

Document:-
A/CN.4/19 and Add.1-2

**Replies from Governments to Questionnaires of the International Law Commission.
(Addenda 1 and 2 refer only to Part II: Replies from Governments concerning a
Draft Code of Offences Against the Peace and Security of Mankind).**

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

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DRAFT CODE OF OFFENCES AGAINST THE PEACE AND SECURITY OF MANKIND

DOCUMENTS A/CN.4/19 and Add. 1 and 2

Replies from Governments to Questionnaires of the International Law Commission

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Note by the Secretary-General

1. In accordance with Article 18 of its Statute (annexed to General Assembly resolution 174 (II) of 21 November 1947), the International Law Commission decided at its first session to undertake the codification of three topics of international law, namely, (i) the Law of Treaties, (ii) Arbitral Procedure, and (iii) the Regime of the High Seas. In implementation of this decision and in conformity with Article 19, paragraph 2 of its Statute, the Commission further decided to request all Governments of Members of the United Nations to furnish it with texts of laws, decrees, judicial decisions, treaties, diplomatic correspondence and other documents relevant to each of these topics.

2. Also the Commission, having been entrusted by the General Assembly, in virtue of resolution 177 (II) of 21 November 1947, with the preparation of "a draft code of offences against the peace and security of mankind", deemed it necessary also to request the Governments to express their views concerning what offences, apart from those defined in the Charter and judgment

of the Nürnberg Tribunal, should be comprehended in that draft code.

3. Accordingly, the Secretary-General, by letter LEG 291/01/YLL of 11 July 1949, communicated the Commission's requests to all Governments of Members of the United Nations.

4. By 23 March 1950, the Secretary-General had received replies from the Governments of Canada, Costa Rica, Denmark, France, Israel, the Netherlands, Philippines, Poland, Union of South Africa, the United Kingdom and the United States.

5. The texts of the replies from Governments concerning topics for codification (Part I), as well as the views expressed on what offences should be comprehended in a draft code of offences against the peace and security of mankind (Part II), are reproduced herein.

6. Relevant materials submitted in the form of books, pamphlets, or lengthy treaty texts are not reproduced, but are held available for reference.

7. Replies received after 23 March 1950 will be reproduced as addenda to the present document.

* Part I contains the replies concerning topics for codification: A. Law of Treaties; B. Arbitral Procedure; and C. Regime of the High Seas. These replies will be found with the documents relating to each item.

Part II

REPLIES FROM GOVERNMENTS CONCERNING
A DRAFT CODE OF OFFENCES AGAINST THE
PEACE AND SECURITY OF MANKIND

I. France

[Text original en français]

Ministère des affaires étrangères

Paris, le 28 février 1950

...

Par la même lettre, vous avez bien voulu également me demander quels crimes il convenait de faire figurer dans le projet de code des crimes contre la paix et la sécurité de l'humanité, préparé par la Commission du droit international, outre ceux que définissent le statut et le jugement de Nuremberg.

J'ai l'honneur de vous faire savoir que le Gouvernement français estime ne pouvoir répondre de façon précise à la question posée avant la formulation préalable des principes de Nuremberg par la Commission du droit international qui doit énumérer et définir les crimes prévus par le Statut de la Cour et le jugement de Nuremberg. Les progrès incessants de la technique excluent, d'ailleurs, une énumération limitative des crimes contre la paix et contre la sécurité de l'humanité.

Sous réserve des observations précédentes, le Gouvernement de la République propose, à l'égard de ces crimes :

1) De confirmer, en ce qui concerne les principes généraux du droit pénal international :

a) La primauté du droit international sur le droit interne,

b) La responsabilité pénale de l'individu en droit international, sans écarter pour autant celle de l'Etat;

2) A l'égard des crimes contre la paix, d'affirmer le caractère criminel de la guerre d'agression et d'exclure ainsi pour l'avenir toute possibilité d'invoquer l'exception tirée du principe de la légalité des délits et des peines;

3) Par rapport aux crimes de guerre, d'attacher des sanctions pénales aux prescriptions des accords internationaux réglementant la guerre terrestre, maritime et aérienne et d'entreprendre l'unification des codes de justice militaires;

4) Pour les crimes contre l'humanité, de réprimer comme tels toute extermination de collectivité humaine et d'individus pour cause de nationalité, de race, de religion, d'appartenance à une catégorie politique ou sociale, etc., et de réaliser ainsi, en temps de paix aussi bien qu'en temps de guerre, la protection pénale des civils dont les conventions conclues à Genève, sous les auspices du Comité international de la Croix-Rouge, le 12 août dernier, marquent un heureux développement.

