

Document:-
A/CN.4/358 and Add.1-4

Comments and observations received pursuant to General Assembly resolution 36/106

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

Extract from the Yearbook of the International Law Commission:-
1982, vol. II(1)

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**DRAFT CODE OF OFFENCES AGAINST THE PEACE AND SECURITY OF MANKIND
(PARAGRAPHS 1 AND 2 OF GENERAL ASSEMBLY RESOLUTION 36/106 OF
10 DECEMBER 1981)**

[Agenda item 8]

DOCUMENT A/CN.4/358 and Add.1-4

**Comments and observations received from Governments pursuant to
General Assembly resolution 36/106**

[Original: English, Russian, Spanish]
[11, 17 and 24 May and 9 June 1982]

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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, appears in *Yearbook . . . 1954*, vol. II, pp. 151-152, document A/2693, para. 54.

Introduction

1. On 10 December 1981, the General Assembly adopted resolution 36/106, the operative paragraphs of which read as follows:

The General Assembly,

...

1. *Invites* the International Law Commission to resume its work with a view to elaborating the draft Code of Offences against the Peace and Security of Mankind and to examine it with the required priority in order to review it, taking duly into account the results achieved by the process of the progressive development of international law;

2. *Requests* the International Law Commission to consider at its thirty-fourth session the question of the draft Code of Offences against the Peace and Security of Mankind in the context of its five-year programme and to report to the General Assembly at its thirty-seventh session on the priority it deems advisable to accord to the draft Code, and the possibility of presenting a preliminary report to the Assembly at its thirty-eighth session bearing, *inter alia*, on the scope and the structure of the draft Code;

3. *Requests* the Secretary-General to reiterate his invitation to Member States and relevant international intergovernmental organ-

izations to present or update their comments and observations on the draft Code of Offences against the Peace and Security of Mankind, and to submit a report to the General Assembly at its thirty-seventh session;

4. *Requests* the Secretary-General to submit to the International Law Commission all the necessary documentation, comments and observations presented by Member States and relevant international intergovernmental organizations on the item entitled "Draft Code of Offences against the Peace and Security of Mankind";

5. *Decides* to include in the provisional agenda of its thirty-seventh session the item entitled "Draft Code of Offences against the Peace and Security of Mankind" and to accord it priority and the fullest possible consideration.

2. On 14 January 1982, the Secretary-General addressed a note to the Governments of Member States and a letter to the relevant international intergovernmental organizations, requesting their comments and observations on the subject.

3. The replies received as of the end of May 1982 from the Governments of eight Member States are reproduced below.

Barbados

[Original: English]
[28 April 1982]

1. The Code of Offences against the Peace and Security of Mankind is highly necessary in the present state of the world, where recent events have emphasized the insecurity and consequent apprehension of smaller and even larger States, and of various religious, cultural, ethnic, and other groups within those States. This code, long overdue, is also a warning to would-be aggressors and oppressors that the nations of the world are prepared to take action against them for the crimes against international law identified in the code, in punishment for those crimes. The code will be gladly welcomed by all peace-loving States and organizations dedicated to the well-being of mankind. It is likely to check, or at least curtail, the activities of those States, if any, which aim at world domination.

2. It may happen that a State is in occupation of a territory to which it no longer has any right. Since it would hardly be possible to organize armed bands *effectively within the occupied territory* for the purpose of its liberation, it would seem that the prohibition in article 2, paragraph (4), of the 1954 draft code of the toleration of the organization of armed bands in *other* territories would tend to perpetuate such unjustified occupation.

3. Paragraph (1) of article 2 does not seem to take into account the situation in which the authorities of a State send armed forces into another State ostensibly at the invitation of that State, but in reality to further its own aims; nor the situation in which a State, convinced of imminent, though not immediate, danger from a

neighbouring State, sends armed units into that neighbouring State to forestall the anticipated attack.

