



UNITED NATIONS
GENERAL
ASSEMBLY



Distr.
GENERAL

A/35/210/Add.2 + Cor.1
30 September 1980

ORIGINAL: ENGLISH

Thirty-fifth session
Agenda item 102

DRAFT CODE OF OFFENCES AGAINST THE PEACE AND
SECURITY OF MANKIND

Report of the Secretary-General

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CANADA

/Original: English/

/8 September 1980/

1. The Government of Canada acknowledges the useful work carried out by the International Law Commission (ILC) in preparing the draft Code of Offences against the Peace and Security of Mankind. At the time it was completed, the draft Code incorporated a number of important changes affecting international law in the area of the consequences of wrongful acts, in terms of both individual and state responsibility. In fact, the draft Code involved responsibility on both these levels but, because it contained no provisions on procedure or implementation, it is difficult to determine how the establishment of these categories of offences was to have any practical application.
2. Before any additional work is done on a code, a general question to be considered is what purpose is to be served by elaborating a code in light of subsequent developments in international law in related areas, and whether any effective implementation mechanism could be generally acceptable.
3. Subsequent to the completion of the draft Code there have been a number of other important developments in international law with respect to what might be described as universally recognized crimes or offences. These of course are not reflected in the draft Code. In this respect, the Definition of Aggression, adopted by the General Assembly in resolution 3314 (XXIX), is relevant, although not conceived in terms of individual criminal responsibility. Similarly, a number of multilateral agreements now recognize certain specific acts as punishable offences. Among these agreements are the Genocide Convention, the three conventions on unlawful interference with civil aviation (Tokyo, The Hague, Montreal), the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, the protocols to the Geneva Conventions of 1949 and the recently adopted International Convention against the Taking of Hostages. In effect these instruments have already increased the scope of universally recognized offences affecting the peace and security of mankind. It must be recalled, of course, that the offences described in these agreements for the most part concern private individual criminal acts and are not usually the result of deliberate government policy or acts of state. It is in the area of criminal acts on the part of governments that a possible Code of Offences runs into the most difficulty. Any "new" offence to peace and security cannot, in the opinion of the Canadian Government, be added to the draft Code in the absence of a broad consensus throughout the international community. Such a consensus is not, at present, evident on the definition of such offences.
4. An examination of the draft Code as it exists reveals a number of offences which clearly involve more than individual criminal responsibility. Offences such as aggression, encouragement of armed bands within other territories, annexation,

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intervention, etc., involve the whole state apparatus, including political decision making and, often, military operations. It is highly improbable that any government would submit individuals responsible for such acts (who would at the same time be members of or comprise that government) to prosecution or extradition. Thus, without some kind of international mechanism to deal with this problem, effective implementation of measures against these broader offences, involving collective or government responsibility, would be extremely difficult. In this context, since many of the offences are acts for which the State concerned may also be held responsible, it would be advisable to await the results of the examination by ILC of the question of state responsibility before pursuing the development of a draft Code.

5. The foregoing observations lead to consideration of the question of implementation of a possible Code. The Government of Canada notes, that, at the time the Code was being drafted, some consideration was also given to the question of an international court or tribunal of criminal jurisdiction. Discussion of this aspect of the question was not pursued by ILC, out of recognition of the fact that most governments could not accept a proposal for the establishment of such a body. At the thirty-third session of the General Assembly, discussion of this aspect of the item on the draft Code indicated that the situation had not changed. The Government of Canada therefore considers it unrealistic to expect that the United Nations will accept an independent implementation or enforcement for a Code. Assuming that States would wish to implement a Code by embodying it in a convention, for example, any legal proceedings to enforce it would be left to domestic tribunals. This is essentially the current state of affairs with respect to the above-mentioned conventions, which rely for their effective enforcement on the principle of aut dedere aut punire. The elaboration of any new, universally recognized offences will also probably proceed on this basis. In the view of the Government, a Code without implementation mechanisms would be of limited value since at the present state of development of the international community, implementation, in terms of enforcement and judicial proceedings, can only be achieved at the national level.

6. The Government of Canada recognizes that the broad offences listed in the draft Code are of continuing concern and constitute problems which the international community has an obligation to address. These offences, many of which can be considered as violations of human rights on a large scale, are frequently the result or subject of disputes between States and should be looked at in the context of relations between States. They cannot be resolved or remedied by assigning individual criminal responsibility for which no judicial or remedial mechanism is provided. It should be remembered in this context that the international community has already established mechanisms and procedures for resolution of disputes. These include the Security Council itself as well as judicial, arbitral, and other forms of third-party settlement. This approach would probably be often more appropriate to the resolution of disputes which involve concepts for which it is difficult to articulate a precise legal content.

7. In view of the considerations outlined above, the Government of Canada is not convinced that the necessary conditions for successful development of a draft Code of Offences against the Peace and Security of Mankind exist under the present circumstances, and does not therefore consider further consideration of a draft Code by the General Assembly opportune at this time.