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**Observations of Member States and intergovernmental organizations received pursuant to
General Assembly resolution 39/80**

Topic:
**Draft code of crimes against the peace and security of mankind (Part II)- including the
draft statute for an international criminal court**

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received pursuant to General Assembly resolution 39/80**

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[8 May, 14 June and 8 July 1985]

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NOTE

The text of the draft Code of Offences against the Peace and Security of Mankind, prepared by the Commission in 1954, is reproduced in *Yearbook ... 1984*, vol. II (Part Two), p. 8, para. 17.

Introduction

1. On 13 December 1984, the General Assembly adopted resolution 39/80 on the draft Code of Offences against the Peace and Security of Mankind. The operative paragraphs of the resolution read as follows:

The General Assembly,

...

1. *Requests* the International Law Commission to continue its work on the elaboration of the draft Code of Offences against the Peace and Security of Mankind by elaborating an introduction as well as a list of the offences, taking into account the progress made at its thirty-sixth session, as well as the views expressed during the thirty-ninth session of the General Assembly;

2. *Requests* the Secretary-General to seek the views of Member States and intergovernmental organizations regarding the conclusions contained in paragraph 65 of the report of the International Law Commission and to include them in a report to be submitted to the General Assembly at its fortieth session with a view to adopting, at the appropriate time, the necessary decision thereon;

3. *Decides* to include in the provisional agenda of its fortieth session the item entitled "Draft Code of Offences against the Peace and

Security of Mankind", to be considered in conjunction with the consideration of the report of the International Law Commission.

2. The Secretary-General, on 20 March 1985, addressed a note to Governments of Member States and a letter to the relevant intergovernmental organizations inviting them, pursuant to paragraph 2 of resolution 39/80, to communicate to him before 15 August 1985 any observations they might wish to submit.

3. The replies received as at 3 July 1985 from the Governments of four Member States¹ are reproduced below.

¹ The replies received after this date from the Governments of nine other Member States (Australia, Byelorussian Soviet Socialist Republic, German Democratic Republic, Malawi, Mexico, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay and Venezuela) were circulated to the General Assembly, at its fortieth session, in document A/40/451 and Add.1-3.

Egypt

[Original: Arabic]
[3 July 1985]

The Arab Republic of Egypt has already had occasion to state its views regarding the content of paragraph 69 of the report of the Commission on the work of its thirty-fifth session,¹ pursuant to paragraph 2 of General Assembly resolution 38/132.

In response to General Assembly resolution 39/80, the Government of Egypt wishes to present its views concerning paragraph 65 of the Commission's report on the work of its thirty-sixth session,² relating to the draft Code of Offences against the Peace and Security of Mankind, as follows:

1. Although the Commission's intention to limit its work at the current stage to the criminal liability of individuals, without prejudice to subsequent consideration of the possible application to States of the notion of international criminal responsibility (para. 65, subpara. (a)), does not take fully into consideration Egypt's previously stated position regarding the possibility of holding States criminally responsible, the Government of Egypt can agree to this approach at present, provided that the criminal responsibility of States remains open for discussion in the future.

2. It is therefore only logical that the Commission should begin (as indicated in paragraph 65, subparagraph (b)) by drawing up a provisional list of offences constituting a threat to the peace and security of mankind, while bearing in mind the need to draft, at an appropriate stage, an introduction summarizing the general principles of international criminal law relating to such offences.

3. In addition, the Government of Egypt considers that a list of offences must necessarily be based on the list prepared by the Commission in 1954. However, the study of this list will naturally lead to the introduction of amendments and the addition of new types of offences which have emerged as a result of international and legal developments since 1954, and which, by a sort of common international conviction, must be considered criminal.

4. Hence the Commission must, at the current stage, work on reaching agreement concerning offences internationally recognized as criminal, with a view to including them in the list of offences; perhaps the most serious are *apartheid* and the use of nuclear weapons, which States cannot but unanimously consider as offences against the peace and security of all mankind.

5. To quote the examples of *apartheid* and the use of nuclear weapons is not to minimize the seriousness of the other offences referred to in paragraph 65, subparagraph (c). The Government of Egypt merely thinks that these two should be given priority as the least controversial offences, following which the Commission could proceed to examine colonialism, economic aggression, etc., as mentioned in the report.

