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DRAFT CODE OF OFFENCES AGAINST THE PEACE AND SECURITY OF MANKIND

Analytical paper prepared by the Secretary-General pursuant to paragraph 2 of General Assembly resolution 35/49

Note by the Secretary-General

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I. INTRODUCTION

1. On 4 December 1980, the General Assembly adopted resolution 35/49 entitled "Draft Code of Offences against the Peace and Security of Mankind", which read as follows:

"The General Assembly,

"Recalling the draft Code of Offences against the Peace and Security of Mankind prepared by the International Law Commission in 1954, 1/

"Bearing in mind its resolution 33/97 of 16 December 1978, by which it decided to accord priority and the fullest possible consideration to the item entitled "Draft Code of Offences against the Peace and Security of Mankind",

"Recalling the 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 to promoting and implementing the purposes and principles set forth in the Charter of the United Nations,

"Having considered the report of the Secretary-General submitted pursuant to resolution 33/97, 2/

"Noting that further comments and observations on the draft Code of Offences against the Peace and Security of Mankind are yet to be submitted by Member States and relevant international intergovernmental organizations,

"Taking into account the statements made during the debate on this item, 3/

"1. Requests the Secretary-General to reiterate his invitation to Member States and relevant international intergovernmental organizations to submit or update, not later than 30 June 1981, their comments and observations on the draft Code of Offences against the Peace and Security of Mankind and, in particular, to inform him of their views on the procedure to be followed in the future consideration of that item, including the suggestion of having the item referred to the International Law Commission;

"2. Requests the Secretary-General, on the basis of the replies submitted by Member States and relevant international intergovernmental organizations and the statements made during the debate on this item, to prepare an analytical paper in order to facilitate the further consideration of the item;

1/ Official Records of the General Assembly, Ninth Session, Supplement No. 9, (A/2693), para. 54.

2/ A/35/210 and Add.1 and 2 and Add.2/Corr.1.

3/ See A/C.6/35/SR.10-15 and 40.

"3. Further requests the Secretary-General to submit a report to the General Assembly at its thirty-sixth session;

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

2. The present analytical paper has been prepared pursuant to paragraph 2 of the above resolution.

3. The materials on which the analytical paper is based include:

(a) The comments and observations submitted by Member States and relevant international intergovernmental organizations pursuant to paragraph 1 of General Assembly resolution 33/97 (A/35/210 and Add.1 and 2 and Add.2/Corr.1);

(b) The comments and observations submitted by them pursuant to paragraph 1 of Assembly resolution 35/49 which had been received by 15 July 1981 (A/36/416);

(c) The statements made during the debate on the item entitled "Draft Code of Offences against the Peace and Security of Mankind" in the Sixth Committee at the thirty-third and thirty-fifth sessions of the General Assembly.

4. The report of the Secretary-General referred to in paragraph 3 of General Assembly resolution 35/49 was circulated in document A/36/416.

5. 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.

6. References to national policies or legislations have not been covered by the paper.

II. BACKGROUND TO THE ISSUE OF THE DRAFT CODE OF OFFENCES AGAINST THE PEACE AND SECURITY OF MANKIND; THE QUESTION OF RESUMPTION OF THE UNITED NATIONS WORK TOWARDS THE ELABORATION OF A DRAFT CODE

A. Background to the issue

7. Some States commented on the historical background to the preparation of the draft Code of Offences against the Peace and Security of Mankind.

8. It was recalled that the issue of the draft Code of Offences was not a new one. The item under consideration, said the representative of Zaire (A/C.6/33/SR.64, para. 29), "was almost as old as the United Nations itself". The problem, felt the representative of Madagascar (A/C.6/35/SR.10, para. 15), had been "of constant concern to peace-loving nations, although for too long only piecemeal or superficial solutions had emerged from the efforts which had been made", and "the crimes of colonialism had been swept under the carpet".

9. By way of tracing the origin of the idea of a code of offences against the peace and security of mankind references were made by a number of States to the Charter of the United Nations, to the establishment of the International Military Tribunal for the trial of war criminals of the European Axis whose offences had no particular geographical location (the Nürnberg Tribunal) and of the International Military Tribunal for the Far East (the Tokyo Tribunal) as well as to the relevant decisions by the United Nations.

10. The representative of Bangladesh (A/C.6/35/SR.14, para. 45) stated that throughout history law had been interpreted by the victors, and only after the First World War the vanquished had challenged the validity of treaties dictated by force, and that Chapter VII of the Charter of the United Nations, adopted in 1945, provided for action with respect to threats to the peace, breaches of the peace and acts of aggression. It was not "until the Nazi holocaust", said the representative of Madagascar (A/C.6/35/SR.10, para. 15), that it was decided to establish under the 1945 London Agreement and the 1946 Tokyo Proclamation those international tribunals. The representative of the Soviet Union (A/C.6/35/SR.13, para. 10) recalled that the Soviet Union was one of the States that had taken part in formulating the Charter and judgement of the Nürnberg Tribunal, which was based on the concept of individual criminal responsibility for offences against peace, war crimes and crimes against humanity. The Nürnberg trials, said the representative of Zaire (A/C.6/35/SR.13, para. 26), had given rise to a new legal concept - the concept of the individual who committed, on his own behalf or as an organ of a State, acts considered as crimes against humanity. And the representative of Lebanon (A/C.6/35/SR.10, para. 11) said that it had been after the judgement of the Nürnberg Tribunal had been rendered that the General Assembly had instructed the International Law Commission to formulate the principles on which that judgement and the Charter of the Tribunal had been based and to consider the preparation of a draft code of offences against the peace and security of mankind, the establishment of an international criminal jurisdiction and the definition of aggression.

11. The Commission, said the representative of Democratic Yemen (A/C.6/35/SR.14, para. 42), had taken into account the need to draw up, in conformity with the mandate entrusted to it by the General Assembly in its resolution 177 (II) of 21 November 1947, a list of actions constituting offences against the peace and security of mankind and to formulate the principles recognized in the Charter and judgement of the Nürnberg Tribunal. In the words of the representative of Zaire (A/C.6/35/SR.13, para. 26) the Commission, in accordance with the mandate it had received from the General Assembly, had affirmed the principle of the criminal responsibility of individuals and States "in conformity with the spirit and judgement of the Nürnberg Tribunals". It attempted the task of defining international offences in clearly stated rules "in a single international instrument", said the representative of the Ukrainian Soviet Socialist Republic (A/C.6/33/SR.63, para. 23).

12. In addition to General Assembly resolution 177 (II), other relevant United Nations decisions, arrangements and actions aimed at the preparation of a code of offences against the peace and security of mankind were also referred to.

13. The developments which followed the adoption of that resolution and which the representative of Fiji (A/C.6/33/SR.62, para. 10) called "the tortuous path followed by the item since it was first considered in 1947" was discussed by the representative of Zaire (A/C.6/33/SR.64, para. 29) and Lebanon (A/C.6/35/SR.10, para. 11) and was succinctly summarized by the Legal Counsel in his statement at the 10th meeting of the Committee:

> "The Commission had begun work on the draft code at its 1949 session and had sent a questionnaire to Member States asking them which offences, apart from those recognized in the Charter and judgement of the Nürnberg Tribunal, should be included in the draft code. In 1950 the General Assembly, having considered the formulation of the Nürnberg principles, had in resolution 488 (V) requested the Commission, in preparing the draft code, to take account of the observations made on that formulation by delegations during the fifth session of the General Assembly and of any observations which might be made by Governments. However, even though the draft code had been completed by the Commission and submitted at the sixth session, the General Assembly had not considered it then or at its seventh session, when the item had been omitted from the agenda on the understanding that the matter would continue to be considered by the ILC. In 1954 the ILC had submitted a revised draft code to the Assembly at its ninth session, but the Assembly, considering that the draft code raised problems closely related to those associated with the definition of aggression, had postponed further consideration of the issue until the Special Committee on the question of defining aggression had submitted its report (resolution 897 (IX)). The same decision had been taken in 1957. As a result of the link thus established by the Assembly between the question of the draft code and that of the definition of aggression, it was not until 1974, when the Assembly had had before it a draft definition of aggression, that the Secretary-General had suggested to the General Committee that the time might have come for the Assembly to resume consideration of the question of the draft code of

offences against the peace and security of mankind and the question of an international criminal jurisdiction. Once again, however, the Assembly had not made any decision on the subject in 1974. It should be noted that, in its report on the work of its twenty-ninth session in 1977, the Commission had suggested reviewing the 1954 draft code, taking duly into account the developments that had occurred in international law since that time." (A/C.6/35/SR.10, para. 8).

14. It was also recalled that the question of the draft Code of Offences against the Peace and Security of Mankind had been included in the agenda of the thirty-second session of the General Assembly at the request of Barbados, Fiji, Mexico, Nigeria, Panama, the Philippines and the Syrian Arab Republic. However, because of lack of time, the Sixth Committee had decided to postpone consideration of the item until the thirty-third session. At its thirty-third session, said the representative of Bangladesh (A/C.6/35/SR.14, para. 45) the General Assembly had adopted resolution 33/97 in pursuance of which the item had been brought before the Sixth Committee at the thirty-fifth session. It was further recalled that a number of delegations had asked that priority should be given to it, which the General Assembly did both at the thirty-third (resolution 33/97) and subsequently at the thirty-fifth sessions (resolution 35/49).

B. Question of resumption of United Nations work towards the elaboration of a draft Code of Offences

15. Three main trends emerged in relation to this question. A majority of States favoured the early resumption of the work towards the elaboration of a Code of Offences against the Peace and Security of Mankind. Several other States expressed doubt, reservations, and objections to such a course of action. Some other States felt that no hasty decision should be taken on the matter and favoured a cautious approach.

16. The States which supported resumption of the work on the draft Code referred to several circumstances which, in their view, made such a move timely and opportune at the present juncture.

17. Several States emphasized in a general way the importance they attached to a Code of Offences against the Peace and Security of Mankind, their interest in the matter and the need for such a code.

18. The representative of Cyprus (A/C.6/35/SR.61, para. 4) stated that a Code of Offences against the Peace and Security of Mankind had, from the outset, been considered "a very important aspect of the legal order needed to ensure a peaceful world". The delegation of Sierra Leone (A/C.6/35/SR.65, para. 9) also attached "great importance to the question", as did the representatives of Senegal (A/C.6/35/SR.12, para. 10), India (A/C.6/35/SR.15, para. 2) and also of Nigeria (A/C.6/35/SR.15, para. 32) for whom the subject was of "particular importance". The delegation of Zaire (A/C.6/35/SR.13, para. 24) attached "great importance to the elaboration of an international convention for the suppression of offences by

individuals and States against the peace and security of mankind". The initiative regarding the preparation and adoption of a code of offences against the peace and security of mankind was "both important and opportune", said the representative of Mongolia (A/C.6/33/SR.62, para. 1).

19. The representative of Burundi (A/C.6/35/SR.15, para. 29) felt that "the international community had a growing interest in the subject"; and the representative of Peru (A/C.6/35/SR.15, para. 23) spoke of "definite interest of obtaining some form of international instrument governing offences against the peace and security of mankind". The representative of Fiji (A/C.6/33/SR.62, para. 9) said that his delegation was also "interested in the item".

20. In the opinion of the representative of Cyprus (A/C.6/33/SR.64, para. 18) the need for a code of offences against the peace and security of mankind had never been "as great as it was at the present time". Such need "was obvious", stated the representative of Senegal (A/C.6/35/SR.12, para. 10); according to the representative of Poland (A/C.6/35/SR.14, para. 15) it "was beyond question" and the representative of Yugoslavia (A/C.6/35/SR.13, para. 30) held the view that it "had become more acute with the passage of time". The initiative to continue the elaboration and adoption of a code of offences against the peace and security of mankind "was particularly timely" in the light of the present international situation "in which the highest authorities of some States were openly advocating wars of aggression under various pretexts" said the representative of Mongolia (A/C.6/36/SR.11, para. 14).

21. In support of their position in favour of the resumption of United Nations work towards the elaboration of a draft code of offences against the peace and security of mankind several other States highlighted a series of negative characteristics of the present-day international situation. Among those characteristics they singled out threats to the peace and breaches of the peace, acts of aggression, the existence of hotbeds of tension and the frequent eruption of armed conflicts, annexation and military intervention, interference in internal affairs, moves to redivide the world into spheres of influence, the wave of international terrorism, genocide, acts of racism and the policy of apartheid, revanshism, chauvinism, neo-nazism, the denial of the right of peoples to self-determination, murder, abduction and persecution of civilian populations on social, political, racial, religious or cultural grounds and serious violations of human rights and fundamental freedoms. Some of the States in question elaborated on those characteristics.

22. The advisability of a code of offences against the peace and security of mankind, Poland stated in its comments (see A/36/416, para. 5), was corroborated by the fact that 35 years since the end of the Second World War the threat of new wars had not been eliminated. There was still hotbeds of tension, the arms race continued and armed conflicts still break out and in the face of the development of weapons of mass destruction "these phenomena acquired a new dimension". Observing that in recent time the international community had again witnessed acts of aggression, annexation, military interventionism and other "more subtle forms of interference in the internal affairs of States" as well as acts of racism and

genocide on the part of States, "all of which were contrary to the Charter of the United Nations and to fundamental norms of international law", the representative of Trinidad and Tobago (A/C.6/35/SR.14, para. 10) felt that "one valid response" to those challenges could be the drafting of a Code of Offences against the Peace and Security of Mankind. The representative of India (A/C.6/35/SR.15, para. 2) also noted that in the last three and a half decades, notwithstanding the affirmations made in the United Nations and elsewhere committing nations to peace and security of the world, acts of aggression, genocide and crimes, such as murder, abduction and persecution of civilian populations on social, political, racial, religious or cultural grounds, still continued and even diplomatic agents who were messengers of peace were not spared from being victims of such crimes. A complete code defining the concept of offences against peace and security and confirming the principle or responsiblity for such crimes, the representative of the USSR (A/C.6/35/SR.13, para. 10) stated, "could be an effective instrument in the hands of the international community in combating the gravest threats to peace and security". It would represent "an additional guarantee for the strengthening of international security", said the representative of Mongolia (A/C.6/35/SR.11, para. 14).

23. Romania stated in its comments (see A/36/416, para. 3) that the adoption of the envisaged Code was all the more imperative as the peace and security of peoples were subject to frequent and ever more serious threats posed by the emergence of new hotbeds of conflict, moves to redivide the world into spheres of influence, interference in the internal affairs of other States, the increasingly adverse effects of the arms race and finally a new wave of terrorism, revanchism, chauvinism and neo-nazism.

24. The world was still plagued by wars, aggression and acts of anarchy and "needed to have its confidence in law restored", said the representative of Fiji (A/C.6/33/SR.62, para. 11). It was essential to establish "recognized and universally accepted standards to secure international peace and security", stated the representative of Bangladesh (A/C.6/35/SR.14, para. 52).

25. A number of States referred in a general way to changes which have occurred in international relations since 1954 when the draft Code of Offences against the Peace and Security of Mankind was submitted by the International Law Commission to the General Assembly. Noting that the draft code was prepared more than 25 years ago, the representative of Algeria (A/C.6/35/SR.14, para. 1) indicated that since that time "international relations had undergone radical changes". The representative of China also stated that the world situation had undergone "great changes" and that the 1954 draft Code must be "further developed in the light of new circumstances". "The super-Powers", he said, "had now stepped up their competition for spheres of influence and their war preparations; aggression and hegemonism presented a serious threat to peace and security, and the danger of a new world war was growing. The peoples of the world urgently desired to curb aggression and hegemonism, so that mankind could be spared the scourge of war. Work on the draft Code of Offences could only be relevant if it is based on those realities" (A/C.6/35/SR.13, para. 15). Stating that the prospect for surmounting the

difficulties which confronted the international community had not improved since the work on the draft code had been suspended, the representative of Senegal (A/C.6/35/SR.12, para. 10) expressed the view that the international situation was even more complicated now than it had been in 1954, partly because of the lack of political will within the international community but specially because of the emergence of new phenomena which affected the future of the world. The representative of Kenya (A/C.6/35/SR.15, para. 19) felt that developments which had occurred since 1954 tended to give the whole question "a new dimension" and that it "was now time to take a fresh look at the draft code".

26. Some States, substantiating their position in favour of the resumption of the work on the draft Code of offences against the peace and security of mankind, referred to the increased threat posed to the security of mankind by the arms race. The representative of Algeria (A/C.6/35/SR.14, para. 2) stated, that as long as the arms race continued to grow and military arsenals to become increasingly sophisticated, the spectre of war and aggression would continue to threaten humanity, "especially the third world" where denial of the right of peoples to self-determination and attacks on the sovereignty of States were perpetuating a situation that was detrimental to the peace and security of mankind. The representative of Zaire (A/C.6/35/SR.13, para. 24) said that the future of mankind was more than ever jeopardized by the arms race and the massive destructive power of weapons possessed by certain States. In his view, the reluctance of the States which produced arms to accept international controls "should induce all peace-loving States to support the speedy elaboration of a Code of Offences against the Peace and Security of Mankind". The representative of Romania referred (A/C.6/35/SR.62, para. 6) to "the existence of enormous military arsenals" as one of the reasons for "a deeply felt need" to resort to all measures, including legal measures, to prevent and combat international offences. He said that the preparation of the proposed code "corresponded" to that need. The continuation of the arms race was mentioned by the representative of Yugoslavia (A/C.6/35/SR.13, para. 30). Poland in its comments (see A/36/416, para. 5) referred to the new dimension acquired by the problems of the security of mankind as a result of the development of weapons of mass destruction.

27. Another factor mentioned in favour of resumption of work on the draft Code was what Yugoslavia (A/C.6/35/SR.13, para. 30) described as the need to protect man "against the unwarranted results of scientific and technological advance". Reference was made in particular to the use of new technologies for military purposes. In its comments (see A/35/210, para. 4) Yugoslavia stated that the situation today was more complex because of the inconsistent and uneven development of international relations with regard to suppression of the acts incriminated in the draft Code, and "also because of some new phenomena which, by the gravity of the consequences, would be placed on the list of the gravest crimes facing the present-day world". That development, the representative of Yugoslavia said, had made it necessary "to prevent new categories of acts which deserved to be included in the list of most heinous crimes confronting mankind". He was referring not only to actions which resulted from negative developments in international relations, referred to above, "but also to threats to peace and stability in the world provoked by the uncontrolled utilization of scientific and

technological advances, particularly for military purposes" (A/C.6/35/SR.13, para. 30). Poland also mentioned "the new, unrelated to war, threats stemming from the nuclear, chemical and bacteriological pollution of the environment" (see A/36/416, para. 5).

28. Still another point in favour of the preparation of a code of offences was made by some speakers who referred to the importance of the proposed code for the newly independent States and for the people struggling for national liberation.

29. Recalling that his country had been one of those which requested the inclusion of the item on the draft code of offences against the peace and security of mankind in the agenda of the General Assembly and stating that "the work already done should be pursued" and taken as a basis for further efforts to solve the problems which threatened general peace and security. The representative of Fiji (A/C.6/33/SR.62, para. 9) said that the initiative "was of particular importance" to a small and defenceless country which, in order to secure its independence and sovereignty, had to depend on the rule of law and on a just international legal order. The Observer from the Palestine Liberation Organization (A/C.6/35/SR.13, para. 21) stated that the peoples still under the yoke of colonialism and foreign domination "had a greater interest than anybody else" in the formulation of a draft code of offences against the peace and security of mankind. Saying that serious crimes were being committed by the racist régimes of South Africa and Israel against the peoples of southern Africa and Palestine, he "on behalf of all liberation movements", expressed his satisfaction that the Sixth Committee was dealing with the issue of crimes against the peace and security of mankind.

30. Particular emphasis was placed by a number of States on the adoption in 1974 by the General Assembly in resolution 3814 (XXIX) of the Definition of Aggression, the lack of which has been a formal reason for the postponement of the consideration of the draft Code.

31. No document confirmed that the item on the draft Code had been postponed for "reasons other than the lack of a definition of aggression" said the representative of Cyprus (A/C.6/33/SR.64, para. 21) who also recalled in 1968 when such a definition was still to be adopted, the Secretary-General had suggested that a Code of Offences against the peace and security of mankind "should be studied". In view of the fact that aggression had been defined and the definition of aggression had become available - observed the representatives of the Byelorussian SSR (A/C.6/33/SR.63, para. 18) and the Ukrainian SSR (A/C.6/33/SR.63, para. 24) - "the time had come" to resume consideration of the draft Code. The representative of Sierra Leone (A/C.6/35/SR.11, para. 49) also said that the elaboration of a code of offences "had become timely" as a result of the adoption of the definition of aggression. Years of strenuous effort had finally led to the adoption of the Definition of Aggression, said the representative of Cyprus and "The logical corollary would now be to adopt a code of offences against the peace and security of mankind" (A/C.6/33/SR.65, para. 7).

32. The representative of Kenya (A/C.6/35/SR.15, para. 19) and the Syrian Arab Republic (A/C.6/35/SR.63, para. 15) also expressed the hope that with the adoption

of the definition of aggression work on the draft code could proceed. The representative of Egypt (A/C.6/33/SR.65, para. 1) noting that General Assembly resolution on the Definition of Aggression was an important contribution to the improvement of international relations, which was "closely linked" to the item under consideration, stated that the existence of that definition afforded "a proper framework" for the formulation of a code of offences against the peace and security of mankind.

33. Another development which was mentioned as an auspicious one for resumption of work on the draft code was the adoption of other new international instruments considered as relevant to the draft code, such as the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, the First Additional Protocol to the 1949 Geneva Conventions, the International Convention against the Taking of Hostages, the Convention on the Non-Applicability of Statutory Limitation to War Crimes and Crimes against Humanity, a number of international agreements on the field of disarmament (see para. 252 below), as well as the Declaration on the Granting of Independence to Colonial Countries and Peoples, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, and also General Assembly resolution 3074 (XXVIII) of 3 December 1973 entitled "Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity".

34. The representative of the Ukrainian SSR (A/C.6/35/SR.14, para. 27) said that the adoption of a series of conventions, treaties and agreements "made it possible to define certain violations of international legal order as international crimes". The representative of Romania also stressed that the coming into being of new instruments relevant to international criminal law "demonstrated the desirability of pursuing the work done during the years when the destruction and atrocities caused by the war unleashed by nazism were still vivid in the mind of the international community" (A/C.6/33/SR.62, para. 5); and the representative of the Philippines considered the elaboration of a code of offences "to be necessary" because, although there were valid precedents such as the Nürnberg and Tokyo judgements, international agreements, covenants and General Assembly resolutions, "not all the offences concerned were covered by those instruments" (A/C.6/35/SR.14, para. 7). In the words of the representative of Cyprus such a code of offences against the peace and security of mankind "would be a vital link in the series of legal instruments designed to achieve a better international legal order and security" (A/C.6/35/SR.13, para. 1) "so direly needed in the current state of world affairs", added the representative of the USSR (A/C.6/33/SR.62, para. 13).

35. It was also held that international law would be enriched by the elaboration of an instrument which would regroup relevant provisions from the various international instruments adopted since 1954. The representative of the Philippines observed that "the essence of codification was to gather together in one piece of legislation all provisions relating to the same subject with a view to their

harmonization and better enforcement" (A/C.6/35/SR.14, para. 7). The representative of the Ukrainian SSR (A/C.6/33/SR.63, para. 23) stated that the fact that relevant international instruments "which had been adopted at different times and in different circumstances" and differed in both form and scope was "an additional argument in favour of the drafting of a new international legal instrument which would harmonize the provisions relating to the offences in question presenting them in uniform style and consistent terminology" (A/C.6/35/SR.14, para. 28). Guatemala in its comments (see A/35/210, para. 3) also favoured a "systematic instrument expressly identifying the actions or omissions specifically defined as offences in the international sphere". The delegation of Finland (A/C.6/35/SR.11, para. 55) and of Sweden (A/C.6/35/SR.15, para. 6) pointed out that since the relevant existing international instrument which had been adopted since 1954 did not form a comprehensive whole, their adoption did not obviate the need for the proposed code.

36. Still another development which was mentioned as an additional reason for resuming work on the draft code was the progress made by the International Law Commission in its work on State responsibility. Thus the representative of Cyprus (A/C.6/35/SR.13, para. 1) observed that the elaboration of a code providing for individual criminal responsibility "was timely and appropriate now that the International Law Commission had nearly completed its draft articles on State responsibility, article 19 of which provided for the criminal responsibility of States", and Poland (see A/36/416, para. 6), said that the draft code would constitute "a proper complement to the convention on the responsibility of States" drafted by the Commission. The need to deal with more serious international offences which directly affected the world community and civilization itself, said the representative of Romania (A/C.6/33/SR.62, para. 7) "had naturally been perceived within the framework of the codification and progressive development of State responsibility", and article 19 of the draft articles prepared by the Commission constituted "an invitation to undertake a more specific and far-reaching study of international offences, not only by listing them but also by defining their constituent elements and the responsibility of individuals guilty of such offences". In the opinion of the representative of Peru (A/C.6/35/SR.15, para. 25), the fact that the Commission was currently working on the topic of the international responsibility "was not sufficient reason for declining to elaborate the Code, since the latter dealt largely with the criminal responsibility of individuals".

37. States favouring the resumption of the work on the draft Code further mentioned in support of their position the positive results to be expected from such an undertaking. Comments in this connexion focused on the role which the proposed Code would play in improving the international climate, on the contribution which the instrument in question would make to the development and codification of international law, and on the deterrent effect it would have in relation to prospective offenders. The representative of the German Democratic Republic (A/C.6/35/SR.10, para. 22) referred to those elements in the following terms: "a code of offences against the peace and security of mankind ... would constitute a weighty contribution not only to securing peace and enhancing international law but also to curbing activities by individuals, groups or

organizations against peace and international law". The Ukrainian delegation considered the proposed code to be one of the "means available for maintaining peaceful relations between States, halting aggression and the arms race and eliminating colonialism" (A/C.6/35/SR.14, para. 26).

38. Several States insisted on the potential contribution of the proposed code to the enhancement of the purposes and principles of the United Nations Charter and to the strengthening of peace. Thus the representative of the Philippines (A/C.6/35/SR.14, para. 7) stated that the adoption of the code of offences would constitute "a significant step towards the attainment of the United Nations objective of maintaining international peace and security". Mongolia in its comments (see A/35/210/Add.1, para. 1) viewed the adoption of the proposed code as "a major contribution to the attainment of the lofty purposes and principles set forth in the Charter of the United Nations, first among them being the noble aim of maintaining and strengthening international peace and security. Views along the same lines were expressed by the representatives of Afghanistan (A/C.6/35/SR.13, para. 35) and Bulgaria (A/C.6/35/SR.14, para. 54) who said that the drafting of such a code would contribute to "the realization of one of the most fundamental tasks of the Organization" and "would contribute to the implementation of the purposes and principles of the Organization" respectively. The representative of the German Democratic Republic emphasized "the importance of adopting" a code of offences as an essential contribution to the realization of "the fundamental task facing all States and peoples" which was in his view the renunciation of the use of force or the threat of force in international relations, the peaceful settlement of all disputes, the unconditional condemnation of aggressive wars, the complete elimination of wars between States, the cessation of the arms race and the final eradication of the vestages of the cold war (A/C.6/33/SR.63, para. 6).

