Document:
A/CN.4/365

Draft code of offences against the peace and security of mankind - Analytical paper prepared pursuant to the request contained in paragraph 256 of the report of the Commission on the work of its thirty-fourth session

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

UNITED NATIONS

A

General Assembly

Distr.
GENERAL

A/CN.4/365
25 March 1983

ORIGINAL: ENGLISH

INTERNATIONAL LAW COMMISSION
Thirty-fifth session
Geneva

DRAFT CODE OF OFFENCES AGAINST THE PEACE AND SECURITY OF MANKIND

Analytical paper prepared pursuant to the request contained in paragraph 256 of the report of the Commission on the work of its thirty-fourth session

CONTENTS

		Paragraphs	Page
INTRODUCTION		1 - 7	3
I.	BACKGROUND TO THE ISSUE	8 - 13	4
II.	QUESTION OF THE RESUMPTION AND CONTINUATION OF THE UNITED NATIONS WORK TOWARDS THE ELABORATION OF A DRAFT CODE OF OFFENCES	14 - 47	5
III.	COMMENTS ON THE DRAFT CODE OF OFFENCES AGAINST THE PEACE AND SECURITY OF MANKIND PREPARED BY THE INTERNATIONAL LAW COMMISSION IN 1954	48 - 59	17
	1. Comments on the ILC draft as possible basis for further United Nations work on the topic	48 - 52	17
	2. Comments on particular provisions of the draft	53 - 59	19

CONTENTS (continued)

		Paragraphs	Page
IV.	SCOPE OF THE PROPOSED CODE	60 - 116	21
	1. Views of a general nature	60 - 70	21
	2. Acts to be characterized in the proposed Code as offences against the peace and security of mankind	71 - 105	25
	3. Other issues which were discussed with reference to the content of the proposed Code	106 - 116	33
V.	QUESTION OF THE ATTRIBUTION OF RESPONSIBILITY UNDER THE PROPOSED CODE	117 - 125	34
VI.	QUESTION OF THE IMPLEMENTATION OF THE PROPOSED CODE	126 - 139	37
VII.	PROCEDURE TO BE FOLLOWED IN THE CONSIDERATION OF THE ITEM SUBSEQUENT TO THE ADOPTION OF GENERAL ASSEMBLY RESOLUTION 36/106	140 - 160	41

INTRODUCTION

1. On 10 December 1981, the General Assembly adopted resolution 36/106 entitled "Draft Code of Offences against the Peace and Security of Mankind".

2. By this resolution, the General Assembly, inter alia, recalling its belief that the elaboration of a code of offences against the peace and security of mankind could contribute to strengthening international peace and security and thus promoting and implementing the purposes and principles set forth in the Charter of the United Nations, invited the International Law Commission (ILC) 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 progressive development of international law.

3. By the same resolution, the General Assembly requested 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 deemed 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.

4. In accordance with the request contained in resolution 36/106, the International Law Commission considered the question of the draft Code of Offences against the Peace and Security of Mankind at its thirty-fourth session, held from 3 May to 23 July 1982. It appointed Mr. Doudou Thiam Special Rapporteur for the topic and established a Working Group to be chaired by the Special Rapporteur.

5. On the recommendation of the Working Group, the Commission decided inter alia to request the Secretariat to give the Special Rapporteur the assistance that may be required and to submit to the Commission all necessary source materials, including in particular a compendium of relevant international instruments and an up-to-date version of the paper prepared pursuant to General Assembly resolution 35/49 of 4 December 1980 (A/36/535) analysing the comments and observations from Governments of Member States which may be received in writing or made in debates in the General Assembly. 1/

6. The present paper updating the analytical paper referred to above (A/36/535) has been prepared pursuant to the above request of the International Law Commission. It has been prepared on the basis of: (a) the comments and observations submitted by Member States pursuant to paragraph 3 of General Assembly resolution 36/106 (A/36/325); (b) the statements made in the Sixth Committee at the thirty-sixth and thirty-seventh sessions of the General Assembly during the debates on the item entitled "Draft Code of Offences against the Peace and Security of Mankind"; (c) the statements made in the Sixth Committee at the thirty-seventh session of the General Assembly during the debate on the item "Report of the International Law Commission on the work of its thirty-fourth session" (A/C.6/37/SR.37-52 and 63).

7. Each of the sections and subsections of the analytical paper reflects the views expressed in the oral statements and written comments of States and in the comments submitted by the relevant international organizations. The listings of States and the quotations which have been provided are merely illustrative and do not purport to cover the entire range of individual positions on each of the issues dealt with in the present paper.

I. BACKGROUND TO THE ISSUE

8. Some representatives referred to the historical circumstances out of which the idea of preparing a Draft Code of Offences against the Peace and Security of Mankind had been born. Thus the representative of Czechoslovakia stated that the Czechoslovak people who had been the victims of Nazi aggression during the Second World War still vividly remembered the crimes committed in Czechoslovakia by the Nazi occupiers (A/C.6/36/SR.62, para. 1). Similarly, the representative of Poland mentioned that "the Polish people had bitterly experienced the inhuman practices and atrocities of the Nazi invaders and that the memory of those crimes had not subsided with the passage of time" (A/C.6/37/SR.52, para. 3). The representative of Israel recalled "the sacrifices made by the Jewish people during the Second World War to bring about the Allied victory, ... the massacres of Kristallnacht and the 6 million Jews who had been victims of the Holocaust". He stressed that Israel had adopted laws against the crime of genocide, providing for the punishment of Nazi war criminals and affirming the imprescriptibility of war crimes and had tried Eichmann, adding that if at present the Jewish people was tenacious in its defence of its national liberation movement, Zionism, and its State, Israel, it was because it had vowed not to permit any repetition of the vile acts perpetrated against Jews as Jews between 1933 and 1945 and which were now reappearing, primarily in both Eastern and Western Europe (A/C.6/37/SR.54, para. 61).

9. The historical links between the Second World War and the proposed draft Code of Offences against the Peace and Security of Mankind were also highlighted by the representative of Zaire (A/C.6/36/SR.60, para. 13) and by several other representatives who drew attention to the relationship between the idea of elaborating such a code on the one hand and the Judgment of the Nürnberg Tribunal and the Nürnberg Principles on the other. Thus, the representative of the German Democratic Republic noted that the ILC draft Code duly reflected the Nürnberg Principles which had been formulated over 35 years ago and had been reaffirmed in General Assembly resolution 95 (I) (A/C.6/36/SR.60, para. 24), the representative of the Soviet Union pointed out that the 1954 ILC draft reflected the concept on which the Charter of the Nürnberg Tribunal and the Judgment of that Tribunal were based (A/C.6/36/SR.58, para. 66) and the representative of the Libyan Arab Jamahiriya stressed that the Nürnberg and Tokyo trials had contributed at the legal and political levels to the process of strengthening peace by constituting the outline of an international criminal code (A/C.6/37/SR.54, para. 31).

10. Several representatives stressed that the question had a long history in the United Nations and outlined the stages of the process which had led to the adoption of a draft code by the International Law Commission in 1954. Thus the representative of the Libyan Arab Jamahiriya noted that the elaboration of an

international criminal code had been a major objective of the United Nations since the Second World War (A/C.6/37/SR.54, para. 31) and the representative of Egypt pointed out that the topic had been one of the first in which the Assembly had shown interest, as evidenced by the request it had addressed to ILC as early as 1947 (A/C.6/36/SR.58, para. 61) - a request, the representative of Uganda stated, which bore witness to the faith of the United Nations "in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small" (A/C.6/37/SR.54, para 37). The German Democratic Republic recalled that the request in question was contained in General Assembly resolution 177 (II) (A/37/325, p. 8, para. 9).

11. The representative of Uganda commended the diligence with which the ILC had prepared the 1954 draft code, which, he added, "should now serve as an example" (A/C.6/37/SR.54, para. 37) and the representative of Bulgaria stressed that his delegation had at the time highly appreciated the work of ILC.

12. Several representatives, including those of Cuba (A/C.6/36/SR.62, para. 33 and A/C.6/37/SR.53, para. 17), Afghanistan (A/C.6/37/SR.33, para. 23), Uganda (A/C.6/37/SR.38) and Uruguay (A/37/325, p. 15, para. 8), noted that consideration of the draft submitted by ILC to the Assembly in 1954 had been held up pending the result of the work on the Definition of Aggression, which had culminated in the adoption in 1974 of resolution 3314 (XXIX) in which the Assembly had defined aggression, thus making it possible to resume work on the draft Code.

13. Also referring to the long history of the topic and to the fact that, as the representative of the Libyan Arab Jamahiriya put it, the process of elaboration of an international criminal code "had lagged behind the development of international relations" (A/C.6/37/SR.54, para. 31), the representative of Tunisia mentioned "the reservations expressed by States on various occasions concerning the usefulness of codifying rules in that sensitive area of international law" and recalled that the idea had encountered difficulties from the time it had been taken up by ILC, which explained why the topic had been put aside for several years (A/C.6/37/SR.53, para. 10).

II. QUESTION OF THE RESUMPTION AND CONTINUATION OF THE UNITED NATIONS WORK TOWARDS THE ELABORATION OF A DRAFT CODE OF OFFENCES

14. Some delegations favoured the resumption and continuation of the work on the draft Code. Thus the delegation of the Union of Soviet Socialist Republics supported "the earliest possible preparation and adoption of constructive measures to establish an effective international legal régime to prevent and punish offences against the peace and security of mankind" (A/C.6/36/SR.58, para. 66) and favoured the swift conclusion of the work on the draft Code "which could be an effective instrument for countering the most serious offences against mankind that threatened international peace and security" (A/C.6/37/SR.53, para. 1). In this context, the representative of the Soviet Union recalled that the Soviet Union had done its utmost to protect mankind from the threat of war and to maintain and strengthen peace, had unilaterally pledged not to be the first to use the nuclear weapon, was

constantly taking initiatives with a view to the adoption of effective measures to counter offences against the peace and security of mankind and was one of the sponsors of such important documents as the United Nations Charter and the Charter and Judgment of the Nürnberg Tribunal, which had established the concept of individual criminal responsibility for war crimes, offences against the peace and offences against mankind (A/C.6/37/SR.53, para. 2). The timeliness and importance of the resumption of the work on the draft Code was also stressed in the written observations of the Soviet Government (A/37/325, p. 13, para. 1).

15. The representative of Mongolia expressed full support for "the idea of drafting a code of offences against the peace and security of mankind" (A/C.6/36/SR.61, para. 1) and the representative of Czechoslovakia "fully supported all measures to prevent such crimes", adding that "the proposal to elaborate and adopt a code would provide a régime of criminal liability for offences against the peace and security of mankind" (A/C.6/36/SR.62, para. 1). The delegation of the Ukrainian Soviet Socialist Republic felt it "very important" to adopt an instrument such as the proposed Code (A/C.6/36/SR.60, para. 43) and said at a later stage that his country was all the more gratified that ILC had resumed work on the draft Code as it had been one of the sponsors of General Assembly resolution 36/106 and had always favoured the adoption of practical and effective measures to prevent and punish the most dangerous breaches of the basic right of human beings to life (A/C.6/37/SR.54, para. 6). The delegation of the German Democratic Republic said that "the continuation and successful conclusion of the work on the draft Code was "an important and topical task" (A/C.6/36/SR.60, para. 24), adding at a subsequent stage that "there was an urgent need for an effective international instrument for the prosecution and punishment of international crimes, which constituted a serious threat to the peace and security of mankind" (A/C.6/37/SR.52, para. 14). The topicality of the issue was also stressed by the Government of the German Democratic Republic in its written observations (A/37/325, p. 7, para. 4).

16. The delegation of Hungary, after recalling that the Hungarian Government was deeply committed to the consolidation of international peace and security, reiterated Hungary's "special interest in the elaboration and adoption by the United Nations of a code of offences against the peace and security of mankind" (A/C.6/36/SR.62, para. 8), a task which it subsequently described as "urgent" (A/C.6/37/SR.54, para. 49). The representative of Cuba said that the resumption of consideration of the draft Code of Offences against the Peace and Security of Mankind demonstrated the importance which the States Members of the United Nations justifiably attached to that topic (A/C.6/37/SR.53, para. 16) and the representative of Afghanistan said that his country, which pursued a peaceful foreign policy and attached great importance to the maintenance of the peace and security of mankind, to the strengthening of friendly relations and to the promotion of broad and mutually beneficial international co-operation, supported "the prompt adoption" of the proposed Code (A/C.6/36/SR.62, para. 25), inasmuch as the numerous agreements, resolutions and declarations defining certain breaches of the international legal order had failed to guarantee either peace and security or respect for the most fundamental rights of thousands of human beings who were the victims of colonialism, genocide, wars of aggression, mercenarism, social oppression, facism and apartheid (A/C.6/37/SR.53, para. 23).

17. The representative of Mongolia stated that his delegation, "in accordance with the policy of the Mongolian People's Republic aimed at averting a nuclear catastrophe and at safeguarding and strengthening international peace and security" fully supported the idea of drafting a code of offences against the peace and security of mankind and considered the speedy elaboration and adoption of such a code as one of the major tasks facing the international community (A/C.6/37/SR.54, paras. 12 and 13). Views along the same lines were expressed by the representative of Bulgaria (A/C.6/36/SR.62, para. 13 and A/C.6/37/SR.54, para. 63) as well as by the representative of Czechoslovakia (A/C.6/36/SR.62, para. 1 and A/C.6/37/SR.54, para. 73), and by the Czechoslovak Government which reaffirmed "its keen interest in the resumption of the work on the draft Code", an undertaking which, in its view, was of "ever-growing urgency" (A/37/325, p. 6, paras. 1 and 2). The representative of Poland shared the same view and recalled in this connection that his country had been among the first to adopt a special penal law on responsibility for crimes of Nazi Germany in 1944 and had enacted in 1964 legislation on the non-applicability of statutory limitations to Nazi crimes which corresponded to United Nations conventions and resolutions on the subject; he further drew attention to document A/INF/81/33 describing the results of the work over the past 36 years of the Polish Commission on Nazi war crimes in Poland (A/C.6/36/SR.62, para. 44). The delegation of Poland subsequently stated "Poland's support for the drafting of a code of offences against the peace and security of mankind stemmed from its policy aimed at ensuring and strengthening international peace and security" (A/C.6/37/SR.52, para. 4).

18. Delegations favouring the resumption or continuation of the work on the draft Code also included the delegations of the United Republic of Tanzania (A/C.6/36/SR.62, para. 11), the delegation of Algeria (A/C.6/36/SR.60, para. 29), which noted that "new trends in international relations had set the stage for a fresh start" (A/C.6/37/SR.52, para. 11), the delegation of the Syrian Arab Republic, which viewed the draft Code as "a particularly urgent question" (A/C.6/37/SR.53, para. 25) - an opinion also expressed by the representatives of the Congo (A/C.6/37/SR.54, para. 46) and Ethiopia (A/C.6/37/SR.55, para. 8) - and the delegation of Zaire which considered the drafting of the proposed Code as highly relevant (A/C.6/36/SR.60, para. 14) and subsequently stated that it was "deeply convinced of the need to draft such a code and would spare no effort to that end" (A/C.6/37/SR.53, para. 32). The Government of Barbados for its part described the proposed Code as "highly necessary" and "long overdue" (A/37/325, p. 4, paras. 1 and 2) and the delegation of Egypt, after noting that "a growing number of States, including Egypt, had become interested in the drafting of the Code", as a result of which the General Assembly had adopted resolution 35/49 on the subject (A/C.6/36/SR.58, para. 61), stated at a later stage that the codification of offences against the peace and security of mankind would provide a basis for a new and expanded international legal order (A/C.6/37/SR.52, para. 18). The representative of Cuba similarly felt it "essential to take legal steps to restrain those who seemed deaf to appeals either from the international community or from their own people" (A/C.6/36/SR.62, para. 32) and the representative of Bangladesh, after remarking that his country, as a member of the non-aligned movement, "had made concerted efforts in favour of the cause of peace and international security", felt it essential that "there should be universally

accepted standards for the safeguarding of international peace and security" (A/C.6/36/SR.62, para. 24).