De plus, en vue d'assurer la répression des crimes contre la paix et contre la sécurité de l'humanité, le Gouvernement français préconise, une fois de plus, l'institution d'une Cour pénale internationale.

2. [Poland *

[Original text: English]

Delegation of Poland
to the United Nations

7 January 1950

...

At the same time, the Delegation of Poland encloses texts of laws and decrees concerning "a draft code of offences against the peace and security of mankind", and expresses the opinion that the efficient fight against the above-mentioned offences must stress the prevention of those crimes because criminal repression alone cannot give satisfactory results, neither in the material nor in the moral sphere. Such prevention should be envisaged as broadly as possible and should punish not only acts directed immediately toward the commission of the crime, but should also counteract any activity which creates favourable conditions for the commission of those crimes and, therefore, must be from this point of view treated as a preparatory act.

For these reasons the Polish Government is of the opinion that one of the most essential elements of the future code should be the prevention and suppression not only of incitement to war or to the perpetration of other offences against the peace and security of mankind contained in the future code, but also of all other forms of spreading nationalistic, racial or religious hatred.

The penalties of the future code should embrace also all such acts as the elaboration of plans for a war of aggression, planning of the use of weapons of mass destruction and fomenting of chauvinistic tendencies directed toward the disturbance of peaceful and friendly relations between nations.

Finally, the Delegation of Poland encloses a list of juridical publications printed in Poland and having for its subject crimes against the peace and security of mankind.

3. Union of South Africa

[Original text: English]

Permanent Delegation of the Union of
South Africa to the United Nations

13 March 1950

...

and with reference to his letter LEG 291/01/YLL of 11 July 1949 . . . has the honour to state that the Union Law Advisers . . . have no comment to offer on paragraph 2 thereof.

4. United Kingdom of Great Britain
and Northern Ireland

[Original text: English]

United Kingdom Delegation
to the United Nations

6 September 1949

...

It is further the opinion of His Majesty's Government that is cannot usefully express any view as to what

* See second communication in section A, printed under the item: "Law of treaties".

offences should be comprehended in the Code of Offences against the Peace and Security of Mankind until the International Law Commission has prepared a draft and circulated it to governments.

5. United States of America

[Original text: English]

United States Mission
to the United Nations
6 January 1950

The United States Representative to the United

Nations presents his compliments to the Secretary-General of the United Nations and has the honour to refer to his note LEG 291/01/YLL, dated 11 July 1949, transmitting the request of the International Law Commission that it be furnished with certain documents and information.

...

With reference to numbered paragraph two of the above-mentioned note from the Secretary-General, it is the view of this Government that the crimes of genocide and piracy might properly be included in the proposed draft code of offences against the peace and security of mankind.

DOCUMENT A/CN.4/19 Add. 1

Addendum to replies from Governments

6. Netherlands

[Original text: English]

Netherlands Delegation
to the United Nations
28 March 1950

I have the honour to refer to your letter of 11 July 1949, LEG. 291/01/YLL concerning *inter alia* a draft code of offences against the peace and security of mankind.

Acting upon your request to give their view on this matter, my Government appointed a Commission, consisting of the following members:

President:

Professor Dr. J. P. A. François, Senior Adviser to the Netherlands Ministry for Foreign Affairs.

Members:

Dr. J. W. Frederiks, General Chairman of the Council for Monuments;

Dr. J. P. Hooykaas, Advocate General to the High Court of Justice;

Dr. B. H. Kazemier, Senior Adviser to the Netherlands Ministry of Justice;

Madame C. A. Kluyver, Director at the Netherlands Ministry for Foreign Affairs;

Miss Dr. G. H. J. van der Molen, Professor at the Protestant University of Amsterdam;

Dr. M. W. Mouton, Member of the Special Court of Appeal;

Dr. B. V. A. Röling, Professor at the University of Groningen;

Dr. A. M. Baron van Tuyll van Serooskerken, President of the Criminal Court at Haarlem.

