

Document:-
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Comments and observations received pursuant to General Assembly resolution 37/102

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

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Comments and observations of Governments received pursuant
to General Assembly resolution 37/102

[Original: English, Spanish]
[19 April, 27 May and 17 June 1983]

CONTENTS

	<i>Page</i>
INTRODUCTION	153
Czechoslovakia	154
Suriname	154
Uruguay	154

NOTE

The text of the draft Code of Offences against the Peace and Security of Mankind, prepared by the International Law Commission in 1954, is reproduced in *Yearbook ... 1983*, vol. II (Part Two), p.11, para. 33.

Introduction

1. On 16 December 1982, the General Assembly adopted resolution 37/102, the operative paragraphs of which read as follows:

The General Assembly,
...

1. *Invites* the International Law Commission to continue its work with a view to elaborating the draft Code of Offences against the Peace and Security of Mankind, in conformity with paragraph 1 of General Assembly resolution 36/106 and taking into account the decision contained in paragraph 255 of the report of the International Law Commission on the work of its thirty-fourth session;

2. *Requests* the International Law Commission, in conformity with resolution 36/106, to submit a preliminary report to the General Assembly at its thirty-eighth session bearing, *inter alia*, on the scope and the structure of the draft Code;

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

organizations to present or update their comments and observations on the draft Code with a view to their submission to the International Law Commission;

4. *Decides* to include in the provisional agenda of its thirty-eighth session the item entitled "Draft Code of Offences against the Peace and Security of Mankind".

2. On 17 January 1983, the Secretary-General addressed a note to the Governments of Member States and a letter to the relevant international intergovernmental organizations, requesting their comments and observations on the subject.

3. The replies received as at the end of June 1983 from the Governments of three Member States are reproduced below.

Czechoslovakia

[Original: English]
[17 May 1983]

1. The Czechoslovak Socialist Republic reaffirms its keen interest in the resumption of work on the elaboration of the Code of Offences against the Peace and Security of Mankind.

2. Czechoslovakia's position, which is one of support for the elaboration of the code, as well as its approach to the basic issues involved, have been set out in its written replies.¹ Czechoslovakia's views were also presented in the statements by Czechoslovak representatives in the Sixth Committee of the General Assembly at its thirty-fifth session, on 8 October 1980, thirty-sixth session, on 30 November 1981, and thirty-seventh session, on 24 November 1982.²

3. On the question of the further course of action to be pursued, the Czechoslovak Socialist Republic is inclined to the view that the urgency of elaborating the code requires that, apart from the Commission, the matter should be considered also as a separate item in the Sixth Committee of the General Assembly and that priority attention be accorded to it.

¹ A/35/210, p. 7, and A/37/325, p. 6.

² *Official Records of the General Assembly, Thirty-fifth Session, Sixth Committee, 15th meeting, paras. 40-43; ibid., Thirty-sixth Session, Sixth Committee, 62nd meeting, paras. 1-6; ibid., Thirty-seventh Session, Sixth Committee, 54th meeting, paras. 73-77.*

Suriname

[Original: English]
[8 March 1983]

The Republic of Suriname considers the draft code prepared by the International Law Commission in 1954 as an acceptable basis for further work.

In continuing this work, account should be taken of the new international legal instruments that have been concluded since the original draft Code of Offences against the Peace and Security of Mankind. These include:

The Definition of Aggression;¹

The 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity;²

The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations;³

The Declaration on the Prevention of Nuclear Catastrophe,⁴ in which it is provided that statesmen who

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

² United Nations, *Treaty Series*, vol. 754, p. 73.

³ General Assembly resolution 2625 (XXV) of 24 October 1970, annex.

⁴ General Assembly resolution 36/100 of 9 December 1981.

resort first to the use of nuclear weapons will be committing the gravest crime against humanity;

General Assembly resolution 37/77 of 9 December 1982, entitled "Prohibition of the development and manufacture of new types of weapons of mass destruction and new systems of such weapons", in which the General Assembly calls upon the permanent members of the Security Council, as well as upon other militarily significant States, to make declarations identical in substance concerning the refusal to create new types of weapons of mass destruction and new systems of such weapons.⁵

Special attention must also be given to the Additional Protocols of 1977 to the 1949 Geneva Conventions regarding the protection of victims of armed conflicts.⁶

⁵ Para. 3 of part A of the resolution.

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

Uruguay

[Original: Spanish]
[13 June 1983]

Since it is a draft code, it should regulate in more exhaustive fashion unlawful acts committed against the peace and security of mankind.

For this purpose, it would be appropriate:

1. To elaborate a definition containing the essential elements characterizing such acts or omissions, without prejudice to specific mention of any such offences;

2. Similarly, to refer in the draft to offences that have been defined in United Nations conventions and resolutions;

3. To provide for a competent international judicial body, for procedural rules relating in particular to evidence and appraisal thereof, and for applicable sanctions;

4. To distinguish between the various categories of internationally wrongful acts in terms of the content of the obligation breached, which entails the application of different régimes of international responsibility;

5. To extend responsibility for the offences covered by article 1 of the draft to cover legal persons, since acts affecting the peace and security of mankind may be performed by individuals, States and other subjects of international law, and by other agencies;

6. To provide that the personal punishment of individuals or State organs to which one of these offences is attributable shall not preclude the international responsibility of the State and other subjects of international law to which the organ belongs; such responsibility will be of a special character because of the consequences of the offence as well as of the subject that may allege such consequences;

7. To provide for the possibility that, in cases where the offence is committed by means of an international agency which is not a State or another subject of international law, that agency may be declared an unlawful association from the standpoint of international law.