclusion of concepts that had such far-reaching political and strategic implications and were so imprecise from the legal point of view as the use of atomic weapons and economic aggression. Such issues fell within the sphere of competence of other United Nations bodies and ILC should not deal with them.

45. Mr. TEPAVICHAROV (Bulgaria) said that his delegation considered encouraging the progress made so far on the draft code of offences against the peace and security of mankind.

46. The 1954 draft code formed a good basis for further work by ILC, since it embodied the principles laid down in the Charter of the United Nations and the main principles upon which the Nürnberg and Tokyo Tribunals had been established. His delegation shared the view on that matter reflected in paragraph 49 of the ILC report (A/39/10).

47. With regard to the content ratione materiae of the draft code, the restrictive approach taken in 1954 should be adopted. In that connection, his delegation welcomed the efforts made by the Special Rapporteur to list the most serious offences, rather than all international offences, through the inductive method. It would also be useful to draw up without delay a general definition of the basic characteristics of crimes against the peace and security of mankind. Just as ILC was contemplating the completion of the list of crimes included in the 1954 draft through the inclusion of the violations of international law recognized by the international community since that date, the violations of international law recognized by the international community since completion of the draft code could be included in the list of crimes against the peace and security of mankind through a reference to such a definition.

48. Particular attention should be devoted to the preparation, threat and perpetration of acts of aggression. In that connection, his delegation noted from paragraph 44 of the report that some members of ILC had voiced doubts regarding the phrases "threat ... to resort to an act of aggression" and "preparation ... of the employment of armed force" included, respectively, in article 2, paragraphs 2 and 3, of the 1954 draft, which it considered linked to too subjective a criterion. It considered that, even although in such cases the international community was normally confronted with two conflicting assessments of a situation, namely, that of the potential aggressor and that of the potential victim, the assessment of the potential victim of an act of aggression should be of particular concern to the international community.

49. With regard to the list of offences not provided for in the 1954 draft, in respect of which ILC had indicated that a choice must be made between a minimum content and a maximum content, his delegation, which shared the view of the

(Mr. Tepavicharov, Bulgaria)

majority of the members of ILC in that connection expressed in paragraph 63 of the report, believed that the minimum content would be more in keeping with the character and purpose of the future code.

50. It was of the view that the minimum content should include the use of nuclear weapons, which were a threat to the very existence of mankind and in respect of which the international community had expressed concern in numerous international instruments. It did not share the view that ILC should not deal with that issue under the pretext that it was already under consideration in other forums and that the inclusion of specific provisions on nuclear weapons would amount to a theoretical prohibition of their use that would not be accepted by States possessing such weapons (ibid., para. 55), and it did not endorse the arguments based on the so-called deterrent character of nuclear weapons (ibid.). However, it did support the view that political difficulties should not stand in the way of stating a rule de lege ferenda (ibid., para. 57). In that connection, his delegation recalled that in resolution 38/75, paragraph 1, the General Assembly condemned resolutely, unconditionally and for all time nuclear war as being contrary to human conscience and reason, as the most monstrous crime against peoples and as a violation of the foremost human right - the right to life.

51. His delegation believed that it was necessary to include in the draft code the crime of genocide, in the sense of the Convention on the Prevention and Punishment of the Crime of Genocide, and the crime of apartheid, in the sense of the International Convention on the Suppression and Punishment of the Crime of Apartheid. Account must also be taken of such important international instruments as the International Convention on the Elimination of All Forms of Racial Discrimination and the Declaration on the Granting of Independence to Colonial Countries and Peoples. The argument that the crime of apartheid should not be included in the draft code since it concerned the shameful practices of a single country (ibid., para. 53) was unconvincing; that fact in no way diminished the danger that it represented for society. Moreover, his delegation shared the view of the ILC members who believed that apartheid had characteristics of its own that were not covered by the term "racial discrimination" and that it should therefore be included as such in the list of the gravest offences.

52. His delegation did not understand the hesitations concerning the inclusion of colonialism in the draft code, which unquestionably fell within the sphere of jus cogens.

53. The consequences of economic aggression designed to destabilize a Government or the social order of a State were such that they could be compared with the consequences of armed aggression. Economic aggression should therefore be included in the draft code.

54. Lastly, the future code should apply to the offences provided for in paragraph 65 (c) (v) of the report only if, in specific cases, their gravity was comparable to that of offences representing the greatest threat to society. For example, that would be so in cases where such offences were linked to the

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perpetration, threat or preparation of an act of aggression, to a direct threat to international peace or to interference in the internal affairs of other States.

55. In view of the great importance of the preparation of a code of offences against the peace and security of mankind, the question should be retained as a separate item on the Committee's agenda and should be given priority.

The meeting rose at 1 p.m.