4. Paragraph (7) of article 2 may be difficult to apply. If State A violates its obligations under a treaty to limit or restrict its armaments, the relevant authorities in State B, a signatory to the treaty which is threatened by State A's breach, could hardly be guilty of a crime under international law if they adopted counter-measures. Situations may arise in which a State may be justified in using coercive measures of an economic kind to enforce its will on another State if the objective is its own self-defence or the protection of its nationals.

5. The draft code of offences might with advantage be referred back to the International Law Commission for further consideration.

Byelorussian Soviet Socialist Republic

[Original: Russian]
[28 May 1982]

1. The draft code prepared by the International Law Commission in 1954 is, on the whole, an acceptable basis for further work. It is rightly based on the concept of individual responsibility for the most serious and dangerous crimes against the peace and security of mankind.

2. The Byelorussian SSR considers that, in the further work on the draft, account should be taken of the new international legal instruments that have appeared since the original draft Code of Offences against the Peace and Security of Mankind was prepared. Among the instruments in question are: the Definition of

Aggression;¹ the provisions of the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity;² the principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity;³ the 1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations;⁴ and the provisions defining breaches of States' obligations as regards disarmament that are contained in the international treaties and conventions adopted since the elaboration of the draft code.

3. The provisions of the Declaration on the Prevention of Nuclear Catastrophe⁵ merit particular attention with a view to their inclusion in the draft code. It is provided in that declaration that statesmen who resort first to the use of nuclear weapons will be committing the gravest crime against humanity. Use should be made in the further work on the draft code of the provisions of the international conventions and agreements aimed at preventing such offences against the peace and security of mankind as the crimes of *apartheid*, genocide, racism, colonialism and acts that are punishable in accordance with the 1949 Geneva Conventions regarding the protection of war victims and their two Additional Protocols of 1977.⁶

4. In the present complex international situation, when imperialist circles are counting on exacerbating tension in the world and on preparation for war and would like to discard the legal and ethical rules that have been formed in the course of centuries with regard to relations between States, the elaboration of an international legal instrument defining the concept and describing the constituent elements of offences against the peace and security of mankind and confirming the principle of individual responsibility for their commission would be an important asset for the international community in the struggle against the most dangerous crimes against humanity, and in the struggle for the peace and security of peoples.

5. In the light of the foregoing, the Byelorussian SSR considers that the question of the elaboration of the draft Code of Offences against the Peace and Security of Mankind should appear as one of the main items in the agenda of the Sixth Committee of the General Assembly until work on it has finally been completed.

¹ General Assembly resolution 3314 (XXIX) of 14 December 1974, annex.

² United Nations, *Treaty Series*, vol. 754, p. 74.

³ General Assembly resolution 3074 (XXVIII) of 3 December 1973.

⁴ General Assembly resolution 2625 (XXV) of 24 October 1970, annex.

⁵ General Assembly resolution 36/100 of 9 December 1981.

⁶ See United Nations, *Juridical Yearbook 1977* (Sales No. E.79.V.1), p. 95.

the draft Code of Offences against the Peace and Security of Mankind. The resumption of work on the code is acquiring an ever growing urgency in view of the overall current international situation, which is characterized by a trend towards an intensified arms race and by the emergence of notions of a limited nuclear war. That is why Czechoslovakia views this question as one of priority which requires the utmost attention.

2. The Czechoslovak Socialist Republic has explained its views on the draft code in a written statement dated 9 June 1980¹ and in the statements of Czechoslovak representatives in the Sixth Committee of the General Assembly, at its thirty-fifth session on 8 October 1980, and at its thirty-sixth session on 30 November 1981.² A suitable basis for further codification efforts is provided, in Czechoslovakia's view, by the draft code elaborated by the International Law Commission, because it rightly proceeds from the concept of individual criminal responsibility for crimes against the peace and security of mankind as they are set down in the Charter of the Nürnberg Tribunal.

3. The filling of the gaps which have appeared in the code as a result of the development of international law since 1954 is regarded by the Czechoslovak Socialist Republic as a necessary condition for the successful codification of the given issue. This requires, first of all, taking into account all the significant international legal documents relating to the question of the code. These have been mentioned in the statements of Czechoslovak representatives in the Sixth Committee and there is therefore no need to repeat them.