39. The Byelorussian SSR in its comments (see A/35/210, para. 1) made a similar point. Furthermore the representative of the Byelorussian SSR stated that his country was especially interested in the matter because during Fascist occupation it had been victim of many crimes similar to those covered in the draft code (A/C.6/33/SR.63, para. 18). Referring to the role which the proposed instrument would play in enhancing the principle of the peaceful settlement of disputes, Romania stressed that its position in favour of resuming work on the draft code and its proposal concerning the preparation of a general treaty on the peaceful settlement of disputes "focused on the same area of concern" (A/C.6/33/SR.62, para. 4).

40. Some other States stressed that role which the proposed Code would play in strengthening international co-operation. Thus the representative of India (A/C.6/35/SR.15, para. 2) said "a code of offences, if universally accepted, would lead to greater co-operation between States and to the peace and security of mankind". The Philippines, in its comments (see A/36/416, para. 1) observed "the code shall serve to strengthen the basis for international co-operation and understanding among States in accordance with the Charter of the United Nations"; and the representative of Democratic Yemen felt that "formulation of the Code would represent a step towards the establishment of friendly relations between States with different social systems" (A/C.6/35/SR.15, para. 43).

41. A number of States emphasized that the elaboration and adoption of the proposed code would be a contribution to the codification of international law and its progressive development as well as to its implementation and enforcement.

42. The representative of India (A/C.6/35/SR.15, para. 1), referred to Article 13 (1) of the United Nations Charter and said that the preparation of a draft code "was a logical step towards the codification and development of international law to promote international peace and security". The drafting of a code of offences would have "a favourable effect on", and would "contribute substantially to", the progressive development and codification of international law said the representative of Bulgaria (A/C.6/35/SR.14, para. 54). The representative of Afghanistan was also of the opinion that such a code based on the broadest possible measure of international agreement, "could greatly contribute to the progressive development and codification of international law" (A/C.6/35/SR.13, para. 35).

43. A code of offences, said the representative of Sweden, might constitute a significant new contribution to existing international law "nothwithstanding the fact that a number of conventions and resolutions concerning related matters had been adopted since 1954 (A/C.6/35/SR.15, para. 6). The representative of Czechoslovakia was of the view that if the code were to be unanimously adopted, it would be "a major contribution" to the maintenance of peace "and respect for international law" (A/C.6/35/SR.15, para. 43). In the opinion of the representative of Egypt, codification work on a code of offences would lay "the basis for a new international legal order" according to which States and individuals would be jointly liable for the violations of the norms. No official could be exempted except in expressly mentioned cases of limitation of liability such as cases of force majeure. That would promote the fulfilment of international obligations and strengthen international justice with beneficial results for peace and security" (A/C.6/33/SR.65, para.1). In the words of the representative of Guyana a code of offences "could represent a first step towards a genuinely international legal order" (A/C.6/33/SR.63, para. 22).

44. More specifically, the elaboration of the code would represent a contribution to the progressive development "and stricter application of the principles and norms relating to the responsibility of States, groups and individuals", said the representative of Mongolia (A/C.6/35/SR.11, para. 14). It would also constitute a step forward in the progressive development of the principle of the responsibility of States and individuals and an additional guarantee of the application of other principles and norms of contemporary international law, he stated (A/C.6/33/SR.62, para. 1).

45. In relation to the contribution which the adoption of the proposed code would make to the progressive development and codification of international law, some comments were made in general terms on the importance of legal instruments in the building up of more satisfactory international relations. The representative of Romania observed that:

> "Legal instruments could not, by the mere fact of their existence, eliminate the policies which endangered the peace and security of peoples, ignored the equal value of all individuals or gave rise to military conflicts, but ... international law could contribute by peaceful means, to the efforts of peoples to ensure peace, to eliminate violence from relations between States, to put an end to crimes against humanity and to build a new system of inter-State relations." (A/C.6/33/SR.62, para. 8)

Fiji stated that "confidence in law could only be truly restored if it was believed that law embodied justice and would be enforced" (A/C.6/33/SR.62, para. 11). The Palestine Liberation Organization stressed the importance for peoples still under the yoke of colonialism and foreign domination of a legal instrument under which they should be able to obtain help from the international community to exercise their fundamental right to self-determination (A/C.6/35/SR.13, para. 21).

46. In a number of comments references were made more specifically to the role which the draft code would play in the development of international criminal law.

47. The representative of Syria stated that the proposed code "would contribute to the development and codification of international criminal law" (A/C.6/33/SR.63, para. 15). Romania was of the view that the resumption of the work on the code would constitute "a most significant contribution" to the codification and development of that branch of international law and would be of capital importance, since the code would constitute "the basic structure of international criminal law" (A/C.6/33/SR.62, para. 4). The United Nations Educational, Scientific and Cultural Organization, after pointing out that the codification of international criminal law was clearly one of the basic missions of the United Nations, and that this new branch of law had taken shape only after the second World War and had still to be fully developed, remarked that "by virtue of their legal, political and philosophical content, the Nürnberg and Tokyo judgements had not only confirmed certain basic principles in this field but also marked a first stage in the protection of the pace and security of mankind by international criminal law" (see A/35/210, para. 26). An instrument such as the draft code could make "a significant contribution to the development of international law in the field of criminal responsibility", said the representative of Sri Lanka (A/C.6/35/SR.15, para. 26) whose country took that view "as an active member of the Non-Aligned Movement". The German Democratic Republic stated (see A/35/210/Add.1, para. 15) that it saw the code's fundamental purpose in its "reaffirming, concretizing and enforcing existing contractual and common law obligations of States for the prosecution and punishment of grave international crimes". The representative of Zaire stressed that the existence of the envisaged code would solve the important question raised by the principle "nullum crimen nulla poena sine lege" (A/C.6/35/SR.13, para. 24). The representative of Cyprus held that the elaboration of the proposed code was necessary because of the possible reoccurrence of situations similar to those which had given rise to the Nürnberg trials where "it had been thought necessary in order to ensure respect for human rights, justice and law and order to accuse and even execute individuals for offences which were not mentioned in any code" (A/C.6/33/SR.64, para. 18).

48. In addition to the contribution which the proposed code could make to the strengthening of peace and enhancement of the principles of the Charter and to the progressive development and codification of international law, the preventive and deterrent effect which such an instrument would have by incriminating violations of the norms of international law was also referred to. Thus the representative of Cyprus observed:

> "No one could deny that international crimes were currently being committed, and the existence of a code providing for the punishment of such crimes might deter some individuals from committing them by removing all prospects of impunity. That would contribute to peace and security and would not have any prejudicial effects. The lack of such a code only served to encourage the perpetration of such offences". (A/C.6/33/SR.64, para. 19)

49. The new code would not be a mere reiteration of international obligations contained in other instruments, it could have a useful deterrent effect, and serve as "a beacon of light to the international community in its search for peace", said the representative of Sri Lanka (A/C.6/35/SR.15, para. 26). In the words of Poland (see A/36/416, para. 6), "... when a 'State' means an anonymous collective and under the contemporary international law the scope of its responsibility is limited to compensation and satisfaction, then the awareness of direct and penal responsibility of individuals guilty of such offences might to a greater extent be conducive to their prevention".

50. Speaking on the elaboration of "an international convention for the suppression of offences by individuals and States against the peace and security of mankind", the representative of Zaire (A/C.6/35/SR.13, para. 24) said that "the very existence of such an international convention would have a positive preventive effect by providing strict sanctions against offenders, would discourage the perpetration of such acts ...". In his words the existence of such instrument would remove all doubts as to the legal justification for suppressing those offences, a problem which had given rise to controversy regarding the Nürnberg Trials (A/C.6/33/SR.64, para. 35).

51. The Ukrainian SSR (see A/38/210/Add.2, para. 1) and Czechoslovakia (see A/35/210, para. 1), as well as the representatives of Mongolia (A/C.6/35/SR.12, para. 1) and the German Democratic Republic (A/C.6/35/SR.10, para. 22) stressed that by defining the criminal responsibility of the perpetrators of offences against peace and mankind, the proposed code would prevent their repetition. The purpose of the code said the representative of Pakistan (A/C.6/35/SR.12, para. 19) should be to punish criminal acts which might constitute "a prelude to war rather than to punish such acts after war had broken out".

52. There were also some other arguments advanced in favour of the carrying out of the task at hand.

53. The representative of the Soviet Union was of the view that in general the conditions for the preparation of a code of offences were currently more favourable than at the beginning of the 1950s since the United Nations had admitted new Members which "had succeeded in shaking off the yoke of colonialism" (A/C.6/33/SR.62, para. 13); and the representative of the Syrian Arab Republic also referred to "the increase in the membership of the United Nations" as one of the reasons why "the code would have to be reconsidered" (A/C.6/33/SR.63, para. 15).

54. The delegation of the Libyan Arab Jamahiriya stated that it was in favour of codifying offences against the peace and security of mankind, "seriousness and magnitude of which were constantly increasing" (A/C.6/35/SR.14, para. 22).

55. The representative of Pakistan agreed that a code of offences "should be formulated, provided that it was effective and could be enhanced with reasonable certainty" (A/C.6/35/SR.12, para. 16).

56. The delegation of Uruguay said that it "supported any initiative for the strengthening of international peace and security" (A/C.6/35/SR.13, para. 19).

57. The representative of Burundi speaking of "those who had shown themselves particularly committed to the task of drafting the recent international instruments governing crimes against peace and security", expressed hope that "they would show the same enthusiasm during the process of drafting the present Code" (A/C.6/35/SR.15, para. 31).

58. While advancing various reasons for the resumption of work on the draft Code of Offences against the Peace and Security of Mankind, a number of delegations, in the words of the representative of Cyprus (A/C.6/33/SR.65, para. 7), "had expressed their concern to see the adoption of the Code, which was increasingly urgent owing to the steady worsening of the world situation". The representative of Byelorussian SSR said that in view of the difficult world situation created by hegemonistic forces and imperialist circles, which were stepping up the arms race, were destroying the balance of military power and had had designs on the territories of other States, there was a real risk that offences against mankind might be committed, and the elaboration of the code of such offences was therefore "urgently necessary" (A/C.6/35/SR.12, para. 6).

59. The task of adopting a code was "of utmost urgency", stated the representative of USSR (A/C.6/33/SR.62, para. 13) remarking that during the time that had elapsed since the completion of the 1954 draft "the imperialist powers have unleashed innumerable wars of aggression in many parts of the world". The representative of Zaire also considered as "extremely urgent" the elaboration of a legal instrument on the punishment of States or individuals guilty of acts endangering the peace and security of mankind (A/C.6/35/SR.13, para. 24).

60. In the opinion of the representative of Hungary (A/C.6/35/SR. 12, para. 21), the task of defining offences that could threaten the peace and security of mankind, was "urgent in view of the fact that it had not been possible to give full effect to the ban on war and the use of force". "The urgent elaboration" of the proposed

Code was also favoured by the Ukrainian SSR (see A/35/210/Add.2/Corr.1, para.1). The representative of Paraguay was pleased that the task of elaborating a code of offences had been resumed, since the international community should have a legal instrument of that kind at its disposal "as soon as possible" (A/C.6/35/SR.14, para. 19). Welcoming the efforts to define those acts which constituted offences against the peace and security of mankind, the representative of Venezuela also said that it was important to elaborate an international instrument on the subject "as soon as possible" (A/C.6/35/SR.11, para. 52). In the present complex international situation it was of great importance to complete work on the draft code "as quickly as possible", said the representative of Czechoslovakia (A/C.6/35/SR.15, para. 43). According to the representative of Afghanistan his country favoured "the speedy elaboration and adoption" of a code of offences against the peace and security of mankind (A/C.6/35/SR.13, para. 35). "Prompt action was now required on the draft Code of Offences", said the representative of Cyprus (A/C.6/33/SR.61, para. 5). The elaboration of the Code "must no longer be delayed", stated the representative of the German Democratic Republic (A/C.6/35/SR.10, para. 24). In its comments, the latter stressed that work on the drafting of the Code "should proceed speedily and with the intensity and thoroughness commensurate with the high significance of the subject" and expressed its conviction that "the earliest possible completion of a Code of Offences against the Peace and Security of Mankind assumes heightened importance" (see A/35/210/Add.1, para. 16).

61. Several other States, some of them recognizing the importance of the initiative under consideration, expressed doubts, reservations and objections to the idea of resuming work on the proposed Code, at least under the present conditions.

62. The main arguments which were adduced in support of this position were that States had shown only limited interest in the item, that in view of the present stage of development of international law a resumption of the work on the draft Code was unwarranted, that the proposed Code might not offer the most adequate framework for the treatment of the problem which had been referred to in the course of the debate and that the issues which would have to be tackled, should it be decided to elaborate the proposed Code, were so complex and controversial that no consensus solution was likely to emerge.

63. Judging from the fact that at the thirty third session of the General Assembly only 18 delegations had spoken on the substance of the item and only 19 States had sent in comments on the subject, the representative of Brazil said that comparing those figures with the number of Member States one might come to the conclusion that in the international community as a whole "there was no strong feeling in favour of reviving efforts towards the completion and adoption of a code of offences against the peace and security of mankind" (A/C.6/35/SR.10, para. 25). Clearly the issue under discussion "was not considered urgent" since only 19 Member States had submitted their views and several of those had expressed doubts, said the representative of Italy (A/C.6/35/SR.13, para. 7).

64. Those doubts were voiced with reference to various reasons. The delegation of the Federal Republic of Germany expressed "serious doubts about the usefulness of resuming discussion" of the draft Code submitted in 1954 (A/C.6/35/SR.12, para. 31). It was doubtful, in the United States delegation's opinion, "whether significant progress could be made on the item at the present time" (A/C.6/35/SR.12, para. 39). The Government of Canada in its comments (see A/35/210/Add.2, para. 7) said that it was not convinced that "the necessary conditions for successful development of a draft Code against the peace and security of mankind exist under the present circumstances". The representative of France, while acknowledging "the importance of the draft Code of Offences against the peace and Security of Mankind" had "some doubts regarding the possibility of reaching a consensus on the matter" (A/C.6/35/SR.15, para. 9). The United Kingdom in its comments (see A/35/210/Add.1, para. 1) remained "sceptical about the opportunities of reverting to this question now". The representative of the Netherlands said that the statements made so far had not allayed his delegation's doubts about "the wisdom of including" the item on the draft code in the agenda of the General Assembly once again after an interval of 24 years (A/C.6/33/SR.64, para. 12).

65. The representative of Italy, recalling that his delegation had abstained in the vote on General Assembly resolution 33/97 because such an initiative "however important", would be difficult to carry out in the prevailing international situation, said that his delegation still thought "it impracticable to formulate a draft code of offences" (A/C.6/35/SR.13, para. 5). Canada in its comments (see A/35/210/Add.2, para. 7) stated that it did not consider "further consideration of the draft code by the General Assembly opportune at that time". And the representative of the Netherlands also said that his Government deemed further legislative activities on the subject "not necessary or opportune at the present time" (A/C.6/35/SR.11, para. 48).

66. Reverting to the question of whether it was urgent to elaborate a code of offences against the peace and security of mankind, the representative of the Netherlands said that although the lack of written rules had been felt shortly after the Second World War that was not necessarily the case in 1980. "Should the necessity of trying war criminals arise again, he said, no one would be able to maintain that there was no precedent or that new ex post facto law would have to be created to prosecute those criminals. The Charters and the proceedings of the Nürnberg and Tokyo Tribunals presented ample legal basis for such prosecutions". Adequate precedents existed for the punishment of the most serious international crimes, he went on to say, and other crimes could be dealt with through extradition agreements (A/C.6/35/SR.11, paras. 46, 43). The representative of Japan also "saw no urgency" in pursuing the item further under the present state of development of international law, and furthermore observed that a code of offences might be abused, by providing a convenient excuse for the victors in an armed conflict to impose a unilateral "justice" against the vanquished (A/C.6/35/SR.15, para. 22).

67. The observation was further made that, because of the emergence in the last three decades of numerous international instruments relevant to the field under consideration, a code of the type envisaged would serve, in the words of the representative of Italy, "no purpose" (A/C.6/35/SR.13, para. 5).

68. The representative of Japan noted that a number of conventions and other legal instruments had been adopted in recent years "concerning the suppression of offences envisaged for inclusion in the draft Code" (A/C.6/35/SR.15, para. 22). In the opinion of the representative of the United States the international legal instruments which had been elaborated since the drafting of the code, and which regulated matters referred to in the code, "reduced the urgency of the issue" (A/C.6/35/SR.12, para. 41). The existence of such instruments was "more an argument against renewed consideration of the draft code", said the representative of the Netherlands, adding that he failed to see what advantage would be gained from duplication. "The repetition of principles did not make them more effective" he said. "The difficulties posed by the item under discussion were essentially the same as those which existed in relation to the principle of non-use of force in international relations. The world would already be a far better place if States lived up to their existing obligations under international law, without the need to add new instruments which might even serve as a pretext for not honouring obligations under existing instruments" (A/C.6/33/SR.64, paras. 12 and 13). The United Kingdom in its comments (see A/35/210/Add.1, para. 2) suggested that the need for a code of the nature proposed "has been obviated by other instruments already adopted". With reference to such instruments, including the Tokyo, Hague and Montreal conventions on unlawful interference with civil aviation, the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, the Protocols to the Geneva Conventions of 1949, and the International Convention against the Taking of Hostages, which, in his view, recognized certain specific acts as punishable offences and were probably already increasing the scope of universally recognized offences affecting the peace and security of mankind, the representative of Canada wondered whether it would be useful to list in a new instrument which lacked implementation mechanisms "acts already universally recognized as offences and referred to not only in international instruments, but also in national legislation" (A/C.6/35/SR.11, paras. 7 and 8).

69. For some States, the very multiplication in the last three decades of international instruments having a bearing on international criminal law made the elaboration of a general code of the type envisaged an even more difficult task. The representative of Israel did not see how "a mass of disparate legal instruments, resolutions of various international organizations, draft articles in varying stages of development and conventions which were either in force or no longer in force could be fused into a single Draft Code of Offences against the Peace and Security of Mankind (A/C.6/35/SR.14, para. 35). For the representative of New Zealand, for whom the elaboration of the Code of Offences "was a delicate matter", a practical problem lay "in seeking to consolidate all matters under the heading of criminal responsibility in a single treaty instrument", and he asked whether it might be possible to consider together all those cases in which the political element was small enough that real solidarity could be achieved "across the board" in the United Nations (A/C.6/35/SR.11, para. 32).

70. Resumption of the work on the draft code was even seen by some States as potentially prejudicial to the international instruments in question.

71. The representative of Italy, noting that penal provisions had been included in several recent international instruments including the 1977 Additional Protocols to the 1949 Geneva Conventions, and the International Convention against the Taking of Hostages, said that "the effectiveness of those Conventions could be damaged if a general code were superimposed upon them" (A/C.6/35/SR.13, para. 8). More specifically, the representative of New Zealand elaborated on the impact which resumption of the work on the draft code could have in relation to the Additional Protocols to the 1949 Geneva Conventions, saying that he "wondered whether it would be wise to reopen the debate on the major achievement of the recent Geneva Diplomatic Conference in adding to the codification of grave breaches under the Geneva Conventions. The protocols to those Conventions would be ratified, and the boundaries between what was purely conventional and what might be regarded as a statement of customary law would gradually shift. However, it might not be advantageous to seek to incorporate the substance of what had been achieved at the Geneva Conference in a competing instrument". It would be a mistake he felt "to reopen discussion of what had been so carefully agreed after lengthy debate" (A/C.6/35/SR.11, para. 32).

72. The representative of the United States raised a similar question in relation to the international rules applied at the Nürnberg and Tokyo Trials:

> "Some of the comments made in the Sixth Committee seemed to suggest that the laws applied in the Nürnberg and Tokyo Tribunals contained ex post facto elements. That was not the case, since the charters of the two Tribunals had been very carefully drafted to include only acts the illegality of which could not be doubted; and the acts of the persons prosecuted had related exclusively to the war. Moreover the records of the Tribunals proved beyond a doubt that the persons who had committed such acts had been aware of their illegality. It would be sadly ironic if consideration of the draft Code were to result in a questioning of the validity of the precedents set at Tokyo and Nürnberg." (A/C.6/35/SR.12, para. 42)

It was important not to denigrate "the enormous encouragement" that the draft Code had given mankind in the period following the Second World War, said the representative of New Zealand (A/C.6/35/SR.11, para. 31). It should be remembered, he went on, that the entire doctrine in the field of human rights was partly a result of the notion that individuals could also be held responsible under the law of nations.

73. Another argument based on the present stage of development of international law which was adduced against resuming, at this stage, consideration of the 1954 draft Code, related to the work being currently carried out by the International Law Commission in the field of State responsibility and to the need to await the results of this work before embarking on a review of the draft code.

74. The representative of the United States was of the view that since the International Law Commission was currently considering the draft articles on State responsibility "it would not be wise to resume work on the draft Code, at least until the Commission had made considerable progress in the present tasks" (A/C.6/35/SR.12, para. 41). He also recalled that, when the Commission had considered article 19 of the draft articles on State responsibility relating to international crimes and international delicts, the Special Rapporteur pointed out that it would be inappropriate to deal with that question without first having accepted judicial machinery for determining in what cases the article should apply. "If it was true in the case of States, it was even more true in the case of accused individuals" he said (A/C.6/33/SR.54, para. 16). The representative of New Zealand observed that article 19 of the Commission's draft articles on State responsibility dealt with international crimes "but did not even purport to provide a definition of such crimes; it merely offered a framework in which such crimes would fall. A great deal therefore remained to be done before a substantive statement could be prepared on what actions represented international crimes". In his delegation's opinion, it was extremely important that, when the subject of individual criminal responsibility was discussed, careful consideration should be given to what had already been achieved in the case of States and to the importance of the draft articles on State responsibility (A/C.6/35/SR.11, para. 35). In its draft articles on State responsibility the Commission, said the representative of Israel, had included many ideas which should have "a direct bearing on the draft code". In his view, certain provisions of that draft should be re-examined and co-ordinated with the provisions which the Commission recommended for many articles in its draft on State responsibility (A/C.6/35/SR.14, para. 35).

75. In the light of article 19 of the Commission's draft articles on State responsibility and UNESCO'S comments on the draft Code (see A/35/210, paras. 1-23) the Canadian delegation felt that "a satisfactory discussion of the criminal responsibility of States would be possible only after the Commission had drafted supplementary provisions on international legal mechanisms or other settlement mechanisms related to international offences. In the absence of such provisions any work on the drafting of a Code would be inconclusive, since it would leave unanswered such questions as the relationship between an act by an individual acting on behalf of a State or of a State organ and the criminal responsibility of the State itself, and the way in which the responsibility of the State could be determined" (A/C.6/35/SR.11, para. 10).

76. Another argument which was presented by some States objecting to the resumption of the substantive work on the proposed code was to the effect that no definition of aggression suitable for a code of offences against the peace and security of mankind had as yet been in existence.

77. Recalling that the work on the draft code had been deferred in 1954 pending the elaboration of a definition of aggression, the representative of the Netherlands stated that the definition of aggression adopted by the General Assembly in 1974, in resolution 3314 (XXIX), "did not help in elaborating a code of conduct, precisely because it was not sufficiently exact to be used in the framework of a code laying

down individual responsibilities" (A/C.6/35/SR.11, para 45). The representative of the United States was of the view that a definition of aggression suited to the purposes of the code had not yet been formulated:

> "The definition contained in resolution 3314 (XXIX) was not in any sense a definition of an offence. As was clear from paragraph 4 of the resolution, the General Assembly recommended to the Security Council that it should take account of that Definition 'as guidance' in determining, in accordance with Article 39 of the Charter, the existence of an act of aggression; but the Definition was not adequate to establish international criminal responsibility in individual cases. A clear definition was still needed because ... it was not enough to label an act as aggression; the term should be defined in advance. Such a delicate problem as the punishment of a person who failed to disobey the orders of his own Government could not be settled by involving a procedural guideline which had been recommended to the Security Council for use in acting in accordance with Article 39 of the Charter." (A/C.6/35/SR.12, para. 39)

The 1974 definition, in his view, constituted a contribution to the work of the Security Council in the analysis of the relevant problems and "was, by its nature, not suitable for application in the very different sphere of individual criminal responsibility" (A/C.6/33/SR.64, para. 15). No definition suited to the purposes of the code had yet been formulated", he said: the barrier of the absence of a definition suitable to the purposes of a code of an essentially criminal character had not been removed and therefore "the rationale for the earlier deferral still stands". (See A/35/210/Add.1, paras. 4-5).

78. Still another argument which was adduced by the States objecting to resumption of the work on the draft Code was that while some of the offences proposed for inclusion constituted problems which the international community had an obligation to address, the proposed code might not offer the most adequate framework for their treatment at the present stage of development of international relations. Thus, referring to "massive, flagrant and systematic violations of human rights", the representative of the Federal Republic of Germany stated that

> "so long as the world-wide discussion on the protection of human rights - and especially on the interpretation and practical implementation by States of existing international obligations - did not yield generally acceptable results, it would seem advisable to proceed first with the work of defining and implementing such obligations, particularly through the greater institutionalization of the protection of human rights. Only then could the circumstances that constituted a criminal offence under international law be defined." (A/C.6/35/SR.12, para. 34)

79. Canada pointed out that some of the problems which had been mentioned in support of their position by States favouring resumption of the work on the draft code should be evoked 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". (See A/35/210/Add.2, para. 6).

80. A further argument which was against the resumption of the work on the proposed code was to the effect that if the task was to elaborate "a meaningful code" as the representative of Brazil put it, controversial issues would have to be tackled on which general agreement was unlikely (A/C.6/35/SR.10, para. 27).

81. The representative of the United States said that the item on the draft code "posed complex and delicate problems which called for considerable caution" (A/C.6/35/SR.12, para. 38). In the opinion of the representative of Brazil the problems involved were so vast, so delicate and so difficult that his delegation was not at all convinced that it would be feasible, at the present stage in the process of codification of international law, to arrive at positive results. He believed that further attempts now to revise and complete the 1954 draft "would lead nowhere" (A/C.6/35/SR.10, para. 27).

82. In the view of the representative of Canada "it would be unrealistic to expect solutions to such questions as the list of the acts in question and a precise definition of them, the close link between the Code and its implementation mechanisms, including an international criminal jurisdiction, and the inherent difficulties of applying the Code to acts of States whatever the implementation mechanisms selected and whatever the links between individual responsibility and State responsibility" (A/C.6/35/SR.11, para 12).

83. Among the controversial issues which the elaboration of the proposed code would give rise to, the question of the scope of the code was also highlighted.