19. The representative of Trinidad and Tobago said that the proposed Code "would be an invaluable contribution to the international legal régime in the maintenance of international peace and security" (A/C.6/37/SR.54, para. 2) and the representative of the Libyan Arab Jamahiriya, after stressing that his country's policy was based on noble principles and objectives aimed at strengthening peace and co-operation among peoples on the basis of respect for justice, national sovereignty and the principles of international law, stated that the adoption of the Code would meet the needs of the present-day world in the field of international law and would enable States to assume their obligations with regard to the strengthening of peace and co-operation among peoples (A/C.6/37/SR.54, para. 30). The representative of Zaire, after stressing that, in view of the difficulties involved, one possible course of action would be to give up the idea of preparing a draft code, "which would be tantamount to accepting the idea of a world beset by violence of every kind, in which the altruistic side of mankind could no longer exist", advocated "a new approach, based on the contemporary structure of international society that avoided transferring to international relations the rigid reasoning that applied in internal law" (A/C.6/36/SR.60, para. 20).

20. A positive approach to the idea of resuming work on the draft Code was also taken by the representative of Sweden who said that the time had come to resume substantive work on the draft Code of Offences (A/C.6/36/SR.60, para. 39), by the representative of Portugal who indicated that, although he had reservations regarding the proposed Code, the underlying objective was fully compatible with the principles affirmed in his country's Constitution and in many provisions of its domestic civil and military criminal law (A/C.6/36/SR.62, para. 57), and by the representative of Greece who observed that it was in the interest of all peace-loving nations to support any measure which would help to strengthen international peace and security and that he therefore favoured resumption of the work relative to the drafting of the proposed Code (A/C.6/36/SR.62, para. 50).

21. Arguments in favour of the elaboration of a code of offences against the peace and security of mankind related on the one hand to various circumstances, including the current international climate and the stage of development of international law, which were viewed as warranting such an undertaking and on the other on the beneficial effects which such a code would have in relation to the peace and security of mankind.

22. With respect to the current international climate, a number of representatives held the view that the proposed Code was particularly necessary in view of what was described by the representative of Algeria as "the threatening developments of the current time" (A/C.6/36/SR.60, para. 29), by the representative of the Ukrainian SSR as "the difficult nature of the current international situation" (A/C.6/36/SR.60, para. 43) and by the representative of Mongolia as the serious deterioration of the international situation (A/C.6/37/SR.54, para. 12).

23. Among the negative characteristics of the present-day world, several representatives, among whom those of the German Democratic Republic (A/C.6/36/SR.60, para. 24 and A/C.6/37/SR.52, para. 14), Bangladesh (A/C.6/36/SR.62, para. 21), Afghanistan (A/C.6/36/SR.62, para. 36), Poland (A/C.6/36/SR.62, para. 39 and A/C.6/37/SR.52, para. 3), Algeria (A/C.6/36/SR.66, para. 29), Pakistan (A/C.6/37/SR.53, para. 8), Trinidad and Tobago (A/C.6.37/SR.54, para. 22), the Syrian Arab Republic (A/C.6/37/SR.53, para. 25), Czechoslovakia (A/C.6/37/SR.54, para. 73) and Ethiopia (A/C.6/37/SR.55, para. 8) highlighted war and the threat of war and the increased international tension. Similar views were expressed in their written observations by the Governments of Barbados (A/37/325, p. 4, para. 1), the German Democratic Republic (A/37/325, p. 7, para. 1) and the Ukrainian SSR (A/37/325, p. 10, para. 2). Several of those representatives including those of the Byelorussian SSR (A/C.6/37/SR.54, para. 1), the Ukrainian SSR (A/C.6/37/SR.54, paras. 7 and 8), the USSR (A/C.6/37/SR.53, para. 1), Mongolia (A/C.6/37/SR.54, para. 12) and Cuba (A/C.6/37/SR.62, para. 32) blamed what the representative of the German Democratic Republic referred to as "current threats to international peace" (A/C.6/36/SR.60, para. 24) and what was described by the representative of Hungary as "dangerous attacks on the policy of détente" (A/C.6/37/SR.54, para. 49) on the policy of aggression and confrontation pursued by certain imperialist circles.

24. Specific instances of hotbeds of tension or outbreaks of violence which were mentioned included the situation prevailing in southern Africa which was mentioned by the representatives of the Ukrainian SSR (A/C.6/37/SR.54, para. 7) and of Uganda (A/C.6/37/SR.54, para. 39) and what the representative of the Byelorussian SSR termed "the Israeli aggression in Lebanon" (A/C.6/37/SR.54, para. 1).

25. Several delegations referred to the events which took place in Lebanon in the summer of 1982. Thus the representative of Egypt said that "the recent massacre of innocent people in Lebanon made it all the more important to finalize" the draft Code (A/C.6/37/SR.52, para. 17), the representative of the Syrian Arab Republic observed that "recent events in Lebanon showed that individual criminal responsibility ... must be established as a principle", adding that "Israel's invasion of Lebanon with a view to exterminating the Palestinian people had been countenanced by certain military men and politicians who had a primitive mentality and were driven by blind religious and racial fanaticism" (A/C.6.37/SR.53, para. 25) and the representative of Uganda said that "the devastating and barbaric bombardments in Lebanon", among other things, justified the preparation of the draft Code (A/C.6.37/SR.54, para. 39). Other delegations which mentioned those events included the representatives of Tunisia (A/C.6/37/SR.53, para. 11), the Byelorussian SSR (A/C.6/37/SR.54, para. 1), the Ukrainian SSR (A/C.6/37/SR.54, para. 7), the USSR (A/C.6/37/SR.53, para. 1) and the Libyan Arab Jamahiriya, the latter observing that Member States would not be forgiven by future generations for remaining silent in the face of such crimes (A/C.6/37/SR.54, para. 31).

26. In addition to cases of direct uses of military force, the representative of Pakistan observed, the world was witnessing cases of indirect aggression such as economic aggression and internal subversion and interference on various pretexts in the internal affairs of other States, practices which were no less harmful to the peace and security of mankind than open armed aggression (A/C.6/37/SR.53, para. 8).

27. Another aspect of the prevailing international situation which, in the view of a number of delegations, called for measures such as the elaboration of the proposed Code related to what the representative of the United Republic of Tanzania called "the dangers of the arms race" (A/C.6/36/SR.62, para. 11). Views along those lines were expressed by the representative of Mongolia (A/C.6/36/SR.61, para. 2 and A/C.6/37/SR.54, para. 12), the Byelorussian SSR (A/C.6/37/SR.54, para. 10), the Ukrainian SSR (A/C.6/37/SR.54, para. 8), Hungary (A/C.6/37/SR.54, para. 49), Algeria (A/C.6/36/SR.60, para. 29), Afghanistan (A/C.6/36/SR.62, para. 26) and the Syrian Arab Republic (A/C.6/37/SR.53, para. 25), as well as by the Government of Czechoslovakia (A/37/325, p. 6, para. 2).

28. Special emphasis was placed on the build-up of weapons of mass destruction including nuclear weapons and on the tremendous danger which it represented for mankind by the representatives of Mongolia (A/C.6/36/SR.61, para. 2 and A/C.6/37/SR.54, para. 12), Algeria (A/C.6/36/SR.60, para. 29), Zaire (A/C.6/36/SR.60, para. 14), Poland (A/C.6/36/SR.62, para. 39 and A/C.6/37/SR.52, para. 3), Afghanistan (A/C.6/36/SR.62, para. 26) and the Byelorussian SSR (A/C.6/37/SR.54, para. 1) and by the Government of the German Democratic Republic in its written observations (A/37/325, p. 8, para. 2). In this connection deep concern was expressed by the representative of Mongolia (A/C.6/36/SR.61, para. 2) over the emergence of doctrines such as that of limited nuclear war, which the representative of Czechoslovakia described as "one of the most serious offences against which the Code should be directed" (A/C.6/37/SR.55, para. 73).

29. The intensification of the threat of nuclear war was attributed to "the conduct of imperialist and other reactionary circles" by a number of representatives, including those of the Byelorussian SSR (A/C.6/37/SR.54, para. 1), the Ukrainian SSR (A/C.6/37/SR.54, para. 7) and Mongolia (A/C.6/37/SR.54, para. 12), as well as in the written observations of the Governments of the Ukrainian SSR (A/37/325, p. 10, para. 2) and the Byelorussian SSR (A/37/325, p. 5, para. 7).

30. Other "threatening developments" which, in the words of the representative of Algeria, "created and perpetuated centres of tension and fuelled insecurity and instability" included "the denial of the right of peoples to self-determination, aggression, the occupation of territories by force, annexation, destabilizing manoeuvres and the use of mercenaries against sovereign States and national liberation movements", as well as "the odious system of apartheid, which had been proclaimed a crime against humanity and continued to hold millions of human beings in subhuman conditions in the name of an alleged hierarchy of races, subjugating an entire people in its own homeland" (A/C.6/36/SR.60, para. 29). The representative of Pakistan likewise mentioned "the practice of racial discrimination, foreign domination and denial of the right of peoples to self-determination" (A/C.6/37/SR.53, para. 8). The representative of Afghanistan similarly noted that although since 1954 the United Nations had adopted a series of resolutions concerning the peace and security of mankind, as well as a number of international agreements defining as international crimes certain violations of the international legal order, "the peace and security of thousands of human beings had been disrupted and their most basic rights had been violated through policies of colonialism, genocide, apartheid, racism and oppression" (A/C.6/36/SR.62, para. 26

and A/C.6/37/SR.53, para. 18). The representative of the United Republic of Tanzania also referred to the crimes of apartheid and racism, as well as to international terrorism (A/C.6/36/SR.62, para. 11). Specific reference was made in this context by the representative of the Ukrainian SSR (A/C.6/37/SR.54, para. 7) to South Africa's policy of repression and terror against the indigenous population and to its illegal occupation of Namibia. The representative of Poland also referred to racism and apartheid and further mentioned genocide, murder and persecution on social, cultural, political, and religious grounds (A/C.6/37/SR.52, para. 3).

31. Other threats to the peace and security of mankind which were viewed as calling for the elaboration of the Code included the "tendencies of neo-Nazism" which, the Government of the German Democratic Republic stated, "had been reviving in various regions of the world" (A/37/325, p. 7, para. 2), and the fact, referred to by the representative of Poland, that "a large number of Nazi war criminals, guilty of the gravest crimes, had not been apprehended or had not been adequately punished" and that the legislation of some States had failed to settle satisfactorily the question of the non-applicability of statutory limitations (A/C.6/36/SR.62, para. 39).

32. Further crimes "contrary to the United Nations Charter" which the international community had witnessed since the Second World War included, in the view of the representative of Bangladesh, "serious violations of human rights and fundamental freedoms" which did not even spare diplomatic agents (A/C.6/36/SR.62, para. 21). The struggle for human rights was also viewed by the representative of Zaire as making the drafting of the proposed Code highly relevant and reference was made in this connection to the Declaration of the Conference of Ministers for Foreign Affairs of Non-Aligned Countries held in New Delhi in February 1981 (A/C.6/36/SR.60, para. 14).

33. In the view of a number of representatives, the elaboration of the proposed Code offered a way of effectively contributing to the reversing of the trends described above.

34. Such an instrument would, the representative of the Byelorussian SSR stated, be in line with the fundamental aims of the Charter which called for the adoption of effective collective measures for the prevention of threats to the peace, acts of aggression and other breaches of the peace. The representative of Zaire likewise said that the preparation of the proposed Code would provide an opportunity to confirm and realize more effectively the purposes and principles of the Charter (A/C.6/36/SR.60, para. 21), the representative of Afghanistan stressed that the adoption of the proposed Code would promote the peace and security of mankind (A/C.6/36/SR.62, para. 25) and the representative of Mongolia, after recalling that his country had made a concrete contribution to the struggle against fascism and had participated directly in the restoration of peace in Asia and the Middle East 36 years earlier, said that the elaboration and adoption of the proposed Code "could contribute to strengthening international peace and security and achieving the noble aims enshrined in the Charter of the United Nations" (A/C.6/36/SR.61, para. 1 and A/C.6/37/SR.54, para. 14). The Government of Barbados observed that the Code would be gladly welcomed by all peace-loving States and

organizations dedicated to the well-being of mankind and was likely to check, or at least curtail, the activities of those States, if any, which aim at world domination (A/37/325, p. 4, para. 3) and the representative of Trinidad and Tobago said that a code of offences would be "an invaluable contribution to the international legal régime in the maintenance of international peace and security" (A/C.6/37/SR.54, para. 21). Views along the same lines were expressed by the representatives of Uganda (A/C.6/37/SR.54, para. 39) and Bulgaria (A/C.6/37/SR.54, para. 63) and by the Governments of the Byelorussian SSR (A/37/325, p. 5, para. 7), the Ukrainian SSR (A/37/325, p. 10, para. 1) and the USSR (A/37/325, p. 13, para. 1).

35. A number of representatives, referring to the danger posed by the arms race and the stockpiling of mass-destruction weapons, said that the elaboration of the proposed Code would facilitate the task of halting the arms race and achieving disarmament. Views along those lines were expressed by the representatives of the Byelorussian SSR (A/C.6/37/SR.54, para. 1, Mongolia (A/C.6/37/SR.54, para. 12), Hungary (A/C.6/36/SR.62, para. 8) and Bulgaria (A/C.6/37/SR.54, para. 63) and in the written observations of the Ukrainian SSR (A/37/325, p. 10, para. 2). The links between the question under consideration and disarmament were also highlighted by the representative of Zaire who observed that "it was basically weapons that provided means to commit offences". In this connection he noted that States which manufactured arms did not do so solely for the purposes of deterrence but also with the morally questionable aim of making money and insisted that psychological action in favour of disarmament should be directed in developed countries both at Governments and public opinion and in less developed countries at Governments above all (A/C.6/37/SR.53, para. 30).

36. A number of representatives stressed that the proposed Code would contribute to "protecting mankind from the threat of extinction" - which, the representative of Zaire stated, was one of the aims the General Assembly had had in mind "in asking ILC to prepare the existing draft" (A/C.6/36/SR.60, para. 15) - through, as the representative of Mongolia put it, "deterring potential criminals from committing grave offences and crimes against the peace and security of mankind" (A/C.6/37/SR.54, para. 13). The deterrent effect which the proposed Code would have in relation to potential offenders was also mentioned by the representative of Algeria who said that "every effort must be made to strengthen international law, especially international criminal law, which served as a deterrent, with a view to bring about genuine peace and security", adding that "even though a code of offences against the peace and security of mankind was not a panacea for the ills besetting international society, it had its place in a new legal order" (A/C.6/36/SR.60, para. 32), as well as by the representative of Uganda (A/C.6/37/SR.54, paras. 39 and 40), by the Governments of Barbados (A/37/325, p. 4, para. 2) and the German Democratic Republic (A/37/325, p. 7, para. 4) and by the representative of the Soviet Union who said that "at the current stage, an international instrument confirming the principle of responsibility for offences against the peace and security of mankind could be effective in the control of such offences" and mentioned in that context the importance of the proposal made in the General Assembly on 22 September 1981 by the Minister for Foreign Affairs of the Soviet Union that "the United Nations should adopt a declaration solemnly proclaiming that States or statesmen that resorted first to the use of nuclear

weapons would be committing the gravest crime against humanity' (A/C.6/36/SR.58, para. 70). The representative of the Soviet Union stated at a later stage that "a legal instrument defining the concept of offences against the peace and security of mankind, delimiting their specific nature and confirming the principle of individual criminal responsibility for such offences could have a deterrent effect on the proponents of doctrines of the first strike in the use of the nuclear weapon" and would also "serve as a warning to those who committed such serious international crimes as genocide and apartheid or their accomplices" (A/C.6/37/SR.53, para. 1).

