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DRAFT CODE OF OFFENCES AGAINST THE PEACE AND SECURITY OF MANKIND

Report of the Secretary-General

Addendum

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REPLIES RECEIVED FROM GOVERNMENTS

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

[Original: Russian]

[15 November 1984]

1. Being a staunch supporter of the world-wide development of friendly relations among States and peoples, the Byelorussian Soviet Socialist Republic actively supported the proposals made by a number of countries concerning the drafting in the Sixth Committee of the United Nations General Assembly of a Code of Offences against the Peace and Security of Mankind and on two occasions submitted comments on the 1954 draft Code, which were issued in documents A/35/210 and A/37/325.
2. The preparation and adoption by States of such a Code would make a substantial contribution to the achievement of one of the main purposes of the United Nations, which according to its Charter is to maintain international peace and security and to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace. In addition, a Code of Offences against the Peace and Security of Mankind, based on the purposes and principles of the Charter of the United Nations, could promote the further progressive development and codification of international law.
3. After considering the report of the International Law Commission on the work of its thirty-fifth session, the Byelorussian SSR deems it necessary to state its views on the conclusions of the Commission contained in paragraph 69 of that report.
4. The Commission correctly concludes that the commission of offences against the peace and security of mankind should be determined by reference to a general criterion and also to the relevant conventions and declarations pertaining to the subject. This general criterion should be, first and foremost, the generally recognized principles of international law embodied in the Charter and in the judgement of the Nürnberg International Tribunal, in full conformity with General Assembly resolution 177 (II) of 21 November 1947 and other instruments of international law currently in force.
5. In drafting the Code, account should be taken of the provisions of conventions, international agreements, General Assembly resolutions and other instruments designed to prevent offences against the peace and security of mankind, such as the crimes of genocide, racism and colonialism, actions punishable under the 1949 Geneva Conventions and the Additional Protocols thereto, and the crimes of war propaganda and of racial and national hatred. It is equally important to include in the Code such crimes against humanity as apartheid, a definition of which is contained in the International Convention on the Suppression and Punishment of the Crime of Apartheid, adopted by the United Nations in 1973 (art. I). The same article of the Convention states that inhuman acts resulting from the policies and practices of apartheid violate the principles of international law, in particular the purposes and principles of the Charter of the United Nations, and constitute a serious threat to international peace and security.

6. The list of specific forms and manifestations of offences against the peace and security of mankind should fully reflect the definition of aggression approved by the United Nations General Assembly in 1974 in resolution 3314 (XXIX). It is well known that consideration of the draft Code was repeatedly postponed by the General Assembly pending the formulation of a generally acceptable definition of aggression, in view of the close link between the concept of aggression and the determination of the constituent elements of offences against the peace and security of mankind.
7. In contemporary conditions, when through the fault of the aggressive forces of imperialism the international situation has seriously deteriorated and the threat of nuclear war has grown, there must be due reflection of the provisions concerning the violations of States' obligations with regard to disarmament which are contained in a number of instruments of international law and also of the basic ideas in the Declaration on the Prevention of Nuclear Catastrophe and of United Nations General Assembly resolution 38/75 of 15 December 1983, which condemns nuclear war and any attempts to justify its "admissibility" or "legitimacy".
8. The draft Code should be supplemented by provisions specifying that no statutory limitation applies to offences against the peace and security of mankind, regardless of the time when they were committed, and, in accordance with international law, all necessary measures should be taken to extradite or punish persons who were responsible for or accomplices in such offences.
9. The draft Code should be based on the principle of individual criminal responsibility for the gravest offences against the peace and security of mankind and of the inevitability of punishment for offences of that kind.
10. In addition, States could undertake, in accordance with the relevant provisions of the Code, to adopt legislative, judicial and administrative measures to prosecute, bring to trial and punish persons involved in the commission of offences against the peace and security of mankind.
11. The Byelorussian SSR considers the drafting of the Code to be the primary question on the agenda of the International Law Commission and believes that it should remain one of the main questions before the Sixth Committee of the United Nations General Assembly.

TUNISIA

[Original: French]

[14 November 1984]

1. We have no objection to the recommendations contained in paragraph 69 (a) of the report of the International Law Commission on the work of its thirty-fifth session. Tunisia believes in the necessity of elaborating the draft Code of Offences according to the norms and general criteria governing the various conventions and international declarations pertaining to the subject.

