

Document:-
A/CN.4/R.3

**Systematic List of the International Crimes Proposed by V. V. Pella in his Memorandum -
incorporated in A/CN.4/SR.61, footnote 16**

Topic:
Draft code of offences against the peace and security of mankind (Part I)

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interests of States, but to draw up a code of crimes against the peace and security of mankind. For purposes of the draft code the Commission had hitherto always considered facts even where genocide was concerned, and it was now suddenly proposed to introduce a subjective element, that of the interests of a State. If the Commission accepted such a suggestion, it would be straying from its real work. Consequently he seconded Mr. Amado's proposal that the discussion on this point should be closed.

114. The CHAIRMAN maintained that it was the Commission's duty to examine the replies sent in by governments at its express request. Item (4) was not only concerned with the interests of such and such a State, but was of great importance from the point of view of peace. The manufacture of and trade in arms was an industry particularly harmful to peace. The transfer, sale or distribution of weapons, etc. and their export might in certain circumstances constitute the crime of fomenting war. However, he was of the opinion that consideration of the acts visualised in item (4) should be postponed and taken up later with a view to their insertion in the general code which the Commission would be called upon to draw up.

115. Mr. FRANÇOIS was in agreement with the Chairman's suggestion, but he pointed out that the Commission had requested governments to submit their views and suggestions and that there had been very little response. The replies which had been sent in might therefore be given somewhat greater consideration. From the point of view of future replies, it would not be encouraging if they did not take the trouble to give due consideration to those they had received.

116. Mr. AMADO said that he had had no intention of minimizing the importance of the Netherlands Government's reply. He merely wished to avoid an indefinite prolongation of the discussion, and specifically a discussion of the obvious. The members of the Commission all knew what was meant by the manufacture of counterfeit currency, the assassination of the Head of a State, or of his wife, etc. That was what he called the obvious. He trusted that the Commission would not misunderstand his intentions.

117. Mr. SPIROPOULOS was sorry that the replies of governments had not reached him in time to enable him to take them into account in drawing up his report.

118. The CHAIRMAN called upon the Commission to continue the examination of the replies of governments.

*Pakistan*¹⁵

119. Mr. HUDSON said that the reply of the Government of Pakistan suggesting that the taking of hostages should be included amongst the crimes listed in the draft code was something new. However, the Commission had already discussed that question. Another new idea suggested by the Government of Pakistan concerned the overthrow of a foreign government by internal upheaval. There again, there was a certain similarity

with one of Mr. Hsu's proposals which had already been discussed by the Commission. In regard to the definition of the word "war" proposed by the Government of Pakistan, he considered that the Commission had already settled this question in connexion with Crime No. I.

LIST OF THE INTERNATIONAL CRIMES PROPOSED BY MR. PELLA IN HIS MEMORANDUM¹⁶

120. Mr. SPIROPOULOS said that, during his stay in the United States in the preceding year, he had seen Mr. Pella who had told him that he would send him the list. However, he had only received a part of it. It

¹⁶ Doc. A/CN.4/R.3, which reads as follows:

LIST OF THE INTERNATIONAL CRIMES PROPOSED BY MR. PELLA IN HIS MEMORANDUM (A/CN.4/39)

I

The unlawful and direct use of force by one State against another State

1. The invasion of the territory of a State by the armed forces of another State.
2. Attack by the land, sea or air forces of a State on the territory, ships or aircraft of another State.
3. Attack by a State on the territory of another State by means of weapons already on the territory of the latter State.
4. The establishment by a State of a naval blockade of the coasts or ports of another State.
5. Declaration of war.

II

Threat of unlawful use of force and preparation for such use

1. The conclusion of treaties of an aggressive character or any arrangement to ensure the co-operation of one State with another State in the eventuality of the latter committing an aggression.
2. Threat of resort to force.
3. Mobilisation carried out with a view to intimidation or in preparation for an act of international aggression.
4. War propaganda.

III

The furnishing of direct or indirect assistance to an aggressor State

1. The furnishing of assistance to an aggressor State.
2. Refusal to lend assistance to the United Nations when the latter takes action for the maintenance of international peace and security.

IV

Failure to submit a dispute to the competent organs of the United Nations in the cases provided for under the Charter

V

Violation of the international obligation of States with regard to armaments

1. Recruitment of forces in excess of those authorised and the construction of forbidden strategical works.
2. The manufacture of, traffic in and possession of weapon of war forbidden by international agreements and the training of persons in the use of such weapons.

VI

The annexation of the territory of a State in violation of international law and any veiled form of annexation

¹⁵ See A/CN.4/19/Add.2.

appeared to him that the list contained a very comprehensive enumeration of international crimes. Should the Commission be of opinion that some of the crimes contained therein should be inserted in the draft code, he would willingly accept the Commission's suggestions on the subject.