84. With respect to acts to be listed in the code and definitions thereof the representative of the United Kingdom said that the comments submitted by his Government emphasized the need for clarifying the concept of "offences against the peace and security of mankind". The use of force in inter-State relations was an important criterion in defining the concept of an offence against the peace and security of mankind, and it was important to adhere to that concept. Only the most serious breaches of international law should be categorized as international crimes. Many of the suggestions which had been advanced for listing new offences in the Code might well fail to satisfy that criterion, since they had little or nothing to do with the use of force in inter-State relations (A/C.6/35/SR.14, paras. 63-64).

85. Italy noted that the replies received and comments made so far indicated "a profound difference of opinion among States" regarding the additions and revisions which should be made to the draft prepared in 1954. Some States wished to extend its provisions to include apartheid and violations of the principle of self-determination of peoples. others wished to take into account the international instruments adopted in the field of disarmament; and yet others wished to include developments in the field of human rights and peaceful relations between States. It seemed impossible to derive, from such disparate references, a unified body of legal measures which could be incorporated into general international law (A/C.6/35/SR.13, para. 7).

86. Canada pointed out another difficulty in determining the scope of the proposed code and in establishing definitions of offences. If the draft code referred to other acts that were not generally considered offences against the peace and security of mankind or acts which could be defined in different ways, there was the danger of incomplete or ambiguous phraseology; no "new" offence to peace and security could be added to the draft Code in the absence of a broad consensus throughout the international community. The repetition of general obligations or principles that were already recognized "could lead to a legal order that existed only on paper and there was no guarantee that such an order would be generally acceptable", said the representative of Canada (A/C.6/35/SR.11, para. 8) In the words of the representative of the Netherlands, the Sixth Committee should bear in mind the danger of creating an international legal order that would exist only on paper. "The Committee should see to it that such development did not move too far ahead of present-day reality" (A/C.6/33/SR.64, para. 12).

87. Still another question which was viewed as controversial was that of the establishment of the implementation of the proposed Code. The representative of Japan felt that "one essential precondition" was to establish a system for implementing the code at the international level, such as an international criminal court, if the community of nations was to punish directly offenders who had committed acts defined by the code of offences against peace and security. "Under present circumstances, it could not be expected that such conditions could be fulfilled in the foreseeable future", he said (A/C.6/35/SR.15, paras. 21-22). "If acts of aggression, racism, colonialism, apartheid and violations in the field of disarmament were declared to be international crimes without clearly indicating in what cases and under what circumstances individuals would be internationally responsible, such a declaration would not have any practical effect", said the representative of the Netherlands. Even if it should prove possible narrowly to define the international crimes, so that the code could be used for criminal proceedings, he went on, "one might question the usefulness of such a code if there was no mechanism for its implementation." In his view a code containing only a number of definitions of criminal acts "would not serve a meaningful purpose" (A/C.6/35/SR.11, paras. 45, 47), and "the necessary consensus for including an effective implementation mechanism in the code would be lacking for some time" (see A/35/210, paras. 2-3). Noting that the draft Code left unanswered many questions concerning the questions of jurisdiction, extradition, evidence and penalties, the representative of the United Kingdom observed "The difficulties were great, and it might be asked whether international law and international relations would be improved by drawing up an instrument which merely defined certain offences without tackling the other component elements which formed part of any viable system of criminal law and justice" (A/C.6/35/SR.14, para. 65).

88. Various other issues related to the definition of the concept of offence against the peace and security of mankind, the implementation of the Code, the determination of penalties and the attribution of responsibility were viewed as likely to give rise to differences of opinion by Brazil, (A/C.6/35/SR.10, para. 26) Canada, (see A/35/210/Add.2, para. 1) France, (A/C.6/35/SR.15, para. 10) Japan, (A/C.6/35/SR.15, para. 21) Israel, (A/C.6/35/SR.14, para. 35) Italy, (A/C.6/35/SR.13, para. 5) the Netherlands, (see A/35/210, para. 2) the Federal

Republic of Germany, (A/C.6/35/SR.12, para. 31) the United Kingdom (A/C.6/35/SR.14, para. 63). Views expressed in relation to the above-mentioned issues are reflected in paragraphs 218-227, 298-300 and 309-365 below.

89. In view of the problems involved and other circumstances referred to above and because the consensus, which was an essential condition of the effectiveness of the envisaged instrument, seemed unlikely to emerge on the issues, it was felt by the States referred to above that "the time had not yet come to devote a great deal of time and energy to an attempt to solve the technical, legal and political problems presented by the draft Code," as the representative of France put it (A/C.6/35/SR.15, para. 9). It was important to secure the co-operation of all Member States especially when dealing with the question of the draft Code of offences against the peace and security of mankind, said the representative of Japan (A/C.6/35/SR.15, para. 21).

90. Still some other States, while supporting in principle, or at least not objecting to the idea of resuming work on a Code of offences against the peace and security of mankind expressed the view that the decision in this respect should not be taken hastily and favoured a cautious and flexible approach and further study of the matter.

91. The representative of Kuwait stated that the problem of a code "was one of the most complex encountered in the process of codification and progressive development of international law". The subject "raised many questions" and he for the time being "did not believe that the draft had reached a stage where it could profitably be considered by the Sixth Committee" (A/C.6/35/SR.10, paras. 18-19) The representative of Mexico said that his delegation had been fully aware when earlier drawing attention to the item which had been actually forgotten for more than 20 years but which the General Assembly had always considered "to be a fundamental one", "of the difficulties it raised". Study of the topic had been suspended in 1954 not because of the lack of a definition of aggression "but because of fear that it might create friction at the height of the cold war". While it was appropriate and expedient that the General Assembly should take up consideration of the item, he did not believe that "it should do so immediately", since it was important to ensure that the resulting code would be a viable instrument", (A/C.6/33/SR.63, para. 11) and he "doubted whether any positive results would be achieved in the short term" (A/C.6/35/SR.12, para. 28).

92. Also saying that the topic was "a fundamental and universally accepted one" notwithstanding many intricate problems which had arisen during the discussion of it, the representative of Colombia stated that his delegation hoped to continue collaborating in the difficult legal task before the Committee "making haste slowly in order to avoid producing legal phraseology which would be incapable of implementation" (A/C.6/35/SR.15, para. 37).

93. The representative of Iraq observing that it was important to establish rules of international criminal jurisdiction which would provide a unified approach to the question of incrimination at the international level stated that comments of Governments and statements in the Sixth Committee, showed that there were great

differences of opinion on the matter, which "were understandable inasmuch as they were related to the different ideologies of States and their different economic, political and social situations" (A/C.6/35/SR.15, para. 17).

94. Among the complex issues raised by the topic, the representative of Iraq highlighted the problem of defining the acts to be considered as offences under the Code and the question of the authority which would be empowered to prosecute offenders and of the mechanism that would be set up for execution of judgment taking into account criminal jurisdiction, non-proscription, responsibility and "all related policies and interests of States" (A/C.6/35/SR.15, para. 18). The representative of Mexico also dealt with the problem of the implementation of the Code (A/C.6/35/SR.12, para. 29) and the representative of Colombia placed some emphasis on the issue of the attribution of responsibility (A/C.6/35/SR.15, para. 38) as did also the representative of Kuwait who moreover discussed the question of an international judicial machinery (A/C.6/35/SR.10, para. 18). The representatives in question also made comments on the 1954 draft Code. Their views on the above matters are reflected in sub-section B of section III and sections V and VI below.

95. There were also States which while not raising objections to the resumption of work on the draft Code were of the view that the matter should be subjected to further study, and the draft Code, to revision.

96. The representative of Argentina said that her delegation was ready to support "any initiative leading to scientific, but at the same time specific, study of the question". The international community, she observed, had for some years "felt the need to define such offences as the taking of hostages, crimes against internationally protected persons, terrorism and aggression". The draft Code had been prepared at a time when few international instruments were in existence or were being drawn up. Her delegation saw little benefit in producing a list of crimes of the kind in the draft Code, which in any event largely constituted duplication of efforts. Moreover, in the view of the Argentina delegation, the subject of the draft Code "was closely linked to the question of State responsibility in general, for both wrongful and lawful acts, and to criminal responsibility of States in particular" (A/C.6/35/SR.10, paras. 20 and 21).

97. The draft Code, said the representative of Chile, although it might have reflected "the needs of the international community in 1954", no longer seemed adequate in view of the subsequent development of international law. The draft Code must therefore be revised; at the same time, an effort must be made to avoid the preparation of over-lapping legal instruments concerning the same crimes. In the opinion of the representative of Chile, in-depth discussion of the draft Code by the Sixth Committee "at the present stage might well prove to be sterile" (A/C.6/35/SR.11, para. 41).

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

A. Comments on the draft as a whole

98. Many States, particularly those which were favouring the resumption of substantive work on the topic, made comments on the draft Code of Offences against the Peace and Security of Mankind as it was prepared by the International Law Commission in 1954. Those comments were made on the draft as a whole, on its particular provisions as well as on the question of its relevance to further United Nations work on the topic.

99. "The draft Code", said the representative of Nigeria, "must now be seen in the light of developments over the past 26 years"; and it is against the background of that development that almost all the comments were made on the draft (A/C.6/35/SR.15, para. 32).

100. The representative of Algeria stated that the draft Code of Offences against the Peace and Security of Mankind "was the outcome of a praiseworthy effort by the International Law Commission" (A/C.6/35/SR.14, para. 1). The representative of Zaire welcomed the fact that the draft Code qualified certain actions as offences in order to protect mankind without distinction as to race or to religious or philosophical beliefs. He also welcomed the fact that the draft Code condemned acts of aggression and confirmed the responsibility of States which directly or indirectly made their territory available for the organization of activities directed against other States (A/C.6/33/SR.64, paras. 31 and 32).

101. In the opinion of the representative of Guyana, the International Law Commission in its description of the acts proscribed in the draft Code "had in 1954 displayed a remarkable prescience". The relevance to the realities of the world of 1954 - and to the realities of today's world - of the organization or encouragement of the organization, by the authorities of a State of armed bands within its territory for incursions into the territory of another State, or the acquiescence of that State in the use of its territory by armed bands for that purpose, was not lost on anyone who was aware of the human and material depredations of mercenaries or, as they had recently described themselves, soldiers of fortune. Of similar purpose was the undertaking or encouragement by the authorities or the toleration by the authorities of a State of organized activities calculated to carry out terrorist acts in another State. Referring to the fears expressed by some small developing countries in recent times of attempts by more powerful neighbours, near or distant, to cause disruption within their borders by means other than the use of force which had led to the frequent use in recent times of the term "destabilization", the representative of Guyana said that the reference in the draft Code to intervention by the authorities of a State in the internal or external affairs of another State by means of coercive measures of an economic or political character in order to force its will and thereby obtain advantages of any kind "must be seen as being relevant" (A/C.6/35/SR.15, paras. 12 and 13).

102. Comments were made upon correlation between the 1954 draft Code and the principles set forth in the Charter and the Judgement of the Nürnberg Tribunal.

103. Some of the States observed that the draft Code took into account those principles. In preparing the draft Code, said the representative of Sudan, the International Law Commission had based its work primarily on the Charter of the International Military Tribunal of Nürnberg, which at that time had been the principal document and was "still a source of international criminal legislation" (A/C.6/35/SR.14, para. 39). The draft was prepared "against the background of the Nüremberg and Tokyo trials" (A/C.6/35/SR.12, para. 17), said the representative of Pakistan. In the words of the representative of Hungary the draft took into account the principles of the Charter and Judgement of the Nürnberg Tribunal (A/C.6/35/SR.12, para. 22). The draft Code "was correctly based on the concept of individual criminal responsibility for crimes against the peace and security of mankind, as affirmed in the Charter of the Nürnberg Tribunal", said the representative of Czechoslovakia (A/C.6/35/SR.15, para. 40).

104. Some other States were of a different view. The 1954 draft Code "did not sufficiently reflect the principles of the International Tribunal of Nürnberg", said the representative of Afghanistan (A/C.6/35/SR.13, para. 36). The representative of the Byelorussian SSR held that "The Code of Offences against the Peace and Security of Mankind should ... be based on the generally recognized principles of international law set out in the Charter and Judgement of the Nürnberg International Military Tribunal, in accordance with General Assembly resolution 177 (II) of 21 November 1947 and other international legal instruments currently in force. Those principles are not adequately taken into account in the draft Code, which the International Law Commission submitted in 1951 and 1954" (A/C.6/35/SR.12, para. 7). In the view of the German Democratic Republic, its comments stated, "The Nürnberg principles are still inadequately reflected in /the draft Code/". It described those principles as

> "... the point of departure and the core of all efforts to achieve a comprehensive codification in international law of the legal norms relating to the prosecution and punishment of international crimes directed against peace and harmony among nations. They embody the principle that the sovereignty of any State cannot extend to the protection of individuals who, mostly in an official capacity, have committed crimes, like war crimes or crimes against humanity, on behalf of that State or in the name of others. On the contrary, such persons shall not escape universal prosecution and punishment to which no statutory limitation shall apply." (See A/35/210/Add.1, paras. 3 and 4.)

The Ukrainian SSR furthermore observed (see A/35/210/Add.2/Corr.1, para. 1) that the principles embodied in the Charter and Judgements of the Nürnberg Tribunal

> "especially the provision to the effect that offences against peace, military offences and crimes against humanity should be termed criminal offences of an international nature for which individual criminal responsibility is established, have become generally accepted principles of international law. They were further developed in many international legal instruments and became the basis of some of them."

105. Several other inadequacies of the 1954 draft Code were highlighted both by those States which favoured the resumption of work on the topic and those States which did not, as well as by States which were in favour of the approach referred to in paragraphs 90 to 97 of the present analytical paper.

106. Many States pointed out that the Code was prepared in 1954 and therefore it could not be considered as fully reflecting the present-day realities and that regardless of its being "a quarter of a century old" as the representative of Bulgaria put it (A/C.6/33/SR.63, para. 17) it had at the outset certain shortcomings.

107. The representative of Mongolia stated that "although the draft Code covered a number of pertinent acts, it could not fully cover all cases of offences against international peace and security and other crimes against mankind. During the last 25 years, many specific norms of international law, in that particular field had emerged, some of which further concretized the provisions of the 1954 draft" (A/C.6/35/SR.11, para. 15).

108. The representative of Sudan said that many important changes had occurred in the development of that branch of international law (A/C.6/35/SR.14, para. 39); and the representative of Afghanistan held that the draft Code "did not take account of the significant changes in international relations which had taken place since its elaboration" (A/C.6/35/SR.13, para. 36) - the point which was also made by the representative of Lebanon with reference to developments that "had occurred in international criminal law since 1954" (A/C.6/35/SR.10, para. 12). "Changes in the concept of international offences were inevitable with the passage of time", said the representative of Madagascar (A/C.6/35/SR.10, para. 16).

109. The representative of Trinidad and Tobago stated that it was acknowledged that the existing draft was "sadly deficient in certain respects" (A/C.6/35/SR.14, para. 11). "In view of the fact that it had been prepared in 1954, the draft Code might not meet current needs", said the representative of the Philippines (A/C.6/35/SR.14, para. 9). The representative of the Libyan Arab Jamahiriya said that the draft Code was not suited to the objectives he had mentioned in his statement (A/C.6/35/SR.14, para. 23).

110. Stating that "there was much in the draft Code that was still valid and should be taken into account in adapting the Code to current circumstances", the representative of Tunisia said that other parts however were "so vague as to be open to interpretations that were incompatible with the fact that the text dealt with criminal matters". Furthermore, most of the replies from Governments, mentioned certain "obvious gaps in the draft", he stated (A/C.6/35/SR.12, paras. 1-2). The work of the International Law Commission, felt the representative of Madagascar, which had resulted in the draft Code, "showed some omissions more than 30 years later and seemed definitely out of date on some points (A/C.6/35/SR.10, para. 16). The representative of Lebanon observed that the 1954 draft "was confined to offences having a political element and did not cover less serious international offences, such as the international traffic in narcotics, counterfeiting and other similar offences which were subject of international conventions dating back quite a long time" (A/C.6/35/SR.10, para. 12).

111. References were made to some other gaps in the draft Code. "While the offences were enumerated, the punishments were omitted in the 1954 draft", said the representative of India (A/C.6/35/SR.15, para. 1). The representative of Pakistan, who regretted his "inability to endorse the draft Code in its present form", observed that it "provided neither the forum before which the complaint was to be made nor the forum of trail and punishment" (A/C.6/35/SR.12, para. 19). Algeria (A/C.6/35/SR.14, para. 4) also singled out the absence of provisions on penalties. Venezuela (A/C.6/35/SR.11, para. 52), Algeria (A/C.6/35/SR.14, para. 4), Pakistan (A/C.6/35/SR.12, para. 16), Qatar (see A/36/416, para. 1), and the Council of Europe (see A/36/416, para. 4) stressed the lack of implementation provisions, the Libyan Arab Jamahiriya (A/C.6/35/SR.14, para. 23) noted the absence of references to the principle of the non-application of statutory limitations and Madagascar (A/C.6/35/SR.10, para. 16), Algeria (A/C.6/35/SR.14, para. 4) and Venezuela (A/C.6/35/SR.11, para. 52) emphasized the silence kept by the draft Code on the question of the attribution of responsibility.

112. Among what Burundi described as "the limitations of the existing draft Code" (A/C.6/35/SR.15, para. 31), Lebanon (A/C.6/35/SR.10, para. 12), the Libyan Arab Jamahiriya (A/C.6/35/SR.14, para. 23), Democratic Yemen (A/C.6/35/SR.14, para. 43), Tunisia (A/C.6/35/SR.12, para. 2) and the Council of Europe (see A/36/416, paras. 2 and 7 (b)) highlighted the incompleteness of the listing of offences in the Code. The representatives of Tunisia (A/C.6/35/SR.12, para. 3), Guyana (A/C.6/35/SR.15, para. 14), Madagascar (A/C.6/35/SR.10, para. 16) and the Council of Europe (see A/36/416, para. 7 (a)) mentioned the imprecision of the definitions of offences. In more detail these comments which were made in those respects are reflected in paragraphs 24a-241, 296-300 and chapters V and VI of the present paper.

113. In the words of the representative of Bulgaria, the International Law Commission draft, "had some shortcomings which, in the view of his delegation, could be avoided at the stage since reached in the development of international relations" (A/C.6/33/SR.63, para. 17).

114. Still other States took an even more critical view of the draft, which the representative of Uruguay described as "vague and incomplete" (A/C.6/35/SR.12, para. 20), the representative of Chile, as amounting to "nothing but a statement of intentions" (A/C.6/35/SR.11, para. 41) and the representative of Mexico as "largely outdated especially in the light of modern international law" (A/C.6/35/SR.12, para. 29). The representative of Senegal was not satisfied with the draft and found it in need to be "improved and radically revised" (A/C.6/35/SR.12, para. 11). The representative of Iraq described it as representing "a viewpoint that was based on limited experience and in an international situation that no longer existed" (A/C.6/35/SR.15, para. 17) and the representative of Guyana, as one which was "out of date and was inadequate from the legal point of view" (A/C.6/33/SR.63, para. 22).

115. The observer from PLO stated that the draft "failed to reflect current realities. ... The existing draft made no mention of the crimes which denied peoples - especially in Namibia, southern Africa and Palestine - the right of self-determination" (A/C.6/35/SR.13, para. 22). In the opinion of the

representative of Iraq, the goal in preparing the draft Code should be to provide for a concept of the peace and security of mankind that would not be rigid. The draft Code prepared in 1954 "did not meet that requirement" (A/C.6/35/SR.15, para. 17).

116. Botswana assessed the draft in the following terms:

> "The draft does not appear sufficiently to attempt to reconcile idealism with reality. It could perhaps be regarded as an impressive document if it were an academic thesis on the subject. But as a document to deal with practical day to day problems it seems to be very unrealistic. Moreover it appears to have ignored all the problems that have been encountered in the progressive development of international law from the League of Nations period through the era of the Kellogg-Briand Pact of 1928 to the experience of the United Nations Charter." (See A/35/210, para. 1.)

117. In the opinion of the representative of Mexico:

> "The draft code submitted in 1954 by ILC was incompatible with contemporary realities 26 years later, notably in the case of most of the provisions contained in article 2. Specifically, the draft code made no reference to the struggle against colonialism whereas the United Nations had, ever since the Declaration on the Granting of Independence to Colonial Countries and Peoples, considered that the struggle of peoples for freedom took precedence over other international norms. He reminded the Committee of the decree on war to the death issued by Bolívar in 1813 during the decolonization of Latin America, which might still be valid for groups fighting for independence. It might well be that what was taking place was the subordination of traditional international law, which he held to be individualist, to values considered more important in the long run, and if that was indeed the case, the Committee should take the greatest care in considering the draft document before it." (A/C.6/33/SR.63, para. 11)

In particular paragraphs 2, 4, 5, 6, 10, 11 and 12 of article 12 seemed "irrelevant in the contemporary context", he said (A/C.6/33/SR.63, para. 12).

118. The lack of provisions concerning implementation mechanisms was viewed as a particularly serious shortcoming by Chile (see A/36/416, para. 7) as well as by the representatives of Iraq (A/C.6/35/SR.15, para. 17) and Uruguay (A/C.6/35/SR.13, para. 20) which furthermore referred to the fact that the draft "did not provide for the imposition of penalties". The representative of Iraq added that the draft "was ambiguous in many of its provisions" (A/C.6/35/SR.15, para. 17). The more detailed views on these points are reflected in paragraphs 298-300 and chapter VI of the present paper.

119. Among the States which did not favour the resumption of the work on the draft Code at this stage, some also referred to a number of inadequacies of the draft. While stressing that, in the words of the Netherlands, "the draft Code ... reflected a number of important developments in international law", (see A/35/210, para. 2) and while acknowledging, as did Canada, "the useful work carried out by the International Law Commission in preparing the draft Code ... /which/ 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", they pointed out that the draft left many questions unanswered. (See A/35/210/Add.2, para. 1.) Thus the representative of the Federal Republic of Germany drew attention to the vagueness of numerous provisions which for reasons of judicial safeguards ... would require much more definite formulation before they could serve as a basis for prosecution against individuals (A/C.6/35/SR.12, para. 32). The representative of the United Kingdom stated that "it was far from satisfied with the clarity and precision of the definitions of the draft Code", adding that it was a common feature of the criminal law of practically all States in the world that each offence had to be very precisely defined, a guarantee which applied to Heads of States and Government in the same way as to ordinary citizens (A/C.6/35/SR.14, para. 64).

120. The representative of the Federal Republic of Germany viewed as another shortcoming of the draft "the lack of an appropriate international body for implementing possible future penal provisions" (A/C.6/35/SR.12, para. 36) and the United Kingdom noted the absence in the draft of implementation provisions concerning "jurisdiction, extradition, evidence and penalties (A/C.6/35/SR.14, para. 65). The absence of provisions on the types of penalties to be applied was viewed by the representative of the Federal Republic of Germany as "clearly inconsistent with article 15 of the International Covenant on Civil and Political Rights. Under international criminal law, the principle of nullum crimen, nulla poena sine lege was an indispensable element of legal protection which any defendant could invoke", he said (A/C.6/35/SR.12, para. 35).

121. The representative of Israel was also critical of the draft Code. He recalled that when the Sixth Committee had last considered the draft Code during the ninth session, his delegation had explained its position with respect to both the structure of the draft and many of its provisions. "The criticisms which it had expressed at that time were still relevant and should be fully taken into consideration" (A/C.6/35/SR.14, para. 54).

122. The States in question considering, in the words of the representative of the United Kingdom, that there were "prior issues of great importance", refrained from offering comments of a more definite character on the ILC draft. The United Kingdom, however, indicated that should any question ultimately arise of revising the draft Code it might have its own proposals to make for the addition of offences such as hijacking, the taking of hostages, crimes against diplomatic and consular agents and other forms of international terrorism, and also the harbouring of the perpetrators of such acts which had "proved, in the intervening period, to constitute serious threats to the peace and security of mankind as well as, in many cases, harsh and unwarranted interference with the rights of innocent persons" (see A/35/210/Add.1, para. 3).

123. It was furthermore recalled that at the time of its adoption the draft had not received general support and that the International Law Commission was not able to solve certain problems. In this connexion, the representative of Israel stated that the consideration of the Commission's report of 1954 and the discussion of that agenda item showed that four of the 15 members of the Commission had expressed grave reservations with regard to the draft text; "it was difficult to understand how work

could be undertaken on the basis of a text which had given rise to so many serious reservations" (A/C.6/35/SR.14, para. 36). And the representative of Brazil recalled that:

> "The International Law Commission had looked deeply into the problems /involved/ but had been unable to give an answer and what it had presented as a draft Code after a great deal of work amounted to little more than a list of the acts which should be considered offences against the peace and security of mankind. The Commission had drawn up and then discarded articles dealing with extradition, with the settlement of disputes relating to the interpretation and application of the Code and with the question of jurisdiction. On the question of punishment the Commission had not only made no progress in 1954 but had retreated by deleting article 5, approved in 1951, which had stated that the penalty for any offence defined in the Code would be determined by the tribunal exercising jurisdiction over the individuals accused." (A/C.6/35/SR.10, para. 26)

B. Comments on the structure and on particular provisions of the draft

Structure of the draft

124. The representative of Madagascar (A/C.6/35/SR.10, para. 16) stated that the format would be clearer if the sections, articles or paragraphs dealing with the various groups, categories and types of offence were given headings and subheadings. The representative of Israel (see para. 121 above), speaking at the ninth session of the General Assembly, stressed that:

> "it would be logical to divide the draft Code into two sections: the first, dealing with the principle of responsibility, and would include articles 1, 2 (13), 3 and 4 of the existing draft; the second would include the list of acts constituting crimes against the peace and security of humanity that appeared in paragraphs 1 to 12 inclusive of the present article 2." 4/

Article 1

125. This article reads as follows:

> "Offences against the peace and security of mankind, as defined in this code, are crimes under international law, for which the responsible individuals shall be punished."

126. Norway felt that the article was somewhat obscure and wondered whether it should not be made more specific in view of the fact that it had the character of a general introduction to the Code (see A/35/210/Add.1, para. 4).

4/ Official Records of the General Assembly, Ninth Session, Sixth Committee, 424th meeting, para. 15.

127. Senegal, on the other hand, commended the drafters for having used the auxiliary "shall"

> "which is equivalent to 'must' /and/ which implies an obligation. It is therefore obligatory to be severe, to punish." (See A/35/210, para. 3.)

128. Botswana offered comments in the following form:

> "The punishment of individuals who commit offences in a municipal setting does not create any problem. But the punishment of individuals for offences against the peace and security of mankind which have an international character is not all that easy. The reason that these crimes have been elevated to the international platform is because it is felt that they cannot be dealt with municipally. Some of these crimes are strictly committed by Governments rather than individuals." (See A/35/210, para. 2.)

129. The representative of Nigeria stated that "recent events had shown that threats to international peace and security were posed not only by States and individuals, but also by multinational or transnational corporations. Therefore, the punishment for such offences should not be limited to responsible individuals, but should be extended also to States and multinationals" (A/C.6/35/SR.15, para. 33).