37. Another argument adduced in favour of the resumption and continuation of the work on the draft Code was that such an instrument would, in the words of the representative of Afghanistan, "be a valuable contribution to the codification and progressive development of international law and would thus contribute to the performance of one of the basic tasks of the Organization" (A/C.6/36/SR.62, para. 25, and A/C.6/37/SR.53, para. 22). Thus the representative of the Libyan Arab Jamahiriya held that "the adoption of the Code would meet the needs of the present-day world in the field of international law" (A/C.6/37/SR.54, para. 30), the representative of Mongolia said that "from a strictly legal point of view, the elaboration of a code would represent a major contribution to the progressive development and stricter application of the principles and norms relating to the responsibility of States, groups and individuals" (A/C.6/37/SR.54, para. 14). The representative of Poland observed that the proposed Code would "give effect to the principle of nullum crime sine lege (A/C.6/37/SR.52, para. 4), the representative of Trinidad and Tobago felt that the completion of the work on that subject "would have a positive effect on the rule of law in international relations by contributing to a greater respect for the norms of international law in this area" (A/C.6/37/SR.54, para. 29), the representative of Uganda said that the proposed Code "came in time to reinforce the existing legal order" (A/C.6/37/SR.54, para. 39) and the representative of Algeria welcomed the efforts of States "to give international law a more active role in effecting change and promoting peace and harmony among nations" (A/C.6/37/SR.52, para. 11). Views along the same lines were expressed by the Government of the Soviet Union in its written observations (A/37/325, p. 13, para. 1) and by the representatives of Bulgaria (A/C.6/36/SR.62, para. 13 and A/C.6/37/SR.54, para. 63), Zaire (A/C.6/36/SR.60, para. 21), the Ukrainian SSR (A/C.6/37/SR.54, para. 110), Egypt (A/C.6/36/SR.58, para. 62) and the Philippines (A/C.6/37/SR.55, para. 3), the latter two referring in this context to Article 13, paragraph 1, of the Charter.

38. A development which, in the words of the representative of Egypt (A/C.6/36/SR.58, para. 62), created "a framework favourable to the work of codification" in relation to the draft Code was the adoption by the General Assembly, in 1974, of the Definition of Aggression (resolution 3314 (XXIX)). In this connection, the representative of the United Republic of Tanzania (A/C.6/36/SR.62, para. 11) noted, as did also the representative of Uganda (A/C.6/37/SR.54, para. 38), that the argument that consideration of the ILC draft should be postponed pending the defintion of aggression "no longer carried weight" because "the General Assembly had long since adopted resolution 3314 (XXIX)", and the representative of Cuba noted that since the Definition of Aggression had been adopted in 1974, there were no longer any obstacles in the way of continuation of

the work "apart from those deliberately placed there by those who opposed the very idea of such a code" (A/C.6/36/SR.62, para. 33). The representative of Egypt furthermore noted that the time was opportune, because the International Law Commission was currently considering the question of State responsibility which was connected with the principle of individual responsibility for offences against the peace and security of mankind (A/C.6/36/SR.58, para. 62).

39. Referring to the doubts expressed by some States as to, in the words of the representative of Zaire, "the usefulness of the proposed Code or the possibility of agreeing on one", in view of the "many questions which would have to be settled first, including the problem of definitions, penalties and the authority empowered to pass judgement" (A/C.6/36/SR.60, para. 13), the representative of the United Republic of Tanzania held the view that the international community should not allow itself to be deluded by such arguments. The representative of Algeria observed that "the complexity and the real or supposed difficulty of the task should not serve as a pretext for lack of progress when what was at stake was the protection of international peace and security" (A/C.6/36/SR.60, para. 32) and stated that, while "it might seem unrealistic to advocate a strengthening of the criminal law provisions for punishing offences against the peace and security of mankind at a time when the precarious balances on which international relations had been based since 1945 were beginning to show their shortcomings and limitations" and even though some suggested that the adversary relationship between the Powers was such that it was illusory to hope for a universal era of peace based on the rule of law, thus launching appeals to realism which contained within them an invitation to resignation, his delegation did not believe that only the periods immediately following wars were conducive to inspiration and that what had been regarded as useful in the aftermath of a devastating world conflict had lost all relevance for contemporary times" (A/C.6/36/SR.60, para. 29). "History", the representative of the United Republic of Tanzania pointed out, "showed that mankind had been able to tackle successfully many problems that had at first seemed intractable" (A/C.6/36/SR.62, para. 11). The representative of Uganda similarly said that "the complexity of the task and the difficulties involved should not serve as a pretext for justifying the lack of progress", adding that "the international community should not allow itself to be deluded by the arguments of those who wished to question the practicality or usefulness of the proposed Code" (A/C.6/37/SR.54, para. 44) and the representative of the Congo stated "that offences against the peace and security of mankind should not go unpunished and that the United Nations could not, because of the hesitations of a few, postpone indefinitely the consideration of a question of such prime importance and risk seeing the world transformed into an anarchistic society" (A/C.6/37/SR.54, para. 47). Also referring to alleged differences of opinion concerning the priority to be accorded to the draft Code, the final form in which it should be adopted and the procedure to be followed for reviewing it and bringing it up to date, the representative of Cuba expressed the hope that "such subterfuges would not be used to delay the achievement of agreement" (A/C.6/37/SR.53, para. 18).

40. As to the claim that the proposed Code would not serve any useful purpose because the Nürnberg and Tokyo judgements provided precedents for similar prosecutions in the future and because existing international agreements, covenants and General Assembly resolutions contained provisions aimed at preventing offences

against the peace and security of mankind, the representative of the Philippines questioned its validity on the ground that "not all the offences that could be incorporated into a code were covered by those precedents and instruments" and that "it was the essence of codification to gather together in one piece of legislation all the provisions relating to the same or related subject-matter which were scattered in various legislative acts or jurisprudence, with a view to harmonization and better enforcement" (A/C.6/37/SR.55, para. 2).

41. Some representatives, particularly at the thirty-sixth session of the General Assembly, disagreed with the above views and expressed reservations as to the advisability of resuming work on the draft Code at the present stage. Some of those representatives recognized that, in the words of the representative of Jordan, "the exercise of drafting the proposed Code was far from futile" (A/C.6/36/SR.62, para. 66) and expressed readiness to, as the representative of Argentina put it, support "any practical proposal provided it was realistic" (A/C.6/36/SR.58, para. 72). But at the same time they placed emphasis on various factors which, to use the words of the representative of Jordan, rendered "arduous and delicate" the process of elaborating the proposed Code, "owing to the complexity and far-reaching scope of the issues involved" (A/C.6/36/SR.62, para. 63).

42. Those factors included what the representative of Jordan characterized as "a divergence of views on a number of primary issues, including those relating to the scope of the draft, the list of offences to be included in it, its relationship to other existing legal instruments having a bearing on international criminal law, the attribution of responsibility and the consequences of that attribution, as well as the very notion of State criminal responsibility and the forum that would ensure the implementation of the Code" (A/C.6/36/SR.62, para. 64). The representative of Argentina also noted that the debate on the question at the thirty-third and thirty-fifth sessions of the General Assembly had been "rather confused" and, after recalling that in 1954 the Special Rapporteur of ILC had remarked that the General Assembly did not appear particularly in favour of the proposed Code, observed that a study of the comments in the analytical paper prepared by the Secretariat (A/36/535) and in the report of the Secretary-General (A/36/416) showed that there was still no agreement on the subject (A/C.6/36/SR.58, para. 72). She also observed that a meaningful code could not shirk such controversial issues as those related to definitions of terms, the gathering and evaluation of proof and the competent court (A/C.6/36/SR.58, paras. 73 and 74).

43. Another factor which was viewed by some of these representatives as unfavourable to a resumption of the work on the draft Code related to the prevailing international climate. Thus the representative of Jordan said that "the international political climate that had previously been responsible for the deferral of the consideration of the draft Code could hardly be said to have improved; it remained as polarized as before and there was perhaps greater cynicism and lack of vision now than in the 1950s, when memories of the horror of the Second World War were still fresh" (A/C.6/36/SR.62, para. 65). The representative of Japan noted that when in 1947 the General Assembly had instructed the International Law Commission to formulate the principles on which the Judgment of the Nürnberg Tribunal had been based and to consider the preparation of a draft code of offences

against the peace and security of mankind, "that request had clearly been prompted by the climate of international public opinion prevailing immediately after the Second World War" and by "a particular need felt by the international community for such a code"; in his opinion, it was very doubtful whether the same conditions still existed (A/C.6/36/SR.62, para. 51).

44. Doubts were furthermore expressed on the need for the proposed Code. Thus the representative of Argentina stressed that the draft Code had been drawn up at a time when there were no international instruments or drafts designed to control offences such as hostage taking, offences against persons enjoying international protection, terrorism and aggression but that since then these gaps had been filled (A/C.6/36/SR.58, para. 73). The representative of Japan similarly observed that many elements which had been envisaged for inclusion in the proposed Code had in the meantime been incorporated in international instruments, adding that "it was expected that further measures for the suppression of international acts of a criminal nature would be formulated in the future" (A/C.6/36/SR.62, para. 52). For those representatives, a code of the type envisaged would prove not only superfluous but even dangerous. Thus the representative of Japan said that "the drafting of a compehensive code of offences against the peace and security of mankind might call in question the principles contained in existing instruments, thus disturbing the carefully achieved balance of interests" (A/C.6/36/SR.62, para. 52), and the representative of Argentina said that her delegation, aside from failing to see the use of a list such as that proposed, "feared that it would only result in useless efforts that would overlap with other work" (A/C.6/36/SR.58, para. 73). The representative of Jordan, however, while taking a cautious approach with regard to resumption of the work on the draft Code, disagreed with the view that the urgency of the proposed Code had been lessened by other instruments already adopted. Those instruments, he observed, did not cover all the offences against the peace and security of mankind listed in the 1954 International Law Commission draft, let alone any possible new additions; moreover, he went on to say, the concept underlying the draft Code was the will of mankind to establish the rule of law in international relations, an aim which necessitated a clear, uniform and generally applicable set of rules to deal with lawlessness on the international plane and to provide for sanctions with both a deterrent and a regulatory effect. In his opinion, that was not to be found in the existing collection of disparate and sometimes conflicting legal instruments, elaborated and adopted piecemeal (A/C.6/36/SR.62, para. 66). The possibility of duplication, he went on to say, could be minimized and perhaps eliminated by careful delineation of the scope of the draft Code and by close comparison with other existing instruments (A/C.6/36/SR.62, para. 69). Views along the same lines were expressed by the representative of Trinidad and Tobago (A/C.6/37/SR.54, para. 23).

45. With regard to the argument that since the General Assembly had adopted a Definition of Aggression in 1974 the reason for postponing consideration of the draft Code had disappeared, the representative of Japan said that the intention behind the 1974 Definition of Aggression had been to provide guidelines which the Security Council could follow when determining, in accordance with the Charter, the existence of an act of aggression: the Definition did not, in his opinion, constitute an adequate legal basis for establishing international criminal responsibility for such an act (A/C.6/36/SR.62, para. 53).

46. Finally, the representatives entertaining doubts as to the advisability of resuming work on the draft Code noted that the question of the international criminal responsibility of individuals was closely linked to that of State responsibility, a question which was still under active consideration in the International Law Commission. In the view of the representative of Japan, "serious confusion might arise if the Assembly were to begin consideration of the question of individual criminal responsibility before the Commission had completed, or at least made further progress on, its work on the topic of State responsibility" (A/C.6/36/SR.62, para. 54) and that, according to the representative of Argentina, "it might be dangerous to draft an instrument that was the equivalent of an international penal code before agreement was reached on the responsibility of the State and its agents" (A/C.6/36/SR.58, para. 73). The representative of Pakistan similarly noted that the question of State responsibility and the effective engagement of that responsibility at the international level were currently being considered by the International Law Commission, and it would perhaps be desirable to know the latter's viewpoint on the subject of the nature or extent of State responsibility for offences against the peace and security of mankind before taking up consideration of the draft Code (A/C.6/36/SR.61, para. 9).

47. In the light of those considerations, the delegations in question expressed doubts on the advisability of considering the substance of the draft Code in the near future, particularly in the Sixth Committee, which, the representative of Japan observed, "was already dealing with a number of questions of greater urgency" (A/C.6.36/SR.62, para. 56).

III. COMMENTS ON THE DRAFT CODE OF OFFENCES AGAINST THE PEACE AND SECURITY OF MANKIND PREPARED BY THE INTERNATIONAL LAW COMMISSION IN 1954

1. Comments on the ILC draft as a possible basis for further United Nations work on the topic

48. A number of representatives considered that the draft Code elaborated by the International Law Commission provided a suitable basis for further work on the topic. Views along those lines were expressed by the representatives of the German Democratic Republic (A/C.6/36/SR.60, para. 24), the Byelorussian SSR (A/C.6/36/SR.60, para. 7 and A/C.6/37/SR.54, para. 1), the USSR (A/C.6/36/SR.58, para. 66 and A/C.6/37/SR.53, para. 2), Czechoslovakia (A/C.6/36/SR.62, para. 2 and A/C.6/37/SR.54, para. 74), Bulgaria (A/C.6/36/SR.62, para. 14 and A/C.6/37/SR.54, para. 63), Afghanistan (A/C.6/36/SR.62, para. 27 and A/C.6/37/SR.53, para. 24), Poland (A/C.6/36/SR.62, para. 42 and A/C.6/37/SR.52, para. 5), Cuba (A/C.6/37/SR.53, para. 18), the Syrian Arab Republic (A/C.6/37/SR.53, para. 54), Trinidad and Tobago (A/C.6/37/SR.54, para. 22), Hungary (A/C.6/36/SR.62, para. 9 and A/C.6/37/SR.54, para. 49), the Libyan Arab Jamahiriya (A/C.6/37/SR.54, para. 31), Uganda (A/C.6/37/SR.54, para. 41), the Sudan (A/C.6/37/SR.54, para. 70) and Ethiopia (A/C.6/37/SR.55, para. 8) as well as by the Governments of the Byelorussian SSR (A/37/325, p. 5, para. 1), Czechoslovakia (A/37/325, p. 6, para. 4) and the USSR (A/37/325, p. 14, para. 2) in their written observations.

49. Some of those representatives held the view that the 1954 draft Code approached the question correctly inasmuch as it reflected the norms and principles on which the judgements of the Nürnberg and Tokyo Tribunals had been based - a view which was expressed by the representatives of Bulgaria (A/C.6/36/SR.62, para. 14 and A/C.6/37/SR.54, para. 63), the Byelorussian SSR (A/C.6/37/SR.54, para. 2), Hungary (A/C.6/37/SR.54, para. 49) and Czechoslovakia (A/C.6/37/SR.54, para. 74), as well as by the Governments of Czechoslovakia (A/37/325, p. 6, para. 4), the German Democratic Republic (A/37/325, p. 8, para. 10) and the Ukrainian SSR (A/37/325, p. 10, para. 3) - and proceeded from the concept of individual criminal responsibility - a remark which was made by the representatives of the USSR (A/C.6/36/SR.58, para. 66 and A/C.6/37/SR.53, para. 2), Afghanistan (A/C.6/36/SR.62, para. 27), the Byelorussian SSR (A/C.6/37/SR.54, para. 2), Bulgaria (A/C.6/37/SR.54, para. 63) and Czechoslovakia (A/C.6/37/SR.54, para. 74) and by the Governments of Czechoslovakia (A/37/325, p. 6, para. 4) and the Ukrainian SSR (A/37/325, p. 10, para. 3) in their written observations.

50. While supporting the view that the 1954 draft Code should be taken as a point of departure, some representatives none the less pointed to what the representatives of Portugal (A/C.6/36/SR.62, para. 67) and of Trinidad and Tobago (A/C.6/37/SR.54, para. 23) termed its "deficiencies". Thus the Government of the Ukrainian SSR stated that the draft could not be considered as meeting all the requirements arising out of the extremely important task of combating aggression and other crimes against peace and mankind (A/37/325, p. 10, para. 3), the representative of Poland observed that the list of offences in the draft Code corresponded "neither to the development of international law nor to the current state of technology (A/C.6/36/SR.62, para. 42), the representative of Tunisia viewed the principles defined by ILC in 1954 as providing "partial guidance" in the deliberations on the topic (A/C.6/37/SR.53, para. 14) and the representative of Greece, while recognizing that the text of the Code retained considerable value and could properly be used for further work on the topic, pointed out that "an impressive list of relevant international instruments had come into being in the intervening years" (A/C.6/36/SR.62, para. 47).