4. In this context, however, the Czechoslovak Socialist Republic deems it necessary to emphasize among the new documents the Declaration on the Prevention of Nuclear Catastrophe,³ which provides that States and statesmen that resort first to the use of nuclear weapons will be committing the gravest crime against humanity. Under paragraph 2 of the Declaration: "There will never be any justification or pardon for statesmen who take the decision to be the first to use nuclear weapons." These ideas should undoubtedly find expression in the code under consideration, but they should also be adequately elaborated in its provisions. Of the greatest importance for further progress, in the view of the Czechoslovak Socialist Republic, is the creation of guarantees that this question will be accorded first priority, in order to advance the efforts for codification of this issue.

5. On some specific questions the Czechoslovak Socialist Republic wishes to comment as follows. The Definition of Aggression⁴ represents a generally recognized interpretation of the basic provisions of the Charter of the United Nations and nothing stands in the way of its being incorporated into the draft code. The jurisdiction of the Security Council neither contradicts nor hinders an objective consideration of a case involving determination of an aggressor. Taking into account the responsibility of the Security Council for the

Czechoslovakia

[Original: English]
[13 May 1982]

1. The Czechoslovak Socialist Republic wishes to reaffirm its keen interest in the resumption of work on

¹ A/35/210, p. 7.

² *Official Records of the General Assembly, Thirty-fifth Session, Sixth Committee*, 15th meeting, paras. 40-43; *ibid.*, *Thirty-sixth Session, Sixth Committee*, 62nd meeting, paras. 1-6.

³ General Assembly resolution 36/100 of 9 December 1981.

⁴ General Assembly resolution 3314 (XXIX) of 14 December 1974, annex.

maintenance of international peace and security, it is necessary to respect this position.

6. The adoption of the code would mean that, in the future, no one could raise the objection *nullum crimen sine lege* when prosecuted for a given crime. In this context, the list of crimes should represent the most serious crimes, those which indeed constitute a threat to the peace and security of mankind.

In Czechoslovakia's view, the resumption of the codification work need not be made conditional on such a question as whether it is necessary for the code to contain specific sanctions or the question of the so-called "criminal responsibility of States".

7. The most important issue is the early elaboration of the code. The completion of work on this document and its speedy adoption would make a significant contribution to the preservation of peace and the strengthening of international security. It would also contribute to a more consistent respect for the norms of international law.

Finland

[Original: English]
[23 March 1982]

The comments and observations of the Government of Finland on the draft Code of Offences against the Peace and Security of Mankind were communicated to the Secretary-General by its note of 6 March 1980, and were reproduced in the relevant report of the Secretary-General of 11 June 1980.¹ In this connection, reference is made to the statements by the delegation of Finland in the Sixth Committee of the General Assembly, at its thirty-fifth session on 6 October 1980, and at its thirty-sixth session on 27 November 1981.²

¹A/35/210, p. 8.

²Official Records of the General Assembly, Thirty-fifth Session, Sixth Committee, 11th meeting, paras. 55-58; *ibid.*, Thirty-sixth Session, Sixth Committee, 60th meeting, paras. 33-38.

German Democratic Republic

[Original: English]
[10 May 1982]

1. In view of the aggravated international situation and the resultant risk of a new world war, which are deeply alarming the peoples of all continents, the German Democratic Republic wishes to reiterate that every effort must be made to counter any new dangers to the peace and security of mankind.

2. The potentials of weapons and other war material accumulated in the world today, were they ever to be used, would inflict a tremendous catastrophe on all mankind, it being understood that any first use of nuclear weapons would be one of the gravest crimes against humanity. Tendencies of neo-Nazism, which is a threat to international peace and security, have been reviving in various regions of the world. Some peoples are still denied the right to determine their own destinies and to develop without outside interference or alien oppression.

3. Consequently, the German Democratic Republic

considers that the elaboration and adoption of a Code of Offences against the Peace and Security of Mankind is a particularly topical issue today. The code would provide States with an effective instrument to prevent and punish grave international crimes and to deter potential criminals from committing such offences. The majority of States have commented favourably on the project, and some have stressed the necessity and urgency of continuing work on the code.