2. As a general rule, the draft Code should take into account, inter alia, the principles embodied in the relevant resolutions of the United Nations General Assembly, particularly resolutions 1514 (XV), 2625 (XXV), 3074 (XXVIII) and 3314 (XXIX).
3. In addition, the draft Code should provide for the punishment of the crime of apartheid, as in, inter alia, the International Convention on the Suppression and Punishment of the Crime of Apartheid of 30 November 1973, and should include the crimes of aggression and genocide.
4. Moreover, given the seriousness of the offences to be covered by the draft Code, it would be useful to extend to them the principle of non-applicability of statutory limitations laid down in the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity of 26 November 1968.
5. The impact of the political nature of the problem should not be such as to prevent the enforcement of the penalty imposed by the international jurisdiction. All States bound by the principles of that jurisdiction should see to it that the judgement passed on any subject of law is respected and, moreover, that it is enforced.
6. It should also be possible to invoke the responsibility of States; the conviction of an individual should not release a State from its responsibility for harm done by its authorities.
7. At the same time, it would not be enough to state which offences are punishable; it is also essential to lay down the relevant procedure for the punishment of such offences, establish the applicable penalties and determine which courts are competent to pass judgement on offenders.
8. In that connection, an international criminal jurisdiction with competence both for individuals and for States is desirable if not necessary. The penalties must be specified in the Code, for a legal text that failed to provide for penalties or for a competent criminal jurisdiction could not be effective and functional.

UKRAINIAN SOVIET SOCIALIST REPUBLIC

[Original: Russian]

[21 November 1984]

1. It is common knowledge that aggression and other acts which violate the principles of non-use of force and of the threat of force in international relations constitute the most serious form of violations of rights, since they impair peace and international security and threaten the enjoyment of a basic human right - the right to life. The need to combat more actively the commission of crimes against the peace and security of mankind is particularly apparent today, when as a result of the policy of the aggressive circles of imperialism, who are

taking a chance on adverturism and the arms race, the threat of nuclear war hangs over the world. The drafting of an international instrument which gives a comprehensive definition of the concept of crimes against the peace and security of mankind would be an important means of combating the most dangerous crimes against humanity, and would promote the adoption of effective practical measures for their suppression.

2. The draft Code prepared by the International Law Commission in 1954 generally constitutes a good basis for the development of the relevant norms establishing responsibility for particularly dangerous international violations of rights. In the course of further work on the draft Code of Offences against the Peace and Security of Mankind, account should be taken of all the changes that have occurred in the field of international law over the past few decades. In the light of the extremely important international legal instruments adopted since 1954 containing a description of the most dangerous breaches of the international legal order, a comprehensive and universal document needs to be drawn up which would define the concept of crimes against the peace and security of mankind, detail the constituent elements of specific types of such crimes, confirm the principles of international responsibility of States and individual criminal responsibility of persons guilty of their commission, and impose severe penalties.

3. The Code should set out clearly such key provisions as the principle of non-applicability of the statute of limitations to crimes in this category, the principle of the inevitability of punishment, etc. It should also reflect the basic provisions of the Declaration on the Prevention of Nuclear Catastrophe, adopted by the General Assembly on 9 December 1981 (resolution 36/100), to the effect that States and statesmen that resort first to the use of nuclear weapons will be committing the gravest crime against humanity. The embodiment of such a provision in the Code would make it possible to condemn nuclear war, unreservedly and for all time, as the most monstrous crime against humanity, and would be aimed at stopping the formulation, dissemination and propaganda of any doctrines and concepts of "legitimacy" of the first use of nuclear weapons and in general of the "possibility" of nuclear war.

4. For purposes of making the list of international crimes contained in the draft Code more specific, and their constituent elements more precise, in the light of the progressive development of the principles of international law, texts of primary importance are, as was pointed out on an earlier occasion, the Definition of Aggression adopted by the General Assembly in 1974 (resolution 3314 (XXIX)), the treaties in force in the field of disarmament, and also the provisions of the 1970 Declaration on the Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations. No less important is the inclusion in the Code of definitions of such dangerous breaches of international peace and security as colonialism, apartheid, genocide, racism and ecocide. A detailed discussion of this point is contained in the comments sent by the Ukrainian SSR to the United Nations in 1982 and issued in document A/37/325.

5. With regard to the question of responsibility for crimes against the peace and security of mankind, it should be pointed out that the special nature of these crimes means that their commission entails both the international responsibility of

the State and, simultaneously, the criminal responsibility of individuals. The international responsibility of the State is entailed by virtue of the fact that such crimes are planned and committed on the basis of a policy pursued by it which contradicts the principles and norms of international law. Individual persons bear criminal responsibility because they have consciously used their official position in the State, and the machinery of State power, to give effect to their criminal designs. The idea of acknowledging the criminal responsibility of the State is without foundation, since contemporary international law recognizes no such responsibility. To agree to the proposal for the development of a category of international criminal responsibility would mean recognizing the appropriateness of substituting categories of national legislation for specific bodies of international law. This approach would place in doubt the possibility of further productive work on the development of the Code of Crimes against the Peace and Security of Mankind.

6. The Code will be an important means of strengthening international peace and security and consolidating co-operation among States only if it is comprehensive in nature and contains a detailed description of the most serious international crimes in the light of the latest trends in the development of international law.

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