51. The view that since 1954 international law had undergone a number of changes reflected in numerous United Nations resolutions and international agreements which should be taken into account in bringing the ILC draft up to date was shared by most of the representatives who commented on the topic, among them the representatives of Bulgaria (A/C.6/36/SR.62, para. 14 and A/C.6/37/SR.54, para. 65), the Ukrainian SSR (A/C.6/36/SR.60, para. 43 and A/C.6/37/SR.54, para. 8), Afghanistan (A/C.6/36/SR.62, para. 27 and A/C.6/37/SR.53, para. 24), Cuba (A/C.6/36/SR.62, para. 36 and A/C.6/37/SR.53, para. 18), Czechoslovakia (A/C.6/36/SR.62, para. 2 and A/C.6/37/SR.54, paras. 75 and 76), Mongolia (A/C.6/37/SR.54, para. 15), the German Democratic Republic (A/C.6/36/SR.60, para. 24), Poland (A/C.6/36/SR.62, para. 42 and A/C.6/37/SR.52, para. 4), Hungary (A/C.6/36/SR.62, para. 9 and A/C.6/37/SR.54, para. 50), the USSR (A/C.6/37/SR.53, para. 3) and the Byelorussian SSR (A/C.6/36/SR.60, para. 6 and A/C.6/37/SR.54, para. 2). Views along the same line were expressed by the Governments of Czechoslovakia (A/37/325, p. 6, para. 5), the German Democratic Republic (A/37/325, p. 8, paras. 7 and 10) and the Ukrainian SSR (A/37/325, p. 11, para. 8).

52. Other representatives who felt that the 1954 draft should be revised and updated in the light of subsequent developments in international law included those of Uruguay (A/C.6/36/SR.60, para. 8), Venezuela (A/C.6/36/SR.62, para. 30), Tunisia (A/C.6/37/SR.53, para. 14), the Philippines (A/C.6/37/SR.55, para. 1), the Syrian Arab Republic (A/C.6/37/SR.53, para. 26), Yugoslavia (A/C.6/36/SR.62, para. 20), the Libyan Arab Jamahiriya (A/C.6/37/SR.54, para. 32), the Sudan (A/C.6/37/SR.54, para. 70), India (A/C.6/37/SR.53, para. 35), Zaire (A/C.6/37/SR.53, para. 32), Algeria (A/C.6/36/SR.60, para. 30), Portugal (A/C.6/36/SR.62, para. 67) and Trinidad and Tobago (A/C.6/37/SR.54, para. 23), the latter observing that the elaboration of separate international legal instruments in specific areas should not preclude the inclusion in the Code of the subject matter dealt with in such instruments.

2. Comments on particular provisions of the draft

53. Commenting on the draft as a whole, several representatives felt that a number of provisions should be made more precise and clarified. Thus the representative of Greece said that the definitions of offences against the peace and security of mankind should be made "more concrete and easier to apply" (A/C.6/36/SR.62, para. 48) and the representative of Portugal, after expressing doubts about both the original and final formulation of the draft and about the simplified text submitted by the Special Rapporteur, stressed that the effectiveness of the law and the principle of legality called for greater clarity of wording (A/C.6/36/SR.62, para. 58). The representative of Egypt also made a general comment to the effect that all loopholes that detracted from the comprehensiveness which the draft Code should have must be closed (A/C.6/37/SR.52, para. 18).

54. Article 1 of the draft was viewed by the representative of Greece as "satisfactory" (A/C.6/36/SR.62, para. 48).

55. With respect to article 2, the representative of Czechoslovakia said that the list of crimes contained therein should be adjusted according to the significant changes in international law since 1954 (A/C.6/37/SR.54, para. 75). Regarding paragraph 1 of article 2, both the representatives of Greece (A/C.6/36/SR.62, para. 48) and Portugal (A/C.6/36/SR.62, para. 58) felt that the term "aggression" should be redefined in the light of the Definition of Aggression contained in General Assembly resolution 3314 (XXIX). The representative of Portugal added that the definition contained in the draft was too vague to permit the possibility of criminal prosecution under international law; he pointed out in this regard that in determining the concept of aggression, the initial and final formulation of the draft Code implied the use of the armed forces of a State against another State but at the same time restricted that definition by referring to self-defence and to the performance of certain acts by the United Nations. In his opinion, therefore, the Definition of Aggression, although not entirely satisfactory, seemed preferable (A/C.6/36/SR.62, para. 59). The Government of Czechoslovakia also felt that the Definition of Aggression, which it described as "a generally recognized interpretation of the basic provisions of the Charter", could be incorporated into the draft Code, adding that "the jurisdiction of the Security Council neither contradicted nor hindered an objective consideration of a case involving the

determination of an aggressor (A/37/325, p. 7, para. 7). Also with respect to paragraph 1 of article 2, the representative of Greece pointed out that some terms, such as "threat", "preparation" and "encouragement", were "in need of further elaboration" (A/C.6/36/SR.62, para. 48) and the Government of Barbados observed that paragraph 1 did not seem to take into account a situation in which the authorities of a State sent armed forces into another State ostensibly at the invitation of that State, but in reality to further its own aims, or the situation in which a State, convinced of imminent, though not immediate danger by a neighbouring State, sent armed units into that neighbouring State to forestall the anticipated attack (A/37/325, p. 4, para. 5). With respect to paragraph 4, the Government of Barbados envisaged the case where a State was in occupation of a territory to which it no longer had any right and pointed out that since it would hardly be possible in such a case to effectively organize armed bands within the occupied territory for the purpose of its liberation, the prohibition in the paragraph in question of the toleration of the organization of armed bands in other territories would seemingly perpetuate such unjustified occupation (A/37/325, p. 4, para. 4). Paragraph 5 of article 2 received the full support of the delegation of Poland, in view of that country's "recent experiences with unfriendly acts by States" (A/C.6/37/SR.52, para. 7). Paragraph 7 was viewed as "difficult to apply" by the Government of Barbados, who pointed out in this connection that if State A violated its obligations under a treaty to limit or restrict its armaments, the relevant authorities in State A, a signatory to the treaty which was threatened by A's breach, could hardly be guilty of a crime under international law if they adopted countermeasures (A/37/325, p. 4, para. 6). Paragraph 8 relating to the acquisition of territory by force was viewed by the representative of Egypt as a provision which ought to be strengthened (A/C.6/37/SR.52, para. 18). With respect to paragraph 9, the Government of Barbados pointed out that situations might arise in which the authorities of a State might be justified in using coercive measures of an economic kind to enforce its will on another State for its own self-defence or the protection of its nationals (A/37/325, p. 4, para. 7).

56. Article 3 was viewed by the representative of Greece as "satisfactory" (A/C.6/36/SR.62, para. 48). The representative of the Syrian Arab Republic, on the other hand, called for the "strengthening of the provisions of article 3 of the 1954 draft Code so as to make it quite clear that a head of State or high official could not evade the criminal responsibility deriving from the commission of criminal acts" (A/C.6/37/SR.53, para. 27).

57. Commenting jointly on articles 3 and 4, the representatives of the Byelorussian SSR (A/C.6/37/SR.54, para. 4) and Mongolia (A/C.6/37/SR.54, para. 19) and the Government of the Ukrainian SSR (A/37/325, p. 10, para. 7) said that the wording of those articles should be brought into line with that of articles 7 and 8 of the Charter of the Nürnberg Tribunal.

58. Referring specifically to article 3, the Government of the Ukrainian SSR pointed out that under article 7 of the Charter of the Nürnberg Tribunal, "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" and that in article 3 of the draft Code the words "or mitigating punishment" had been omitted, as a result of which the

present wording of article 3 created a possibility of the mitigation of the punishment of criminals which might be equivalent to an absence of punishment (A/37/325, p. 10, para. 4).

59. The same Government, commenting on article 4, recalled that under article 8 of the Charter of the Nürnberg Tribunal, "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" and observed that in article 4 of the draft Code, the words "but may be considered in mitigation of punishment if the Tribunal determines that justice so requires" had been replaced by the words "if, in the circumstances at the time, it was possible for him not to comply with that order", which created an even more dangerous loophole since every criminal could plead that he was unable to comply with an order from his superiors because they threatened him with punishment (A/37/325, p. 10, para. 5). A similar observation was made by the representative of Poland (A/C.6/37/SR.52, para. 6). The Government of the Ukrainian SSR added that provisions of this kind not only did not contribute to the struggle against war crimes, but created an opportunity to evade responsibility, thereby indirectly encouraging further crimes against peace and mankind (A/37/325, p. 10, para. 6). Also referring to article 4, the representative of the Syrian Arab Republic proposed that the wording be revised so as to provide that a person who had committed an act on orders from his Government or his superior was not immune from responsibility, even if he did not understand the criminal nature of the act (A/C.6/37/SR.53, para. 27).

IV. SCOPE OF THE PROPOSED CODE

1. Views of a general nature

60. Several representatives emphasized that reaching agreement on the structure and scope of the proposed Code was, in the words of the representative of the German Democratic Republic, "the foremost issue" (A/C.6/37/SR.52, para. 16), a point which was also made by the representatives of Bulgaria (A/C.6/37/SR.54, para. 68) and Poland (A/C.6/37/SR.52, para. 9).

61. The aspects which were viewed as relevant to the issue of the scope of the proposed Code included the definition of the concept of an offence against the peace and security of mankind, the identification of the acts to be characterized as offences against the peace and security of mankind and of their constituent elements, and the state of customary international law and the status of various United Nations pronouncements concerning offences against the peace and security of mankind.

62. The need to define the concept of an offence against the peace and security of mankind was highlighted by the representatives of the Ukrainian SSR (A/C.6/37/SR.54, para. 8), Finland (A/C.6/36/SR.60, para. 33), Bangladesh (A/C.6/36/SR.62, para. 22), Poland (A/C.6/37/SR.52, para. 9) and the Syrian Arab Republic (A/C.6/37/SR.53, para. 27). Several representatives pointed out that the Charter of the Nürnberg Tribunal had included a definition of offences against the peace and security of mankind which, in the words of the representative of Tunisia,

"still merited serious consideration" (A/C.6/37/SR.53, para. 13). The representatives of Finland and the German Democratic Republic recalled in this connection that according to the Charter of the Nürnberg Tribunal there were three classes of acts qualifying as offences against the peace and security of mankind, namely, crimes against peace, crimes against humanity and war crimes. The representative of Tunisia, for his part, suggested to distinguish between offences against the individual, offences against peoples and offences against States (A/C.6/37/SR.53, para. 15).

63. With respect to the second of the above-mentioned aspects, namely, the identification of the acts to be characterized as offences against the peace and security of mankind and of their constituent elements, comments related, on the one hand, to the drawing up of, in the words of the representative of Finland, "a tentative list of all acts constituting offences against the peace and security of mankind" (A/C.6/36/SR.60, para. 35) and, on the other hand, to the definition of the acts in question.

64. On the first point, a number of delegations commented in a general way on the criteria to be applied in selecting the acts to be characterized as offences against the peace and security of mankind. As indicated above (see para. 51), most of the representatives who commented on the issue agreed that the list contained in article 2 of the 1954 draft Code ought to be expanded taking into account the subsequent development of international law.

65. In the view of a number of representatives, the gravity of the act should be a paramount factor. Thus the representative of the Ukrainian SSR said that "it was absolutely necessary to take into account in the Code the provisions and norms of the international instruments adopted since 1954 which mentioned the most serious breaches of the international order" (A/C.6/37/SR.54, para. 8), a view which was also expressed in the written comments of the Ukrainian SSR Government (A/37/325, p. 11, para. 9); the representative of Czechoslovakia stated that the list in the Code should "contain offences that gravely threatened and breached the peace and security of mankind or the freedom of peoples or constituted serious violations of fundamental human rights" (A/C.6/37/SR.54, para. 76 and A/C.6/36/SR.62, para. 4), a view which was also expressed in the written comments of the Czechoslovak Government (A/37/325, p. 6, para. 8). The criterion of the gravity of the act was also mentioned by the Government of the German Democratic Republic (A/37/325, p. 8, para. 10) and by the representative of that same country (A/C.6/36/SR.60, para. 25 and A/C.6/37/SR.52, para. 16), as well as by the representative of Mongolia (A/C.6/36/SR.61, para. 1) and by the representative of Algeria, who stated that in order to preserve the specificity of crimes against peace and the security of mankind, the Code "should be applicable only to internationally unlawful acts of exceptional seriousness which caused substantial damage, such as genocide, apartheid, aggression and colonialism, to mention only a few unlawful acts prohibited by contemporary international law" (A/C.6/36/SR.58, para. 31 and A/C.6/37/SR.52, para. 12).

66. The representative of Egypt, on the other hand, stated that the proposed Code should include "all violations of the Charter and of the relevant international instruments" (A/C.6/37/SR.52, para. 18).

67. Also commenting on the approach to the question of which acts should fall into the category of offences against the peace and security of mankind, the representative of Zaire said that the point of departure should not be the penal codes of States but the nature of the acts themselves, adding that "the acts that might be considered as crimes against humanity should be accepted as grave crimes by reason of their very nature - which would be a positive contribution to the evolution of international law" (A/C.6/36/SR.60, para. 20). The Government of the Ukrainian SSR and the representative of Czechoslovakia also insisted on the criterion of the international character of the offence, the former stating that "it would be inadvisable to include in the draft code crimes of a general criminal nature that are regulated by national legislation" (A/37/325, p. 13, para. 17) and the latter holding the view that the list in the draft Code should "contain offences that were punishable under international law regardless of the internal law of certain States" (A/C.6/37/SR.54, para. 76), and the representative of Trinidad and Tobago felt that "a distinction should be drawn between, on the one hand, those instruments that applied to the criminal actions of private citizens (for example, the Tokyo, Hague and Montreal Conventions) and, on the other hand, those that censured the official acts of persons which gave rise to the application of the principles relating to international State responsibility, such as the 1973 Convention on the Suppression and Punishment of the Crime of Apartheid. The first category", he went on to say, "would seem to fall outside the scope of the Code." (A/C.6/37/SR.54, para. 24.)

68. The need to define precisely the constituent elements of each of the offences to be included in the proposed Code was stressed by the representatives of the Philippines (A/C.6/37/SR.54, para. 5), Mongolia (A/C.6/37/SR.54, para. 17), the Libyan Arab Jamahiriya (A/C.6/37/SR.54, para. 24), Egypt (A/C.6/37/SR.52, para. 18) and the German Democratic Republic (A/C.6/36/SR.58, para. 25), as well as by the Government of the latter country which stated in its written observations that "the legal definition of the elements which constitute international crimes should be as clear, precise and concrete as possible" (A/37/325, p. 8, para. 11). The representative of Israel also stressed that all the impermissible conduct of States and individuals which the proposed Code was supposed to punish should be described "in appropriate language" and that "the act itself and its parameters should be properly defined" (A/C.6/37/SR.54, para. 53). The Government of the Ukrainian SSR noted in this connection that the legal instruments to be taken into account in defining the acts to be characterized as offences against the peace and security of mankind had been adopted at various times, in varying historical circumstances and by different international organs and differed significantly as regards their nature and legal force, the identity of the parties to them, the topics and territory to which they applied, their terminology and the clarity and completeness with which they defined the constituent elements of individual international crimes. Consequently, the Government of the Ukrainian SSR observed, "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" (A/37/325, p. 11, para. 9). The representative of Sweden pointed out that it was important "to draft provisions sufficiently clear and well defined to form the basis for criminal prosecution and conviction", adding that "the ability to tell whether a certain act would constitute a criminal offence was a fundamental principle of penal law"

(A/C.6/36/SR.60, para. 41). The representative of Finland similarly noted that many of the obligations laid down in this field by existing instruments "had been formulated in such general terms that they did not lend themselves easily to codification" and noted that "even the Definition of Aggression was not without ambiguity in that respect" (A/C.6/36/SR.60, para. 35).