130. Tunisia, in its comments (see A/36/416, para. 5), noted that article 1 provides only for the responsibility of individuals, "whereas it should be possible to invoke the responsibility of States. The conviction of an individual should not automatically absolve a State of responsibility for damage caused by its authorities".

131. The representative of Sri Lanka said that draft article 1 "failed to specify whether such crimes could be subject to national jurisdiction or to an international tribunal". It should be amended "to incorporate the concept of the criminal responsibility of States, notwithstanding the fact that the International Law Commission was currently dealing with that topic" (A/C.6/35/SR.15, para. 27).

132. The United Nations Educational, Scientific and Cultural Organization proposed to replace the words "for which the responsible individuals shall be punished" by "for which those responsible shall be punished", in order to broaden the scope of this article by leaving open all possibilities for subsequent development (see A/35/210, para. 17).

Article 2

Article 2 as a whole

133. The representative of Paraguay "had no objection to the definition of offences contained in the draft; he also supported the listing of offences involving the violation of the principles of non-intervention in matters essentially within the domestic jurisdiction of any State" (A/C.6/35/SR.14, para. 20).

134. In the opinion of the representative of Tunisia, "the listing in article 2 was not exhaustive" (A/C.6/35/SR.12, para. 2).

135. In the view of Poland,

> "the enumeration of offences in article 2 of the draft is no longer adequate either in the light of the present state of technology or the development of the law. It has to be borne in mind that over the past 25 years, i.e., since the adoption of the draft ... a number of international acts have been promulgated whose violation is considered an international offence." (See A/36/416, para. 7.) 5/

136. The representative of Zaire felt that the list of offences contained in article 2 "should be expanded to include any action which might endanger the peace and security of mankind, and actions which ought to be described as inhuman for instance the taking of hostages" (A/C.6/33/SR.64, para. 31). It "should be revised since although acts of interference in the affairs of other States must be listed among the offences covered by the code, the frequency with which Article 2 of the Charter was violated reduced the effectiveness of that particular rule". (A/C.6/33/SR.64, para. 33)

137. The representatives of Madagascar (A/C.6/35/SR.10, para. 16) and Sri Lanka (A/C.6/35/SR.15, para. 27) also were of the view that the definition of offences contained in article 2 should be reviewed to take account of contemporary international reality including various international instruments adopted since 1954.

138. Commenting on article 2 as a whole, Guatemala distinguished four categories among the acts listed in this article as follows:

> "(a) Crimes against peace: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;
>
> (b) War crimes proper, including violations of the law or customs of war;
>
> (c) Crimes against humanity, the following in particular being cited as such: murder, extermination, enslavement, deportation or persecutions committed against any civilian population on political, racial, religious or cultural grounds by the authorities of a State or by private individuals acting at the instigation or with the toleration of such authorities as well as acts by

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5/ As indicated in paragraphs 107-110, a number of other States, without expressly referring to article 2 of the ILC draft, made the general remark that the listing of offences and the corresponding definitions on the proposed Code would have to take due account of the developments which had taken place since 1954, and made reference in this connexion to various international instruments which they considered as relevant.

the authorities of a State or by private individuals committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, etc.;

(d) Intervention by the authorities of a State in the internal or external affairs of another State by means of coercive measures." (See A/35/210, para. 2.)

139. Referring to the phrase "the authorities of a State" which appears in almost all of the paragraphs of article 2, Norway observed that "It is not clear who is covered by /that phrase/" - a remark which was also made by the representative of the Federal Republic of Germany (A/C.6/35/SR.12, para. 32) - and suggested that consideration might be given to including a definition of the phrase in question in the proposed Code (see A/35/210/Add.1, para. 5).

140. Senegal noted that the article "very often deals with situations involving collective responsibility, where the reprehensible criminal acts had been committed by the authorities of a State; the words 'by the authorities of a State' were a veritable emblematic leitmotiv. Only twice do the drafters refer to private individuals (cr. art. 2, paragraph 10 and paragraph 11, in fine) (see A/35/210, para. 5).

141. The representative of Nicaragua pointed out that article 2 should not apply to the right of peoples to struggle against colonial régimes and for their liberation (A/C.6/33/SR.63, para. 30).

142. Paragraphs 1 to 6

These paragraphs read as follows:

"The following acts are offences against the peace and security of mankind:

(1) Any act of aggression, including the employment by the authorities of a State of armed force against another State for any purpose other than national or collective self-defence or in pursuance of a decision or recommendation of a competent organ of the United Nations.

(2) Any threat by the authorities of a State to resort to an act of aggression against another State.

(3) The preparation by the authorities of a State of the employment of armed force against another State for any purpose other than national or collective self-defence or in pursuance of a decision or recommendation of a competent organ of the United Nations.

(4) The organization, or the encouragement of the organization, by the authorities of a State, of armed bands within its territory or any other territory for incursions into the territory of another State,

or the toleration of the organization of such bands in its own territory, or the toleration of the use by such armed bands of its territory as a base of operations or as a point of departure for incursions into the territory of another State, as well as direct participation in or support of such incursions.

(5) The undertaking or encouragement by the authorities of a State of activities calculated to foment civil strife in another State, or the toleration by the authorities of a State of organized activities calculated to foment civil strife in another State.

(6) The undertaking or encouragement by the authorities of a State of terrorist activities in another State, or the toleration by the authorities of a State of organized activities calculated to carry out terrorist acts in another State."

143. The use of the term "aggression" in the draft Code was commented upon in general terms by several States. Thus the representative of the Federal Republic of Germany remarked that there was not

"any precise definition of the key term of the draft Code 'aggression' which, despite its importance under the Charter and despite all the efforts made, still defied a universally acceptable legal definition" (A/C.6/35/SR.12, para. 32).

144. Botswana made the following remarks with reference to article 2:

"Attempts to define the word 'aggression' have shown that this is a word which defies universally acceptable definition. The League of Nations failed to maintain peace mainly because it could not find an agreed definition. The Kellog-Briand Pact of 1928 was brought about during the lifetime of the League of Nations in an endeavour to devise an agreed definition of 'aggression'. This did not succeed. The United Nations Charter has attempted the definition but it has not succeeded either. Therefore simply to make provisions by making use of phrases the definition of which cannot be agreed does not seem to serve any useful purpose". (See A/35/210, para. 3.)

145. Norway (see A/35/210/Add.1, paras. 8-14), Egypt (A/C.6/35/SR.11, para. 37) and the Council of Europe (see A/36/416, para. 7 (a)) on the other hand drew attention to the need to harmonize these paragraphs with the Definition of Aggression adopted by the General Assembly.

146. Norway stressed that paragraph 1

"should be adjusted and adapted to the Definition of Aggression, in particular to article 1 and article 3 (a) of the definition",

and further suggested that paragraphs (1), (2) and (3) be tied to that definition and that a new paragraph (1) embracing the concepts of present paragraphs (1), (2) and (3) could be worded as follows:

"Any act of aggression, as defined by the Definition of Aggression adopted by the General Assembly of the United Nations, as well as preparation of such an act of aggression or any other threat to resort to such an act, committed by authorities of a State". (See A/35/210/Add.1, paras. 8, 9 and 11.)

147. As an alternative solution Norway suggested to keep three separate paragraphs, but establishing in all cases a link with the Definition of Aggression. In that case Norway stated "it might be appropriate to draw up a special article containing a definition of the term aggression (with reference to the relevant General Assembly resolution) ... and of other expressions used in the draft, in particular the expression 'authorities of a State'." (See A/35/210/Add.1, para. 8.)

148. Referring to paragraphs (3), (4), (5) and (6), the representative of Egypt stressed that these paragraphs

"contained terms which might create problems of interpretation, such as 'the preparation of the employment of armed forces' 'the encouragement', /and/ 'the toleration' ... It would be more appropriate to refer to the Definition of Aggression adopted by the General Assembly." (A/C.6/35/SR.11, para. 37).

149. The representative of the Federal Republic of Germany also noted that

"no clear definition was provided ... for the word 'preparation' used in article 2, paragraph (3) for the words 'encouragement' and 'toleration' used in paragraph (5) of the same article /or/ for the words 'terrorist acts' in paragraph (6)." (A/C.6/35/SR.12, para. 32).

150. With respect to paragraphs (4), (5) and (6), Sweden wondered (see A/35/210, para. 6) if the terms "encouragement" and "toleration" were sufficiently clear; and the Council of Europe said that

"... expressions such as 'armed bands', 'activities calculated to foment civil strife' and 'terrorist activities' should be defined or at least a list of examples should be given (see art. 2, paras. 3, 4 and 5)." (See A/36/416, para. 7 (a).)

151. Also with reference to paragraphs (4), (5) and (6), Botswana made the following comment:

"The employment of force against another State and the encouragement of armed bands to engage in incursions into another State ... are said to be crimes against the peace and security of mankind. Again, bringing this to the realistic level and especially applying it to the situation in southern Africa, how do we prove the encouragement or preparation? Some States have refugees on their territories who are armed by third States and who often end up being better equipped than the national armies. The result is that these refugees make incursions into their own countries from a State which would otherwise not wish to have such incursions made

but may be militarily too weak to prevent them. The problem is that it might be difficult especially taking into account the present attitudes to convince the outside world that the State concerned does not encourage the incursions. These, however, are provisions which hit both ways.

Therefore, great caution should be exercised when dealing with these provisions." (See A/35/210, para. 4.)

152. Norway, referring to paragraph (3), drew attention to a number of practical problems with regard to a precise understanding of the word "preparation", a term which did not cover the drawing up of ordinary emergency preparedness plans in case an armed conflict should arise (see A/35/210/Add.1, para. 10).

153. With respect to paragraph (4), the representative of Tunisia noted that the text as presently formulated

"might be interpreted as a condemnation of liberation movements the legitimacy of which had been recognized by the international community;" (A/C.6/35/SR.12, para. 1)

and Norway observed that this provision was substantially wider in scope than article 3 (g) of the Definition of Aggression and should be retained

"if it is desired to go further than article 3 (g) ... "
(See A/35/210/Add.1, para. 13.)

154. The representative of Zaire observed that the draft Code in paragraph 4 enunciated the principle of direct participation in, or support given to, armed bands for the purpose of carrying out activities in the territory of other States, therefore he questioned whether the concept of the attempt to commit an offence would apply in the same manner as it did in internal law of States or whether it would have a specific sense. That point in his view should be mentioned at least in the commentaries (A/C.6/35/SR.13, para. 27).

155. The representative of Algeria also stressed the need to harmonize paragraph (4) with the spirit and letter of the Definition of Aggression and of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (A/C.6/35/SR.14, para. 5).

156. With respect to paragraph (5), Norway noted that the offence mentioned therein

"is not directly covered by the Definition of Aggression although attention is drawn to article 3 (t) of the Definition.

As now worded, the provision immediately raised the question of the degree which the authorities' guilt or involvement had to assume before they become liable to punishment under the provision or, in relation to the expression 'toleration', the degree of activity required to avoid punishment." (See A/35/210/Add.1, paras. 14 and 15.)

157. Referring to paragraph (6), Botswana (see A/35/210, para. 5) and Norway (see A/35/210/Add.1, para. 16) felt that it was necessary to arrive at a definition of what type of acts the paragraph covered. Tunisia also held the view that "the concept of 'terrorist acts' and 'terrorist activities' should be strictly defined" (see A/36/416, para. 6) and Sweden pointed to the problems which might arise from the use of these expressions.

> "since it has proved difficult to define the concept of terrorism and it is known that States interpret this concept differently." (See A/35/210, para. 6.)

158. Norway noted that

> "the persons who are directly responsible for the act of terrorism will often be punishable under penal provisions in other international conventions, while the provision here is only directed against the authorities giving support to, a failing to combat, acts of terrorism."
> (See A/35/210/Add.1, para. 17.)

159. The Council of Europe drew attention to the international conventions so far adopted in this field

> "notably the Council of Europe's 1977 Convention on the Suppression of Terrorism, which should perhaps be taken into account."
> (See A/36/416, para. 7 (a).)

160. Paragraph (7)

This paragraph reads as follows:

> "(7) Acts by the authorities of a State in violation of its obligations under a treaty which is designed to ensure international peace and security by means of restrictions or limitations on armaments, or on military training, or on fortifications, or of other restrictions of the same character."

161. Norway felt that the scope of this provision should be restricted to cover grave violations,

> "even if it might obviously create problems in each individual case to decide whether or not a violation should be considered grave. It seems unreasonable that the Code should make every minor infraction in this field a punishable offence. The provision should be restricted to cover clear violations of substantive provisions." (See A/35/210, para. 18.)

162. Commenting on the phrase "acts by the authorities of a State", which also appears in paragraphs 8, 9 and 10, Botswana made the following observations:

> "If these acts can be referred to as acts by the authorities of a State, how will the international tribunal extract from the State concerned the individuals for punishment, because this tribunal can only punish individuals in this context. Is there any Government or any State that can hand over for punishment an individual who acted in the course of his duties? Such has only happened in cases of conquest." (See A/35/210, para. 6.)

163. Paragraph (8)

This paragraph reads as follows:

"(8) The annexation by the authorities of a State of territory belonging to another State by means of acts contrary to international law."

164. Norway wondered

"if this provision has any significance of its own, since annexation undoubtedly comes under the term 'aggression' and will in addition be unlawful in many cases under the laws and customs of war" (See A/35/210/Add.1, para. 19.)

and referred in this respect to its observations on paragraph (12) reflected below and to article 6 in the Fourth Geneva Convention and article 3 of Additional Protocol I.

165. The representative of Egypt stated that paragraph (8)

"should be redrafted in order to make it clear that no /annexation/ claim was acceptable under international law and that any attempt to acquire territory by war was an offence against peace." (A/C.6/35/SR.11, para. 37).

166. The German Democratic Republic favoured

"more specific provisions on the prosecution of the crimes of annexation and intervention dealt with in paragraphs (8) and (9), taking into account all current forms of their commission and relevant United Nations documents." (See A/35/210/Add.1, para. 11.)

167. Paragraph (9)

This paragraph reads as follows:

"(9) The intervention by the authorities of a State in the internal or external affairs of another State, by means of coercive measures of an economic or political character in order to force its will and thereby obtain advantages of any kind."

168. The representative of Zaire supported that formulation. (A/C.6/35/SR.64, para. 33)

169. Norway suggested the deletion of this paragraph

"which seems to fall outside the natural scope of the draft and /is, because of its imprecision/ difficult to enforce." (See A/35/210/Add.1, para. 20.)

170. Chile on the other hand made the following remarks:

> "The entirely new text of ... paragraph 9 could be adopted in its present wording. We would suggest however the deletion of the words 'and thereby obtain advantages of any kind', since it is possible that 'the authorities of a State' might intervene 'in the internal or external affairs of another State, by means of coercive measures of an economic or political character, in order to force its will', without there necessarily being any intention on the part of those authorities to 'thereby obtain advantages of any kind'. If the wording is retained in the form in which it has been submitted to Member States for consideration, it could be interpreted by the State concerned as meaning that the provision in question stipulates a prerequisite that has nothing to do with the essential aspect of traditional conduct, the prerequisite being the obtaining of advantages of any kind. That would be to side-step the issue, namely, the intervention by the authorities of a State in the internal or external affairs of another State by means of coercive measures of an economic or political character, in order to force its will." (See A/35/210, paras. 3-4.)

171. Referring to the phrase "coercive measures of an economic or political character", Sweden said that this phrase

> "can undoubtedly be interpreted in many different ways and should be replaced by some other language which contains a clear definition of the acts envisaged." (See A/35/210, para. 6.)

172. The representatives of Egypt (A/C.6/35/SR.11, para. 37) and the Federal Republic of Germany (A/C.6/35/SR.12, para. 32) also drew attention to the vagueness of the phrase "coercive measures of an economical or political character".

173. Qatar suggested the inclusion of an explicit statement that the provision of paragraph (9)

> "does not apply to the right of some States to resort to an embargo on the exportation of certain of their products as a means of obtaining their legitimate, internationally recognized rights or as a means of self-defence." (See A/36/416, para. 2.)

174. Paragraph (10)

This paragraph reads as follows:

> "(10) Acts by the authorities of a State or by private individuals committed with intent to destroy, in whole or in part, a national ethnic, racial or religious group as such, including:
>
> (i) Killing members of the group;
>
> (ii) Causing serious bodily or mental harm to members of the group;

(iii) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(iv) Imposing measures intended to prevent births within the group;

(v) Forcibly transferring children of the group to another group."

175. The German Democratic Republic, referring to the Convention on the Prevention and Punishment of the Crime of Genocide, held that

"the constituent facts of the crime of genocide are, on the whole, adequately reflected in the draft." (See A/35/210/Add.1, para. 7.)

176. Norway noted that paragraph (10) was almost identical to article II of that Convention, adding that while some differences in wording seemed by and large necessary on editorial grounds, there were some doubts

"as to the justification of the word 'including' in the introductory part of the paragraph. This gives the impression that the listing that follows is not exhaustive. If this is the case, the text clearly differs from article II of the Genocide Convention." (See A/35/210/Add.1, para. 21.)

177. The representative of Israel, speaking at the ninth session of the General Assembly (see para. 121 above) said that after analysing the differences in wording between article II, paragraph 10, and the Genocide Convention

"it felt that if there was any point in including a reference to genocide in the Code - which was questionable - the relevant provision should reproduce literally the terms of the Convention." 6/

178. UNESCO observed that while the draft Code referred basically to the physical destruction of human groups, it made no reference to what had been called cultural genocide and might therefore be appropriately supplemented

"by a subparagraph (vi) mentioning the restriction or prohibition of the use of languages, the destruction of cultural identity, the systematic destruction of archives and objects of artistic or historical value, etc." (see A/35/210, para. 19).

179. Paragraph (11)

This paragraph reads as follows:

6/ Official Records of the General Assembly, Ninth Session, Sixth Committee, 424th meeting, para. 16.

"(11) Inhuman acts such as murder, extermination, enslavement, deportation or persecutions, committed against any civilian population on social, political, racial, religious or cultural grounds by the authorities of a State or by private individuals acting at the instigation or with the toleration of such authorities."

180. Norway noted that paragraph (11) was based on the definition of "crimes against humanity" contained in the Nürnberg Charter but with certain alterations. Norway elaborated on the difficulties to which this provision seemed to give rise as follows:

"While crimes against humanity according to the Nürenberg Charter could only be adjudged if they were committed in connexion with other offences described in the Charter (offences against peace and war crimes), the draft is so formulated that the acts in question may be adjudged separately. However, it contains certain ambiguities in the manner it is worded.

"According to the wording it appears that the offence must be directed against 'any civilian population'. This formulation creates a number of problems. In the first place the question may be asked whether, under the provision, it is possible to be punished for violations against own nationals. In the second place the wording seems to imply a minimum scale so that violations against individual persons are not directly covered. The question of where the limit is to be drawn appears on the other hand somewhat uncertain.

"The provision also raises problems with regard to who may be liable to punishment. The expression 'private individuals acting at the instigation or with the toleration of such authorities' may possibly lead to unfortunate results. It seems somewhat unreasonable to argue that the degree of punishability in respect of individual persons should be greater if they have acted with the open or tacit consent of the authorities than if they act exclusively on their own initiative. There is no corresponding limitation in paragraph 10."
(See A/35/210/Add.1, paras. 22-26.)

181. Tunisia also drew attention to a discrepancy between paragraphs (10) and (11), noting that the reference to "private individuals" was accompanied in paragraph (11) with the proviso "acting at the instigationor with the toleration of the authorities" but that such a proviso did not appear in paragraph (10) (See A/36/416, para. 7).

182. Senegal suggested

"to include in article 2 paragraph (11) a reference to mass detention, which could be inserted immediately after the word 'enslavement'."
(See A/35/210, para. 7.)

183. The Council of Europe felt that paragraph (11) was a suitable place to mention the "forced disappearance" of persons (see A/36/416, para. 7 (b)), and UNESCO considered it advisable to amend paragraph (11) to read as follows:

> "Massive, flagrant and systematic violations of human rights by the authorities of a State or by private individuals acting at the instigation or with the toleration of such authorities."
> (See A/35/210, para. 23.)

184. Paragraph (12)

This paragraph reads as follows:

> "(12) Acts in violation of the laws or customs of war."

The representative of Egypt felt that paragraph (12)

"must refer to the Hague Regulations and the Geneva Conventions and must be detailed so as to reflect the provisions of the Security Council and General Assembly resolutions on illegal practices in occupied territories. The provisions of the principles of international law recognized in the Charter of the Nürnberg Tribunal and in the judgement of the Tribunal must be taken into consideration." (A/C.6/35/SR.11, para. 37).

185. Some States raised the question whether paragraph (12) should cover all violations of the laws of war. Norway elaborated on this point as follows:

> "... the Geneva Conventions have special provisions concerning prosecution of violations of the Convention's rules. In this connexion certain acts have been identified and described as 'grave breaches' and the contracting parties have undertaken to introduce provisions in their domestic penal legislation prohibiting such acts. Furthermore, States have the obligation to institute proceedings against persons suspected of having committed such grave breaches themselves, or extraditing them to another State willing to institute such penal proceedings.

"If the paragraph is concerned with 'grave violations' only, such a provision is unnecessary in the Code, since the Geneva Conventions and the Additional Protocols must already be considered to cover this in a satisfactory manner. However, breaches of the laws of war may imply violations of rules other than those of the Geneva Conventions and for that reason there may be good grounds for keeping the provision. On the other hand, the provision such as it is worded at present implies that any violation either of the Geneva Conventions or of other treaties relating to war as well as rules of customary law shall be regarded as criminal violations against the peace and security of mankind. There seems to be good reasons for arguing that this is to go rather too far, since the treaty provisions embodied in rules of international law on the laws of war are in a large measure very detailed and there seems to be little reason to allow minor infractions to come under the term 'offences against the peace and security of mankind." (See A/35/210/Add.1, paras. 25-27).

186. Sweden observed:

"Since the Code is meant to deal with crimes under international law, it is also important that the definitions should be restricted to acts which are of a particularly serious nature ... paragraph (12) of article 2 deals with 'Acts in violation of the laws or customs of war'. However, the laws of war deal with serious as well as less serious offences, and it seems desirable to restrict the scope of the present provisions to the serious acts." (See A/35/210, para. 8).

187. Some States further wondered whether paragraph (12) should extend to other conflicts than international conflicts. Thus Norway stated:

> "It seems reasonable to suppose that in 1954 the provision was formulated exclusively with international conflicts in mind. However, in 1977 a special Additional Protocol to the Geneva Conventions was adopted, including rules exclusively covering domestic conflicts and it therefore seems natural that gross violations at any rate of these provisions shall fall under paragraph (12)." (See A/35/210/Add.1, para. 28.)

188. The representative of Yugoslavia felt that the draft Code should cover offences in violation of the laws and customs of war in armed conflicts other than wars, adding that:

> "The Additional Protocol I to the 1949 Geneva Conventions had extended, materially and legally, the range of its competence to the struggle of peoples and liberation movements against colonial domination, foreign occupation and racist régimes on the basis of the right to self-determination",

and that

> "Since that form of struggle fell within the category of armed conflicts in which, under Protocol I, the parties were bound to comply with the Geneva Conventions, the commission of war crimes in such conflicts was also punishable and, therefore, should be prohibited in the draft Code." (A/C.6/35/SR.13, para. 33)

189. Paragraph (13)

This paragraph reads as follows:

"(13) Acts which constitute:

(i) Conspiracy to commit any of the offences defined in the preceding paragraphs of this article;

(ii) Direct incitement to commit any of the offences defined in the preceding paragraphs of this article; or

(iii) Complicity in the commission of any of the offences defined in the preceding paragraphs of this article; or

(iv) Attempts to commit any of the offences defined in the preceding paragraphs of this article."

190. In connexion with subparagraph (ii), Senegal pointed out that, unlike complicity, for a definition of which one only had to refer to the penal code of any country, the concept of incitement was not defined and further observed that "direct incitement to commit any of the offences" was regarded here as a positive act, i.e. compulsion, rather than a form of complicity, a fact which

"has definite legal relevance as far as doctrine is concerned, but from another standpoint, i.e. in terms of what happens ultimately, it is less relevant since both the perpetrator and the accomplice will incur the same fate as far as criminal liability is concerned." (See A/35/210, paras. 9-11.)

191. With respect to subparagraph (iii), Senegal proposed the following text:

"(a) Punishment as an accomplice shall be incurred by any person, in addition to the perpetrator or accomplice, who:

- Without being coerced, and although aware of the intentions of the perpetrators of offences as defined in this Code, affords them financial assistance, means of subsistence, lodging, a refuge or a meeting place;

- Knowingly carries mail for the perpetrators of such offences, or in any way knowingly makes it easier for them to find, conceal, transport or convey the object used to commit the offence."

and referred in this regard to article 88 of the Senegalese Penal Code which broadened the meaning of the terms "complicity" and "concealment". (See A/35/210, paras. 12-13.)

192. Senegal also proposed to include a new subparagraph (iii) bis on concealment which would read as follows:

"Punishment for concealment shall be incurred by any person, in addition to the perpetrator or accomplice, who:

- Knowingly conceals the objects or instruments used to commit the offence, or the material objects or documents obtained through the offence;

- Knowingly destroys, purloins, conceals or falsifies a public or private document likely to facilitate the investigation of the offence, the discovery of evidence or the punishment of the offenders." (See A/35/210, para. 14.)

193. As to subparagraph (iv), Senegal expressed the view that in the light of some penal codes,

"the provision concerning attempts to commit offences may appear superfluous. Indeed, if all the acts are considered criminal offences stricto sensu - as stipulated in article 2 of the draft Code - an attempt to commit any of those offences is tantamount to actual commission." (See A/35/210, para. 15.)

194. Senegal proposed concrete formulations for additional provisions to be included in article 2 with respect to crimes against State security, attacks, conspiracies and other offences against the authority and integrity of the national territory, and crimes likely to disrupt the State. The text proposed by Senegal in this connexion reads as follows:

"1. Anyone who:

(a) Through hostile acts not approved by his country, lays that country open to a declaration of war;

(b) Through acts not approved by his country, lays the inhabitants open to reprisals;

(c) Has with the agents of a foreign Power secret dealings likely to damage the military or diplomatic position of his country or its essential economic interests;

(d) With a view to prejudicing the defence of a State Member of the United Nations under United Nations protection, impedes the movement of military matériel or in any way instigates, facilitates or organizes violent or concerted action designed to impede such movement or having that effect;

(e) Knowingly participates in any way in the attempt to undermine the discipline of an army operating in a given State under the direction and control of the United Nations, with a view to

- Prejudicing the defence or security of that State, or

- Undermining the army's obedience of orders and, in particular, the allegiance owed to the international authorities ..." (See A/35/210, para. 6.)

195. The Council of Europe proposed adding to the list of offences listed in article 2 such offences as genocide, apartheid and the taking of hostages, which had been the subject of specific conventions defining them as offences under international law. (See A/36/416, para. 7 (b).)

Article 3

196. This article reads as follows:

"The fact that a person acted as Head of State or as responsible government official does not relieve him of responsibility for committing any of the offences defined in this code."