4. The Government of the German Democratic Republic, too, has repeatedly set forth in detail its views regarding the code, both in written comments¹ and in statements made before the Sixth Committee of the General Assembly. It considers that due care, commensurate with the high political significance of the document, should be applied in revising the draft prepared by the International Law Commission in 1954, in the light of the progressive development of international law and taking into account the constructive relevant proposals submitted by States.

5. At the same time it should be noted that divergent views on certain questions are not insurmountable obstacles to an early completion of the code. The Secretary-General's analysis of comments and proposed amendments received so far² provides a good basis for a revision of the draft. On the other hand, it should be recalled once again that the work on this project is based on General Assembly resolution 177 (II) on 21 November 1947, in which the Assembly entrusted the Commission with the task of preparing a draft Code of Offences against the Peace and Security of Mankind, which would be predicated on the principles recognized in the Charter of the Nürnberg Tribunal and in the judgment of the Tribunal.

6. In the view of the German Democratic Republic, the revision of the draft code and its finalization should continue to focus on further developing and updating the Nürnberg principles, taking into account recent international instruments and establishing and reaffirming the criminal responsibility of individuals for grave international crimes. The legal definition of the elements which constitute international crimes should be as clear, precise and concrete as possible.

7. In view of the purpose and objective of the code, it would seem appropriate that the gravest international crimes, which constitute a serious threat and an immediate danger to the peace and security of mankind, be included in it. Above all, this will mean defining as international crimes all forms and methods of the preparation, conduct and threat of conduct of wars of aggression; the crimes of colonialism and racism; the crime of *apartheid*; war crimes and crimes against humanity; and specific warfare methods, including in particular the use of nuclear and other mass destruction weapons. Those crimes, in terms of purpose and effect, are not only directed against the lives and security of individuals or peoples but threaten or violate international peace and security and can endanger the survival of mankind as a whole. In the code, these categories of international crimes should be legally established, further developed or reaffirmed, as the case may be,

¹A/35/210/Add.1, pp. 2-4; and A/36/416, pp. 4-5.

²See "Analytical paper prepared by the Secretary-General pursuant to paragraph 2 of General Assembly resolution 35/49" (A/36/535).

based on a precise definition of their constituent elements and taking into account the latest relevant documents and international instruments. Thus conditions will be created ensuring the universal prosecution and punishment of such crimes and of those responsible for them.

8. The German Democratic Republic wishes to reiterate its position that the concept of individual criminal responsibility should be one of the underlying principles of the code. This does not mean annulling or replacing the international responsibility of States for the commission of such crimes. An express provision that the assertion of individual criminal responsibility shall not affect the international responsibility of States for such crimes could, for instance, be included in article 1.

9. Crimes against the peace and security of mankind are international crimes, the prosecution of which is a universal duty. The obligation to prosecute and punish such crimes is part of the international responsibility of States and makes it incumbent upon States, within the scope of their national legal systems, to adopt relevant legislative and other measures under which persons guilty of grave international crimes can be prosecuted and punished, without distinction as to their citizenship or the place of commission of the crime and irrespective of the public office they may hold. Where such offences are organized, supported or tolerated by a State, that State is responsible for them under international law, irrespective of the criminal responsibility of the person or persons having committed them.

10. In this connection, another aspect comes into play: because of their gravity, such offences must be prosecuted systematically, based on a universal duty to do so. Consequently, it is both a necessity and an obligation for States to combat international crimes in a co-operative and co-ordinated manner.

11. In the view of the German Democratic Republic, one of the foremost issues on which agreement must be reached concerns the structure and scope of the code. In the past, States have specified a great number of requirements which they wish to see considered in the process of supplementing and updating the constituent elements of international crimes to be included in the code. All these proposals certainly deserve close study with a view to determining whether they can be reflected in a code of international crimes.