69. The third of the aspects mentioned in paragraph 61 above, namely, the state of customary international law and the status of various United Nations pronouncements concerning offences against the peace and security of mankind was mentioned as relevant to the question of the scope of the proposed Code by the representatives of Finland (A/C.6/36/SR.60, para. 33), Bangladesh (A/C.6/36/SR.62, para. 22), Poland (A/C.6/37/SR.52, para. 9) and the Philippines (A/C.6/37/SR.55, para. 5). In this connection the representatives of Finland (A/C.6/36/SR.60, para. 33) and Bangladesh (A/C.6/36/SR.62, para. 23) noted that divergent views existed as to the legal status and nature of obligations flowing from existing legal instruments. The representative of Israel, after stressing that "the work should take into consideration all the existing international law on the subject and should not merely make a selective choice between resolutions and conventions adopted by United Nations organs or conferences", drew attention to "the ambivalent status in international law of resolutions and declarations of international organizations", the inclusion of which, in the general thesaurus of international law, as "indicators of the direction in which evolution of the law was desired" implied "extremely delicate assessments" (A/C.6/37/SR.54, para. 55). The representative of Israel referred in this context to a letter dated 27 July 1982 from the World Jewish Congress to the Director of the Centre for Human Rights in response to a questionnaire prepared by the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on the status of the individual with respect to contemporary international law (E/CN.4/Sub.2/432/Rev.1). In that letter the World Jewish Congress indicated that, while favouring the drawing up of a draft code in which the duties and obligations of individuals and States would be appropriately defined in their relevant context and the establishment of an international criminal jurisdiction, it was aware of the dangers that lay behind certain contemporary trends in the development of international law and believed that "concepts which had different degrees of acceptance and which did not have the same level of authority as established principles contained in international conventions should be avoided in the rush to achieve results". Furthermore, the World Jewish Congress observed, the distinction made between the relative responsibilities of the individual and the State in contemporary international law would be impeded if, by virtue of an ex post facto political rationalization, actions that had been considered legitimate when committed were subsequently to be considered as criminal (A/C.6/37/SR.54, para. 56).

70. Finally, a few delegations dealt briefly with the question whether the list of acts to be characterized as acts against the peace and security of mankind should be limitative or not. Thus the representative of Poland noted that the draft Code could either include an exhaustive list of offences or give some examples and refer generally to the relevant rules of international law, further remarking that the second solution was more flexible and would permit the inclusion of references to new legal instruments, while the first had the advantage of the certainty of the law (A/C.6/36/SR.62, para. 42). The representative of Portugal favoured the

combination of "an enumerative approach with one based on strict criteria determining what should constitute an offence against the peace and security of mankind" (A/C.6/36/SR.62, para. 67) and the representative of Bangladesh noted that "a list of offences could never be closed; if the code was indeed to protect international peace and security, it should contain a precise but fairly broad definition to deal with possible omissions" (A/C.6/36/SR.62, para. 23).

2. Acts to be characterized in the proposed Code as offences against the peace and security of mankind

71. A large number of representatives felt that the scope of the future Code of Offences against the Peace and Security of Mankind should be broadened so that it could take into account various international legal instruments relating to phenomena which had taken place since 1954.

72. Many representatives pointed out that among the acts to be characterized as offences in the future Code there should be included a crime of aggression. The representative of Poland felt that the draft should refer to such crimes as preparations for, threats and acts of aggression (A/C.6/37/SR.52, para. 5) and the representative of Sierra Leone mentioned in that regard such activities as "preparing and waging wars of aggression" (A/C.6/37/SR.49, para. 46). The German Democratic Republic considered that among the grossest international crimes which constitute a serious threat and an immediate danger to the peace and security and which should be included in the Code, defining, inter alia, as international crimes all forms and methods of the preparation, conduct and threat of conduct of wars of aggression should be taken into account (A/37/325, p. 9, para. 12). The representative of the Sudan pointed out that the list of offences to be included in the Code should be supplemented by "occupation of territory by force" (A/C.6/37/SR.54, para. 71).

73. The representatives of Egypt (A/C.6/36/SR.58, para. 6 and A/C.6/37/SR.52, para. 18), the USSR (A/C.6/36/SR.58, para. 68 and A/C.6/37/SR.53, para. 3, as well as A/37/325, p. 14, para. 3), the Byelorussian SSR (A/C.6/36/SR.60, para. 5 and A/C.6/37/SR.54, para. 3, as well as A/37/325, p. 5, para. 3), Mongolia (A/C.6/36/SR.61, para. 3 and A/C.6/37/SR.54, para. 16), Afghanistan (A/C.6/36/SR.62, para. 27), Cuba (A/C.6/36/SR.62, para. 36 and A/C.6/37/SR.53, para. 20), Poland (A/C.6/36/SR.62, para. 42 and A/C.6/37/SR.52, para. 5), Pakistan (A/C.6/36/SR.61, para. 7), the Syrian Arab Republic (A/C.6/37/SR.53, para.26), the Ukrainian SSR (A/C.6/37/SR.54, para. 8 and A/37/325, p. 12, para. 12), the Libyan Arab Jamahiriya (A/C.6/37/SR.54, para. 33), Hungary (A/C.6/37/SR.54, para. 50), Bulgaria (A/C.6/37/SR.54, para. 65), the Sudan (A/C.6/37/SR.54, para. 70), Czechoslovakia (A/C.6/37/SR.54, para. 75) and Ethiopia (A/C.6/37/SR.55, para. 8) stressed in this connection that due account should be taken of the Definition of Aggression adopted in 1974 by the General Assembly in resolution 3314 (XXIX).

74. The representative of Cuba (A/C.6/37/SR.53, para. 18) also referred in that regard to economic aggression directed against developing countries, as did the representative of Tunisia, who added that the economic aggression was carried out mainly by plundering the resources of the younger States (A/C.6/37/SR.53,

para. 14). The representative of Uganda pointed out that attention should be paid to the various forms of aggression that had developed since then, including those which involved depriving a people of its right to a homeland, independence and self-determination (A/C.6/37/SR.54, para. 43).

75. The representative of Yugoslavia proposed that the list of acts constituting crimes against the peace and security of mankind should also include various forms of the use of force and interference in the internal affairs of States (A/C.6/36/SR.62, para. 19). The inclusion of the latter act in the list was also proposed by the representative of Pakistan (A/C.6/36/SR.61, para. 6). Also, in the view of the representative of Cuba, a reference should be made to Article 2, paragraph 4, of the United Nations Charter, calling on Members to "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations" (A/C.6/36/SR.62, para. 36).

76. The use of mercenaries was highlighted by the representatives of Cuba (A/C.6/36/SR.62, para. 36), Afghanistan (A/C.6/36/SR.62, para. 27), Algeria (A/C.6/37/SR.52, para. 12), Trinidad and Tobago (A/C.6/37/SR.54, para. 27), the Sudan (A/C.6/37/SR.54, para. 71), Nigeria (A/C.6/37/SR.41, para. 39) and Norway (A/C.6/37/SR.45, para. 73) as a crime the draft Code should refer to. The representative of Afghanistan pointed out in this regard that mercenary activities, the encouragement of the activities of armed bands in other States and terrorism, were crimes which, although not yet defined, "might come to constitute a threat to the peace and security of mankind" (A/C.6/36/SR.62, para. 27).

77. In the view of the representative of Uganda account should be taken of the Organization of African Unity Convention for the Elimination of Mercenarism in Africa of 1977 (A/C.6/37/SR.54, para. 41). The representative of Cuba referred in this regard to General Assembly resolution 35/48 entitled "Drafting of an international convention against the recruitment, use, financing and training of mercenaries" (A/C.6/37/SR.53, para. 20).

78. A number of representatives felt it important that the future Code should contain broad provisions relating to disarmament. Thus the representative of the Ukrainian SSR pointed out that in view of the danger to mankind created by the unbridled arms race in which the imperialist countries were engaged, the draft Code should also contain provisions "relating to disarmament, based on the relevant provisions of existing agreements" (A/C.6/37/SR.54, para. 8). It was also the view of the Ukrainian SSR that it would be advisable for the Code to contain a distinct section dealing with "the breaches of States' obligations in the sphere of disarmament" (A/37/325, p. 12, para. 14). The representative of the Byelorussian SSR also felt that in the final stages of the preparation of the draft Code account should be taken of "the obligation imposed on States by the disarmament agreements concluded over the past 20 years" (A/C.6/36/SR.60, para. 5 and A/37/325, p. 5, para. 4), a view which was shared by the representative of Czechoslovakia who referred to "the most important agreements relating to disarmament" (A/C.6/37/SR.54, para. 75).

79. Several representatives were therefore of the view that the part of the draft Code dealing with breaches of obligations of States in the field of disarmament should reflect the relevant provisions of such international legal instruments as the 1963 Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water, the 1968 Treaty on the Non-Proliferation of Nuclear Weapons, 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, the 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction and the 1976 Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques. Those instruments, or some of them, were referred to by the representatives of the USSR (A/C.6/36/SR.58, para. 68 and A/C.6/37/SR.53, para. 4, as well as A/37/325, p. 14, para. 4), Afghanistan (A/C.6/36/SR.62, para. 27), Poland (A/C.6/36/SR.62, para. 42 and A/C.6/37/SR.52, para. 8), the Syrian Arab Republic (A/C.6/37/SR.53, para. 26), Trinidad and Tobago (A/C.6/37/SR.54, para. 27) and the Ukrainian SSR (A/37/325, p. 12, para. 14).

80. Several representatives underlined the "capital importance to the future work on the draft Code", as the representative of the German Democratic Republic put it (A/C.6/36/SR.60, para. 25 and A/37/325, p. 9, para. 12), of the proposal made by the USSR delegation to the thirty-sixth session of the General Assembly "to declare the first use of nuclear weapons the gravest crime against humanity". The representative of the USSR stated in this regard that

> "the Code could be a substantial supplement to the existing instruments of international law for dealing with the fundamental contemporary problem, namely, the prevention of a nuclear world war the risk of which was steadily growing" (A/C.6/37/SR.53, para. 3 and A/37/325, p. 13, para 3).

81. The need to take into account the Declaration on the Prevention of Nuclear Catastrophe, adopted by the General Assembly in its resolution 35/100 on the initiative of the Soviet Union, was underlined also by the representatives of the Byelorussian SSR (A/C.6/36/SR.60, para. 5 and A/C.6/37/SR.54, para. 3, as well as A/37/325, p. 5, para. 5), Bulgaria (A/C.6/36/SR.62, para. 15), Afghanistan (A/C.6/36/SR.62, para. 27), Hungary (A/C.6/36/SR.62, para. 9 and A/C.6/37/SR.54, para. 50), Poland (A/C.6/37/SR.52, para. 8), the USSR (A/C.6/37/SR.53, para. 3 and A/37/325, p. 14, para. 3, the Ukrainian SSR (A/C.6/37/SR.54, para. 8 and A/37/325, p. 12, para. 13), Mongolia (A/C.6/37/SR.54, para. 17), Czechoslovakia (A/C.6/37/SR.54, para. 75 and A/37/325, p. 5, para. 6, and Trinidad and Tobago (A/C.6/37/SR.74, para. 27).

82. In this connection the representatives of the Byelorussian SSR (A/C.6/37/SR.54, para. 3 and A/37/325, p. 5, para. 5), the Ukrainian SSR (A/C.6/37/SR.54, para. 8), Mongolia (A/C.6/37/SR.54, para. 17), Hungary (A/C.6/37/SR.54, para. 50), Bulgaria (A/C.6/37/SR.54, para. 66) and the USSR (A/C.6/37/SR.53, para. 3 and A/37/325, p. 14, para. 3), pointed out that paragraph 1 of that Declaration "provided that States and statesmen that resorted first to the use of nuclear weapons would be committing the gravest crime against humanity", as did also the representative of Czechoslovakia, who added that "paragraph 2

stated that there would never be any justification or pardon for statesmen who would take the decision to be the first to use nuclear weapons". He went on by saying that "those important conclusions should undoubtedly be reflected in the Code and adequately elaborated in its provisions" (A/C.6/36/SR.62, para. 5 and A/37/324, p. 5, para. 6).

83. The representative of Algeria also felt that among the acts which should be defined as offences against the peace and security of mankind, "the use of nuclear weapons in general and their use against non-nuclear-weapon States in particular" should be included (A/C.6/37/SR.52, para. 12).

84. The representative of the Ukrainian SSR considered that the Code should likewise contain a normative provision concerning the responsibility entailed by the destruction of civilian nuclear installations, which would be considered equivalent to the use of nuclear weapons, characterized as a serious crime against humanity by the United Nations. The delegation of the USSR had submitted a new proposal along those lines, calling for the intensification of efforts to avoid the threat of nuclear war and to ensure international security (A/C.6/37/SR.54, para. 9).

85. The Ukrainian SSR emphasized that, 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. 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 imperialist circles, a growing danger of the militarization of outer space (A/37/325, p. 12, para. 15). The representative of Trinidad and Tobago also considered that the draft Code should include provisions "designed to prohibit the militarization of outer space" (A/C.6/37/SR.54, para. 27). To this end, the Ukrainian SSR (A/37/325, p. 12, para. 15) and the representative of Uganda (A/C.6/37/SR.54, para. 42) felt it appropriate to reflect in the draft Code the provisions of the 1967 Treaty on Principles Governing the Activities in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies.

86. A number of States considered it important to take into account in the future Code the various international agreements relating to war crimes and crimes against humanity. Among those crimes the representative of Poland highlighted the use of mass destruction weapons and crimes against humanity, as defined in the Charter of the International Military Tribunal of 1945, as did the representative of the Sudan (A/C.6/37/SR.54, para. 70), and in the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War (A/C.6/37/SR.52, para. 5).

87. Specific reference to the 1949 Geneva Conventions and the 1977 Additional Protocols to the 1949 Geneva Conventions dealing with the protection of the victims of armed conflicts was also made by the representatives of the USSR (A/C.6/36/SR.58, para. 67 and A/C.6/37/SR.53, para. 5, as well as A/37/325, p. 14,

para. 5), the Byelorussian SSR (A/C.6/36/SR.60, para. 5 and A/C.6/37/SR.54, para. 3, as well as A/37/325, p. 5, para. 5), Mongolia (A/C.6/37/SR.61, para. 3 and A/C.6/37/SR.54, para. 16), Pakistan (A/C.6/36/SR.61, para. 7), Afghanistan (A/C.6/36/SR.62, para. 27), Hungary (A/C.6/36/SR.62, para. 9), Cuba (A/C.6/36/SR.62, para. 36), Poland (A/C.6/36/SR.62, para. 42), Egypt (A/C.6/37/SR.52, para. 18), the Syrian Arab Republic (A/C.6/37/SR.53, para. 26), the Ukrainian SSR (A/C.6/37/SR.54, para. 10 and A/37/325, p. 12, para. 12), the Libyan Arab Jamahiriya (A/C.6/37/SR.54, para. 33), Uganda (A/C.6/37/SR.54, para. 41), Trinidad and Tobago (A/C.6/37/SR.54, para. 26), Bulgaria (A/C.6/37/SR.54, para. 65) and Uruguay (A/37/325, p. 16, para. 9).

88. The representatives of Poland (A/C.6/37/SR.52, para. 8) and Uruguay (A/37/325, p. 16, para. 9) made specific reference to the crimes defined in the 1907 Hague Convention concerning Laws and Customs of War on Land.

89. Several representatives stressed that the future Code should include such acts as war propaganda and incitement to national and racial hatred. Referring to those acts, the representative of the German Democratic Republic supported the proposal to include in the Code provisions "expressly prohibiting propaganda for war and hatred against other nationalities and races, which was aimed at preparing new generations psychologically for committing grave international crimes" (A/C.6/36/SR.60, para. 25), as did also the representative of Mongolia who said that "the policy of instigating war propaganda and inciting hatred among peoples should be expressly prohibited as acts leading to the psychological preparation and commission of grave international criminal offences" (A/C.6/37/SR.54, para. 17). Similar views were expressed by the representatives of Bulgaria (A/C.6/36/SR.62, para. 14 and A/C.6/37/SR.54, para. 66) and Afghanistan who referred to article 20 of the International Covenant on Civil and Political Rights (A/C.6/37/SR.53, para. 23).