197. Poland described the principle enunciated in this article as "correct" (see A/36/416, para. 8). Senegal noted with satisfaction that there was no guarantee of immunity for Heads of State or responsible government officials, adding in this respect:

"This is understandable because in the commission of these offences the political establishment is usually (not to say invariably) involved very deeply. Added to this is the fact that these are offences, i.e. exceptionally serious acts, which might endanger the peace and security of mankind." (See A/35/210, para. 16.)

198. The representative of the Ukrainian SSR felt that the provisions of article 3 should be harmonized with the corresponding provisions of the Charter of the Nuremberg Tribunal - a point which was also made by the representative of the Soviet Union (A/C.6/35/SR.13, para. 13) - and made the following observations in this regard:

> "Article 7 of the Nuremberg charter stated that the position of defendants as Heads of State or officials in Government departments should not be considered as freeing them from responsibility or mitigating punishment. Article 3 of the draft Code made no mention of reducing the penalty, which, if carried to the extreme, could be interpreted to imply absolute impunity for the offender. That was equivalent to leaving a loophole for war criminals and diminishing the authority of the recognized principles of the Charter of Nuremberg." (See A/C.6/35/SR.14, para. 30.)

199. Sweden pointed out that it was not clear in what circumstances a government official could be held responsible for a certain act, adding that

> "this poses many difficult problems relating to the decision-making process or to the hierarchical structure of the administration of different States." (See A/35/210, para. 7.)

200. Norway suggested that the expression "Head of State" be replaced by "constitutionally responsible rulers", and made reference in this regard to the corresponding expression in article IV of the Convention on the Prevention and Punishment of the Crime of Genocide. (See A/35/210/Add.1, para. 29.)

Article 4

201. This article reads as follows:

> "The fact that a person charged with an offence defined in this code acted pursuant to an order of his Government or of a superior does not relieve him of responsibility in international law if, in the circumstances at the time, it was possible for him not to comply with that order."

202. The representative of Egypt made the general observation that article 4

> "should define more precisely the conditions of responsibility of the offender and the conditions for his exemption from responsibility." (A/C.6/SR.11, para. 38)

203. Senegal observed that the fact that the order came from a government or a superior would be accepted warily, indeed very reluctantly, as a circumstance relieving a person charged with one of the enumerated offences of responsibility. (See A/35/210, para. 17.) The representative of Guyana stated that the issues which arose from article 4 should be confronted and fully discussed, adding:

> "The plea of respondant superior, which had not been seen as a valid defence by the International Military Tribunals of Nürnberg and Tokyo and other legal fora in more recent times, should not now provide a valid argument for the abandonment of the article." (A/C.6/35/SR.15, para. 14)

204. In the view of the representative of Sri Lanka the question as to how far individuals could refuse to comply with orders of their Governments or supervisors "should be further clarified" (A/C.6/35/SR.15, para. 27).

205. Both the representative of the Soviet Union (A/C.6/35/SR.13, para. 13) and the representative of the Ukrainian SSR (A/C.6/35/SR.14, para. 31) said that the wording of article 4 should be brought into line with that of the corresponding provision of the Charter of the Nürnberg Tribunal (article 11), and referred in this regard to article 8 of the Nürnberg Charter, which stated that the fact that the defendant acted pursuant to an order of his Government or of a superior should not free him from responsibility, but might be considered in mitigation of punishment if the Tribunal determined that justice so required. The representative of the Ukrainian SSR added the following remarks:

> "Although that rule had been reproduced in article 4 of the draft Code, it had been modified: the reference to the mitigation of punishment had been replaced by the expression 'if, in the circumstances at the time, it was possible for him not to comply with that order.' That created a loop-hole which was more dangerous than the previous one /in respect of article 3 of the draft/, since any war criminal could justify his acts by claiming that he would have been judged by a court martial if he had not complied with the orders he received. It was obvious that those provisions of the Code did not contribute to efforts to combat aggression and war crimes. The criterion of considering the circumstances at the time was extremely ambiguous since the evaluation of those circumstances was always subjective. War criminals should never be freed from responsibility under any circumstances." (A/C.6/35/SR.14, para. 31)

206. The Council of Europe referred to the proposal made by the Netherlands 7/ in 1954 to amend article 4 of the draft Code, as provisionally adopted by the International Law Commission in 1951, to make it clear that the fact that a person had acted on the orders of his Government or of a superior did not relieve him of responsibility "si elle pouvait avoir connaissance du caractère criminel de l'acte". In the view of the Council of Europe, the amended text of article 4, as adopted and as it now appeared in the draft code ("if, in the circumstnaces at the time, it was possible for him not to comply with that order"), did not adequately reflect the aspect emphasized by the Netherlands, namely knowledge of the illegality of the act. (See A/36/416, para. 7 (e).)

C. Comments on the 1954 draft Code with reference to further United Nations work on the topic

207. Many States discussed the 1954 draft Code of Offences also in the context of further United Nations work on the topic.

208. Several of them, including some of those who held critical views on the draft, did believe that it could be used as a basis for that work, particularly as it

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7/ See Yearbook of the International Law Commission, 1954, vol. II, p. 120.

embodied, in the words of the representative of Bulgaria, "the judgement of the Nürnberg Military Tribunal and the fundamental principles of the Charter of the United Nations". (A/C.6/35/SR.14, para. 54) The language in which the idea of using the 1954 draft as a basis for further work was expressed has however varied. The draft was described by various delegations to be:

"useful as a point of departure" in the consideration of the item (Poland - (A/C.6/35/SR.14, para. 17);

"a compendium of accepted principles which provided a valuable starting point" (Colombia - A/C.6/35/SR.15, para. 37);

"a base for future work in codifying the relevant norms" (Bulgaria - A/C.6/35/SR.14, para. 54);

"a basis for defining offences against the peace and security of mankind" (Democratic Yemen - A/C.6/35/SR.14, para. 43);

"an acceptable basis for continuing work on that subject" (Afghanistan - A/C.6/35/SR.13, para. 36);

"for further discussions on the matter" (GDR - A/C.6/35/SR.10, para. 23);

"for consideration of the subject" (Libya - A/C.6/35/SR.14, para. 23);

"for further work on the topic" (USSR - A/C.6/35/SR.13, para. 10);

"for the drafting of such an instrument" (Ukrainian SSR - A/C.6/35/SR.14, para. 26); (Byelorussian SSR - A/C.6/35/SR.12, para. 9);

"a useful basis - for future work" (Pakistan - A/C.6/35/SR.12, para. 19);

"for the drafting of a code of international offences" (Lebanon - A/C.6/35/SR.10, para. 12);

"a suitable basis for further work on the topic" (Sweden - A/C.6/35/SR.15, para. 7);

"a sufficient basis for continuation of work" (Philippines - A/C.6/35/SR.14, para. 9);

"a good basis for further codification of work" (Czechoslovakia - A/C.6/35/SR.15, para. 40);

"a working paper of undeniable value in future codification work in this field" (Romania - A/36/416, para. 4);

"a useful element in the continued consideration of the question" (Hungary - A/C.6/35/SR.12, para. 22).

209. In the context of further United Nations work on the topic, particular emphasis was placed by many States on the necessity to have the draft revised and brought up to date.

210. It was said that since 1954 when the draft Code was submitted by the International Law Commission to the General Assembly a number of important international events directly affecting the peace and security of mankind had occurred and continued to occur - a fact which in the words of the representative of the United Arab Emirates "would have an impact on the future drafting of any such code" (A/C.6/35/SR.11, para. 22).

211. The period of more than 25 years which has passed since the elaboration of this draft Code, stated Hungary in its comments, has witnessed significant and positive developments in international law and in international relations in general. In view of this, the Hungarian Government considered it "strongly advisable to review the contents and the structure of the draft Code and to incorporate into it the latest developments of international law on the basis of an over-all and in-depth analysis of the whole domain of proposed regulation" (see A/35/210, para. 3). The representative of Egypt referred to such recent developments, "as efforts to remove the vestiges of colonialism, national liberation movements, the exercise of the right of self-determination, the struggle against racism and discrimination and the protection of human rights in peacetime and wartime, particularly with reference to reprisal against civilians, such as their expulsion, seizure of their property, destruction of their dwellings and other acts of barbarism" (A/C.6/33/SR.65, para. 3).

212. The representative of India agreed with the view that since 1954 various elements in the draft Code had been affected by international developments and practice. The draft needed to be further revised, taking into account that development he said (A/C.6/35/SR.15, para. 3). It "must be revised and expanded", emphasized the representative of the Ukrainian SSR (A/C.6/35/SR.14, para. 26).

213. With respect to the development which should be reflected in the process of the elaboration of a Code of Offences it was stated by a number of States that due account must be taken "of the important developments which had occurred during the last decades" (the representative of Sweden - A/C.6/35/SR.15, para. 7), more specifically of "the development of international law during the past 30 years and the radical changes in international relations, so that the draft might duly reflect the latest results observed in the progressive development and codification of international law" (the representative of Hungary - A/C.6/35/SR.12, para. 22) "including all major international legal instruments adopted since then" (the representative of Czechoslovakia - A/C.6/35/SR.15, para. 40). The representative of Democratic Yemen felt that it was necessary to take into account "the conventions approved by the United Nations in the field of human rights, disarmament, and humanitarian laws" (A/C.6/35/SR.14, para. 43). The representative of Egypt stated that the draft Code "required updating in the light of recently adopted international conventions and relevant General Assembly resolutions relating to international peace and security" (A/C.6/35/SR.11, para. 30). Being prepared in 1954, the draft Code "must now be brought up to date in the light of current circumstances", said the representative of Uruguay (A/C.6/35/SR.13, para. 19) and the representative of Madagascar emphasized that "a serious effort

should be made to bring the draft Code up to date" (A/C.6/35/SR.10, para. 17). The representative of Cuba spoke of "the immense task of up-dating its contents and scope" (A/C.6/35/SR.14, para. 67). "Considerable work would be required to codify all the offences which were recognized internationally as offences of that nature", said the representative of Sudan (A/C.6/35/SR.14, para. 38).

214. Speaking on the international conventions and other United Nations instruments to be taken into account in the future work on the topic, most of the representatives who discussed the matter, and several States which submitted their written comments, listed those instruments. They are referred to in paragraph 33 above and in paragraphs 236-281 below.

215. With regard to the instruments in question the representative of Trinidad and Tobago made a general observation to the effect that a distinction must be drawn between those instruments that applied to the criminal actions of private persons and those that applied to official actions of persons giving rise to State responsibility. The former category, in his view, would seem to fall outside the scope of the Code (A/C.6/35/SR.14, para. 12).

IV. SCOPE OF THE PROPOSED CODE

A. Views of a general nature

216. Several States referred to the question whether the Code should provide an exhaustive list of offences against the peace and security of mankind. Thus Poland pointed out that the future Code should either provide such a list or spell out the relevant spheres such as crimes against humanity, war crimes, genocide, apartheid, heavy pollution of world-environment, adding that:

> "The advantage of the first solution is the firmness of the law and the impossibility of pleading ignorance of committing an international crime. On the other hand the disadvantage of this solution is its unwieldy nature, incompatible with the accelerated pace of technological and sociological changes which breed new crimes or contribute to such intensification of others as to threaten the security of mankind ... The advantage of the second solution is its flexibility, which allows for the possibility of embodying new legal acts, while lacking the legal firmness of the former." (See A/36/416, para. 7.)

217. Some States favoured a code providing an exhaustive list of offences. Thus Senegal stressed that in penal matters it is imperative to specify "all offences" (see A/35/210, para. 6). In the opinion of Romania a comprehensive listing of offences "was necessary" (see A/36/416, para. 8).

218. The Observer from the Palestine Liberation Organization hoped that "an exhaustive draft code" enumerating all crimes against peace and security, "including those against whole peoples" would be prepared; otherwise the Code would be "superfluous and inadequate" (A/C.6/35/SR.13, para. 23).

219. Other States were of a different view. Thus the representative of Nigeria observed that the list of offences "could never be closed" (A/C.6/35/SR.15, para. 34) and the representative of the Libyan Arab Jamahiriya pointed out that "an exhaustive listing 'of offences' was impossible because of the fact that they were constantly increasing" (A/C.6/35/SR.14, para. 23). UNESCO stressed the difficulty in the present circumstances to draw up an exhaustive list of all offences against the peace and security of mankind, adding that any list of criminal acts and omissions would therefore have to be supplemented "by a precise but fairly broad definition" if the Code was to meet the need to protect international order. At the same time, in the interests of legality, "an express reference should be made to offences declared punishable under other international instruments" (see A/36/210, para. 18).

220. Another general question which was commented on in relation to the scope of the proposed Code was that of the criteria to be applied in that connexion. The representatives of Brazil (A/C.6/35/SR.10, para. 27) and Senegal (A/C.6/35/SR.12, para. 12) remarked that attention should be paid to the formulation of general criteria for deciding whether an act was to be considered an offence against the peace and security of mankind.

221. Some States favoured a restrictive approach. Thus the representative of China remarked that acts which violated international law did not all constitute international crimes. "The main content of the draft Code, he said, should be the grave offences against the peace and security of mankind represented by the illegal use of force in armed aggression and intervention, large-scale massacres of innocent people, genocide, ruthless colonial aggression and racial discrimination" (A/C.6/35/SR.13, para. 16).

222. Other States held a different view. The representative of Sudan felt that the scope of the proposed Code should not be limited to "offences which were recognized as such by international law"; it was also necessary to bear in mind other offences (A/C.6/35/SR.14, para. 40). The Philippines felt that the Code should not be confined to a mere listing of political or related offences but provide for a wider listing of non-political offences so as to "give greater emphasis to the vital concerns of humanity for greater equality, development and world peace" (see A/36/416, para. 2).

223. Yugoslavia was of the view that the scope of the term "crime against humanity" should "be based not only on incrimination of the gravest offences which endanger basic human values, such as life, health and personal dignity, but also on the need for broader protection of the individual against discriminatory treatment to which he may be subjected in the most varied fields of social life" (see A/35/210, para. 8).

224. Egypt also favoured a broad approach and said "the scope of the draft Code should be broadened to include all violations of the principles of the Charter of the United Nations" and to determine liability for "the non-implementation of United Nations resolutions adopted by an overwhelming majority, since the thwarting of those resolutions by some States should be regarded as defiance and violation of the Charter and as an act harmful to the international community and to the peace and security of mankind". He said that "those United Nations resolutions were in a way a codification of the principles of the Charter ... /and/ whether they had been adopted by the General Assembly or the Security Council, ... represented one of the major sources of customary law" (A/C.6/33/SR.65, para. 2).

225. Still other States felt that the criterion in defining the scope of the proposed Code should be whether a specific offence posed a threat to the peace and security of mankind. What had to be determined in relation to the Code, said the representative of Bangladesh, were acts which might endanger "the peace and security of mankind and not merely of States" (A/C.6/35/SR.14, para. 46). The representative of Czechoslovakia stated that the Code should include "only crimes which genuinely constituted a threat to the peace and security of mankind", namely the gravest offences. The inclusion of really serious international crimes in the Code would be an effective means of prosecuting and punishing them" he said (A/C.6/35/SR.15, para. 41). A similar view was expressed by the German Democratic Republic (see A/35/210/Add.1, para. 14). The latter as well as the representatives of Czechoslovakia (A/C.6/35/SR.15, para. 41), Bulgaria (A/C.6/35/SR.14, para. 58) and Hungary (A/C.6/35/SR.12, para. 23) also raised the problem of inclusion in the proposed Code of other crimes which although not yet defined in any international instrument, posed a threat to the peace and security of mankind.

226. The representative of the German Democratic Republic said that the proposed Code should cover other serious crimes which were a threat to peace, international security or the peaceful co-existence of States and which had not been defined in universal international agreements (A/C.6/33/SR.63, para. 8). Such crimes included, in the view of the representative of Bulgaria, war propaganda, incitement to national and racial hatred and acts damaging the environment in a manner threatening the security of mankind as a whole (A/C.6/35/SR.14, para. 58), to which the representative of Hungary added "... crimes which affected the security of internationally protected persons (A/C.6/35/SR.12, para. 23). On the other hand, said the representative of the German Democratic Republic, it should exclude offences which were not directed against the peace and security of mankind (A/C.6/33/SR.63, para. 8).

227. Another approach which was suggested was to proceed in stages. Thus, the representative of Mexico stated that, on the question which offences should be included in the Code, "... a first step might be to take those already defined in existing Conventions or in resolutions of the General Assembly designed to characterize illegal acts" (A/C.6/35/SR.12, para. 29). Finland in its comments, while agreeing that a number of crimes recognized as international crimes in various conventions could be considered for possible inclusion held that "... priority should be accorded to the incrimination of wars of aggression and the confirmation of war crimes and crimes against peace and humanity as international crimes as defined in the Charter of the International Military Tribunal". (See A/35/210, para. 3.)

228. Some States emphasized that offences to be covered by the proposed Code, should be defined as precisely as possible and it should be necessary to avoid any ambiguity in the provisions.

229. "A right definition of offence", to be included in the Code, stated Romania, is "necessary inasmuch as the basic principle universally recognized in penal matters is the principle of legality of accusation, i.e., nullum crimen sine lege" (see A/36/416, para. 8).

230. The representative of Algeria observed that those offences "should be precisely defined, in view of their exceptional gravity and the large-scale damage they entailed" (A/C.6/35/SR.14, para. 4). The representative of the Libyan Arab Jamahiriya stressed that "offences against the peace and security of mankind must be clearly defined bearing in mind that the purpose of the Code was to ensure that those guilty of such acts would be punished". (A/C.6/35/SR.14, para. 24.)

231. Norway in its comments observed:

> "If the draft is to be embodied in a Code under which the contracting parties would be required to introduce the definitions in their own penal legislation, the definitions should be formulated as precisely as possible both with regard to the description of the offence itself and to the question of whom the provisions are directed against". (See A/35/210/Add.1, para. 5.)

232. The representatives of Finland (A/C.6/35/SR.11, para. 36) and Sweden (A/35/210, para. 5) also stressed that the draft called for definitions of utmost precision.

233. The need to provide strict definitions of offences was also stressed by the representatives of India (A/C.6/35/SR.15, para. 1), Mongolia (A/C.6/35/SR.11, para. 18), Guyana (A/C.6/35/SR.15, para. 14), Iraq (A/C.6/SR.15, para. 18), Egypt (A/C.6/35/SR.11, para. 37), Tunisia (A/C.6/35/SR.12, para. 3) and the Ukrainian SSR (A/C.6/35/SR.14, para. 28). The representative of Cyprus said "... that the Code must also be as clear and unambiguous as possible" (A/C.6/35/SR.13, para. 3).

234. The representative of Mexico was of the view that the reference to "security" should be deleted from the title of the proposed Code because many delegations might fear that each State would interpret it according to its own interests (A/C.6/35/SR.12, para. 29).

235. As to the format of the international instrument which would embody the proposed Code, the representatives of Egypt (A/C.6/35/SR.11, para. 40), Pakistan (A/C.6/35/SR.12, para. 20), and Venezuela (A/C.6/35/SR.11, para. 52) suggested considering the possibility of framing the draft Code in the form of a convention. The representative of Mexico said that the world should proceed on the assumption that the envisaged instrument would be a convention "so that no problems might arise as to the legal significance of such a code" (A/C.6/35/SR.12, para. 29). Finland also favoured the form of a draft Convention "with a view to establishing clear, binding rules" (A/C.6/35/SR.11, para. 58). As indicated in para. 18 above, the representative of Zaire spoke of an international convention for the suppression of offences by individuals and States against the peace and security of mankind (A/C.6/35/SR.13, para. 24).

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

236. Among acts to be characterized as offences against the peace and security of mankind, many States highlighted aggression.

237. Finland said that "priority should be accorded to the incrimination of wars of aggression" (see A/35/210, para. 3). Afghanistan (A/C.6/35/SR.13, para. 36), Mongolia (see A/35/210/Add.1, para. 3), Madagascar (A/C.6/35/SR.10, para. 16), the German Democratic Republic (A/C.6/35/SR.10, para. 23), Tunisia (A/C.6/35/SR.12, para. 2), the Byelorussian SSR (see A/35/210, para. 5), Hungary (see A/35/210, para. 5), Mexico (A/C.6/35/SR.12, para. 29), the USSR (see A/35/210, para. 3), the Philippines (see A/36/416, para. 2), Poland (see A/36/416, para. 7), Romania (see A/36/416, para. 5), Bangladesh (A/C.6/35/SR.14, para. 46), Pakistan (A/C.6/35/SR.12, para. 17), India (A/C.6/35/SR.15, para. 3), United Arab Emirates (A/C.6/35/SR.11, para. 22), Sudan (A/C.6/35/SR.14, para. 39), Ukrainian SSR (A/C.6/35/SR.14, para. 27), Zaire (A/C.6/35/SR.13, para. 25) Bulgaria (A/C.6/35/SR.14, para. 57), Egypt (A/C.6/35/SR.11, para. 36) and Senegal (A/C.6/35/SR.12, para. 12) stressed, as did also the Council of Europe (see A/36/416, para. 2) that in this connexion, due account should be taken of the Definition

of Aggression as adopted by the General Assembly in 1974 (resolution 3314 (XXIX)). The representative of Afghanistan stated:

> "In the list of forms and manifestations of crimes against the peace and security of mankind, the provisions concerning crimes of aggression should be formulated in accordance with the definition of aggression in General Assembly resolution 3314 (XXIX)." (A/C.6/35/SR.13, para. 36)

And the Byelorussian SSR stressed that the proposed Code "should fully reflect the definition of aggression" (see A/35/210, para. 5).

238. Disagreement was expressed with the view that the Definition of Aggression was not the product which the General Assembly had contemplated in its resolution 1186 (XII), when it had decided to "defer consideration of the question of the draft Code until such time it took up again the question of defining aggression". The representative of Mongolia defined its position in this respect in the following terms:

> "Resolution 1186 (XII) referred to "the definition of aggression" without specifying that it would be intended solely for the use of the Security Council as guidance in determing the existence of an act of aggression. In its resolution 3314 (XXIX), the General Assembly had expressed its deep conviction that "the adoption of the Definition of Aggression would contribute to the strengthening of international peace and security". Moreover, article 5, paragraph 2, of the Definition stated: "A war of aggression is a crime against international peace. Aggression gives rise to international responsibility". That provision could hardly be considered a mere guidance for the Security Council in determing the existence of an act of aggression. For all those reasons, his delegation could not agree to the implied argument that the General Assembly should elaborate another definition of aggression suited to the purposes of the Code. The nature of acts of aggression could not change according to the intended use of the definition" (A/C.6/35/SR.11, para. 18).

239. The representative of Fiji said that despite its imperfection the Definition of Aggression was a visible reaffirmation of the hope of mankind that there must be legal limits to the use of armed force (A/C.6/33/SR.62, para. 10). The fact that there was no clear definition of aggression, stated the representative of Bangladesh, did not create problems provided General Assembly resolution 3314 (XXIX) was used as "a guideline for determining the offence" (A/C.6/35/SR.14, para. 48).

240. Other States, while recognizing the relevance of the 1974 Definition of Aggression to the proposed Code, held the view that the concept of aggression under the Code should not be limited to the content of that Definition. Thus the representative of the Libyan Arab Jamahiriya stated that use could be made of the Definition of Aggression "with the concept further developed and refined" (A/C.6/35/SR.14, para. 24). The representative of Yugoslavia stressed that "in order to improve the draft Code, it was necessary to arrive at a broad definition of aggression based on the contemporary conception of the principle of non-intervention

which guaranteed to all peoples the right freely to decide their socio-political and economic system without outside interference. The definition of aggression linked exclusively to the legal concept of prohibition of use of armed force was too narrow to encompass all the various forms of the illegal use of force in contemporary international relations" (A/C.6/35/SR.13, para. 31).

241. A number of States insisted on the need to incriminate all forms of the use of force and not only the use of armed force and commented on the concept of indirect aggression. The representative of Algeria stressed the need to take account in this respect of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (A/C.6/35/SR.19, para. 5) and the representative of Madagascar pointed out that the criteria applicable to such acts as use of armed bands, annexation and intervention "could not ignore the relevant resolutions and declarations of the General Assembly in particular the Definition of Aggression, the Declaration on the Granting of Independence to Colonial Countries and Peoples and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations" (A/C.6/35/SR.10, para. 16). The representative of Afghanistan also felt that "the encouragement of armed bands in other States" should also be included in the draft Code (A/C.6/35/SR.13, para. 37).

242. The representative of Egypt (A/C.6/35/SR.11, para. 36), Senegal (A/C.6/35/SR.12, para. 12), Hungary (A/C.6/35/SR.12, para. 23), Pakistan (A/C.6/35/SR.12, para. 17), the USSR (A/C.6/35/SR.13, para. 12), Afghanistan (A/C.6/35/SR.13, para. 36), Mongolia (A/C.6/33/SR.62, para. 1), the Ukrainian SSR (A/C.6/35/SR.14, para. 27) also suggested that the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations should be taken into account.

243. The representative of Zaire stressed that the list of acts constituting crimes against mankind should also include "acts committed by foreign States for the purposes of inciting rebellion in the territory of other States". He added that the "acts committed by peoples struggling against colonization or foreign occupation, however, should not fall within that category" (A/C.6/35/SR.13, para. 27).

244. The use of mercenaries was another act which Senegal (A/C.6/35/SR.12, para. 12), Afghanistan (A/C.6/35/SR.13, para. 37), the Sudan (A/C.6/35/SR.14, para. 40), Cuba, (A/C.6/35/SR.14, para. 68), Guyana (A/C.6/35/SR.15, para. 12), Zaire (A/C.6/35/SR.13, para. 27) and Madagascar felt should be covered by the Code, with the remark in the case of the last-mentioned State that the offence in question "had given rise to the adoption of a new article on mercenaries in Protocol I to the 1949 Geneva Conventions (A/C.6/35/SR.10, paras. 10-17). It was necessary to bear in mind such offence as "the use of mercenaries against the peace and security of mankind" said the representative of Sudan (A/C.6/35/SR.14, para. 40) adding that in that regard mention should be made of the agreements in that field signed by African countries. And in the view of the representative of Madagascar, a code which sidestepped the use of mercenaries "would lose all credibility in the eyes of the vast majority of the peoples of the third world" (A/C.6/35/SR.10, para. 17).

245. The representatives of Madagascar (A/C.6/35/SR.10, para. 16) and Sudan (A/C.6/35/SR.14, para. 40) referred to "the annexation of territory by force".

246. Violations of the principle of non-interference and non-intervention were considered by several States as coming within the ambit of the proposed Code.

247. The representative of Yugoslavia noted that "the obligation to refrain from interfering in the internal affairs of other States had an expressly peremptory character because it was based on the principles of self-determination, non-intervention and the prohibition of the threat or use of force, /so that/ any limiting of the scope of the code exclusively to the use of armed forces would not be in accordance with the existing rules of international law" (A/C.6/35/SR.13, para. 31).

