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**Observations of Member States received pursuant to General Assembly resolutions 43/164  
and 44/32**

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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# DRAFT CODE OF CRIMES AGAINST THE PEACE AND SECURITY OF MANKIND

[Agenda item 5]

DOCUMENT A/CN.4/429 and Add.1-4

## Observations of Member States received pursuant to General Assembly resolutions 43/164 and 44/32

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[23 March, 11, 15 and 21 May and 15 June 1990]

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### Introduction

1. In its resolutions 43/164 of 9 December 1988 and 44/32 of 4 December 1989 on the draft Code of Crimes against the Peace and Security of Mankind, the General Assembly, *inter alia*, invited the International Law Commission to continue its work on the elaboration of the draft Code of Crimes against the Peace and Security of Mankind and requested the Secretary-General to continue to seek the views of Member States regarding the conclusions contained in paragraph 69(c) (i) of the Commission's report on its thirty-fifth session.<sup>1</sup>

2. In implementation of the above-mentioned resolutions, the Secretary-General, by notes dated 28 February 1989 and 15 February 1990, requested the views of Member States on the conclusions referred to above.

3. The replies received pursuant to resolution 43/164 were reproduced in a report submitted by the Secretary-General to the General Assembly at its forty-fourth session.<sup>2</sup>

4. The replies received subsequent to the distribution of that document will be reproduced in the relevant report to be submitted by the Secretary-General to the General Assembly at its forty-fifth session. They include the replies received from the Governments of eight Member States before 15 June 1990, which are reproduced below.

<sup>1</sup> Paragraph 69 (c) (i) reads as follows:

“(c) With regard to the implementation of the code:

“(i) Since some members consider that a code unaccompanied by penalties and by a competent criminal jurisdiction would be ineffective, the Commission requests the General Assembly to indicate whether the Commission's mandate extends to the preparation of the statute of a competent international criminal jurisdiction for individuals;”

(*Yearbook* . . . 1983, vol. II (Part Two), p. 16).

<sup>2</sup> The report (A/44/465) contained the replies received from the Governments of the following Member States: Brazil, Finland, Libyan Arab Jamahiriya and Sweden.

### Argentina

[Original: Spanish]  
[23 April 1990]

With regard to paragraph 3 of General Assembly resolution 44/32, the Government of Argentina considers that it is too early for the International Law Commission to discuss the question of the preparation of the statute of a competent international criminal jurisdiction for individuals. In its opinion, the consideration of that question should begin only after agreement has been reached on the definition of offences and penalties under an international criminal law system.

### Australia

[Original: English]  
[7 May 1990]

While conscious of the heavy workload of the International Law Commission, Australia supports the continued consideration by the Commission of the proposal for an international tribunal to deal with crimes against the peace and security of mankind. Such a view is consistent with Australia's support for General Assembly resolutions 44/32 and 44/39, its continuing endeavours to make the work of the Commission more timely and relevant and its recognition of the pressures imposed on the judicial systems of small States by major crimes such as international drug trafficking. The consideration of the practical difficulties implicit in the implementation of a proposed international tribunal would, in Australia's view, require the Commission to eventually consider the terms of any statute creating a competent international criminal jurisdiction for individuals. Australia therefore considers that the Commission's mandate should be understood as extending to the drafting of such a statute.

### Belgium

[Original: French]  
[10 May 1990]

In reply to the request made by the Secretary-General pursuant to paragraph 3 of General Assembly resolution 44/32 on the draft Code of Crimes Against the Peace and Security of Mankind, seeking the views of the Belgian Government regarding the conclusions contained in paragraph 69(c) (i) of the report of the International Law Commission on its thirty-fifth session, the Permanent Representative of Belgium has the honour to refer to the reply transmitted by his Government on 7 July 1988, which was before the General Assembly at its forty-third session.<sup>1</sup>

The reply read as follows:

1. It will be possible to implement the draft Code of Crimes against the Peace and Security of Mankind only to the extent that an international judicial organization is able to impose sanctions for breaches of the norms of that Code. It is with this in mind that the International Convention on the Prevention and Punishment of the Crime of Genocide provides, in article 6, that an international criminal court should have jurisdiction for the trial of persons charged with

genocide. While the principle of universal punishment, which is set forth in a number of international conventions, to some extent offsets the lack of an international criminal jurisdiction, it must be recognized that the principle of universal punishment is not the ideal solution in respect of international crime; that is so for the two following reasons.