90. Genocide was another act which several representatives, among whom the representative of Algeria (A/C.6/37/SR.57, para. 12), felt should be covered by the Code. The representatives of Pakistan (A/C.6/36/SR.61, para. 7), Czechoslovakia (A/C.6/36/SR.62, para. 2 and A/C.6/37/SR.54, para. 75), Afghanistan (A/C.6/36/SR.62, para. 27), Cuba (A/C.6/36/SR.62, para. 36 and A/C.6/37/SR.53, para. 20), Tunisia (A/C.6/37/SR.53, para. 13), the Byelorussian SSR (A/C.6/37/SR.54, para. 3 and A/37/325, p. 5, para. 6), Mongolia (A/C.6/37/SR.54, para. 16), the Libyan Arab Jamahiriya (A/C.6/37/SR.54, para. 33), Uganda (A/C.6/37/SR.54, para. 41), Hungary (A/C.6/37/SR.54, para. 50), Ethiopia (A/C.6/37/SR.55, para. 8) and Uruguay (A/37/325, p. 15, para. 9), underlined the need to take into account the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide during the elaboration of the Code.

91. A large number of representatives stressed that special emphasis should be placed in the proposed Code on the crime of apartheid. The representatives of Nigeria (A/C.6/37/SR.41, para. 39), Norway (A/C.6/37/SR.45, para. 73), Egypt (A/C.6/36/SR.58, para. 64 and A/C.6/37/SR.52, para. 18), the USSR (A/C.6/36/SR.58, para. 67 and A/C.6/37/SR.53, para. 1, as well as A/37/325, p. 9, para. 5), the Byelorussian SSR (A/C.6/36/SR.60, para. 5 and A/C.6/37/SR.54, para. 3), Mongolia (A/C.6/36/SR.61, para. 3 and A/C.6/37/SR.54, para. 16), Pakistan (A/C.6/36/SR.61,

para.1), Czechoslovakia (A/C.6/36/SR.62, para. 2 and A/C.6/37/SR.54, para. 75), Bulgaria (A/C.6/36/SR.62, para. 15 and A/C.6/37/SR.54, para. 66), Poland (A/C.6/36/SR.62, para. 42 and A/C.6/37/SR.52, para. 8), Hungary (A/C.6/36/SR.62, para. 15 and A/C.6/37/SR.54, para. 50), Nigeria (A/C.6/37/SR.52, para. 12), Cuba (A/C.6/36/SR.53, paras. 18 and 20), the Syrian Arab Republic (A/C.6/37/SR.53, para. 26), Trinidad and Tobago (A/C.6/37/SR.54, para. 26), the Libyan Arab Jamahiriya (A/C.6/37/SR.54, para. 33), Uganda (A/C.6/37/SR.54, para. 41), the Congo (A/C.6/37/SR.54, para. 47), Ethiopia (A/C.6/37/SR.55, para. 8) and the Ukrainian SSR (A/37/325, p. 12, para. 11) stressed the need to include that act in the proposed Code. A large number of those representatives felt in that regard that the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid should be taken into account. The representative of Sierra Leone felt that such activities as perpetrating atrocities and robbing thousands of persons of their citizenship and deporting them to "bantustans' were comparable to the deportations and forced labour measures condemned by the Nürnberg Tribunal and were all acts which should be considered by the Commission under that topic (A/C.6/37/SR.49, para. 46).

92. The representatives of the Byelorussian SSR (A/C.6/36/SR.60, para. 6, and A/37/325, p. 5, para. 6), Bulgaria (A/C.6/36/SR.62, para. 15 and A/C.6/37/SR.54, para. 66), Hungary (A/C.6/36/SR.62, para. 9 and A/C.6/37/SR.54, para. 50), Pakistan (A/C.6/36/SR.61, para. 6), Poland (A/C.6/37/SR.52, para. 5), Cuba (A/C.6/37/SR.53, para. 18), Trinidad and Tobago (A/C.6/37/SR.54, para. 27), the Libyan Arab Jamahiriya (A/C.6/37/SR.54, para. 33), Czechoslovakia (A/C.6/37/SR.51, para. 75), Ethiopia (A/C.6/37/SR.55, para. 8) and the German Democratic Republic (A/37/325, p. 9, para. 12), referred to racism and racial discrimination as acts to which due regard should be paid while elaborating the future Code. The representative of Israel pointed out in this context that the principles of racial tolerance "would have to find a place in the draft Code" (A/C.6/37/SR.54, para. 58). The 1965 Convention on the Elimination of All Forms of Racial Discrimination was mentioned as an international instrument to be taken into account by the representatives of Egypt (A/C.6/36/SR.58, para. 64), Czechoslovakia (A/C.6/36/SR.62, para. 2 and A/C.6/37/SR.54, para. 75), Bulgaria (A/C.6/36/SR.62, para. 15 and A/C.6/37/SR.54, para. 66), Afghanistan (A/C.6/36/SR.62, para. 27), Cuba (A/C.6/36/SR.62, para. 36), the Syrian Arab Republic (A/C.6/37/SR.53, para. 26), Mongolia (A/C.6/37/SR.54, para. 16), Uganda (A/C.6/37/SR.54, para. 41) and the Ukrainian SSR (A/37/325, p. 12, para. 11).

93. Several representatives, among them the representatives of the Byelorussian SSR (A/C.6/36/SR.60, para. 5, and A/37/325, p. 5, para. 6), Poland (A/C.6/37/SR.52, para. 5), Cuba (A/C.6/37/SR.53, para. 20), Mongolia (A/C.6/37/SR.54, para. 17), Trinidad and Tobago (A/C.6/37/SR.54, para. 27) and Ethiopia (A/C.6/37/SR.55, para. 8), emphasized that colonialism was one of the crimes to be included in the draft Code. The representatives of Cuba (A/C.6/36/SR.62, para. 36), the Syrian Arab Republic (A/C.6/37/SR.53, para. 26), the Libyan Arab Jamahiriya (A/C.6/37/SR.54, para. 34) and Hungary (A/C.6/37/SR.54, para. 50), as well as the USSR (A/37/325, p. 14, para. 3) referred in this regard to the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples. The representative of Cuba referred also to General Assembly resolution 2465 (XXIII) on the implementation of the said Declaration (A/C.6/37/SR.53, para. 20). In this

connection it was pointed out by the representative of the Byelorussian SSR that the Code should not, however, impinge on the right of peoples to struggle for their independence against colonialism, aggression, racism and apartheid, since that right derived from the United Nations Charter and numerous decisions and resolutions of the United Nations (A/C.6/36/SR.60, para. 5). The representatives of Yugoslavia (A/C.6/36/SR.62, para. 19) and Pakistan (A/C.6/36/SR.61, para. 6) felt that non-recognition of the right of peoples to self-determination necessitated a re-examination of the draft Code. The representative of Algeria stressed the need of inclusion in the draft Code of the denial of the right of self-determination as an offence against the peace and security of mankind (A/C.6/37/SR.52, para. 12). The representative of Tunisia favoured also the inclusion of offences directed "against peoples who were oppressed and were deprived of their natural right to self-determination and peoples under the colonial yoke or the regime of apartheid" (A/C.6/37/SR.53, para. 14). The representative of the Sudan emphasized the need to add to the list of offences constituting a patent threat to peace and security "the occupation of territories by force, the establishment of colonies of settlers of racist entities, as was occurring in Namibia and the occupied Arab territories, the exploitation of the natural resources of a country and obstructing accession to independence, as in the case of Namibia" (A/C.6/37/SR.54, para. 71).

94. The representatives of Bangladesh (A/C.6/36/SR.62, para. 23), Nigeria (A/C.6/37/SR.41, para. 39) and Norway (A/C.6/37/SR.45, para. 73) hoped that "an exhaustive draft Code" would cover, inter alia, hijacking and the representative of Cuba felt that in the future Code reference should be made to the principles governing the International Civil Aviation Organization, particularly those relating to the responsibility of States that did not adopt severe measures against the perpetrators of acts that endangered or caused the loss of human lives (A/C.6/36/SR.62, para. 36).

95. Grave offences against diplomatic and consular representatives were mentioned by the representative of Bangladesh (A/C.6/36/SR.62, para. 23). Uruguay also considered that offences against diplomatic agents as well as hostage-taking and terrorism in all its forms must be given special attention by the International Law Commission for review and inclusion in any draft code that it formulates (A/37/325, p. 16, paras. 10-12), Uganda felt in this regard that both the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents and the International Convention against the Taking of Hostages should be taken into account (A/C.6/37/SR.54, para. 41).

96. Among other matters which, as the representative of Israel put it, "had been virtually unheard of in 1954" and which would have to find a place in the draft Code, he emphasized religious tolerance and protection against acts of terrorism, particularly, but not exclusively directed against places of worship, such as those acts whih had been committed against many synagogues, particularly in Europe, during 1982. The representative of Israel went on to say that terrorism, by its very nature, violated a whole series of fundamental human rights and was a source of tension in international relations and therefore the draft Code must deal with the problem in realistic, practical terms (A/C.6/37/SR.54, para. 58).

97. The representatives of Mongolia (A/C.6/37/SR.54, para. 17) and the Congo (A/C.6/37/SR.54, para. 47), as well as Uruguay (A/37/325, p. 16, para. 10) pointed out that the crime of piracy should be duly included in the Code.

98. The representatives of Mongolia (A/C.6/37/SR.54, para. 17) and Trinidad and Tobago (A/C.6/37/SR.54, para. 27) felt that crimes relating to slavery should be incorporated in the Code, as did also Uruguay, who added that due account should be taken of the crime of the slave trade (A/37/325, p. 16, para. 10). The Ukrainian SSR considered that account should be taken of the Supplementary Convention of 1956 on the abolition of slavery and institutions similar to slavery (A/37/325, p. 12, para. 11).

99. The representative of the Congo expressed the hope that the Code would include offences relating to drug trafficking (A/C.6/37/SR.54, para. 47).

100. The representative of Bulgaria felt that proper place in the future Code should be found for acts damaging the environment in a manner threatening the security of mankind as a whole (A/C.6/36/SR.62, para. 15 and A/C.6/37/SR.54, para. 66). Uruguay expressed the opinion that particular emphasis should be placed on the crime of the use of environmental modification techniques for military and other hostile purposes (A/37/325, p. 16, para. 11). The representative of Zaire, in that connection, drew attention to the World Charter for Nature adopted by the General Assembly at its thirty-seventh session (A/C.6/37/SR.53, para. 31).

101. The representative of Yugoslavia pointed out that the Code should prevent threats to world peace and stability that could be caused by the uncontrolled use of scientific and technological advances, particularly for military purposes (A/C.6/36/SR.62, para. 19).

102. The representative of Zaire felt that the proposed Code should construe the concept of security in its broadest sense; in other words, it should include "political, economic, social and even ecological security" (A/C.6/36/SR.60, para. 20 and A/C.6/37/SR.53, para. 31).

103. The representative of Algeria mentioned the denial of economic sovereignty among the acts to be considered as crimes against the peace and security of mankind (A/C.6/37/SR.52, para. 12).

104. A number of representatives referred to international instruments of general scope which, in their view, should be taken into account in defining the scope of the draft Code and the specific acts to be included therein. Thus the representatives of Egypt (A/C.6/36/SR.58, para. 64), the USSR (A/C.6/36/SR.58, para. 67 and A/C.6/37/SR.53, para. 3, as well as A/37/325, p. 14, para. 3), Mongolia (A/C.6/36/SR.61, para. 3 and A/C.6/37/SR.54, para. 16), Pakistan (A/C.6/36/SR.61, para. 7), Poland (A/C.6/36/SR.52, para. 8), the Byelorussian SSR (A/C.6/37/SR.54, para. 3, and A/37/325, p. 5, para. 4), the Ukrainian SSR (A/C.6/37/SR.54, para. 8 and A/37/325, p. 12, para. 12) and Uganda (A/C.6/37/SR.54, para. 41) referred to the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations. The representative of the Syrian Arab Republic referred to the

Declaration on the Strengthening of International Security and General Assembly resolution 2734 (XXV) (A/C.6/37/SR.53, para. 26).

105. The representative of Czechoslovakia pointed out, among documents mentioned by delegations that should be taken into account in the new draft Code, "the document dealing with the codification of fundamental human rights" (A/C.6/37/SR.54, para. 75) and the Ukrainian SSR specifically referred to the International Covenants on Human Rights of 1966 (A/37/325, p. 12, para. 11).

3. Other issues which were discussed with reference to the content of the proposed Code

106. A number of issues were considered by States as being relevant to the content of the proposed Code.

107. Several representatives pointed out that safeguard clauses should be included in the proposed Code.

108. The representative of the Syrian Arab Republic felt that the draft Code should contain "clauses protecting the sovereignty of peoples and liberation movements, their right to self-determination and their right to continue the struggle against occupation and all forms of colonialism" (A/C.6/37/SR.53, para. 27). Similarly, the representative of the Libyan Arab Jamahiriya felt that the draft Code should take into account "the right of peoples to struggle against oppression ... and economic, political and military repression, and to struggle for self-defence, protection of their freedom and their independence since those rights had been recognized by relevant General Assembly resolutions" (A/C.6/37/SR.54, para. 34).

109. Some representatives stressed that the Code should deal with the principle of the non-applicability of statutory limitations to war crimes and crimes against humanity. References were made in that connection to the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes against Humanity, or to General Assembly resolution 3074 (XXVIII) entitled "Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity", by the representatives of the USSR (A/C.6/36/SR.58, para. 68 and A/C.6/37/SR.53, para. 5, as well as A/37/325, p. 14, para. 5), Mongolia (A/C.6/36/SR.61, para. 3 and A/C.6/37/SR.54, paras. 16 and 18), Czechoslovakia (A/C.6/36/SR.62, para. 2), Bulgaria (A/C.6/36/SR.61, para. 3 and A/C.6/37/SR.54, para. 66), Poland (A/C.6/37/SR.52, para. 8), Cuba (A/C.6/37/SR.53, para. 20), the Syrian Arab Republic (A/C.6/37/SR.53, paras. 26 and 27), the Byelorussian SSR (A/C.6/37/SR.54, para. 3, and A/37/325, p. 5, para. 4), the Ukrainian SSR (A/C.6/37/SR.54, para. 10, and A/37/325, p. 12, para. 12), the Libyan Arab Jamahiriya (A/C.6/37/SR.54, para. 33), Uganda (A/C.6/37/SR.54, para. 6) and Trinidad and Tobago (A/C.6/37/SR.54, para. 26).

110. Several representatives offered comments on the relationship between the proposed Code and domestic legislation. The representative of Poland considered it preferable to incorporate the rules of the Code into national criminal legislation (A/C.6/36/SR.62, para. 45), a view which was shared by the representative of

Finland, who suggested that the proposed Code should be drafted in such a way as to make it possible for States to incorporate its provisions into national penal legislation (A/C.6/36/SR.60, para. 38), and the representative of the Syrian Arab Republic, who felt that this incorporation would facilitate prevention of criminal acts (A/C.6/37/SR.53, para. 27).

111. The question of the determination and imposition of penalties was raised by the representatives of Uruguay (A/C.6/36/SR.60, para. 11), Pakistan (A/C.6/36/SR.61, para. 8), Bulgaria (A/C.6/36/SR.62, para. 16), Afghanistan (A/C.6/36/SR.31, para. 28), Venezuela (A/C.6/36/SR.62, para. 30), Portugal (A/C.6/36/SR.62, para. 62), Tunisia (A/C.6/37/SR.53, para. 15), the Ukrainian SSR (A/C.6/37/SR.54, para. 11), Mongolia (A/C.6/37/SR.54, para. 13), Trinidad and Tobago (A/C.6/37/SR.54, para. 28), the Libyan Arab Jamahiriya (A/C.6/37/SR.54, para. 34) and the Philippines (A/C.6/37/SR.35, para. 3), as well as by Uruguay (A/37/325, p. 15, paras. 2 and 5).