12. As for the necessary amendment and updating of article 2 of the 1954 draft code, the German Democratic Republic has already submitted a number of proposals.³ Like several other States, the German Democratic Republic takes the view that the code should contain a provision stating the non-applicability of statutory limitations to crimes against the peace and security of mankind.

13. While the German Democratic Republic continues to believe that the appropriate forum in which to continue work on the code is the Sixth Committee of the General Assembly which could set up a special working group for the purpose, it can also agree to the code project being handled by the Commission, provided an early completion of this urgently needed international instrument is ensured.

Ukrainian Soviet Socialist Republic

[Original: Russian]
[1 June 1982]

1. The Ukrainian Soviet Socialist Republic notes with satisfaction the adoption by the General Assembly of resolution 36/106 concerning the resumption by the International Law Commission of work on the draft Code of Offences against the Peace and Security of Mankind, an instrument that is destined to play an important role in the elimination of the threat of war, the curbing of aggression and the consolidation of peace. The preparation of this document is particularly urgent under present circumstances, in view of the heightened international tension which has arisen as a result of the irresponsible action of imperialist circles in a number of countries that have embarked on a course of confrontation, escalation of the arms race and revival of the "cold war".

2. As is known, an acceptable basis for the continuation of work on the above-mentioned international legal instrument already exists, in the form of the draft code prepared by the Commission in 1954. This document reflects the principles of individual criminal responsibility for war crimes and crimes against peace or humanity that was recognized in the Charter and Judgment of the Nürnberg International Military Tribunal. However, the draft cannot be considered as meeting all the requirements arising out of the extremely important task of combating aggression and other crimes against peace and humanity.

3. Regrettably, not all the principles contained in the documents of the International Military Tribunal are adequately reflected in the draft code. In particular, article 7 of the Charter of the Tribunal¹ provides that:

The official position of defendants, whether as Heads of State or responsible officials in Government Departments, shall not be considered as freeing them from responsibility or mitigating punishment.

Article 7 of the Charter of the Tribunal is reproduced in article 3 of the 1954 draft code, but the words "or mitigating punishment" have been omitted. Consequently, the present wording of article 3 of the draft code creates the possibility of mitigation of the punishment of criminals. The extent of that mitigation could be equivalent to an absence of punishment.

4. Article 8 of the Charter of the International Military Tribunal provides that:

The fact that the Defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires.

This provision of the Charter is reproduced in article 4 of the draft code, with one fundamental change. In the draft code, the words "but may be considered in mitigation of punishment if the Tribunal determines that justice so requires" have been replaced by the words "if, in the circumstances at the time, it was possible for him not to comply with that order". This creates an even more dangerous loophole enabling criminals to escape punishment for their crimes against the peace and security of mankind. A criminal would only have to plead that he was unable not to comply with an order from his superiors, because they

³ A/35/210/Add.1, pp. 3-4, paras. 7-14.

¹ United Nations, *Treaty Series*, vol. 82, p. 284.

threatened him with punishment, in order to escape punishment for his crimes.

5. It is altogether obvious that provisions of this kind in the 1954 draft code not only do not contribute to the struggle against war crimes, but create an opportunity to evade responsibility, thereby indirectly encouraging further crimes against peace and mankind. In this connection, it would seem advisable that, in the process of further work on the draft code, the wording of articles 3 and 4 of the code should be brought into line with that of articles 7 and 8 of the Charter of the International Military Tribunal.

6. It should also be borne in mind that there have been substantial changes in this sphere of international law in the period since the draft code was compiled. The past few decades have seen the adoption of a number of new legal rules aimed at preventing crimes against the peace and security of mankind, rules that enable the most dangerous infringements of the international legal order to be qualified as international crimes. Further work on the draft code is impossible without taking these normative instruments into account, for the code is, in particular, intended to define the concept of a crime against the peace and security of mankind, to describe the constituent elements of such crimes and to establish the principle of responsibility for them.