121. Mr. ALFARO said that he had not yet occasion to study the list and pick out the items which might constitute a new crime for insertion in the code. He suggested that the Commission should examine the list and decide whether, apart from the crimes already provided for in the draft code, there were any others which had hitherto been overlooked.

122. The CHAIRMAN read Part I of the list, "The unlawful and direct use of force by one State against another State", and pointed out that the acts described in items 1, 2, 3, 4 and 5 thereof were already provided for in the draft code. He then proceeded to read Part

VII

Acts calculated to disturb the public order of another State

1. The furnishing of support by a State to armed bands organised on its territory who have invaded the territory of another State, or the refusal, despite the request of the invaded State, to take on its own territory all the measures in its power to deprive the said bands of help and protection.
2. The fomenting of civil strife in another State or the encouragement of one of the contending parties.
3. Abuse by a diplomatic representative of the privileges accorded him in order to commit acts prejudicial to international public order or infringements of international law directed against the State to which he is accredited.
4. Acts of terrorism affecting international relations.
5. The counterfeiting of currency and bank notes conducted, encouraged or tolerated by one State and detrimental to the credit of another State.
6. The forging of passports or other equivalent documents.
7. The cession, sale or distribution of arms, ammunition or explosives in violation of the national legislation of a State.

VIII

Various acts constituting failure on the part of States to observe their obligations to respect the dignity of other States and to conform to international usages

1. Admission by a State into its armed forces of deserters from the land, sea or air forces of other States.
2. Violation of diplomatic immunities.
3. Dissemination of false or distorted news or of forged documents in the knowledge that they are harmful to international relations.
4. Flagrant insult of a foreign State.
5. Abuse in the exercise of police powers on the high seas.

IX

Violation of the laws and customs of war

X

Crimes against humanity

1. Extermination or persecution of a population or of an element of the population on grounds of race, nationality, religion, political or other opinions by one of the following means: wilful homicide, torture, inhumane treatment, including biological experiments, the infliction of serious bodily injury or injury to health, deportation or illegal detention.
2. The encouragement by a State of slavery or analogous practices.

II, "Threat of unlawful use of force and preparation for such use".

123. Mr. CORDOVA pointed out that the Commission had decided to delete the term "threat" from the wording of Crime No. I. He was of the opinion that that word should be re-introduced.

124. Mr. HSU supported the proposal.

125. Mr. SPIROPOULOS was against it and said that a threat might be legitimate. If a State threatened to intervene if another State occupied the territory of a third, that constituted a legitimate defensive threat. The Commission had discussed this question at some length in the course of the examination of Crime No. I. He did not see why it should now take the idea of a threat up again and re-introduce it into Crime No. I.

126. Mr. CORDOVA pointed out that the case mentioned by Mr. Spiropoulos constituted a threat made for the purpose of legitimate defence, but Mr. Pella visualized the case of threats of the illegal use of force. The Commission should legislate for such cases by inserting an appropriate provision in the draft code.

127. Mr. SANDSTRÖM thought that the Commission would be well advised to leave it to the Drafting Committee to see whether it could find a formula suitable for insertion in the report.

128. The CHAIRMAN proceeded to read Part III of the list.

129. Mr. SPIROPOULOS recalled that the matter in question had been submitted to the General Assembly and examined by it. It had been mentioned in its first draft report, but in connexion with article 10 of the draft Declaration on Rights and Duties of States, the British representative, Mr. Fitzmaurice, had raised the point in the Assembly, as to what sort of assistance was contemplated.¹⁷ As a result of the discussion he had come to realize the difficulties inherent in the question of assistance to an aggressor State. It was for that reason that he had preferred to omit all reference to such action in his second draft.

130. The CHAIRMAN expressed the opinion that the case of direct or indirect aid was covered by Crime No. X of the draft code. In his opinion such acts undoubtedly amounted to complicity.

131. Mr. SPIROPOULOS did not agree. Assistance of this type could be given much later, when the act of aggression had already been committed.

132. The CHAIRMAN considered that complicity in the crime still existed. They might get over the difficulty by stating in the report that Part III of Mr. Pella's list was covered by Crimes I and X of the draft code.

133. Mr. ALFARO was of the opinion that in the case of Crime I the criterion to be observed was the following: If the act was done in legitimate defence or in the execution of a United Nations mandate, there would be no violation of international law.

134. Article 10 of the draft Declaration on Rights and Duties of States stipulated that: "Every State has the

¹⁷ See *Official Records of the General Assembly, Fourth Session, Sixth Committee, 172nd meeting, para. 17.*