2. Firstly, there has always been some opposition to universal punishment because it makes national tribunals responsible for judging the conduct of foreign Governments. Secondly, it is logical that a crime which constitutes a breach of international order as such should be referred to a jurisdiction which is itself the expression and guarantor of that international order. Accordingly, it is essential that the mandate of the International Law Commission include the creation of an international criminal jurisdiction.

### Mali

[Original: French]  
[15 February 1990]

1. Following the First World War, the international community felt the need to draw up an international criminal code and to set up an international criminal jurisdiction, but the will to do so could not be translated into reality until after the Second World War, when for the first time in history war criminals were put on trial, at Nürnberg.

2. The United Nations has made a consistent endeavour to draw up a draft code of crimes against the peace and security of mankind. After many years of suspension of this work, the General Assembly once again invited the International Law Commission to consider the issue of whether there is an international legal order, namely whether there are interests whose protection is not the concern of individual nations but of all mankind.

3. Environmental pollution problems (for example, destruction of the ozone layer or toxic waste) are a case in point. It is recognized that the environment is a matter of public concern and that it must therefore be given international protection. Likewise, all civilizations must receive equal protection. When it is a question of civilized nations, there is no room for slavery, colonization and domination by one race over another, or for hegemonistic wars, which constitute a negation of peace and security in the world or even crimes against humanity.

4. The Commission will have to list and define in a code acts whose perpetration would disrupt international peace, thus constituting crimes falling within the competence of an international criminal jurisdiction. However, the purpose of such a codification exercise, highly laudable though it may be, remains somewhat unclear, since no international criminal jurisdiction really exists and, moreover, many perpetrators of international crimes are heads of State or Government who, owing to their position, are beyond the reach of the law in their countries. At present, such political leaders are merely denounced before world public opinion. Since such denunciations are insufficient, sanctions are sometimes applied to their countries, wrongly.

5. The purpose of setting up an international criminal jurisdiction is to facilitate the prosecution and personal conviction of all perpetrators, whatever position they hold, of crimes against the peace and security of all mankind.

<sup>1</sup> See A/43/525.

6. Such a project would inevitably have implications for domestic legislation, which must be brought into line with the measures adopted by the international community in the field of criminal law.

7. In view of the foregoing, the Government of Mali is of the view that the International Law Commission should proceed with the preparation of the draft statute of an international criminal jurisdiction.

### Nigeria

[Original: English]  
[25 April 1990]

Nigeria is of the view that it is rather premature at this stage for the International Law Commission to consider the preparation of a statute. There are still many issues which remain unsolved in the international criminal system relating to the definition of offences and penalties which would arise from such offences. The Commission should speed up action so that the definition of offences in the draft code can be completed in good time. As soon as the draft code is completed, the question of a statute for an international criminal tribunal for individuals could be deliberated on.

### Norway

[Original: English]  
[29 May 1990]

In the view of the Norwegian Government, the question of determining the extent of the International Law Commission's mandate in relation to the preparation of a statute for an international criminal jurisdiction for individuals should await further clarification of the underlying substantive issues.

### Singapore

[Original: English]  
[30 April 1990]

The Government of Singapore supports the request of the International Law Commission that its mandate extend to the preparation of the statute of a competent international criminal jurisdiction for individuals. The Government of Singapore also holds the view that a code unaccompanied by penalties and by a competent criminal jurisdiction would be ineffective.

### Trinidad and Tobago

[Original: English]  
[3 May 1990]

1. Trinidad and Tobago has always supported the formulation and adoption by States of a code of crimes against the peace and security of mankind. A code, once accepted by States, would serve as an important international legal instrument and would enumerate the most dangerous crimes which shock the conscience of States and disrupt international peace and security.