112. The representative of Israel observed in this connection the importance of the Talmudic principle that "there is no punishment without forewarning", more commonly known in the Latin version "nulla poena sine lege" (A/C.6/37/SR.54, para. 56).

113. The representative of Cuba emphasized the need to take into consideration, in drawing up the draft Code, the General Assembly resolution on capital punishment (A/C.6/37/SR.53, para. 20).

114. The question of extradition was referred to by the representative of the Philippines (A/C.6/37/SR.55, para. 3).

115. The representatives of Pakistan (A/C.6/36/SR.61, para. 8) and Greece (A/C.6/36/SR.62, para. 49), referred to the question of the initiation and conduct of proceedings and to the question of the execution of judicial decisions. The representative of the Philippines said that the draft Code should contain a complementary set of rules of procedure and evidence (A/C.6/37/SR.55, para. 3).

116. The representative of Greece pointed out that it was also essential to make provision for the prohibition of double punishment, guarantees of fair trial and the impartiality of judges, rights of appeal, legal representation, and so forth (A/C.6/36/SR.62, para. 49). The representative of Israel stressed that the motivations behind the impermissible conduct was of major importance, therefore "proper attention should also be given to the related questions of means of defence and extenuating circumstances" (A/C.6/37/SR.54, para. 53).

V. QUESTION OF THE ATTRIBUTION OF RESPONSIBILITY UNDER THE PROPOSED CODE

117. Several representatives, including those of Argentina (A/C.6/36/SR.58, para. 74), Bangladesh (A/C.6/36/SR.62, paras. 21 and 22) and Poland (A/C.6/37/SR.52, para. 9) stressed that the draft Code raised the complex question of the attribution of responsibility.

118. The representative of the Congo "recognized that it was not easy, for technical and political reasons, to set up an international system of criminal responsibility", but felt that those difficulties could be overcome (A/C.6/37/SR.54, para. 47); the representative of Finland drew attention to the difficult conceptual problems which arose in connection with the responsibility for offences against the peace and security of mankind (A/C.6/36/SR.60, para. 36) and the representative of Pakistan noted that it was not clear whether the field of application of the draft Code would extend to State authorities or only to the individuals constituting those authorities and, in the latter case, how the individuals responsible would be determined (A/C.6/36/SR.61, para. 9).

119. A number of representatives, including those of the German Democratic Republic (A/C.6/36/SR.60, para. 26) and the Sudan (A/C.6/37/SR.54, para. 72), held that the proposed Code should embody the concept of individual criminal responsibility for international offences. In this connection the representative of the Byelorussian SSR referred to the Charter and Judgment of the Nürnberg Tribunal, which embodied the principle that offences against the peace, war crimes and crimes against humanity were international offences for which individuals could be held accountable, and found it regrettable that some representatives still sought to hold States exclusively responsible for actions prohibited by international law (A/C.6/36/SR.60, para. 6 and A/C.6/37/SR.54, para. 4).

120. The representatives of Czechoslovakia (A/C.6/36/SR.62, para. 3), the Ukrainian SSR (A/C.6/37/SR.54, para. 10) and Poland (A/C.6/36/SR.62, paras. 38-40 and A/C.6/37/SR.52, para. 7) also felt that the proposed Code should uphold the régime of responsibility for offences against peace, war crimes and the crime of genocide which had found expression in several international instruments, including the Charter of the Nürnberg Tribunal, the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. The representative of the Soviet Union held the same view and added that subsequent instruments which developed the principle of individual criminal responsibility for war crimes and offences against mankind should be taken into account (A/C.6/37/SR.53, para. 5) - a point which was also made by the representatives of the Ukrainian SSR (A/C.6/37/SR.54, para. 10) and Trinidad and Tobago (A/C.6/37/SR.54, para. 26). Among the instruments in question, the two latter representatives singled out the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, the Additional Protocols of 1977 to the 1949 Geneva Conventions for the protection of war victims, and General Assembly resolution 3074 (XXVIII) on the principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity (A/C.6/37/SR.54, para. 10 and A/C.6/37/SR.54, para. 26). The representative of the Soviet Union furthermore pointed out that the concept of individual responsibility had been enforced by ILC in 1954 and that it was "essential to retain that concept which underlay the draft and constituted its main value" (A/C.6/37/SR.53, para. 2). The same remark was made by the representative of the Ukrainian SSR (A/C.6/37/SR.54, para. 10) and in the written comments of the Governments of the USSR (A/37/325, p. 14, para. 5) and of the Byelorussian SSR (A/37/325, p. 5, para. 7). The representative of Tunisia,

also referring to the approach taken to this issue by ILC in 1954, pointed out that "particular attention should be given to the liability of perpetrators of any offence under international law and the need to punish their actions; the international responsibility of heads of State or Government committing, directly or indirectly, an international offence; and the liability of persons committing an international offence on the orders of their Government or a higher authority" (A/C.6/37/SR.53, para. 14).

121. Most of the above-mentioned representatives, while emphasizing the principle of individual criminal responsibility, felt that the question of State responsibility should not be overlooked. The representative of Poland pointed out in this connection that international practice had already established the link between State responsibility and the criminal responsibility of individuals (A/C.6/36/SR.62, para. 40) and the representative of Cuba objected to considering individual responsibility as a question completely isolated from any responsibility that might arise for States as a result of the actions of individuals (A/C.6/36/SR.62, para. 35 and A/C.6/37/SR.53, para. 18). The representative of the German Democratic Republic shared the view that States could and should be held responsible for their actions even though individuals guilty of such actions must also be liable to criminal proceedings, adding that "holding individuals responsible should not replace the responsibility under international law of a State which organized, committed or supported such crimes" (A/C.6/36/SR.60, para. 26, and A/37/325, p. 9, paras. 13-15). The Government of the German Democratic Republic suggested in its written comments to include in article 1 an express provision that the assertion of individual criminal responsibility shall not affect the international responsibility of States for such crimes (A/37/325, p. 9, para. 13).

122. Other representatives also emphasized the link between the two forms of responsibility. Thus the representative of Zaire insisted that the future Code should envisage the responsibility not only of States but also of individuals acting on their behalf (A/C.6/37/SR.53, para. 32), as did also the representative of the Syrian Arab Republic, who referred in this connection to recent events in Lebanon (A/C.6/37/SR.53, para. 25).

123. The representative of the Congo, for his part, felt that "the possibility of taking measures not only against individuals but also against abstract entities such as States and Governments should not be discounted" (A/C.6/37/SR.54, para. 47). The representative of Trinidad and Tobago similarly stated that "responsibility for offences against the peace and security of mankind should not be confined to public officials, as was envisaged under the current draft Code; it should also be attributed directly to States, irrespective of the criminal responsibility of the person or persons having committed the offences" (A/C.6/37/SR.54, para. 25).

124. The representative of the Libyan Arab Jamahiriya, for his part, felt that "the draft Code would be effective only if the responsibility of States as subjects of international law was properly recognized", adding that the draft Code "should also determine the different kinds of responsibility, including material responsibility for the illicit acts of States" (A/C.6/37/SR.54, para. 35), and the representative

of Jordan said that the Code should take into account the concept of State, as opposed to individual, responsibility. The principle that the State as such was responsible for its criminal acts had, in his view, gained acceptance, and lay at the core of the draft articles on State responsibility currently being prepared by the International Law Commission. He pointed out that that principle was particularly appropriate in dealing with many of the offences listed in article 2 of the 1954 draft (A/C.6/36/SR.62, para. 68).

125. A number of other representatives, including those of Finland (A/C.6/36/SR.60, para. 36), Pakistan (A/C.6/36/SR.61, para. 9), the Syrian Arab Republic (A/C.6/37/SR.53, para. 27), the Philippines (A/C.6/37/SR.55, para. 4) and Israel (A/C.6/37/SR.54, para. 57), made reference to the work being carried out by ILC on the question of State responsibility. In this connection, the representative of Finland said that a parallel should be drawn between the draft Code and the Commission's work on State responsibility, especially with regard to the attribution to a State of an act committed by an individual, and that it should be determined whether the rules of imputation laid down in the draft articles on State responsibility as they stood also applied to offences against the peace and security of mankind. He further said that the relationship between article 19 of the draft articles on State responsibility and the draft Code should also be considered (A/C.6/36/SR.60, para. 36). The representative of Israel, after recalling that, in the letter referred to in paragraph 69 above, the World Jewish Congress had stated that consideration of the draft Code should not be divorced from the consideration of the State responsibility and the work of the International Law Commission on that subject, suggested that the Commission should place the topic within the framework of the concepts expressed in article 19, adopted in first reading, of the draft articles on State responsibility (Yearbook of the International Law Commission, 1976, vol. II, Part Two, p. 95, document A/31/10). That provision, he went on to say, was assuredly highly controversial but some of the ideas which appeared in it would be more appropriate in an integrated convention embodying a code of offences against the peace and security of mankind than in a general codification of the law of State responsibility (A/C.6/37/SR.54, paras. 56 and 58).

VI. QUESTION OF THE IMPLEMENTATION OF THE PROPOSED CODE

126. A number of representatives shared the view of the representative of Sweden that the effectiveness of the eventual Code would depend to a large degree on the implementation system established and that special attention should therefore be devoted in future work on the draft Code to the question of implementation (A/C.6/36/SR.60, para. 42). Providing the future Code with an adequate system of international implementation was also considered by the representatives of Greece (A/C.6/36/SR.60, para. 38), Israel (A/C.6/37/SR.54, para. 59) and Finland (A/C.6/36/SR.60, para. 38) as a most important task.

127. The representative of Afghanistan pointed out that if the envisaged Code was to be a truly effective international legal instrument, it should not only define offences, but should embody a procedure for the application of its provisions and also provide for the establishment of appropriate legal and judicial machinery that

would make it possible to prosecute, try, sentence and punish offenders (A/C.6/36/SR.62, para. 28 and A/C.6/37/SR.53, para. 24) and the representative of Bangladesh observed that if the Code was intended to protect international peace and security, it should contain clear provisions for its effective implementation (A/C.6/36/SR.62, para. 23). Views along the same lines were expressed by the representatives of the Sudan (A/C.6/37/SR.54, para. 72), the Philippines (A/C.6/37/SR.55, paras. 3 and 4) and the Syrian Arab Republic (A/C.6/37/SR.53, para. 27).

128. The representative of Pakistan pointed out that the draft Code under consideration did not contain any provisions on the forum before which criminal proceedings would be initiated and considered that "this lacuna should therefore be filled" (A/C.6/36/SR.61, para. 8). The Government of Uruguay similarly observed that the 1954 draft was incomplete inasmuch as it did not embody the necessary elements of criminal law, which could make it an effective instrument. It was therefore important, the Government of Uruguay stated, to draw up procedural rules of law with a view to implementing the substantive provisions of the draft (A/37/325, p. 15, para. 4). Similar views had previously been expressed by the representative of Uruguay (A/C.6/36/SR.60, para. 10) and by the representative of Venezuela, who felt it essential to specify the judicial organ that would be responsible for trying the perpetrators of acts previously defined as offences under the Code, since otherwise "the enumeration of such offences would be little more than a moral gesture by the international community, with no real practical effect" (A/C.6/36/SR.62, para. 30).

129. The question whether the proposed Code should be applied by national courts or by an international tribunal was commented upon by several States. The representative of Algeria felt - as did also the representative of Trinidad and Tobago (A/C.6/37/SR.54, para. 28) - that the issue should be dealt with in a separate section of the Code and suggested that States be invited to submit views thereon (A/C.6/37/SR.52, para. 13).

130. Several representatives held the view that the Code should be applied by national courts. The Government of the German Democratic Republic also favoured enforcement by national courts on the basis of the principle of universal jurisdiction. In this connection it stated the following: "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" (A/37/325, p. 9, para. 14). The representative of Bulgaria also favoured enforcement by national tribunals and suggested adopting an approach similar to that followed in the drafting of a number of international conventions directed against specific categories of international crime, such as crimes against the security of civil aviation and crimes against internationally protected persons. In dealing with such offences, the draft Code should provide for the obligation of a State to extend jurisdiction to cover such offenders, even when they were not

citizens of that State and when the crime was not committed in its territory, and for the obligation to extradite the offender or to subject him to criminal prosecution (A/C.6/36/SR.60, para. 26 and A/C.6/37/SR.54, para. 67).

131. Both the representatives of Bulgaria (A/C.6/36/SR.62, para. 16) and the German Democratic Republic (A/C.6/36/SR.60, para. 26) held that the offences should be regarded as criminal, irrespective of the motives for which they were perpetrated, and the latter added that no protection under State sovereignty could be claimed for acts which could be characterized as grave international offences.

132. With reference to the argument that national courts might not deal satisfactorily with the prosecution and punishment of the perpetrators of offences covered by the Code, the representative of Poland observed that State practice demonstrated that in instances where the State was not involved, its judicial organs were effectively implementing the provisions of numerous conventions on the prevention and punishment of such offences as the traffic in drugs, slavery, interference with civil aviation and terrorism (A/C.6/36/SR.62, para. 41). As for the criminals who had acted in the name of the State, the same representative pointed out that the Nürnberg Tribunal and the Tokyo Tribunal had proved that the world community was able to deal adequately with such cases (ibid.).

133. The remark was made that implementation of the proposed Code by national courts would require international co-operation. Thus, the representative of the German Democratic Republic felt it necessary to establish "the obligation of States to co-operate in combating international offences" (A/C.6/36/SR.60, para. 26), a view which was reiterated in the written comments of the Government of the German Democratic Republic (A/37/325, p. 9, para. 16).

134. Other representatives disagreed with the view that implementation of the proposed Code should be left to national courts. Thus, the representative of Jordan pointed out that leaving jurisdiction in the matter to domestic courts would be "a regressive step" and might weaken the draft and render ineffective provisions relating to punishment or extradition, "especially since most of the offences in the draft Code had an official character" (A/C.6/36/SR.62, para. 70). The representative of Zaire observed in this regard that if the acts considered as offences under the proposed Code had been committed by a State itself or one of its organs, the national judicial authorities called on to prosecute and try the offences might not have sufficient independence to ensure their impartiality and that if States themselves urged or ordered certain persons to undertake actions that were forbidden in the proposed Code, it was unlikely that they would be prosecuted - with the result that offences under the Code could be committed with impunity (A/C.6/36/SR.60, para. 19).

135. One of the alternatives to enforcement by national courts - namely, the establishment of an international criminal court - was envisaged by several representatives, including those of Venezuela (A/C.6/36/SR.62, para. 30), Greece (A/C.6/36/SR.62, para. 49), Argentina (A/C.6/36/SR.58, paras. 73 and 74), Sweden (A/C.6/36/SR.60, para. 42), Jordan (A/C.6/36/SR.62, para. 70), Finland (A/C.6/36/SR.60, para. 38) and Japan (A/C.6/36/SR.62, para. 55), all of whom,

however, placed emphasis on the difficulties that would have to be overcome in establishing such a court with compulsory jurisdiction over States and individuals.

136. The representative of Israel recalled that there was a material connection between the draft and the question of an international criminal jurisdiction and expressed regret that the formal procedural link which had existed between the two questions should have been broken. He referred in this connection to two reports of the Committee on International Criminal Jurisdiction (A/2136 and A/2646) on the basis of which the question had been discussed in some detail in 1952 and 1954, as well as to the observations made on the question as a whole by his delegation at the 325th meeting of the Sixth Committee - observations which, he went on to say, might be outdated in some respects but developed a general theme that remained valid (A/C.6/37/SR.54, paras. 53 and 54). Also referring to the historical link between the question of the draft Code and that of an international criminal jurisdiction, the representative of the Philippines recalled that the Committee formed in 1952 under General Assembly resolution 687 (VII) to explore the implications and consequences of establishing an international criminal court and of the various methods by which that might be done, to study the relationship between such a court and the United Nations and its organs and to re-examine a draft statute for an international criminal court, had long ago submitted a report, consideration of which had been repeatedly postponed to await the General Assembly's action on the draft Code of Offences against the Peace and Security of Mankind. Thus, the representative of the Philippines observed, the mechanism for implementation awaited the completion of the Code (A/C.6/37/SR.55, para. 4).