7. It should be noted that the legal instruments in question were adopted at various times, in varying historical circumstances and by different international organs. They differ significantly as regards their nature and legal force, the identity of the parties to them, the topics and territory to which they apply, their terminology and the clarity and completeness with which they define the constituent elements of individual international crimes. Consequently, the Code of Offences against the Peace and Security of Mankind must define in uniform terms and wording the content of all the most serious international crimes and must be of the nature of an international treaty.

8. For that reason, references to the constituent elements of international crimes appearing in the draft code must be made more precise and the list of those crimes must be supplemented to take account of the present state of international law. A particular example of the kind of crime that should be included in the category of offences against the peace and security of mankind is *apartheid*, a definition of which is to be found in the 1973 International Convention on the Suppression and Punishment of the Crime of *Apartheid*.² It would seem no less important for the draft to reflect, in due fashion, the basic ideas contained in the 1966 International Convention on the Elimination of All Forms of Racial Discrimination,³ the International Covenants on Human Rights of the same year,⁴ and the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.⁵

²General Assembly resolution 3068 (XXVIII) of 30 November 1973, annex; see also United Nations, *Juridical Yearbook 1973* (Sales No. E.75.V.1), p. 70.

³United Nations, *Treaty Series*, vol. 660, p. 212.

⁴General Assembly resolution 2200 A (XXI) of 16 December 1966, annex.

⁵United Nations, *Treaty Series*, vol. 266, p. 40.

9. In addition, account should be taken in the draft code of the Definition of Aggression,⁶ the provisions of the two Additional Protocols of 1977 to the 1949 Geneva Conventions regarding the protection of war victims,⁷ and the 1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.⁸ It would be extremely timely and important to include in the draft code the provisions of the Declaration on the Prevention of Nuclear Catastrophe adopted by the General Assembly at its thirty-sixth session, on the proposal of the delegation of the USSR.⁹

10. It would seem advisable for the code to contain a distinct section dealing with breaches of States' obligations in the sphere of disarmament. The basic material for the elaboration of this section should be the provisions of the 1963 Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water;¹⁰ the 1968 Treaty on the Non-Proliferation of Nuclear Weapons;¹¹ the 1971 Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof;¹² the 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction;¹³ the 1977 Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques;¹⁴ and other international legal instruments in the sphere of disarmament.

11. In view of the fact that, as a result of scientific and technical progress, man's activities are constantly extending into new areas, notably outer space, it would be entirely justified to embody in the draft code rules aimed at preventing the use against peace and security of achievements in the conquest of space. To this end, it would be appropriate to reflect in the draft code the provisions of the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies.¹⁵ Furthermore, the inclusion in the Code of Offences against the Peace and Security of Mankind of articles providing for responsibility for the deployment in outer space of weapons of any kind would make an extremely significant contribution to the cause of averting what is, as a result of the activities of reactionary

⁶General Assembly resolution 3314 (XXIX) of 14 December 1974, annex.

⁷See United Nations, *Juridical Yearbook 1977* (Sales No. E.79.V.1), p. 95.

⁸General Assembly resolution 2625 (XXV) of 24 October 1970, annex.

⁹General Assembly resolution 36/100 of 9 December 1981.

¹⁰United Nations, *Treaty Series*, vol. 480, p. 43.

¹¹*Ibid.*, vol. 729, p. 169.

¹²General Assembly resolution 2660 (XXV) of 7 December 1970; see also United Nations, *Juridical Yearbook 1970* (Sales No. E.72.V.1), p. 121.

¹³General Assembly resolution 2826 (XXVI) of 16 December 1971, annex; see also United Nations, *Juridical Yearbook 1971* (Sales No. E.73.V.1), p. 118.

¹⁴General Assembly resolution 31/72 of 10 December 1976, annex; see also United Nations, *Juridical Yearbook 1976* (Sales No. E.78.V.5), p. 125.

¹⁵United Nations, *Treaty Series*, vol. 610, p. 206.

imperialist circles, a growing danger of the militarization of outer space.