2. Certain crimes have assumed a transnational character which unfortunately severely limits the effectiveness of States to combat these crimes when acting within the confines of their domestic jurisdiction. Acts of genocide, torture, crimes against diplomats, mercenarism, terrorism and the illicit traffic in narcotic drugs across international frontiers all pose grave threats to the integrity of States and have the potential to undermine their stability, security and development.

3. The idea for the establishment of an international criminal jurisdiction and an international criminal court to deal with individuals accused of committing such crimes was, very broadly speaking, nurtured by scholars and non-governmental organizations until the Second World War. Following the establishment of the Nürnberg International Military Tribunal in 1946 it was envisaged that the jurisdiction of an international criminal court would cover individuals charged with violations of certain rules of international law, particularly in such fields as war crimes, genocide and other offences likely to disturb international peace.

4. Under the auspices of the General Assembly a draft statute for an international criminal jurisdiction was formalized in 1951, then revised in 1954.<sup>1</sup> There followed, however, a period of inactivity brought about by the contents of General Assembly resolution 1187 (XII) of 11 December 1957, in which the Assembly recommended that consideration of the question of an international criminal jurisdiction be deferred "until such time as the General Assembly takes up again the question of defining aggression and the question of a draft Code of Offences against the Peace and Security of Mankind".

5. Trinidad and Tobago recognizes that the proposal for the establishment of an international criminal jurisdiction has been on the agenda of the International Law Commission in its drafting of a code of crimes against the peace and security of mankind.

6. In exercising its mandate, the Commission has successfully categorized and defined a number of crimes which disrupt international peace and security, such as aggression, *apartheid*, colonialism and war crimes. Trinidad and Tobago notes the recent submission by Mr. Doudou Thiam, Special Rapporteur for the topic, of the draft articles on illicit traffic in narcotic drugs<sup>2</sup> and commends the Commission for its timely and positive response in the examination of this global problem.

7. Trinidad and Tobago firmly believes however that the elaboration of a code unaccompanied by penalties, a competent jurisdiction and a court would not be effective. In order to ensure that the code is effective, it would be necessary to establish a mechanism for its implementa-

<sup>1</sup> Draft statute prepared by the Committee on International Criminal Jurisdiction set up under General Assembly resolution 489 (V) of 12 December 1950 (*Official Records of the General Assembly, Seventh Session, Supplement No. 11 (A/2136, annex I)*), and revised draft statute prepared by the 1953 Committee on International Criminal Jurisdiction set up under General Assembly resolution 687 (VII) of 5 December 1952 (*ibid.*, *Ninth Session, Supplement No. 12 (A/2645), annex*).

<sup>2</sup> See below, p. 35, document A/CN.4/430 and Add.1, part II.

tion. It is in this regard that Trinidad and Tobago supports the establishment of a competent international criminal jurisdiction for individuals.

8. The judges of such a court would be appointed on the basis of their moral standing, their legal qualifications and their status as representatives of the world's legal systems. The jurisdiction of such a court, which would require the political support of States, would be derived from its own statute. The statute should seek to guarantee that body's objectivity and impartiality, and to ensure that a code of crimes against the peace and security of mankind is less open to varying interpretations. The draft statute should also suggest the parameters of the court's jurisdiction and, in accordance with the Charter of the United Nations, should seek to ensure adherence to the principles of sovereignty and non-interference in the internal affairs of States parties.

9. Trinidad and Tobago welcomes the "questionnaire-report" on the statute of an international criminal court

submitted by Mr. Doudou Thiam in his eighth report,<sup>3</sup> which will enable States to consider provisions that may be included in the statute of an international criminal court.

10. Trinidad and Tobago firmly believes that the international community should attach high priority to the Commission's useful and productive work on the formulation of the draft code and to the proposals contained in the "questionnaire-report" on the statute of an international criminal court. The possible alternatives submitted in the latter document would not only facilitate the work of the Commission but would also assist States in their examination of the feasibility and the merits of establishing an international criminal jurisdiction.

11. In this context, the Government of Trinidad and Tobago is of the view that, in order to facilitate the fullest possible consideration of the question of an international criminal jurisdiction, the Commission could appoint either a special rapporteur or a working group to that end.

<sup>3</sup> See document A/CN.4/430 and Add.1, part III.