137. Several representatives favoured the establishment of an international court to apply the provisions of the proposed Code. Thus the representative of the Libyan Arab Jamahiriya said that "an international court should be established to apply the provisions of the Code" and that Member States should be requested to give effect to the judgements of such a court (A/C.6/37/SR.54, para. 36), the representative of the Syrian Arab Republic held the view that the draft Code should provide for "the establishment of an international judicial organ whose judgements would be binding" (A/C.6/37/SR.53, para. 27) and the representative of the Congo felt that "the revised draft should provide for the establishment of a court with extensive powers to punish violations of the relevant rules in the Code which should be a permanent one, like the International Court of Justice" (A/C.6/37/SR.54, para. 47).

138. Some representatives held that the alternative of internal jurisdiction and that of international jurisdiction should be examined with an open mind. Thus the representative of Cuba said that it was important "not to take a narrow view; the two approaches were complementary rather than contradictory, since a connection between them was to be found in the very sources of international criminal law" (A/C.6/36/SR.62, para. 34). The representative of the Sudan felt that both options should be considered, namely, providing for an obligation at the national level to establish the necessary jurisdiction to punish persons committing offences against the peace and security of mankind and at the same time exploring the feasibility of creating for the same purpose an international criminal jurisdiction (A/C.6/36/SR.54, para. 72). The representative of Bulgaria drew attention in this connection to article VI of the Convention on the Prevention and Punishment of the

Crime of Genocide 2/ and article V of the International Convention on the Suppression and Punishment of the Crime of Apartheid 3/ and felt that a provision combining national and international jurisdiction could be included in the Code provided "that the international tribunals referred to in those articles were understood to be ad hoc tribunals" (A/C.6/36/SR.62, para. 17). The representative of Poland also felt that the Code could both impose on signatory States an obligation to incorporate the rules of the Code into their criminal legislation and provide for the establishment of ad hoc courts, which, he pointed out, would not entail the same costs and staffing problems as a permanent court (A/C.6/36/SR.62, para. 14). Along the same lines, the Government of Uruguay, while advocating the setting up of an international criminal court having compulsory jurisdiction for States and individuals - the compulsory aspect being, in the view of that Government, essential since it was a sine qua non condition of the efficacy of the Code - said that the proposed Code must define the jurisdiction of national courts with regard to international crimes (A/37/325, p. 15, para. 13).

139. Another approach involving both national and international jurisdiction was put forward by the representative of Trinidad and Tobago in the following terms:

> "... the Code ... should provide for the assumption of jurisdiction by all States over offences under the Code on the basis of the universal jurisdiction principle. ... would also oblige States in whose territory one of those crimes had been committed to apprehend the alleged offender and either to extradite that person to a requesting State or to hand him over to its competent authorities for prosecution. The alleged offender would be tried under internationally recognized judicial safeguards by a specifically constituted international criminal court whose composition would be international in character. The jurisdiction of that court must be compulsory, as without such jurisdiction the Code would be ineffective." (A/C.6/37/SR.54, para. 28).

VII. PROCEDURE TO BE FOLLOWED IN THE CONSIDERATION OF THE ITEM SUBSEQUENT TO THE ADOPTION OF GENERAL ASSEMBLY RESOLUTION 36/106

140. Further to the debate held on the topic at the thirty-sixth session, the General Assembly adopted, on 10 December 1981, resolution 36/106 by which it inter alia invited 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, and requested 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 deemed 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 structure of the draft code.

141. In accordance with that resolution, ILC, at its thirty-fourth session, appointed Mr. Doudou Thiam Special Rapporteur for the topic "Draft Code of Offences against the Peace and Security of Mankind". At the same meeting, the Commission established a Working Group on the topic to be chaired by the Special Rapporteur which held a preliminary exchange of views on the requests addressed to the Commission by the General Assembly in its resolution 36/106.

142. On the recommendation of the Working Group, the Commission decided to accord the necessary priority to the draft Code and expressed the intention, at an early stage during its next session, to proceed to a general debate in plenary on the basis of a first report to be submitted by the Special Rapporteur and to present to the General Assembly at its thirty-eighth session, the conclusions of that general debate.

143. Some representatives, among them the representative of Norway, speaking on behalf of the Nordic countries (A/C.6/37/SR.64, para. 15), welcomed the decision taken at the previous session by the General Assembly to refer the topic to ILC. The representative of Jamaica noted in this connection that since it could be anticipated that offences against the peace and security of mankind would be designated as crimes under international law, there was a connection between the topic of the draft Code and the Commission's consideration of the legal consequences of international crimes in relation to the question of State responsibility (A/C.6/37/SR.40, para. 29). The representative of Uganda similarly noted that since ILC was already seized of questions closely related to the draft Code it was the most appropriate body to draft such a code (A/C.6/37/SR.54, para. 44).

144. The representative of New Zealand, on the other hand, noted with concern that the ILC work programme "had shifted significantly towards topics that aroused controversy" and pointed out that the "deep and unresolved difference of opinion regarding the desirability and scope of the draft Code of Offences against the Peace and Security of Mankind" must first be resolved in the Sixth Committee inasmuch as greater agreement, if not on the substantive questions, then at least on the Commission's terms of reference, would enable the Commission to work more quickly and effectively (A/C.6/37/SR.39, paras. 13 and 14). Views along the same lines were expressed by the representatives of France (A/C.6/37/SR.37, para. 6) and the United States (A/C.6/37/SR.44, para. 38).

145. Many representatives expressed satisfaction at the measures taken by the Commission at its thirty-fourth session to study the question of the draft Code, which was, in the view of the representatives of Sierra Leone (A/C.6/37/SR.49, para. 46) and Venezuela (A/C.6/37/SR.45, para. 46), a question of considerable importance to the international community. Those measures were proof, according to the representative of Cyprus, of the Commission's responsiveness to the concern of the General Assembly about the appropriateness of injecting some fresh thinking and new perspectives into the Commission's role, objectives and methods of work (A/C.6/37/SR.46, para. 36). The representative of Romania stressed in this connection that the Commission's decisions were "consistent with the need to promote the normal development of international relations and goodwill among nations" (A/C.6/37/SR.49, para. 12).

146. The decision to appoint Mr. Doudou Thiam as Special Rapporteur for the topic met with general support. The representative of the Congo expressed particular gratification at the choice of a Special Rapporteur from Africa, "a continent which had been greatly affected by offences committed against mankind in all ages" (A/C.6/37/SR.54, para. 46). The representative of the United States, on the other hand, expressed surprise that the Commission "had seen fit to take the step of naming a Special Rapporteur" in view of the doubts expressed at the thirty-sixth session of the General Assembly on the very nature of the topic itself. He added, however, that he had confidence in the particular Special Rapporteur who had been appointed and was sure that "he would be sensitive to those doubts and to the need to treat the question of a tribunal as an integral part of any consideration of the issue" (A/C.6/37/SR.44, para. 38).

147. The decision of the Commission to establish a Working Group was also generally noted with satisfaction.

148. Regarding the progress of work within the Commission, some representatives, including those of Brazil (A/C.6/37/SR.38, para. 2) and the United Kingdom (A/C.6/37/SR.48, para. 24), indicated that they would defer their comments until the preliminary report to be submitted by the International Law Commission to the General Assembly at its thirty-eighth session had been presented.

149. Among the representatives who commented on the question, some expressed positive views. Thus the representative of Egypt stated that since "the International Law Commission was now dealing with the question, those delegations that had had doubts about its ability to do so because of its heavy work-load should be reassured". He further expressed the hope that the question could be left definitely with the Commission so that it could finalize the draft Code as soon as possible for submission to the General Assembly (A/C.6/37/SR.52, para. 17).

150. Other representatives, however, expressed disappointment at the outcome of the work carried out on the topic by the International Law Commission at its thirty-fourth session. Thus the representative of the Byelorussian SSR said that his delegation was "astonished that the Commission had not fulfilled the General Assembly's mandate to resume work on a draft Code of Offences against the Peace and Security of Mankind but had merely appointed a Special Rapporteur and established a Working Group" (A/C.6/37/SR.45, para. 27). The representative of Poland said that the results of the International Law Commission's work on the topic at its thirty-fourth session were "less than impressive" (A/C.6/37/SR.52, para. 9) and the representative of the German Democratic Republic regretted that the Working Group had so far met only once and expressed fear that this important matter might not be dealt with on a priority basis (A/C.6/37/SR.52, para. 15). Those representatives and others, including the representatives of the Ukrainian SSR (A/C.6/37/SR.54, para. 11) and Hungary (A/C.6/37/SR.54, para. 52), expressed the hope that at its thirty-fifth session the Commission would devote more time to the topic and begin considering it in depth.

151. A number of representatives, including those of the German Democratic Republic (A/C.6/37/SR.52, para. 15), the Byelorussian SSR (A/C.6/37/SR.54, para. 5 and A/C.6/37/SR.45, para. 28), the Ukrainian SSR (A/C.6/37/SR.46, para. 112), Sierra

Leone (A/C.6/37/SR.49, para. 46), Afghanistan (A/C.6/37/SR.50, para. 82), Mongolia (A/C.6/37/SR.54, para. 20), Trinidad and Tobago (A/C.6/37/SR.54, para. 21), Hungary (A/C.6/37/SR.54, para. 52) and Bulgaria (A/C.6/37/SR.54, para. 69) held that ILC should give priority to the topic or complete its work on the matter as quickly as possible.

152. In this connection the remark was made by the representative of Zaire, speaking on behalf of the sponsors of the draft resolution which later became General Assembly resolution 37/102, that the Commission had amply shown that it could maintain a judicious balance in its consideration of various topics and did not give priority to one at the expense of others, so that fears to the contrary were ill-founded. In any event, the representative of Zaire observed, the Commission had an obligation under article 18, paragraph 3, of its statute, to give priority to requests of the General Assembly to deal with any question (A/C.6/37/SR.63, para. 39).

153. Other delegations disagreed with the view that the International Law Commission should give priority to the topic. Thus the representative of the United States said that his delegation was not of the view that the elaboration of a code of offences was the most important work that needed to be done to strengthen international peace and security and did not believe that there was any urgency about that work. In his opinion, there were a number of more productive issues on which the international legal community could well concentrate and it was very doubtful whether further work on the draft would do anything but exacerbate differences without making any positive contribution (A/C.6/37/SR.64, para. 17). The representative of Norway, speaking on behalf of the Nordic delegations, said that those delegations did not consider that the item should be accorded higher priority than many others on the Commission's agenda and would therefore like to express their reservations with respect to the language used in paragraph 1 of resolution 36/106, which might be interpreted to mean that special priority should be given to that particular item. Views along the same lines were expressed by the representatives of France (A/C.6/37/SR.64, para. 21), Japan (A/C.6/37/SR.64, para. 28) and Australia (A/C.6/37/SR.64, para. 26).

154. A number of delegations, including those of Hungary (A/C.6/37/SR.54, para. 52), the Byelorussian SSR (A/C.6/37/SR.54, para. 5), the Ukrainian SSR (A/C.6/37/SR.54, para. 11), Mongolia (A/C.6/37/SR.54, para. 20) and the German Democratic Republic (A/C.6/37/SR.52, para. 15), endorsed the retention of the question of the draft Code of Offences as a separate item on the agenda of the thirty-eighth session of the General Assembly. Thus, the representative of Czechoslovakia said that although his delegation highly appreciated the work of the International Law Commission, it believed that, given the urgency of drawing up the Code, a less conventional approach would be required and accordingly supported the view that the question of the Code should continue to be considered also by the Sixth Committee and should be included as a separate item in the provisional agenda for the thirty-eighth session of the General Assembly as a priority matter (A/C.6/37/SR.54, para. 77). The representative of the Soviet Union likewise advocated "the retention of the item on the agenda of the General Assembly as one of the main items on the agenda of the Sixth Committee" so that Member States could

keep abreast of the way in which the Commission was carrying out the terms of reference assigned to it by the General Assembly (A/C.6/37/SR.53, para. 6).

155. Similar views were expressed in their written observations by the Governments of the Byelorussian SSR (A/37/325, p. 6, para. 8) and Czechoslovakia (A/37/325, p. 6, para. 6). The representative of Zaire further pointed out that the above-mentioned course was justified because the draft Code had a special status, being the only draft which had been referred back to the Commission for reconsideration or redrafting under article 23, paragraph 2, of the statute (A/C.6/37/SR.63, para. 39).

156. Other representatives, including those of Norway, speaking on behalf of the Nordic delegations (A/C.6/37/SR.67, para. 16), and France (A/C.6/37/SR.64, para. 21), said that they did not see any special reason for retaining the question of the draft Code as a separate item on the agenda of the General Assembly. The representative of the United States said that now that the International Law Commission had decided to study the matter and had gone so far as to appoint a Special Rapporteur, it seemed "highly improper to retain a separate item on the agenda of the General Assembly"; he added that he regretted such a departure from the normal procedures in so sensitive an area as the codification and progressive development of international law (A/C.6/37/SR.64, para. 12).

157. The representative of the United Kingdom observed that "once the subject had been referred to the Commission, the Sixth Committee should not give the impression that it was unwilling to trust the Commission to carry out the mandate conferred on it or that it was trying to subject the Commission to any undue pressure, either of a political nature or with regard to priorities in its programme of work" (A/C.6/37/SR.64, para. 19). The representative of Japan similarly stressed that "a parallel debate in the Assembly might exert undesirable pressure on the careful technical examination of the topic by the Commission", adding that any delegation which wished to comment on the topic or on the Commission's work in connection with it had ample opportunity to do so under the item relating to the report of the Commission and that there seemed to have been no case, at least in recent years, where a topic under substantive consideration by the Commission had been taken up by the General Assembly under a separate agenda item (A/C.6/37/SR.64, para. 24). The representative of Australia viewed the course of action as described above as creating "an unfortunate precedent" (A/C.6/37/SR.64, para. 27).

158. With respect to the orientation of the future work on the item, the representative of the United Kingdom said that the Commission should be given an opportunity "to consider at length and in an objective fashion the extremely difficult questions that automatically arose in the context of that particular topic" (A/C.6/37/SR.64, para. 20) and the Government of Uruguay stated that it was up to the International Law Commission to decide on the advisability or otherwise of approving a new legal text - which should have unanimous acceptance - 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 had been carried out in regard to offences of an international character since the time when the draft was approved (A/37/325, p. 14, para. 1).

159. With respect to the form of the instrument to be prepared by the International Law Commission, the representative of Israel expressed the view that the Commission should aim at the elaboration of a treaty. He pointed out in this respect that the Commission had always felt that the proper way of considering a topic was to prepare draft articles suitable for inclusion in a convention, and that the current topic was certainly no exception to that method of work. He further noted that work on the topic would involve both the progressive development of the law and its codification, under the terms of article 15 of the statute of the Commission. In addition, he pointed out that the experience acquired, since the suspension of discussion of the topic in the Sixth Committee in 1954, with regard to the only existing code adopted in the form of model rules on a topic involving a great deal of progressive development of the law, namely, the model rules on arbitral procedure (General Assembly resolution 1262 (XIII)), had not been encouraging and that the considerations which had led the International Law Commission in 1966 to recommend that the draft articles which it had prepared on the law of treaties should be adopted not in the form of a code but in the form of a convention were valid in the current case (A/C.6/37/SR.54, para. 59).

160. The representative of Trinidad and Tobago (A/C.6/37/SR.51, para. 29) and the Government of the Ukrainian SSR (A/37/325, p. 11, para. 9) also felt that the International Law Commission should aim at the elaboration of a treaty on the matter.

Notes

1/ See Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 10 (A/37/10), para. 256.

2/ Reading as follows:

"Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction".

3/ Reading as follows:

"Persons charged with the acts enumerated in article II of the present Convention may be tried by a competent tribunal of any State Party to the Convention which may acquire jurisdiction over the person of the accused or by an international penal tribunal having jurisdiction with respect to those States Parties which shall have accepted its jurisdiction".