248. The representative of Guyana felt that the draft Code should cover "intervention by the authorities of a State in the internal or external affairs of another State by means of coercive measures of an economic or political character in order to force its will and thereby obtain advantages of any kind" (A/C.6/35/SR.15, para. 13). The representative of Paraguay "supported the listing of offences involving the violation of the principle of non-intervention in matters essentially within the domestic jurisdiction of any State" (A/C.6/35/SR.14, para. 20). The representative of Zaire referred to intervention in the internal affairs of States (A/C.6/35/SR.13, para. 27).

249. Some States favoured the inclusion in the proposed Code of international crimes against economic interests of States. In this regard the Philippines referred to crimes of an economic nature "that would tend to financially or economically destabilize the economic viability and security of States, particularly those of the developing States," including for example "large-scale estafa; the absconding of public funds by individuals of /trans/nationals; counterfeiting and forgery offences" (see A/36/416, para. 4). The representative of Zaire spoke of "acts committed in violation of the economic security and independence of States" (A/C.6/35/SR.13, para. 27). The representative of the Sudan referred to the "exploitation of the natural wealth of peoples" (A/C.6/35/SR.14, para. 40) and the representative of Algeria, speaking of the acts which were "clearly offences against the peace and security of mankind", referred to "economic domination" (A/C.6/35/SR.14, para. 3).

250. Several States were of the view that violations of international obligations in the field of disarmament should be characterized as an offence against the peace and security of mankind.

251. The Byelorussian SSR stated that the Code should contain a specific provision that "non-compliance with obligations in /this/ field was inadmissible" (see A/35/210, para. 8). The representative of Bangladesh said that "it had to be determined whether violations of obligations under treaties relating to nuclear-weapons tests in the atmosphere, in outer space and under water could be construed as offences in the context of the Code" (A/C.6/35/SR.14, para. 46). Finland

mentioned "among other crimes to be considered for possible inclusion the military or other hostile use of methods altering the environment" (A/35/210, p. 8, para. 2).

252. More specifically the representative of USSR suggested that a section in the proposed Code dealing with violations of the obligation of States in the field of disarmament should reflect the relevant provisions of international legal instruments such as the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water (1963), the Treaty on the Non-Proliferation of Nuclear Weapons (1968), the 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 (1971), the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxic Weapons and on Their Destruction (1972) and the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (1976) (A/C.6/35/SR.13, para. 12). Those instruments, or some of them, were also rereferred to by the Byelorussian SSR (see A/35/210, para. 8), and representatives of Poland (A/C.6/35/SR.14, para. 17) India (A/C.6/35/SR.15, para. 3), and the Ukrainian SSR (A/C.6/35/SR.14, para. 27), who mentioned also the Declaration on the Prohibition of the Use of Nuclear and Thermonuclear Weapons. The representatives of Egypt (A/C.6/35/SR.11, para. 36), Senegal (A/C.6/35/SR.12, para. 12), Afghanistan (A/C.6/35/SR.13, para. 36) and Democratic Yemen (A/C.6/35/SR.14, para. 43) also felt that due account should be taken in the proposed Code of existing instruments in the field of disarmament.

253. Several States stressed that special emphasis should be placed in the proposed Code on war crimes. Thus Finland stated that priority should be accorded to the "confirmation of war crimes and crimes against peace and humanity as international crimes as defined in the Charter of the International Military Tribunal" (see A/35/210, para. 3), and the representative of Poland pointed out that article 85, paragraph 5, of Additional Protocol I to the 1949 Geneva Conventions "provided that all breaches defined by the article should be regarded as war crimes" (A/C.6/35/SR.14, para. 17). The German Democratic Republic similarly referred to the Geneva Conventions and their Additional Protocols - as did also Mongolia (see A/35/210/Add.1, para. 3), Egypt (A/C.6/35/SR.11, para. 36), Senegal (A/C.6/35/SR.12, para. 12), Pakistan (A/C.6/35/SR.12, para. 17), Hungary (see A/35/210, para. 4), the USSR (A/C.6/35/13, para. 12), Tunisia (see A/36/416, para. 2 (b)), Afghanistan (A/C.6/35/SR.13, para. 36), the Libyan Arab Jamahiriya (A/C.6/35/SR.14, para. 24), the Ukrainian SSR (A/C.6/35/SR.14, para. 27), the Sudan (A/C.6/35/SR.14, para. 39), Bulgaria (A/C 6/35/SR.14, para. 55), Cuba (A/C.6/35/SR.14, para. 68), Czechoslovakia (A/C.6.35/SR.15, para. 42), Poland (see A/36/416, para. 7), Yugoslavia (A/C.6/35/SR.13, para. 33), Romania (see A/36/416, para. 5), and Kenya (A/C.6/35/SR.15, para. 19) and stressed that in elaborating the relevant provisions of the future Code "account should be taken of the relevant provisions of the Geneva Conventions of 12 August 1949 and the first Protocol amending them of 8 June 1979" (see A/35/210/Add.1, para. 10).

254. Yugoslavia observed that Additional Protocol I had extended the scope of the Geneva Conventions to the struggle of peoples and liberation movements against colonial domination, foreign occupation and racist régimes on the basis of the right to self-determination and added:

"Since that form of struggle fell within the category of armed conflicts in which, under Protocol I, the parties were bound to comply with the Geneva Conventions, the commission of war crimes in such conflicts was also punishable and, therefore, should be prohibited in the draft Code." (A/C.6/35/SR.13, para. 33)

255. A number of States considered it important that the proposed Code should include such acts as war propaganda and incitement of national and racial hatred.

256. Referring to its comments that the right to live in peace and security was one of the most important human rights, Hungary considered it "as most important that the Code should include acts constituting an instigation to war and war propaganda as well as incitement to national and racial hatred" (A/C.6/35/SR.12, para. 24). The representative of Afghanistan referred to the provisions of the Geneva Conventions and their Additional Protocols concerning "crimes of propaganda for war and the incitement of national and racial hatred" (A/C.6/35/SR.13, para. 36). Also referring to war propaganda, the representative of Mongolia stated that "the instigation of war propaganda and incitement to hatred among peoples should be expressly prohibited as acts leading to the psychological preparation and commission of grave international criminal offences" (A/C.6/35/SR.11, para. 17). Similar views were expressed by Romania, (see A/36/416, para. 7) and Bulgaria (A/C.6/35/SR.14, para. 58). Hungary also stated that it was "particularly important for the draft to include acts designed to educate youth in a war spirit or in national or racial hatred considering that such acts are likely to constitute a grave threat to the peace and security of mankind in the long term" (see A/35/210, para. 7) - the view which was supported by the representative of Mongolia (A/C.6/35/SR.11, para. 17) and the representative of the United Arab Emirates was of the view that the problem of crimes committed "for racial or religious motives must also be studied" (A/C.6/35/SR.11, para. 22).

257. Genocide was highlighted by several States, including Madagascar (A/C.6/35/SR.10, para. 16), Pakistan (A/C.6/35/SR.12, para. 17), Hungary (see A/35/210, para. 4), the United Arab Emirates (A/C.6/35/SR.11, para. 22) the German Democratic Republic (A/C.6/33/SR.63, para. 8) and Cuba (A/C.6/35/SR.14, para. 70), as a crime to be included in the proposed Code and emphasis was placed by Cyprus (A/C.6/35/SR.13, para. 3), the Sudan (A/C.6/35/SR.14, para. 39), Sri Lanka (A/C.6/35/SR.15, para. 26), Bulgaria (A/C.6/35/SR.63, para. 17), Afghanistan (A/C.6/35/SR.13, para. 36), Byelorussian SSR (A/C.6/35/SR.12, para. 7), Mongolia (A/C.6/33/SR.62, para. 1) and Romania (A/C.6/33/SR.62, para. 5) on the need to take into account the provisions of the Convention on the Prevention and Punishment of the Crimes of Genocide in the formulation of the corresponding provisions of the Code.

258. The Sudan (A/C.6/35/SR.14, para. 40) stated that the proposed Code should furthermore cover cultural genocide which was also referred to by UNESCO (see A/35/210, para. 19) and by Mongolia. The latter supported the suggestion that the draft Code should make specific reference to "cultural genocide" and described it as "the policy of prohibiting people from using their language and of destroying national cultural identity" (A/C.6/35/SR.11, para. 17).

268. The representative of Egypt stated that emphasis should be placed "on the incrimination ... of the deprivation by force of the right of peoples to self-determination" (A/C.6/35/SR.11, para. 36). The representative of Zaire suggested that the Code should include "all acts which violated the principle of self-determination of peoples" (A/C.6/35/SR.13, para. 27). As indicated in paragraph 115 of the present paper, the Observer from the Palestine Liberation Organization referred to the crimes which denied peoples the right of self-determination, adding that "the concept had now developed in international law that the right of self-determination was a fundamental element of jus cogens, upon which all social and economic rights depended", and that "... many resolutions and documents of the United Nations condemned imperialism, colonialism, racism, apartheid and zionism as acts against peace and security" (A/C.6/35/SR.13, para. 22). The representative of Trinidad and Tobago (A/C.6/35/SR.14, para. 12) felt that violation of the collective right of a people to self-determination and independence should be included in the Code as one type among others of "grave, wilful and persistent violation and denial of human rights".

269. Several States characterized colonialism as one of the crimes to be included in the draft Code.

270. The representative of Algeria referred to colonialism among those offences which were "clearly offences against the peace and security of mankind" (A/C.6/35/SR.14, para. 3). The representative of Afghanistan (A/C.6/35/SR.13, para. 36), the Byelorussian SSR (A/C.6/35/SR.12, para. 7), Egypt (A/C.6/33/SR.65, para. 3), the German Democratic Republic (A/C.6/33/SR.63, para. 8), Libya (A/C.6/35/SR.14, para. 24), Madagascar (A/C.6/35/SR.10, para. 17), the Observer from the Palestine Liberation Organization (A/C.6/35/SR.13, para. 22) also spoke on colonialism in this context. In the view of the representative of Kenya, further work on the item should lead to "the outlawing of colonialism in all its manifestations" (A/C.6/35/SR.15, para. 20).

271. Some of the representatives referred to in paragraph 267 above and some other States - the representatives of Mongolia (A/C.6/33/SR.62, para. 1), Senegal (A/C.6/35/SR.12, para. 12), Hungary (A/C.6/35/SR.12, para. 21), Cuba (A/C.6/35/SR.14, para. 68) - stated that the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples should be taken into account in the process of further work on the proposed Code. The representative of Afghanistan emphasized that the draft Code should in particular promote "the full implementation" of the provisions of that Declaration (A/C.6/35/SR.13, para. 36).

272. Acts of international terrorism were mentioned for inclusion in the proposed Code by the representatives of Afghanistan (A/C.6/35/SR.13, para. 37), Romania (A/C.6/33/SR.62, para. 7) which deemed it "desirable to broaden the scope of concern in that area and deal with more serious international offences which directly affected the world community and civilization itself", and the German Democratic Republic (see A/35/210/Add.1, para. 12) which, speaking of "the crime of international terrorism" placed emphasis on acts in which "the State was involved" (A/C.6/35/SR.10, para. 23).

273. Nor should slavery be ignored "as a crime against humanity", said the representative of Bangladesh (A/C.6/35/SR.14, para. 49). The representatives of Madagascar (A/C.6/35/SR.10, para. 17), Finland (see A/35/210, para. 2) and Mongolia (A/C.6/35/SR.11, para. 17) also referred to slavery and the slave trade.

274. The representative of Lebanon mentioned "offences committed in violation of human rights conventions" (A/C.6/35/SR.10, para. 12). The representative of Democratic Yemen (A/C.6/35/SR.14, para. 43) held the view that due account should be taken of United Nations instruments in the field of human rights. The Council of Europe stressed "the need to expand the scope of the Code to include the systematic denial of human rights", adding that "the international protection of human rights" is closely linked to the maintenance of peace and repeated and systematic violations at least should be considered an offence against mankind (see A/36/416, para. 7(d)). The representative of Pakistan, observing that "other forms of serious threats to the peace and security of mankind had come into existence and should perhaps be added to the category of offences in the draft Code", said that, for instance, large numbers of people had been compelled to leave their countries against their will and seek refuge in other countries (A/C.6/35/SR.12, para. 18).

275. Some States felt that in defining the scope of the future Code account should be taken of the 1963 Tokyo Convention on Offences and Certain Acts Committed on Board Aircraft, the 1970 Hague Convention for the suppression of Unlawful Seizure of Aircraft and the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. Views to that effect were expressed by the representatives of Lebanon (A/C.6/35/SR.10, para. 12), India (A/C.6/35/SR.15, para. 4), the United Arab Emirates (A/C.6/35/SR.11, para. 22), Kenya (A/C.6/35/SR.15, para. 19), Poland (A/C.6/35/SR.14, para. 17) as well as by Finland (see A/35/210, para. 2) and Romania (see A/36/416, para. 5) in their respective comments. The representative of Cuba stated that the proposed Code should include a reference to the responsibility of States for acts committed against civil aviation (A/C.6/35/SR.14, para. 69).

276. A number of States stated that account should be taken in the future Code of the provisions of the International Convention against the Taking of Hostages. They were Madagascar (A/C.6/35/SR.10, para. 16), Senegal (A/C.6/35/SR.12, para. 12), Cyprus (A/C.6/35/SR.13, para. 3), Poland (A/C.6/35/SR.14, para. 17). In the opinion of the representative of Madagascar the definition of terrorism in the draft Code could not ignore the provisions of that convention (A/C.6/35/SR.10, para. 16).

277. Many States were of the view that the proposed Code should include crimes against internationally protected persons taking into account the 1973 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents. References to this convention were made by the representatives of India (A/C.6/35/SR.15, para. 4), Poland (A/C.6/35/SR.14, para. 17), Egypt (A/C.6/35/SR.11, para. 36), the German Democratic Republic (A/C.6/33/SR.63, para. 8), Afghanistan (A/C.6/35/SR.13, para. 37), Kenya (A/C.6/35/SR.15, para. 19) as well as by Finland (see A/35/210, para. 2), Hungary (see A/35/210, para. 6), Romania (see A/36/416, para. 5) and Tunisia (see A/36/416, para. 2 (d)).

278. Finland (see A/35/210, para. 2) in its comments and the representative of Mongolia (A/C.6/35/SR.11, para. 17) mentioned the crime of piracy.

279. Some States felt that the draft Code should include acts damaging the environment in a manner threatening the security of mankind as a whole. Thus Hungary (see A/35/210, para. 9) recommended - as did also the representative of Bulgaria (A/C.6/35/SR.14, para. 58) - consideration of the advisability to extend the applicability of the draft Code "to acts damaging the natural environment in a manner threatening the security of mankind as a whole, adding: "The material-technological conditions are already partially at hand for the commission of such acts and they can be expected to continue increasing in the future." The representative of Zaire also referred to offences endangering environment (A/C.6/35/SR.13, para. 27).

280. Yugoslavia stated in its comments that:

> "... the indispensability of preserving the biophysical and chemical characteristics of the human environment points to the need for wider activity. Such activity, by its effects, will transcend the scope of classical thinking on negative implications of the existence and permanent testing and further development of atomic, biological and chemical weapons, and prevent possible utilization with impunity of scientific and technological advancements for purposes contrary to such objectives". (see A/35/210, para. 2)

281. References were made to United Nations decisions condemning such phenomena as imperialism (Observer from the Palestine Liberation Organization - (A/C.6/35/SR.13, para. 22), zionism (the representative of Libya (A/C.6/35/SR.14, para. 24). Expansionism was referred to by the representative of Algeria among the acts which were "clearly offences against the peace and security of mankind" (A/C.6/35/SR.14, para. 3).

282. As may be seen from paragraphs 82-86 of the present paper, the States which had objections or reservations to the resumption of the work on the draft Code stressed that the listing in a code of the type proposed of acts to be characterized as offences against the peace and security of mankind raised a number of problems.

283. One of those problems was that of duplication. Thus the United States observed that much of the potential contribution of a Code of the type envisaged "had already been made by instruments" already in existence (see A/35/210/Add.1, para. 6). The representative of Italy noted that since penal provisions had been included in several such instruments, many of the concerns which had given rise to the idea of the Code "were no longer current". (A/C.6/35/SR.13, para. 8).

284. With reference to such acts by States as organizing armed bands, intervention, annexation of territory, encouragement of terrorist acts, acts in violation of the laws and customs of war and genocide, the United States pointed out that:

> "Guidelines concerning the limits of State conduct in these areas ... now clearly exist. 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 1949 Geneva Conventions and Additional Protocols I and II are but a few relevant examples. Other material contained in the /International Law/ Commission draft is present in such instruments as the Genocide Convention." (See A/35/210/Add.1, para. 6.)

285. Attention was further drawn to the difficulties which might be encountered in trying to harmonize the provisions of the proposed Code relating to specific offences with those of existing instruments. Referring to aggression, the representative of the Federal Republic of Germany stressed that "it would be unacceptable if an individual were sentenced for a crime of aggression which the Security Council, under Article 39 of the Charter, did not recognize as such or which it defined as a case of self-defence. For an act committed by an individual to become a punishable offence, it would first have to be established as such by the Security Council" (A/C.6/35/SR.12, para. 32).

286. A similar issue was raised by that representative in connexion with the war crimes: "the Contracting Parties to the four Geneva Conventions of 12 August 1949 ... were already obliged to make provisions in their national laws for the imposition of penalties for serious violations of those Conventions and to bring such offenders before their own national courts or to hand them over to any of the other Contracting Parties for the purpose of criminal prosecution. The First Additional Protocol contained similar obligations. In order to maintain a parallel with the Geneva Conventions and the Additional Protocols, the provisions of the draft Code should be formulated with much greater precision, since it was important to avoid creating the impression that the provisions of the Geneva Conventions were being questioned" (A/C.6/35/SR.12, para. 32).

287. Still another question which was raised by the States in question was whether existing instruments dealing with acts proposed for inclusion in the proposed Code necessarily met the purposes of a document which, as the Netherlands put it, was intended "to be used for purposes of criminal proceedings" (A/C.6/35/SR.11, para 45). They illustrated their position in this respect by referring to the Definition of Aggression adopted by the General Assembly in 1974. The representative of New Zealand pointed out that that definition which had been

elaborated after years of efforts and discussion provided legal principles to guide the Security Council in the exercise of its political responsibilities and "deliberately allowed the Council a certain degree of latitude, for it was important not to limit its political discretion" (A/C.6/35/SR.11, para. 30) The representative of Israel (see para. 121 above) had described the claim that "the definition of aggression and the draft Code were Siamese twins whose development was interdependent" as fallacious, pointing out that differentiation could be expected depending on the purpose of the instrument concerned and that "aggression under the code would be an offence for which individuals would be responsible, while, for the purpose of the definition, the responsible entity would be a State. Moreover, the enumeration of acts constituting aggression in the draft code was closely connected with the Nürnberg principles. That connexion did not exist in the case of a definition of aggression." 8/

288. Other views on the problem of duplication expressed by the States concerned are set out in paragraphs 67 to 69 above. Those paragraphs, as well as paragraphs 70 to 89 also summarize their views on other problems involved, such as the absence of a unanimity of views as to the offences to be listed in the proposed Code and the difficulty of reconciling the widely varying opinions which had been expressed in this respect, the absence of generally agreed criteria for the selection of offences to be included in the proposed Code, the difficulty of reaching agreement on the inclusion in that Code of those offences against the peace and security of mankind which were not covered by various international instruments adopted since 1954.

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

289. There were a number of such issues which were considered by many States as being relevant to the content of the proposed Code.

290. Several States pointed out that safeguard clauses should be included in the proposed Code.

291. Mongolia stressed, as did also the Byelorussian SSR (see A/35/210, para. 5) and the representative of Afghanistan (A/C.6/35/SR.13, para. 36), that

> "Particular attention must be devoted to ensuring that the provisions of the Code do not impair or hamper the full implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted by the General Assembly in 1960, the right of peoples to struggle for liberation from colonialist and neo-colonialist oppression and combat racism and apartheid, hegemony and other forms of foreign domination and subjugation" (see A/35/210/Add.1, para. 5).

8/ Official Records of the General Assembly, Ninth Session, Sixth Committee, 424th meeting, para. 27.

292. The Sierra Leone delegation believed that any elaboration of a draft Code "should not in any way adversely affect the legitimate struggle of a people fighting for the exercise of the right to self-determination and independence in any racist régime" (A/C.6/35/SR.11, para. 49). The representative of the Libyan Arab Jamahiriya stated that "the provisions of the Code should parallel those of the Declaration on the Granting of Independence to Colonial Countries and Peoples. They should recognize the right of peoples to struggle to free themselves from colonialism, apartheid, racism and zionism ... and their right to attain independence and to protect the human rights set forth in United Nations documents, inasmuch as violations of those rights constituted a crime against humanity", (A/C.6/35/SR.14, para. 24(a)).

293. The representative of Bangladesh emphasized that "the right of oppressed and subjected colonial or semi-colonial peoples to self-determination must likewise be guaranteed" (A/C.6/35/SR.14, para. 50) and the representative of Egypt said that the provisions of the Code "must expressly uphold ... the rights of national liberation movements" (A/C.6/33/SR.65, para. 2). The Code, stated the representative of the Byelorussian SSR "Should not contain anything which would diminish the right of peoples to self-determination and independence and their right to struggle to free themselves from racism, colonialism and apartheid" (A/C.6/35/SR.12, para. 7).

294. The representative of Kenya referred to the specific situation prevailing in particular regions of the world. As long as parts of Africa and elsewhere, he said, remained under colonial or other domination, special consideration should be given to the position of front-line States with regard to freedom-fighters. The Kenyan delegation could not envisage a situation in which those States "would willingly hand over freedom-fighters to the racist régime in South Africa, as would appear to be required under the existing draft Code (A/C.6/35/SR.15, para. 20).

295. Some of the above-mentioned States emphasized that the safeguard clauses should also cover the right of self-defence as provided in Article 51 of the Charter. Thus the representative of Afghanistan said that the draft Code should in particular "promote ... the right of peoples and States to individual or collective self-defence in accordance with Article 51 of the Charter" (A/C.6/35/SR.13, para. 36), a view which was also expressed by Mongolia (see A/35/210/Add.1, para. 2). The representative of Egypt stated that the provisions of the Code "must expressly uphold the right of self-defence" (A/C.6/33/SR.65, para. 2). There must be no impairment of the sovereignty of States, i.e. the right of a State to self-defence as guaranteed by Article 51 of the United Nations Charter, emphasized the representative of Bangladesh (A/C.6/35/SR.14, para. 50).

296. Many States emphasized that the proposed Code should deal with the principle of the non-applicability of statutory limitations to war crimes and crimes against humanity. References were made in this connexion to the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity by the representatives of the USSR (A/C.6/35/SR.13, para. 12), Afghanistan

(A/C.6/35/SR.13, para. 36), the Sudan (A/C.6/35/SR.14, para. 39), the German Democratic Republic (see A/35/210/Add.1, para. 4), the Byelorussian SSR (see A/35/210, para. 6), Czechoslovakia (see A/35/210, para. 3), the Ukrainian SSR (see A/35/210/Add.2/Corr.1, para. 5), India (A/C.6/35/SR.15, para. 3), Tunisia (A/C.6/35/SR.12, para. 2), Bangladesh (A/C.6/35/SR.14, para. 46), Cuba (A/C.6/35/SR.14, para. 68), Romania (A/C.6/33/SR.62, para. 5), Poland (A/C.6/35/SR.14, para. 17) and Mongolia (A/C.6/33/SR.62, para. 1).

297. The representative of Bulgaria stated that the principle in question should be "reflected in the proposed Code" (A/C.6/35/SR.14, para. 57), the view which was also expressed by the representative of the Libyan Arab Jamahiriya (A/C.6/35/SR.14, para. 23). The representative of Iraq felt that that principle should be taken into account in the proposed Code (A/C.6/35/SR.15, para. 17). Yugoslavia also favoured the inclusion in the proposed Code of a provision including statutory limitations in respect of offences against the peace and security of mankind and elaborated on its position by stressing that such offences

> "violate, in the gravest sense, the interests of general international significance ... and, which from the formal point of view, actually constitute international criminal acts since they are already incriminated by the existing rules of international law. The fact that they are compiled in the form of a Code of the gravest offences is proof of the harmful effects they cause, but also of the significance which is attached to the preservation of protected values. Since it is a matter of a group of the gravest criminal offences, in the suppression and punishment of which the whole international community is interested, exclusion of statutory limitation with regard to the prosecution and punishment of the perpetrators, in the form of a separately formulated provision to that effect in the draft Code, appears therefore to be an absolute condition of efficient international co-operation aimed at the realization of the set objectives".
> (See A/35/210, para. 10.)

Poland expressed the same view and furthermore considered it imperative for the Code to impose on all signatories "an obligation to introduce relevant laws in their legislation", adding that the principle in question "should be accorded the status of a principle of international law" (see A/36/416, para. 9). Romania also favoured the inclusion of a provision concerning the principle of non-applicability of statutory limitations "both with regard to the prosecution of offences against the peace and security of mankind and with regard to the enforcement of penalties for the preparation of such offences (see A/36/416, para. 11). The representative of Zaire stated that it would have to be decided whether the acts considered as crimes in the future Code "would be exempt from statutory limitations" (A/C.6/35/SR.13, para. 27).

298. Another aspect which China (A/C.6/35/SR.13, para. 18), Brazil (A/C.6/35/SR.10, para. 27) and Algeria (A/C.6/35/SR.14, para. 4), felt should be given due consideration related to the determination of penalties and the question whether they should be set out in the Code. In this connexion, a number of States held

that the proposed Code should define penalties. Thus the representative of India held that for the draft Code "to be meaningful and to serve the intended purpose, it should not only define offences but should provide for punishments" (A/C.6/35/SR.15, para. 1).

299. The representative of Zaire observed that the "general effectiveness of any code lay in the sanctions specified for offenders. The code would have to provide for such sanctions, in spite of the problem which the application of those sanctions raised in international law" (A/C.6/35/SR.13, para. 28). Romania in its comments stressed that by virtue of the principle of legality of punishment - nulla poena sine lege - the Code must ... "lay down rules governing penalties for acts defined as offences" (see A/36/416, para. 9).

Guatemala was of the view that

> "one of the reproaches levelled at the Nürnberg Tribunal was that it acted in violation of the principle of nullum crimen, nulla poena sine lege. If the draft under consideration should not include a complete designation of such penalties, a partial designation would still be feasible. Given the universal recognition of the principle that the law is the source par excellence of penal procedure, even if conduct is expressly identified as unlawful, an indication of the penalties therefore is essential to the integrity of the aforementioned principle ... since no penalty may be imposed unless already provided for by statute or treaty." (See A/35/210, para. 4.)

The representatives of Tunisia (A/C.6/35/SR.12, para. 3), Paraguay (A/C.6/35/SR.14, para. 21) and Finland (A/C.6/35/SR.11, para. 56) also felt that the proposed Code should define penalties.

300. A different approach to this question was however taken by Yugoslavia which elaborated on its position as follows:

> "Just as in other cases of international criminal offences prohibition of incriminated acts has not been accompanied by the provision of sanctions under international law in this case either. This means that the existence of international criminal offences and the responsibility for the commission thereof must, also under the draft Code of Offences against the Peace and Security of Mankind, be in compliance with the principle nullum crimen sine lege, and not nullum crimen, nulla poena sine lege, as the basic principle governing the legality of the process of prosecution and punishment in specific situations." (see A/35/210, para. 11).