12. The draft code should not be limited to an enumeration of the constituent elements of crimes. It must contain articles providing for concrete steps to prevent and punish crimes against the peace and security of mankind. Account must be taken to this end of the provisions of the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity,¹⁶ and of the principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity.¹⁷

13. Particular mention should be made of the fact that the additions and refinements which the Commission makes to the draft code in the course of its work must not prejudice the principle that underlies that instrument, namely the principle of individual responsibility for crimes against peace, war crimes and crimes against humanity. In this connection, it would be inadvisable to include in the draft code crimes of a general criminal nature that are regulated by national legislation.

¹⁶ *Ibid.*, vol. 754, p. 74.

¹⁷ General Assembly resolution 3074 (XXVIII) of 3 December 1973.

Union of Soviet Socialist Republics

[Original: Russian]
[26 May 1982]

1. The resumption of work on the draft Code of Offences against the Peace and Security of Mankind is particularly timely and important. In the current situation, in which the advocates of dangerous balancing on the brink of war would like to cast aside the legal and ethical rules that have been formed in the course of centuries with regard to relations between States, an international legal instrument defining the concept and describing the constituent elements of offences against the peace and security of mankind and confirming the principle of individual liability for such offences could be, in the hands of the international community, an effective instrument for the safeguarding of people's right to life and in the struggle against the crimes that are the most dangerous for mankind.

2. The present draft code is, on the whole, an acceptable basis for the continuation of work in this field. It is important to preserve the concept on which it is founded and which constitutes its most valuable feature, namely that of individual responsibility for crimes that are the most serious and dangerous for peace and mankind.

3. In the process of further work, account must, of course, be taken of the new international legal instruments that have made their appearance since 1954. For example, account should be taken in the draft of the Definition of Aggression¹ and the 1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accord-

¹ General Assembly resolution 3314 (XXIX) of 14 December 1974, annex.

ance with the Charter of the United Nations.² The code could be an important complement to the existing international legal means for the solution of the key question of our age, that of averting the growing threat of a world war waged with nuclear missiles. It should duly reflect the fundamental idea of the Declaration on the Prevention of Nuclear Catastrophe,³ in which it is stated, in particular, that statesmen who resort first to the use of nuclear weapons will be committing the gravest crime against humanity. Account should be taken in the section devoted to the breach of States' obligations in the sphere of disarmament of the relevant provisions of such agreements as: the 1963 Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water;⁴ the 1968 Treaty on the Non-Proliferation of Nuclear Weapons;⁵ the 1971 Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof;⁶ the 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction;⁷ and the 1977 Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques.⁸

4. The draft code should also reflect the international legal instruments in which there has been further development of the principle of individual responsibility for war crimes and crimes against humanity. These include: the International Convention on the Suppression and Punishment of the Crime of Apartheid,⁹ the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity;¹⁰ the Additional Protocols of 1977 to the 1949 Geneva Conventions regarding the protection of war victims;¹¹ and the principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity.¹² The draft Code of Offences against the Peace and Security of Mankind must remain, at all stages up to the completion of work on it, one of the main items in the agenda of the Sixth Committee of the General Assembly.

² General Assembly resolution 2625 (XXV) of 24 October 1970, annex.

³ General Assembly resolution 36/100 of 9 December 1981.

⁴ United Nations, *Treaty Series*, vol. 480, p. 43.

⁵ *Ibid.*, vol. 729, p. 169.

⁶ General Assembly resolution 2660 (XXV) of 7 December 1970; see also United Nations, *Juridical Yearbook 1970* (Sales No. E.72.V.1), p. 121.

⁷ General Assembly resolution 2826 (XXVI) of 16 December 1971, annex; see also United Nations, *Juridical Yearbook 1971* (Sales No. E.73.V.1), p. 118.

⁸ General Assembly resolution 31/72 of 10 December 1976, annex; see also United Nations, *Juridical Yearbook 1973* (Sales No. E.78.V.5), p. 125.

⁹ General Assembly resolution 3068 (XXVIII) of 30 November 1973, annex; see also United Nations, *Juridical Yearbook 1973* (Sales No. E.75.V.1), p. 70.

¹⁰ United Nations, *Treaty Series*, vol. 754, p. 74.