Secretary:

Dr. H. J. Eversen, Official of the Netherlands Ministry for Foreign Affairs.

This Commission made up a draft "Code of Offences against the Peace and Security of Mankind", which

I have the honour herewith to submit to you, together with an explanatory note, concerning these Netherlands proposals, which contains the views of the Netherlands Government on this important matter and which I hope may prove to be of some use.

ANNEX

Draft Code of Offences Against the Peace and Security of Mankind¹

A. Crimes against peace

[1. Waging of a war of aggression or of a war in violation of international treaties, agreements or assurances.]

2. Acts committed on the territory of a State in violation of a rule of international law or of the domestic law of that State and directed against the independence or the territorial integrity of another State.

3. The following acts committed on the territory of a State and directed against the interests of another State:

(1) Any wilful act causing death or serious bodily or mental harm or loss of liberty to:

(a) The Head of the State, a person exercising the prerogatives of the Head of the State, their hereditary or designated successors;

(b) The wives or husbands of the above-mentioned persons;

(c) Persons charged with public functions or holding public positions when the act is directed against them in their public capacity;

(2) Wilful destruction of, or damage to, public property or property devoted to a public purpose belonging to or subject to the authority of the State;

(3) Any wilful act calculated to endanger the lives of a part of the population.

4. The following acts if they should endanger the interests of another State:

(a) The transfer, sale or distribution of arms, munitions or explosives to any person who does not hold such licence or make such declaration as may be required by domestic legislation;

(b) Exportation of arms, munitions or explosives without such licence as may be required by domestic legislation.

¹For articles 1 and 7 between brackets, see para. 9 of the explanatory note.

5. The following acts if they should endanger the interests of another State:

(a) Any fraudulent manufacture or alteration of passports or other equivalent documents;

(b) Obtaining such documents by means of false declarations or documents;

(c) Wilfully using any such documents which are forged or falsified or were made out for a person other than the bearer.

6. The following acts committed on the territory of a State and directed against the credit of another State:

(a) Any fraudulent making or altering of currency;

(b) The fraudulent uttering of counterfeit currency.

[7. Violations of international regulations on limitation and reduction of armaments and on manufacture of arms.]

8. Diffusion in bad faith of evidently false publications likely to endanger the relations with another State.

9. Insult of another State with the intent to raise public contempt or hatred against this State.

B. War crimes

10. Violations of the laws or customs of war.

C. Crime against humanity

11. The following acts committed with the intent to destroy or enslave, in whole or in part, a national, ethnical, racial, political or religious group as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group;

(f) Confining or deporting members of the group;

(g) Other acts causing loss of liberty to members of the group.

12. Denial of the right to a fair and regular trial to a person charged with a penal offence if such a denial is based on the fact that such a person belongs to a national, ethnical, racial, political or religious group.

13. Other persecutions of a national, ethnical, racial, political or religious group as such in violation of a rule of international law or of the domestic law of the State where the crime is committed.

14. Diffusion in bad faith of evidently false publications about a national, ethnical, racial, political or religious group as such.

15. Insult of a national, ethnical, racial, political or religious group as such with the intent to raise public contempt or hatred against such group.

D. Planning, preparation, etc.

16. (a) Incitement to any of the foregoing crimes.

(b) Planning or preparation of any of these crimes.

(c) Wilful participation in any of these crimes.

(d) Attempt to commit any of these crimes.

17. (a) Propaganda of a war of aggression or of a war in violation of international treaties, agreements or assurances.

(b) Propaganda of one of the other foregoing crimes.

Explanatory note concerning the Netherlands proposals for a Code of Offences Against the Peace and Security of Mankind

1. In general the Netherlands is of the opinion that it is useful that the United Nations has undertaken the codification of international penal law and that attempts are being made to draw up a code that is acceptable to the greatest number of States.

2. The Netherlands Government have the opinion that the code should mainly be limited to the *jus constitutum*, that is to say to acts which at the present moment already constitute offences according to international law. Only then shall *jus constituendum* be included in the code, when the matter has ripened to such a degree that acceptance by the General Assembly of the United Nations of the rules concerned might be considered the last impetus to cause the acts to be recognized as punishable offences by the majority of States.