301. Complicity was another question which several States felt should be given due attention. Thus the representative of Madagascar said that a "specific provision spelling out the constituent elements of complicity and covering a broad range of reprehensible acts was clearly desirable" (A/C.6/35/SR.10, para. 17). The effectiveness of the Code, said the representative of Zaire, required a clear definition of the principle of complicity (A/C.6/35/SR.13, para. 27). The question of complicity was also mentioned by the Philippines (see A/36/416, para. 3) and by the Byelorussian SSR (A/35/210, para. 7).

302. The question of extradition was referred to by Burundi (A/C.6/35/SR.15, para. 31), Zaire (A/C.6/35/SR.13, para. 27), Madagascar (A/C.6/35/SR.10, para. 17) and Trinidad and Tobago (A/C.6/35/SR.14, para. 13). In view of the existence of numerous extradition treaties and agreements between States the future Code should also provide for the obligation of States to extradite offenders or punish them in their own courts, said the representative of Zaire. (A/C.6/35/SR.13, para. 27) With regard to extradition, said the representative of Madagascar, the way in which bilateral conventions on the subject had been applied suggested that the point should not raise insurmountable difficulties (A/C.6/35/SR.10, para. 17). With reference to the proposed Code the problem of extradition is also discussed in paragraphs 356-357 of the present paper.

303. The question of the right of asylum was also raised with reference to the proposed Code. The representative of Chile felt that consideration should be given to the question "whether or not the right of asylum should be available to alleged offenders under the Code". He pointed out that different replies to that question were provided by the Convention on the Prevention and Punishment of the Crime of Genocide - which provided that the offences to which it related should be considered as political crimes for the purpose of extradition - and by 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 which both expressly mentioned the right of asylum (A/C.6/35/SR.11, para. 42). The representative of Burundi also referred to the question of the right of asylum (A/C.6/35/SR.15, para. 31).

304. Still other elements which were viewed as relevant to the proposed Code related to the conduct of criminal proceedings and the execution of the sentence.

305. The first aspect was referred to by the representatives of Burundi (A/C.6/35/SR.15, para. 31), Venezuela (A/C.6/35/SR.11, para. 52) and Argentina who stressed that "the proposed Code would be incomplete unless it included procedural provisions especially concerning rules of evidence and a suitable evaluation system" (A/C.6/35/SR.10, para. 21).

306. Special emphasis was placed by the representatives of Burundi (A/C.6/35/SR.15, para. 31), Tunisia (A/C.6/35/SR.12, para. 3), Trinidad and Tobago (A/C.6/35/SR.14, para. 13) and Yugoslavia (see A/35/310, para. 13) on the protection of the rights of the accused. Thus the representative of Tunisia stressed that the proposed Code should lay down "all the procedural rules to protect the rights of the accused" (A/C.6/35/SR.12, para. 3). The representative of Trinidad and Tobago suggested that "internationally recognized procedural safeguards applicable in criminal proceedings should apply to the arrest, detention and trial of the alleged offenders" (A/C.6/35/SR.14, para. 13). Yugoslavia in its comments made the following remarks on this aspect of the question:

> "for the purpose of a more complete affirmation of the principle of legality, in proceedings against perpetrators of offences incriminated by the Code, the set of rules contained in the Code should also include provisions which would guarantee to the accused persons impartial court treatment at all stages of criminal proceedings, under conditions stipulated in advance, i.e.,

guarantees of a criminal-legal nature regulating in a uniform manner, through appropriate legal principles of a substantive, procedural and executive character in relation to all offences incriminated by the Code, the legal grounds of criminal responsibility and the conditions for prosecution and punishment for the purpose of protecting the perpetrators against arbitrary acts on the part of the authorities. Responsibility for the offences incriminated under precisely determined conditions, as legal grounds for punishment on the basis of criminal proceedings, is a rule which is reflected, in compliance with the principle of legality, both in national and international law, in classical provisions on the following matters: individual responsibility, prohibition of collective punishment, criminal-legal qualification of the offences prior to their commission, the prohibition of double punishment for the same offence, non-retroactive character of criminal-legal provisions, presumption of innocence until guilt is proven, determination of guilt through judicial proceedings which provide all guarantees of independence and impartiality, right to information on the nature of the accusation, right to a fair hearing, right to legal aid in the course of the defence, right to the hearing of witnesses and producing evidence, right of appeal against the pronounced penalty and sentence, etc. The importance of these guarantees as grounds upon which criminal responsibility is based and determined is beyond any doubt, both at the national and international levels (see A/35/210, para. 13).

307. Regarding the question of the execution of sentence the representative of Tunisia said that the proposed Code should "lay down all the procedural rules to ... ensure execution of the sentence" (A/C.6/35/SR.12. para. 3). The representative of Zaire stressed that provision should be made "for machinery to guarantee the execution of decisions taken to safeguard the new legal order" which the proposed Code was designed to establish (A/C.6/35/SR.13, para. 28).

308. Comments were also made on the relationship between the proposed Code and domestic legislation. Poland stated that the Code should include a provision similar to that contained in article 4 of the draft articles on State responsibility - that characterization of an act as an offence against the peace and security of mankind cannot be affected by the charterization of the same act as lawful under internal law (see A/36/416, para. 8). The representative of Trinidad and Tobago said that the Code "should be so drafted that the offences included in it could be incorporated without difficulty in the criminal law of States (A/C.6/35/SR.14, para. 13). Romania suggested "with a view to providing an effective regulative system and making it possible to bring offenders to book", that consideration be given to "including in the draft Code a provision under which all States would incorporate relevant clauses in their internal legislations", (see A/36/416, para. 9) and the Council of Europe raised the question whether there should be added to the draft Code "a provision whereby the States parties would undertake to incorporate in their national penal laws provisions prohibiting the acts referred to in the Code" (see A/36/416, para. 7 (e)).

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

309. Many States commented on the issue of the attribution of responsibility under the proposed Code. Three main trends emerged in that respect.

310. Some States held the view that the proposed Code should be based on the concept of individual criminal responsibility. Thus, Czechoslovakia felt that the "underlying theme" of the Code should be "the criminal liability of individuals for the most serious offences against peace and mankind" (see A/35/210, para. 2). The representative of the Byelorussian SSR stated that the Code "should spell out the individual criminal responsibility of persons who committed offences against mankind" (A/C.6/35/SR.12, para. 8), and the representative of the Soviet Union stressed that the content of the offences should be specified in such a way "as to make it clear in each case that what was involved was the acts and responsibility of individuals" (A/C.6/35/SR.13, para. 13).

311. While viewing the proposed Code as "a proper complement to the Convention on the Responsibility of States currently drafted by the ILC", the representative of Poland pointed out that "under contemporary international law the scope of the State's responsibility is limited to compensation and satisfaction" and that, as a result, providing for the direct penal responsibility of individuals guilty of offences against the peace and security of mankind might to a greater extent be conducive to their prevention (see A/36/416, para. 6).

312. The German Democratic Republic held the view that the concept of individual responsibility should encompass "individuals, groups or organizations, and transnational corporations" (see A/35/210/Add.1, para. 11).

313. Several other States took a different approach. Some remarked that there was no need to dwell on the question of the punishment of individuals having committed acts recognized as offences in their respective States because that did not create any problems. In their opinion, the problem which the proposed Code should tackle was that of the responsibility of individuals for crimes committed in a particular State on the instructions of the Government. Botswana observed that the punishment of individuals in such circumstances "is not all that easy" and asked the following question:

> "If an individual in a particular State commits acts which would offend against the /Code/ , but does so on the instructions of his Government, how would the international community arrest this person and punish him while that Government is still in power? This can only succeed in cases where the Government concerned is overthrown by force and the succeeding Government is prepared to co-operate." (See A/35/210, para. 2) 9/

9/ A similar observation was made by Botswana with reference to paras. 7, 8, 9 and 10 of the ILC draft Code (A/35/210, para. 6).

314. In the view of those States, the responsibility under international law of individuals for acts committed by them in the exercise of their official duties could only be a corollary of the responsibility of the State itself. Thus the representative of China, while noting that the Charter of the Nürnberg Tribunal had contained provisions for the punishment of individuals, observed that those who now launched oppressive wars and perpetrated massacres were mainly States pursuing imperialist and expansionist policies and added:

> "It would be impossible to assess the responsibility of individuals unless the draft Code first determined the responsibility which States should bear for such crimes. Unless the Code mentioned State responsibility, it would be impossible to implement it." (A/C.6/35/SR.13, para. 17)

315. The representative of Sierra Leone also felt that the proposed Code should focus on State responsibility, stating in that respect that what the text should reflect "was State responsibility for crimes committed by an individual in carrying out his official duties". The draft Code placed too much emphasis on individual responsib responsibility in criminal acts of States, he said (A/C.6/35/SR.11, para. 50).

316. The representative of Trinidad and Tobago said, as did also the representative of Sri Lanka (A/C.6/35/SR.15, para. 27) as well as Romania (see A/36/416, para. 10) and Tunisia (see A/36/416, para. 5), that the responsibility for offences "should not be confined to public officials but should also be attributed to States, even in the case of offences against legal persons" (A/C.6/35/SR.14, para. 12). The representative of the United Arab Emirates stressed that some of the offences proposed for inclusion in the Code, among which he singled out "crimes committed for racial or religious motives /which/ went beyond individual responsibility and entailed the criminal responsibility of States"(A/C.6/35/SR/11, para. 22). In the opinion of the representative of Algeria, the application of the proposed Code would involve the responsibility of individuals as well as that of States and of certain racist entities (A/C.6/35/SR.14, para. 4).

317. Some of the States in question pointed out that over-emphasizing the responsibility of individuals who might be under the authority of a State and could not avoid committing certain offences, might result in injustice. The representative of Bangladesh stated in this respect that:

> "No law prohibiting offences against the peace and security of mankind could be effective unless it recognized the principles of State responsibility. None the less, there were certain limits to that recognition. It was necessary to ensure that, in the name of justice, injustice was not done to those who were not directly responsible for offences against the peace and security of mankind but were merely part of the system of State administration." (A/C.6/35/SR.14, para. 47).

and Finland stressed that

> "The responsibility of individuals must naturally be taken into account in any definition of punishable acts. There is the danger, however, that by

stressing individual responsibility the draft Code might blur the responsibility of Governments." (See A/35/210, para. 4).

318. Some of the States which placed emphasis on State responsibility mentioned existing international instruments in support of their position. The representative of Trinidad and Tobago referred to the International Convention on the Suppression and Punishment of the Crime of Apartheid and held the view that in the case of the acts in question, the responsibility "should not be confined to public officials but should also be attributed to States" (A/C.6/35/SR.14, para. 12). Finland drew attention to article 5 of the Definition of Aggression under which an act of aggression gave rise to international responsibility (A/35/210, para. 4).

319. As to the form of responsibility that States should incur under the Code, the representative of Madagascar held the view that it would be unrealistic to go against the traditional concept that only individuals could incur criminal responsibility (A/C.6/35/SR.10, para. 16). The representative of Zaire, however, observed that at the Nürnberg Trial, the concept of the criminal responsibility of the individual having committee as an agent of a State an act considered as a crime against humanity had led to judgement being indirectly passed on the acts of the State concerned, and therefore to the emergence of "the principle of the indirect criminal responsibility" of States. He added:

"The fact that a State could be held responsible before an international criminal jurisdiction, albeit indirectly, was unprecedented and greatly broadened the scope of further international law. The International Law Commission, in accordance with the mandate it had received from the General Assembly, had affirmed the principle of the criminal responsibility of individuals and States in conformity with the spirit and judgement of the Nürnberg Tribunal". (See A/C.6/35/SR.13, para. 26)

320. The United Nations Educational, Scientific and Cultural Organization furthermore pointed out that in the view of many authors "no law prohibiting offences against the peace and security of mankind can be effective unless it recognizes the principle of the criminal responsibility of the State" (see A/35/210, para. 6), and referred in this connexion to the remark of Professor Donnedieu de Vabres that "the criminal responsibility of the State as a legal person was not excluded by the Nürnberg Judgement", 10/ to the statement of Sir Hartley Shawcross that "there was nothing sensationally new in adopting the principle that the State as such was responsible for its criminal acts", 11/ to the opinion of Professor Pella that

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10/ Donnedieu de Vabres, "Le jugement de Nüremberg", Revue de droit pénal et de criminologie (1947), No. 10, p. 822.

11/ Sir Hartley Shawcross, Déclaration du 4 décembre 1945, Le proces de Nüremberg, Exposés introductifs (Office français d'édition), p. 58.

"if criminal law is to protect international peace and civilization, one cannot and must not exclude from its purview the principle of State responsibility" 12/ and to the observation of Bustamante y Sirven that the responsibility of legal persons of which the State is the first and the highest "has finally gained acceptance in international law". 13/ UNESCO further maintained that "most of the experts who oppose the principle of the criminal responsibility of States do so more for practical reasons dictated by expediency than for reasons of substance" (see A/35/210, para. 10), and quoted in this connexion Professor Spiropoulos 14/ and Professor Jescheck. 15/ UNESCO finally observed that according to Professor Pella, the authors opposed to the principle of the criminal responsibility of States - among them Judge Francis Biddle 16/ - nevertheless recognize "the need to apply preventive measures to States" (see A/35/210, para. 14).

321. Some States observed that there were other forms of responsibility, besides criminal responsibility, which could be imposed on States under the proposed Code. Thus Romania referred to "the material liability for damage caused by the unlawful activities of States" (see A/C.6/416, para. 10); the representative of Madagascar felt that it should be possible "to lay down the civil responsibility of the State or a special responsibility based on the administrative responsibility provided for in codified legal systems" (A/C.6/35/SR.10, para. 16) and Finland felt that it might be appropriate to provide in the envisaged instrument that "condemning an individual did not free a Government from liability in respect of damages caused by its authorities" (see A/35/210, para. 4).

322. According to the third trend which emerged with regard to the issue under consideration, a question as complex as that of the relationship between State and individual responsibility would prove impossible to solve at the present stage of development of international law.

323. It was said that the offences proposed for inclusion in the Code, although they constituted problems which the international community had an obligation to address, ought to be looked at in the context of relations between States. Such issues could not, in the words of Canada, "be resolved or remedied by assigning individual criminal responsibility for which no judicial or remedial mechanism is provided" (see A/35/210/Add.2, para. 6).

324. Some States pointed out that progress in linking State and individual responsibility had been slow and that the gap was far from being bridged at the present stage.

12/ Vespasien V. Pella, La Guerre-Crime et les criminels de guerre, Paris, Editions A. Pedone, 1946, p. 58.

13/ Antonio Sánchez de Bustamante y Sirven, Droit international public, Paris, Librairie du Recueil Sirey, 1937, vol. IV, p. 7.

14/ Yearbook of the International Law Commission, New York, United Nations, 1950, vol. II, p. 319.

15/ Hans-Heinrich Jescheck, Revue internationale de droit pénal (1964), No. 1-2, p. 95.

16/ Yearbook of the International Law Commission, New York, United Nations, 1950, vol. II, p. 319.

325. Retracing the historical development of the concept of individual criminal responsibility under international law, the representative of New Zealand observed that

> "... the notion of individual criminal responsibility had its origin in customary law concerning. Pirates had been distinguished from privateers by virtue of the fact that the latter had possessed a certain warrant from the States of which they were nationals." (A/C.6/35/SR.11, para. 28).

The representatives of the Netherlands (A/C.6/35/SR.11, para. 44) and New Zealand (A/C.6/35/SR.11, para. 28) pointed out that an important step in the evolution of the concept of individual criminal responsibility under international law had been made as a result of the development of the law concerning war crimes. It was in connexion with war crimes, the representative of the Netherlands observed, that:

> "The question had arisen whether crimes committed with the consent or on the order of the State could give rise to responsibility for the individual under international law. The importance of the judgements of the Nürnberg and Tokyo Tribunals lay in the fact that they established the principle of individual criminal responsibility for the violation of the law of nations including the responsibility of the individual for such violations by States." (A/C.6/35/SR.11, para. 44).

326. Another development which was viewed by several States as a significant step in the development of international criminal law was the adoption of the Convention on the Prevention and the Punishment of the Crime of Genocide. The International Law Commission's draft Code of Offences against the Peace and Security of Mankind was viewed as another significant document which had had far-reaching repercussions since, in the words of the representative of New Zealand, "the entire doctrine in the field of human rights was partly a result of the notion that individuals could be held responsible under the law of nations" (A/C.6/35/SR.11, para. 31). The greatest progress in linking State and individual responsibility had been made, in his view, with the adoption of conventions such as those concerning hijacking and the protection of diplomatic personnel, in relation to which he made the following remarks:

> "In such cases, even in a divided world, States could agree that the perpetrator of an offence should be condemned regardless of his nationality or of the target of his action." (A/C.6/35/SR.11, para. 29).

The representative of Israel also referred to recent developments of "the so-called international criminal law" and of the concept of individual responsibility which could "no longer be limited to persons acting on behalf of a State or as an organ of a State" (A/C.6/35/SR.14, para. 35). It had been, he said, "considerably broadened".

327. While acknowledging that recent Conventions had marked a progress in the field of international criminal law, the States concerned pointed out that those conventions for the most part concerned private individual criminal acts and were not usually,

in the words of Canada "the result of deliberate government policy or acts of State". It was, in their opinion, in relation to acts of States - and they observed, many of the offences proposed for inclusion in the Code were acts of States - that the problem of the attribution of responsibility was most complex. In the words of Canada, it was in the area of criminal acts on the part of Governments that a possible Code of offences would run "into the most difficulty" (see A/35/210/Add.2, para. 3).

328. Commenting on the difficulties involved, certain States stated that the proposals to define and codify crimes against peace and humanity and war crimes as the representative of the Netherlands put it had aimed "not so much at a code of conduct for States as at one for individuals" (A/C.6/35/SR.11, para. 44). The representative of Italy stated that a "clear distinction must be drawn between the obligations of States and those of individuals, under international law, to disobey their authorities when they were requested to co-operate in the execution of a criminal act as specified in the Code". He pointed out in this connexion that "it must also be clear in what cases and under what circumstances individual responsibility arose under international law" (A/C.6/35/SR.13, para. 5). The representative of the Netherlands illustrated his position by referring to the 1974 Definition of Aggression which, in his view, "did not help in elaborating a code of conduct, precisely because it was not sufficiently exact to be used in the framework of a code laying down individual responsibility" (A/C.6/35/SR.11, para. 45).

329. Canada pointed to another difficulty which stemmed from the fact that a number of the offences which the proposed Code was intended to cover involved Governments. Such acts, Canada noted, "clearly involved more than individual responsibility" (see A/35/210/Add.2, para. 4), and raised the issue of determining "the relationship between an act by an individual acting on behalf of a State or of a State organ and the criminal responsibility of the State itself" (A/C.6/35/SR.11, para. 10). The Council of Europe shared the view that the problem of the criminal responsibility of States would have to be dealt with if the draft was to have "any positive effect" (see A/36/416, para. 5). The representative of New Zealand also stressed the importance of giving careful consideration when the subject of individual criminal responsibility was discussed "to what had already been achieved in the case of States and to the importance of the draft articles on State responsibility" and suggested that the Sixth Committee might, in due time, ask the International Law Commission how it envisaged the work to be done on the topic of the Code of Offences in relation to its ongoing work in the field of State responsibility" (A/C.6/35/SR.11, para. 35). The representative of Israel similarly stressed the need to co-ordinate the provisions of the proposed instrument with those of the Commission draft on State responsibility (A/C.6/35/SR.14, para. 35).

330. The problem of State responsibility was viewed by certain States in question as extremely delicate. Thus the United States, referring to the article on the matter contained in Part I of the draft on State responsibility, noted that "the Commission's suggestions concerning the very notion of a criminal responsibility for States have proven controversial" (see A/35/210/Add.1, para. 7).

331. Also bearing in mind the fact that the International Law Commission was currently engaged in elaborating draft articles on State responsibility the representative of Canada observed that since many of the offences proposed for inclusion in the Code were acts for which the State concerned also "be held responsible, it would be advisable to await the results of the examination by the ILC of the question of State responsibility before pursuing the development of a draft Code" (see A/35/210/Add.2, para. 4). A similar observation was made by the United States (see A/35/210/Add.1, para. 7). The Council of Europe also noted that criminal responsibility of States and means of effectively penalizing such responsibility at the international level was "currently being studied by the International Law Commission in connexion with its work on State responsibility" (see A/36/416, para. 4).

VI. QUESTION OF THE IMPLEMENTATION OF THE PROPOSED CODE

332. A number of States stressed that a Code without implementation mechanisms would be of limited value. Thus the representative of Egypt noted that the preparation of the Code "... raised the problem of the mechanism necessary for its implementation " (A/C.6/35/SR.11, para. 39). The representative of Qatar observed that since the specification of the competent court was essential if the Code was not to be merely a piece of wishful thinking, "the judicial competence should be clearly indicated in the draft Code" (see A/36/416, para. 1). The representative of Venezuela also said that the proposed Code should specify which authority would be responsible for prosecuting and punishing alleged offenders (A/C.6/35/SR.11, para. 52).

333. The States sharing this view included some which, as indicated in paragraphs 61-89 above, did not favour resumption of the work on the draft Code at this stage because of, inter alia, the unlikelihood of agreement on what they viewed as an essential condition of the effectiveness of the proposed instrument, namely the provision of adequate implementation mechanisms. Thus the representative of the United Kingdom asked whether international law and international relations would be improved by drawing up "an instrument which merely defined certain offences without tackling the other component elements which formed part of any viable system of criminal law and justice" (A/C.6/35/SR.14, para. 65). The representative of Italy descibed as a "crucial problem the creation of an effective judicial mechanism to prosecute and punish the crimes specified in the Code" (A/C.6/35/SR.13, para. 6).

334. The Council of Europe also insisted on the need for effective machinery for the enforcement of the provisions of the proposed Code (see A/36/416, para. 4).

335. The question whether the Code should be applied by an international court or by domestic tribunals was raised by the representatives of Brazil (A/C.6/35/SR.10, para. 27), Tunisia (A/C.6/35/SR.12, para. 3), Uruguay (A/C.6/35/SR.13, para. 20), China (A/C.6/35/SR.13, para. 18) and Paraguay (A/C.6/35/SR.14, para. 21), as well as by the representatives of Senegal (A/C.6/35/SR.12, para. 13) and Venezuela (A/C.6/35/SR.11, para. 52), which described it as very important.

336. Three answers were offered to the above-mentioned question. Some States felt that the prosecution and punishment of persons guilty of offences listed in the Code should be left to domestic tribunals. Others considered that the establishment of an international court was the only way of ensuring the effectiveness of the Code, a number of them warning that such a solution, although theoretically the best, could not realistically be envisaged. Still others suggested combinations of these two approaches.

337. The States which were of the view that prosecution and punishment of persons guilty of offences listed in the Code should be entrusted to domestic tribunals included the representatives of the German Democratic Republic (A/C.6/35/SR.10, para. 23), Mongolia (A/C.6/35/SR.11, para. 16), Sierra Leone (A/C.6/35/SR.11, para. 31) and Zaire (A/C.6/35/SR.13, para. 27), as well as the

Byelorussian SSR (see A/35/210, para. 6) and Poland which pointed out that although the idea of an international penal court was not a new one and had been implemented with the establishment of the Nürnberg Tribunal, "both high costs of maintaining a permanent court and well understandable difficulties in its staffing argue in favour of other solutions." (see A/36/416, para. 12).

338. In the opinion of those States the Code should lay down the generally recognized principle under which the only options open to a State which had apprehended persons guilty of war crimes or crimes against humanity must be either to extradite them to a State requesting their extradition or to punish them itself with all due severity. Thus the representative of Sierra Leone favoured "the inclusion of provisions relative to the competence of national tribunals in dealing with international crimes and provisions on extradition and prosecution" (A/C.6/35/SR.11, para. 51).

339. The Philippines suggested the inclusion /in the proposed Code/ of a binding provision under which "acceding or signatory States should automatically extradite or punish offenders" (see A/36/416, para. 5). Reference was made in this connexion to existing conventions which, it was felt, might provide some useful ideas in an examination of the question of the implementation of the proposed Code. Thus the representative of Guyana (A/C.6/35/SR.15, para. 15), referred to the International Convention against the Taking of Hostages 17/ and to the Convention

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17/ Article 5 of the Convention reads as follows:

"1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over any of the offences set forth in article 1 which are committed:

(a) In its territory or on board a ship or aircraft registered in that State;

(b) By any of its nationals or, if that State considers it appropriate, by those stateless persons who have their habitual residence in its territory;

(c) In order to compel that State to do or abstain from doing any act; or

(d) With respect to a hostage who is a national of that State, if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 1 in cases where the alleged offender is present in its territory and it does not extradite him to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law."

on the Prevention and Punishment of the Crime of Genocide 18/ and said that they might provide in their implementation provisions, "some ideas which could be of value in an examination of that aspect of the draft Code". The representative of Egypt made mention of the mechanism established by articles IV, V and VI of the International Convention on the Suppression and Punishment of the Crime of Apartheid (A/C.6/35/SR.11, para. 39) which was, in its view "the most appropriate for the enforcement of the provisions of the Code". 19/

18/ Articles VI and VII of that Convention read as follows:

"Article VI

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.

Article VII

Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purposes of extradition.

The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force."

19/ Articles IV, V and VI of that Convention read as follows:

"Article IV

The States Parties to the present Convention undertake:

(a) To adopt any legislative or other measures necessary to suppress as well as to prevent any encouragement of the crime of apartheid and similar segregationist policies or their manifestations and to punish persons guilty of that crime;

(b) To adopt legislative, judicial and administrative measures to prosecute, bring to trial and punish in accordance with their jurisdiction persons responsible for, or accused of, the acts defined in article II of the present Convention, whether or not such persons reside in the territory of the State in which the acts are committed or are nationals of that State or of some other State or stateless persons.

Article V

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

340. Several States stressed that implementation of the proposed Code by domestic tribunals would require co-operation among States. Thus, the Philippines favoured the inclusion of a provision under which acceding or signatory States would be bound "to co-operate with each other in implementing the Code on a bilateral or multilateral basis" (see A/36/416, para. 5).

341. The Byelorussian SSR in its comments (see A/35/210, para. 7) and the representative of the USSR (A/C.6/35/SR.13, para. 12) insisted on the need for States to abide by the principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity laid down in General Assembly resolution 3074 (XXVIII). "The Code should not be a mere enumeration of offences", said the representative of the USSR, it must also provide "for concrete measures for the prevention and punishment of crimes against peace and humanity" (A/C.6/35/SR.13, para. 12). The representative of the United Arab Emirates said that there was a problem of States that refused to extradite individuals who were guilty of crimes (A/C.6/SR.11, para. 22). The future code, said the representative of Zaire, should provide for the obligation of States to extradite offenders or to punish them in their own court. All States should support that obligation, which would enhance the effectiveness of the implementation of the code itself. It would also be necessary to stipulate that extradition could be effected either for the purpose of judging the offender or for applying the penalty imposed upon him (A/C.6/35/SR.13, para. 27).