¹¹ See United Nations, *Juridical Yearbook 1977* (Sales No. E.79.V.1), p. 95.

¹² General Assembly resolution 3074 (XXVIII) of 3 December 1973.

Uruguay

[Original: Spanish]
[23 April 1982]

1. The Government of Uruguay considers, as its representatives to recent sessions of the General Assembly have stated in the Sixth Committee, that the draft Code of Offences against the Peace and Security of Mankind should be the subject of further consideration by the International Law Commission, which should decide on the advisability or otherwise of approving a new legal text, on the basis of the examination of the matter in the various United Nations forums and in the light of all the codification work that has been carried out in regard to offences of an international character since the draft was adopted. The text should be accepted unanimously and its terms should be effectively implemented and so conceived that they do not operate to the detriment of justice and law.

2. As it has stated at previous sessions of the General Assembly in the Sixth Committee, Uruguay understands offences to mean, in accordance with article 1 of the Uruguayan Criminal Code, "any explicit act or omission provided for under the criminal law". For this to be so understood, there must be a rule of law and a sanction. An offence, therefore, is an act that is specifically unlawful, culpable, imputable and punishable by a penal sanction. The legal-technical essence of a criminal offence would be based on three requirements: classification, unlawfulness and culpability, the penalty constituting the differential element in the offence.

3. The 1954 draft code is incomplete. It does not embody the necessary elements of criminal law, and this could make it an ineffective instrument. It is therefore important to draw up procedural rules of law with a view to implementing the substantive provisions of the draft which the Commission is expected to reconsider.

The main observations which the Government of Uruguay has to make on the draft relate basically to the lack of any sanction applicable to the offender, the non-designation of the competent court, and the failure to classify types of offence, for instance, aggression, terrorism, hostage-taking, etc.

4. The code adopted must determine the judicial body which will hear and decide cases involving the kind of offences provided for under the code and which must, in addition, carry out its functions autonomously and independently. There must likewise be set up an international criminal court having compulsory jurisdiction over States and individuals. Uruguay regards

this as essential, since only by making such jurisdiction compulsory will total efficacy of the code in question be achieved, neither States nor individuals being able to derogate from it.

5. The Commission submitted the draft Code of Offences against the Peace and Security of Mankind to the General Assembly in 1954. Subsequent consideration of the draft code was, however, postponed until the General Assembly had adopted the Definition of Aggression. By resolution 3314 (XXIX), of 14 December 1974, the General Assembly defined acts of aggression and thus established the basis for determining wars of aggression. The draft code also governs other offences against the peace and security of mankind that have been defined as international crimes in other conventions.

6. These crimes include the crimes against humanity defined in the Charter of the International Military Tribunal of 1945,¹ the crime of genocide as defined under article II of the Convention on the Prevention and Punishment of the Crime of Genocide,² as well as the crimes defined in the 1907 Hague Convention respecting the Laws and Customs of War on Land³ and in the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War.⁴ Crimes relating to slavery and the slave trade, piracy and abduction, and offences against diplomatic agents were not included in the original draft code; but they have been included, and interpreted as international crimes or offences, in a number of later conventions, and for this reason should receive special attention.

7. In the opinion of Uruguay, other crimes on which it will be necessary to place particular emphasis include hostage-taking, terrorism and the use of environmental modification techniques for military and other hostile purposes. Uruguay also considers that offences against diplomatic agents, as well as hostage-taking and terrorism in all its forms, must be given special attention by the Commission for review and inclusion in the draft code. Other matters that should likewise be considered in the draft code must include the question of the appointment of the court and its jurisdiction as well as the jurisdiction of national courts with regard to international crimes, and provisions on extradition and prosecution.

¹United Nations, *Treaty Series*, vol. 82, p. 284.

²*Ibid.*, vol. 78, p. 277.

³J. Brown Scott, ed., *The Hague Conventions and Declarations of 1899 and 1907* (New York, Oxford University Press, 1918), pp. 100 *et seq.*

⁴United Nations, *Treaty Series*, vol. 75, p. 287.