6. Lastly, the Government of Egypt attaches special importance to setting a time-limit for completion of the Commission's work on the list of offences. This is a

matter which should be dealt with by the Commission when it next examines this topic.

Gabon

[Original: French]
[27 June 1985]

1. The Gabonese Republic considers that the preparation of a code of offences against the peace and security of mankind is a step forward in the process of the progressive development and codification of international law. In order to move ahead and arrive at concrete results, the Commission should continue its work on the basis of the views expressed by Member States during the discussion in the Sixth Committee of the General Assembly and in the written replies from Governments.

2. For the purpose of harmonizing the various views expressed by Member States, a cautious and realistic approach on the part of the Commission is therefore essential. In the circumstances now prevailing in the international community, the draft Code of Offences against the Peace and Security of Mankind raises controversial issues at both the legal and the political levels.

3. With regard to the content *ratione personae* of the draft code, Gabon endorses the Commission's pragmatic decision to limit itself at the current stage to the criminal liability of individuals, as indicated in paragraph 65, subparagraph (a), of the Commission's report on the work of its thirty-sixth session.¹

4. This circumspect approach is in keeping with the principles underlying the Charter and Judgment of the Nürnberg Tribunal. The Commission's intention to draw up a provisional list of offences and draft an introduction summarizing the general principles of international criminal law relating to such offences is in conformity with its mandate.

5. With regard to the content *ratione materiae*, the Gabonese Republic is of the view that the 1954 draft code is an acceptable point of departure for preparing the list of offences.

6. Offences which have emerged since 1954, such as colonialism, *apartheid* and all other forms of foreign domination, should also be included in the list of offences, since they are a violation of one of the most fundamental of human rights, namely the right of peoples to self-determination, and constitute a threat to international peace and security. The same is true of the offence of mercenarism and hegemony.

7. The necessary updating of the draft Code of Offences against the Peace and Security of Mankind should be based on the "minimum content" set out in paragraphs 52 to 62 of the Commission's report.²

8. In this connection, the Gabonese Republic endorses the view that the draft code would be weakened if it were too broad in scope.

¹ Yearbook ... 1983, vol. II (Part Two), p. 16.

² Yearbook ... 1984, vol. II (Part Two), p. 17.

¹ Yearbook ... 1984, vol. II (Part Two), p. 17.

² Ibid., pp. 15-17.

Mongolia

[Original: Russian]
[10 June 1985]

In addition to the comments transmitted to the United Nations in 1980,¹ the Mongolian People's Republic wishes to state the following:

1. In the current complex international situation, marked by an increased risk of nuclear war as a result of the actions of the aggressive forces of imperialism, the completion of the work on the draft Code of Offences against the Peace and Security of Mankind as quickly as possible is extremely important for the conservation of peace on Earth.
2. Generally speaking, the draft code prepared by the Commission in 1954 represents a good basis for the code. However, in further work on the draft code, account must be taken of the relevant provisions of the extremely important resolutions adopted by the General Assembly in recent years. These include the Declaration on the Prevention of Nuclear Catastrophe (resolution 36/100 of 9 December 1981), resolution 38/75 of 15 December 1983 on the condemnation of nuclear war, and the Declaration on the Right of Peoples to Peace (resolution 39/11 of 12 November 1984).
3. The idea of the draft code, based on the principle of the criminal responsibility of the individual for serious

¹ See A/35/210/Add.1.

crimes against peace and on the imperative nature of punishment for such crimes, must be maintained.

4. The code could include a provision whereby countries would enter into an obligation to incorporate definitions of international crimes into their national legislation and to introduce severe penalties for persons committing such crimes.

Qatar

[Original: English]
[18 April 1985]

1. The Government of the State of Qatar is in agreement with the conclusions reached by the Commission with regard to the draft Code of Offences against the Peace and Security of Mankind, as contained in paragraph 65 of the Commission's report on the work of its thirty-sixth session.¹
2. With regard to the use of nuclear weapons in particular, the Government of Qatar concurs with the view that the Commission cannot remain indifferent to the legal characterization to be given to the use, at least in the case of a first strike, of such weapons of mass destruction causing incalculable long-term harm to the planet and its inhabitants.

¹ Yearbook ... 1984, vol. II (Part Two), p. 17.