3. The Netherlands Government are of the opinion that apart from the question whether in the long run not only persons but also States shall be indictable, it is certainly not opportune at this moment to include the indictment of States as *jus constitutum* in the code.

4. The Netherlands Government have the opinion that the code shall apply both in war-and in peace-time, unless the text provides otherwise.

5. The Netherlands Government have confined themselves to "offences against the peace and security of mankind" and have not given too wide an interpretation to this conception. They have not therefore included offences such as piracy, traffic in women and children or illicit traffic in narcotic drugs, with regard to which offences it is doubtful whether they come under this category.

6. With a view to forming a clear and systematic picture of the offences to be included in the code, the Netherlands Government have the opinion that not only such offences shall be included in the code which do not come under the Nürnberg principles, but that also such offences which are mentioned in the principles of Nürnberg shall be repeated in the code.

7. According to the Charter of Nürnberg, the "crimes against humanity" are only then prosecutable when committed in execution of or in connexion with the crimes against peace as mentioned in the Charter of Nürnberg. The Netherlands Government are of the opinion that the crimes against humanity to be enumerated in the code shall under all circumstances be punishable.

8. The reply to the question what crimes shall be indictable according to the code to be drawn up, will also depend on the standpoint taken with respect to the manner of implementation, that is to say: prosecution, judgement and punishment.

9. With respect to the implementation, in its most appropriate form, distinction should be made between that which is the final objective in view in this respect and that which might be accepted at the present moment. The final objective should be the establishment of an international tribunal, before which tribunal persons who have committed indictable offences according to the code shall be tried, and the obligation of the States to give up the accused residing within their territory for trial and possible punishment, and, failing this, the possibility to force the States thereto. With regard to the question as to what may be achieved at the present moment, two standpoints may be taken.

On the one hand, the standpoint that at present the establishment of an international tribunal for the judgement of the offences of the code is already possible, exclusively, however, for the judgement of indictable acts which the States have undertaken to bring before this tribunal, it being understood that after the establishment of the tribunal each State separately shall enumerate the offences with regard to which it is willing to accept the jurisdiction of the tribunal.

On the other hand, the view may be held — and the Netherlands Government are inclined to accept this standpoint — that the

States as a whole have not as yet reached such a degree of solidarity that they would entrust an international tribunal with these trials. Hereby the question of compulsory inclusion of the offences of the code in domestic penal law is a matter of foremost consideration while it is also assumed that, upon agreement, smaller groups of States may already be willing to accept jurisdiction of an international tribunal at the present moment.

The Annex contains a draft code. If the second view is held, the offences mentioned in articles 1 and 7 cannot be included in the domestic penal law since these offences can only be committed by a Government. It is not impossible, however, that in the future these crimes might be included in a code intended for a smaller group of States by which jurisdiction in criminal cases by an international tribunal is accepted.

DOCUMENT A/CN.4/19 Add. 2

Addendum to replies from Governments

7. Pakistan

[Original text: English]

Ministry of Foreign Affairs
and Commonwealth Relations
Karachi
24 March 1950

The Minister of Foreign Affairs and Commonwealth Relations presents his compliments to the Secretary-General of the United Nations and has the honour to say that the Government of Pakistan have the following comments to offer on the offences to be comprehended in the draft code of offences against the peace and security of mankind.

The crimes defined in the Charter of the Nürnberg

Tribunal include the killing of hostages. This implies that the taking of hostages is as legitimate as the taking of prisoners. The Government of Pakistan are of the view that the taking of hostages (i.e. living pledges for the good behaviour of third parties) is barbaric and should be included in the draft code of offences. They are further of the view that the crime of genocide as well as the attempt to overthrow another government by disruption from within should be included in the draft code of offences. They also suggest that the word "war" needs to be defined since the days when it meant physical violence are now long past and its instruments are manifold and operate in manifold spheres. In other words the term covers now not only a conflict carried on by means of the effective and engagement of armed forces but also by other means.

DOCUMENT A/CN.4/25

Report by J. Spiropoulos, Special Rapporteur

[Original Text: English]

[26 April, 1950]

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