342. Several States disagreed with the view that implementation of the proposed Code should be left to domestic tribunals. They pointed out that while some of the offences proposed for inclusion in the proposed instrument were acts of individuals which did not, as a rule, result from a deliberate State policy and could therefore be effectively dealt with by national courts in accordance with the aut dedere aut punire principle, such a procedure was not likely to be effective in the case of criminal acts committed by Governments. The representative of Finland remarked that leaving implementation of the Code to national courts "might lead to failure to take effective action against offenders" (A/C.6/35/SR.11, para. 57). "It would hardly be satisfactory to leave implementation exclusively to the national courts," said the representative of Sweden, "since that might in many cases result in arbitrariness or in failure to take effective action against offenders" (A/C.6/35/SR.15, para. 6).

343. The representative of New Zealand observed that leaving it to States to prosecute individuals charged with an international offence did not raise any difficulty if the offence was one which the entire community was in agreement "but

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(continued)

by an international penal tribunal having jurisdiction with respect to those States Parties which shall have accepted its jurisdiction.

Article VI

The States Parties to the present Convention undertake to accept and carry out in accordance with the Charter of the United Nations the decisions taken by the Security Council aimed at the prevention, suppression and punishment of the crime of apartheid and to co-operate in the implementation of decisions adopted by other competent organs of the United Nations with a view to achieving the purposes of the Convention."

it became more difficult when the offence in question was closely related to the political positions of sovereign States" (A/C.6/35/SR.11, para. 33). The representative of Canada pointed out that it was highly improbable that any Government on whose behalf an act had been committed "would submit the individuals responsible to prosecution or extradition " (A/C.6/35/SR.11, para. 9). In the opinion of the representative of the Netherlands problems arose in cases where an individual under international law was obliged to be disloyal to his national government, where the individual had international duties which transcended his national obligation of obedience to his State. "In how many countries would courts be prepared to punish their nationals for violation of those international duties" he asked (A/C.6/35/SR.11, para. 47).

344. It was furthermore pointed out by the representatives of Sweden (A/C.6/35/SR.13, para. 6) and New Zealand (A/C.6/35/SR.15, para. 6) that entrusting the interpretation and implementation of the provisions of the Code to national courts would result in inconsistencies and the imposition of widely varying penalties. The representative of New Zealand remarked that narrowing the relevant jurisdiction in order to provide safeguards would be difficult because "a universal crime was, by definition, a crime in all countries," and the criminal jurisdiction of sovereign States was not very clearly or narrowly limited, even in relation to matters that were not universal crimes (A/C.6/35/SR.11, para. 33).

345. In the view of the States in question, one could not envisage a Code of offences against the peace and security of mankind without an international criminal jurisdiction and the history of the item under consideration was referred to as proof of the inextricable links between the two concepts. Thus the United States considered it impossible to discuss in any conclusive manner the question of a Code of Offences against the Peace and Security of Mankind "without also discussing the mechanism of an international criminal jurisdiction, /since/ these matters have been discussed together in the past" (see A/35/210/Add.1, para. 9). The representative of Israel recalled that in 1978 the Israeli delegation to the thirty-third session of the General Assembly had abstained in the vote in which the resolution 33/97 had been adopted because it felt that the link between the agenda item on the draft Code of Offences and the agenda item on the establishment of an international criminal court should be maintained (A/C.6/35/SR.14, para. 33). The changes which had occurred since 1954 in the progressive development of that branch of law had shown that that position was correct, he said.

346. The view that the effective implementation of the proposed Code called for the establishment of an international criminal court was held by a number of States. The representative of Kuwait observed that "if the essence of law was its enforceability and binding character, then an international criminal jurisdiction should be created. A supra-national criminal law presupposed the existence of an international criminal court" (A/C.6/35/SR.10, para. 18). The representative of Argentina noted that the value of a penal instrument which no court would apply "was not apparent" (A/C.6/35/SR.10, para. 21).

347. Several States held that an international tribunal would have to be established to ensure the effectiveness of the Code. The representative of Libyan Arab Jamahiriya stated that in order to ensure that the Code would be effective it was

necessary to establish an international tribunal which could apply it, and to invite States to honour its decisions and undertake to comply with them. Any State or regional or international organization, and even any individual, should be able to bring complaints before the tribunal, which would rule on them (A/C.6/35/SR.14, para. 25). The representative of Mexico thought that the draft Code should contain "a clause giving States the option of accepting or declining to accept the jurisdiction of an international court in respect of certain offences" (A/C.6/35/SR.12, para. 29). In the view of Chile it was particularly important that the jurisdiction of the envisaged court should be compulsory ipso facto because the only path to respect for the international penal order was "one circumscribed by obligations which cannot be evaded, so that a legal duty will be the basis for the peaceful settlement of disputes arising from the application of the proposed Code" (see A/36/416, para. 6). The representative of Algeria felt that the application of the proposed Code also raised questions concerning the statute and composition of the judicial body competent to try and punish offenders (A/C.6/35/SR.14, para. 4).

348. Speaking of an international criminal court, the representative of the Federal Republic of Germany said that only such "an independent and neutral body would be able to ensure that the principle of equality was observed in enforcing the penal provisions and that the Code fulfilled its peace-preserving function, /a/ function which would be thwarted if the impression arose that political motives were involved" (A/C.6/35/SR.12, para. 36). The representative of Japan described as "an essential pre-condition" the establishment of "a system for implementing the Code at the international level, such as an international criminal court, if the community of nations was to punish directly offenders who had committed acts defined by the Code as 'offences against the peace and security'" (A/C.6/35/SR.15, para. 21).

349. The Council of Europe asked whether in view of the developments which had occurred and the current work of the International Law Commission "it might not be possible to go further and make provisions for enforcement of the Code at the international level through the establishment of an international criminal court". The Council recalled in this connexion that the question of an international criminal jurisdiction was on the Commission's programme of work among the topics which might be taken up in the near future (see A/36/416, para. 4).

350. Some States, while supporting in principle the creation of an international criminal court, referred to some difficulties involved in its establishment.

351. The representative of Sweden said that his Government considered the creation of an international criminal court to be "the ideal solution to the matter of implementation". It was fully aware of the difficulties involved in realizing such a solution at the present time, but felt it was important to state a position of principle and set the goal towards which the Organization should strike (A/C.6/35/SR.15, para. 6). "However, if the drafting of a code had to wait for an international criminal court to be set up" said the representative of Finland, "that might delay work on the Code indefinitely. He therefore believed that the

prosecution and punishment of offenders against the provisions of the Code, or their possible extradition, should be left to national Governments and Courts." (A/C.6/35/SR.11, para. 57)

352. Mention was made by several States of various problems which would have to be solved, should an international criminal court be established. One such problem was how to ensure the impartiality of the court in question. The representative of Bangladesh, referring to the question of determining whether a war was or was not legitimate self-defence, said that if means were not found "to ensure that impartiality was maintained in that regard, in conformity with the recognized principles of international law, the purpose of drafting a Code was likely to be completely frustrated" (A/C.6/35/SR.14, para. 52).

353. Chile felt it important that "the autonomous, independent and creative function" of whatever tribunal was decided on should be underscored, so that considerations extraneous to its strictly judicial task might not impinge on its actions. Chile added that the process of access to the judge "should be focused on a technical appraisal of the act complained of, unaffected by the political motivations of the parties to the case or of third parties, or by pressures of any kind" (see A/36/416, para. 7).

354. Guatemala stressed that the impartiality of the envisaged tribunal would depend on its composition and expressed concern in this regard as follows:

> "given the nature of offences in the past, the countries which regularly had the upper hand, especially in the case of offences arising out of military conflicts, were those which opted to constitute special tribunals, excluding from their membership States neutral in the conflict or internationally recognized as permanently neutral States." (see A/35/210, para. 5).

355. Another problem which was mentioned related to the difficulties inherent in the establishment of the procedural rules to be applied by the envisaged international court. Thus Chile indicated that it favoured "the establishment of general and equitable procedural rules to provide full and consistent process of law, spelt out in advance in specific and generally accepted legal norms" (see A/36/416, para. 7) - a task which Chile described as "complex". The representative of Argentina said that the proposed Code would be incomplete unless it included procedural provisions especially concerning "rules of evidence and a suitable evaluation system" (A/C.6/35/SR.10, para. 21) and Guatemala stressed that consideration of the question "will remain inconclusive unless procedural provisions are created, particularly with regard to the procedures for adducing and evaluating evidence", in order to ensure "the defence rights of the accused" and the observance of "relevant formalities and safeguards" (see A/35/210, para. 5).

356. Still another problem which was raised concerned the operation of extradition law in relation to the envisaged international court.

357. The representative of Senegal, stating that it would be important to determine whether international offences would be judged by national jurisdictions or by an

international jurisdiction, said "If an international jurisdiction was established, specific provisions would have to be laid down regarding the extradition of nationals" (A/C.6/35/SR.12, para. 13). Serious consideration would have to be given, Senegal felt, to the "important question of extradition, since the sacrosanct principle that a State does not extradite its nationals could constitute an insuperable impediment" (see A/35/210, para. 18). The representative of Bangladesh stressed that "no authority to impose extradition should be accorded to a tribunal, since such an authority would impair the sovereignty of States" (A/C.6/35/SR.14, para. 51).

358. As may be seen from paragraphs 75, 82, 87 and 88 above, the establishment of an international criminal court was viewed by some States as a major obstacle to resuming work on the draft Code. The representative of Canada recalled that, at the time when the Code was being prepared, some consideration had been given to the question of an international court or tribunal of criminal jurisdiction. He said that discussion of this aspect of the question had not been pursued by the International Law Commission, "in recognition of the fact that most Governments could not accept a proposal for the establishment of such a body". Since the situation had not changed, and since it was "unrealistic to expect that States would accept an independent implementation of the Code, efforts in that direction were likely to lead to a dead end" (A/C.6/35/SR.11, para. 11).

359. The representative of the Netherlands stated that the theoretical solution would be to establish an international criminal court. However, "international agreement on the establishment of such a court and on how its decisions could effectively be executed seemed too ambitious under existing political circumstances" (A/C.6/35/SR.11, para. 48).

360. Chile, while saying that the creation of an international judicial organ possessing penal competence had for long been an aspiration of the civilized world, stressed that initiatives towards the establishment of a system of international criminal liability were viewed with scepticism "since States generally prove reluctant to subject themselves to the most rigorous aspects of the law, namely the punitive aspect" (see A/36/416, para. 4).

361. Other States, while recognizing that agreements on the establishment of an international criminal court to enforce the provisions of the proposed Code was unlikely at the present stage, considered that this difficulty should not impede the process of codification of international law. Thus the representative of Egypt pointed out that the problem of enforcement of the law "had not prevented the conclusion of many international conventions and the adoption of similar codes and declarations" (A/C.6/35/SR.11, para. 39). The representative of Burundi while acknowledging the difficulties raised, inter alia, by the problem of an international criminal court felt that "it would serve no purpose to abandon the draft Code at the present stage" (A/C.6/35/SR.15, para. 31).

362. The remark was further made that General Assembly resolutions 687 (VII) and 898 (IX) gave precedence to the question of the draft Code over that of international criminal jurisdiction. Thus the representative of Mongolia said that the General Assembly had dealt with the issue of international criminal

jurisdiction as "completely separate from that of the draft Code. The two items were always considered separately and in different subsidiary organs" and that in its resolution 898 (IX), the Assembly had deferred consideration of the question of international criminal jursidiction" until it had taken up again the question of defining aggression and the Draft Code of Offences" (A/C.6/35/SR.11, para. 19).

363. The representative of the Philippines said that while his delegation considered it essential to have an adequate mechanism for the implementation of the Code, it thought that the matter should not be considered at the present time but the adoption of the draft Code should not be delayed for that reason. He furthermore stressed that under General Assembly resolution 687 (VII), the report of the committee which had been formed to explore the implications of establishing an international criminal court was to be considered only after the Assembly had taken a decision on the draft Code. "The mechanism for its implementation ... awaited the code", he concluded (A/C.6/35/SR.14, para. 8).

364. As indicated above, some States suggested exploring the feasibility of combining municipal and international implementation mechanisms. The representative of Paraguay suggested an alternative to the establishment of an international court. "Although it was impossible at the current state of development of international law to create an international criminal court", he said "it might be possible to create other and more realistic mechanisms which could subsequently be improved" (A/C.6/35/SR.14, para. 21). The representative of Nigeria mentioned the possibility of conferring jurisdiction either to domestic courts on the basis of the aut dedere aut punire principle or to a permanent or ad hoc international court with criminal jurisdiction, and said that one solution "might be to give the victim a choice between a State court or an ad hoc international court until a permanent international court with criminal jurisdiction could evolve" (A/C.6/35/SR.15, para. 35). The representative of Trinidad and Tobago, referring to the case where a State in whose territory an alleged offender was apprehended would choose to submit him to its competent authorities for prosecution rather than extradite him, suggested that the alleged offender "be tried under the laws of the prosecuting State not by a court of that State but by a criminal court having an international composition and specially constituted for that purpose" (A/C.6/35/SR.14, para. 13).

365. It is furthermore to be noted that, as indicated above, reference was made by the representative of Guyana to the Convention on the Prevention and Punishment of the Crime of Genocide and by Egypt to the International Convention on the Suppression and Punishment of the Crime of Apartheid and that both Conventions provide that persons charged with the acts they refer to shall be tried by a competent domestic tribunal or by an international penal tribunal having jurisdiction with respect to those States Parties which shall have accepted its jurisdiction (A/C.6/35/SR.15, para. 14). The representative of Mexico suggested that the proposed Code "should contain a clause giving States the option of accepting or declining to accept the jurisdiction of an international court in respect of certain offences" (A/C.6/35/SR.12, para. 29).

VII. PROCEDURE TO BE FOLLOWED IN THE FUTURE CONSIDERATION OF THE ITEM

366. When the item has been discussed at the thirty-third and thirty-fifth sessions of the General Assembly several States - those which were favouring the resumption of the work on the draft Code, those which were not, and those which took an approach referred to in paragraphs 90 to 97 of the present paper, stated that Governments should have a new opportunity of commenting on various issues involved. Views to that effect were expressed by the representatives of Cyprus (A/C.6/35/SR.13, para. 4), Poland (A/C.6/35/SR.14, para. 15) Bulgaria (A/C.6/35/SR.14, para. 61), Czechoslovakia (A/C.6/35/SR.15, para. 43), Mexico (A/C.6/35/SR.12, para. 30), Iraq (A/C.6/35/SR.15, para. 18) as well as the representatives of the United Kingdom (A/C.6/35/SR.14, para. 66), France (A/C.6/35/SR.15, para. 10) and Israel (A/C.6/35/SR.14, para. 37).

367. The representative of Cyprus thought it "beneficial to hear further views from Member States and relevant intergovernmental organizations ... and to continue discussion of the item in the Sixth Committee in 1981" (A/C.6/35/SR.13, para. 4). The representative of Bulgaria felt that States which had not yet done so should submit their comments in pursuance of General Assembly resolution 33/97. A further clarification of the views of different States on the subject, he said, would perhaps be helpful in selecting the correct procedure for elaborating the draft Code (A/C.6/35/SR.14, para. 61). The representative of France also felt that the best course was "to ask for comments from Member States and, at a later date, to discuss the matter further in the Sixth Committee" (A/C.6/35/SR.15, para. 10). And in the view of the representative of Israel, "the replies received in response to General Assembly resolution 33/97 did not justify taking a valid decision in 1980 since they did not reflect all the principal legal systems represented in the General Assembly" (A/C.6/35/SR.14, para. 37).

368. Some of the States listed above held that no decisions should be made on the question of the procedure to be followed in the future consideration of the item until further comments from Governments have been received.

369. The representative of the United Kingdom expressed the view that further consideration was required and further written comments should be requested and that "it would be premature" to take a decision on the matter at the thirty-fifth session (A/C.6/35/SR.14, para. 66). "The best solution would be", stated the representative of Iraq, "to invite Governments to give their views on the matter before a final decision was taken" (A/C.6/35/SR.15, para. 18). The representative of Mexico, considering that the view of Member States should again be sought, stated that the item should be included in the agenda of the next /thirty-sixth/ session of the General Assembly and "that a decision should not be taken until that session" (A/C.6/35/SR.12, para. 30).

370. While agreeing that it was premature to take a decision on the matter in 1980, many States including some of those listed above, nonetheless made their views known as to the procedural action they felt should be taken in relation to the elaboration of a Code of Offences against the Peace and Security of Mankind.

371. Several States favoured the referral of the draft to the International Law Commission. Thus the representative of Norway held that the International Law Commission provided "the best forum for substantive discussion of the subject". The General Assembly should therefore entrust the Commission with the task of reviewing the draft Code in order to achieve a more precise formulation which would enable it to function as a general code (A/C.6/35/SR.10, para. 14).

372. The representatives of Argentina (A/C.6/35/SR.10, para. 21), Chile (A/C.6/35/SR.11, para. 42), Venezuela (A/C.6/35/SR.11, para. 53), Finland (A/C.6/35/SR.11, para. 58), Tunisia (A/C.6/35/SR.12, para. 4), Senegal (A/C.6/35/SR.12, para. 14), Pakistan (A/C.6/35/SR.12, para. 20), Cyprus (A/C.6/35/SR.13, para. 4), China (A/C.6/35/SR.13, para. 18) Uruguay (A/C.6/35/SR.13, para. 19), Algeria (A/C.6/35/SR.14, para. 6), Paraguay (A/C.6/35/SR.14, para. 21), Israel (A/C.6/35/SR.14, para. 37), India (A/C.6/35/SR.15, para. 5), Sweden (A/C.6/35/SR.15, para. 7), Guyana (A/C.6/35/SR.15, para. 16) and Peru (A/C.6/35/SR.15, para, 24) as well as the Federal Republic of Germany (A/36/416, para 1) also favoured referral of the draft to the International Law Commission for further study, revision and elaboration. It was pointed out by the representatives of Tunisia (A/C.6/35/SR.12, para. 4), Algeria (A/C.6/35/SR.14, para. 6) and India (A/C.6/35/SR.15, para. 5) that the International Law Commission was the most appropriate forum since it had prepared the first draft.

373. The representative of Israel recalled that "in 1977, the Commission itself had intimated its willingness to undertake a review of the draft Code" and furthermore observed that

> "Since the draft Code should encompass in an appropriate form all the impermissible conduct of the individuals to whom it related and should take into consideration all provisions of existing international law on that subject without being limited to resolutions and conventions adopted by United Nations bodies or conferences, ILC would be the most appropriate body for carrying out the scientific and dispassionate study required." (A/C.6/35/SR.14, para. 37).

374. The representative of New Zealand having elaborated on some reasons why it was for being not possible for the International Law Commission to deal with the draft Code in 1980, also stated that, as the records of past sessions of the Commission showed, changes in its agenda were generally proposed at the end of the first year of each five-year period. "Accordingly, he expected that in 1982 the Commission would be giving careful attention to the current discussion of the draft Code of Offences in the Committee", he said (A/C.6/35/SR.11, para. 27).

375. The representatives of Argentina (A/C.6/35/SR.10, para. 21), Venezuela (A/C.6/35/SR.11, para. 53), Finland (A/C.6/35/SR.11, para. 58), Senegal (A/C.6/35/SR.12, para. 14), Paraguay (A/C.6/35/SR.14, para. 21), India (A/C.6/35/SR.15, para. 5), Guyana (A/C.6/35/SR.15, para. 16), and Kenya (A/C.6/35/SR.15, para. 20) stressed that the International Law Commission, if it was decided to entrust it with the revision, should have before it the views expressed in the Sixth Committee as well as the written observations of States.

Israel expressed the same view and added that the Secretary-General should be invited to transmit to the Commission the records not only of the current debate but also of the debates on the item at the thirty-second and thirty-third sessions of the General Assembly (A/C.6/35/SR.14, para. 37).

376. In the opinion of some of those States, the International Law Commission should be given very precise terms of reference. Views to that effect were expressed by the representatives of Venezuela (A/C.6/35/SR.11, para. 54), Paraguay (A/C.6/35/SR.14, para. 21), India (A/C.6/35/SR.15, para. 5), Sweden (A/C.6/35/SR.15, para. 7) and Guyana (A/C.6/35/SR.15, para. 16). The representative of Tunisia held the view in this connexion, that the Sixth Committee should establish a working group "to specify the Commission's terms of reference" (A/C.6/35/SR.12, para. 4) - a suggestion which was supported by the representative of Nigeria (A/C.6/35/SR.15, para. 36).

377. With respect to the schedule of work, the representative of Chile said that the International Law Commission should be requested to report to the General Assembly "in the near future" (A/C.6/35/SR.11, para.62) and the representative of Tunisia suggested that the working group of the Sixth Committee which it proposed to establish to specify the Commission's terms of reference should also specify "a time limit for submission of the results of /the Commission's/ work", adding that the Committee should also closely follow the work of the Commission which should submit annual progress reports (A/C.6/35/SR.12, para. 4).

> "To meet the concerns of delegations which felt that review by the International Law Commission might delay finalization of the draft Code", said the representative of India, "the International Law Commission might be requested to submit a preliminary report to the General Assembly at its /subsequent/ session" (A/C.6/35/SR.15, para. 5).

The representative of Nigeria held that "the draft should be submitted by the Commission to the Secretary-General before the 1983 session of the General Assembly" (A/C.6/35/SR.15, para. 36).

378. Some other States felt that more leeway should be left to the Commission in the carrying out of a task which the representative of Kuwait described as "long and arduous" (A/C.6/35/SR.10, para. 19). Thus the representative of Norway said that the Commission should report to the General Assembly "in due course" (A/C.6/35/SR.10, para. 14). The representative of Israel suggested that the General Assembly could perhaps express the hope that "the review could be completed before the end of the next term of office of the members of the Commission" (A/C.6/35/SR.14, para. 37). The Federal Republic of Germany in its comments felt that "the deadline to be given to the ILC should make allowances for the other, important items on the Commission's agenda" (see A/36/4/6, para. 1).

379. As to the action to be taken on the outcome of the Commission's work, the representative of Venezuela held the view that once the Commission had completed its work, "the United Nations should consider the advisability of convening a conference of plenipotentiaries to examine and adopt the final text" (A/C.6/35/SR.11, para. 53). The representatives of Tunisia (A/C.6/35/SR.12, para.4) and Sri Lanka (A/C.6/35/SR.15, para. 28) expressed similar views.

380. Other States doubted whether the International Law Commission was the appropriate body for considering the question of the draft Code. Thus the German Democratic Republic wondered whether referral to the Commission concerned at present with a large number of codification projects, would "guarantee priority treatment and speedy completion" of the work. (see A/36/416, para.) The representative of the Philippines also felt that referral to the Commission would mean "another delay in the adoption of the Code" (A/C.6/35/SR.14, para. 4).

381. In the opinion of those States the Sixth Committee was the most appropriate forum for the early consideration of questions relating to the draft Code at least at the initial stage. Views along those lines were expressed by some States which felt that the task should be entrusted to the Sixth Committee "in view of its complexity and the wide scope of political interests involved", as the representative of Zaire put it, (A/C.6/35/SR.13, para. 25). The representative of the German Democratic Republic pointed out that "the Sixth Committee has on several occasions successfully elaborated international treaties on the prevention and combating of offences which are particularly dangerous to peaceful co-operation among States" (A/C.6/SR.10, para. 24). The elaboration of the Code by the Sixth Committee, said the representative of the Ukrainian SSR, would greatly underscore its role "and enhance its authority" (A/C.6/35/SR.14, para. 32). The representative of the Philippines also favoured the Sixth Committee as the forum for the carrying out of the task and stressed that the work should proceed in stages: the only concern at the moment should be the preparation "of a list of offences against the peace and security of mankind and definition of such offences as well as of criminal responsibility" (A/C.6/35/SR.14, para. 9); after the General Assembly had acted on the report of the Committee established under resolution 687 (VII) and taken a decision on the international criminal court

> "it could proceed to consider the question of the imposition of penalties and the desirability of drawing up a complementary set of rules of procedure and evidence, including a rule on extradition." (A/C.6/35/SR.14, para. 9).

382. Doubts were expressed by some States as to the possibility of having the Sixth Committee undertake the elaboration of the proposed Code. Thus the representative of Lebanon said that the Sixth Committee itself "could hardly undertake the task, in view of its heavy work programme, and the increasing number of items allocated to it every year"(A/C.6/SR.10, para. 13). The representative of Kuwait doubted whether for the time being "the draft had reached a stage where it could profitably be considered by the Sixth Committee" (A/C.6/35/SR.10, para. 19).

383. A few States, without opposing the referral of the draft to the International Law Commission, struck a note of caution in this respect. Thus the representative of Brazil said that although he believed that further attempts now to revise and complete the 1954 draft would lead nowhere, he would suggest, if an opposite view prevailed in the Committee,

"that the General Assembly should request the International Law Commission to reconsider the draft and give the Commission much more precise terms of reference than on the previous occasion. Laying down those terms of reference would not be an easy task, and he was not sure that the Sixth Committee could do so at the present time". (A/C.6/35/SR.10, para. 27).

384. The representative of the Byelorussian SSR stressed that

"in view of the professional competence of the representatives serving on the Committee, any draft which it prepared would be of a high standard, both legally and politically. Furthermore, the cost to the Organization and to Member States would be much lower if the draft Code was elaborated by the Committee". (A/C.6/35/SR.12, para. 9).

The representatives of Afghanistan (A/C.6/35/SR.13, para. 38), Hungary (A/C.6/35/SR.12, para. 25), the USSR (A/C.6/35/SR.13, para. 14), Czechoslovakia (A/C.6/35/SR.15, para. 43) and Democratic Yemen (A/C.6/35/SR.14, para. 44) as well as Poland (see A/36/SR/16, para. 13) and Mongolia (see A/210/Add.1, para.6) were also in favour of entrusting the Sixth Committee with the task of the elaboration of the proposed Code.

385. Some States indicated that the Sixth Committee should at least, in the words of the representative of Yugoslavia, "provide guidelines for future activities in this field" (A/C.6/35/SR.13, para. 33). Thus, the representative of Mongolia said that after the question had been considered in the Sixth Committee, it could be "together with the concrete views of Governments and all other relevant documents, be referred to the International Law Commission" (A/C.6/35/SR.11, para. 20). Views along the same lines were expressed by Hungary (see A/35/210, para. 10) and by Poland which elaborated on its position as follows:

"at present - until agreement is reached on basic provisions of the Code - the debate should be continued in the Sixth Committee of the General Assembly. However, at a stage of elaborating concrete provisions, the work should be continued in the International Law Commission." (see A/36/416, para. 13)

The representative of Uruguay felt that before referring the draft to the Commission, the Assembly should ask it

"for its opinion on the need for studying and adopting a new text in the light of existing instruments concerning crimes of an international nature" (A/C.6/35/SR.13, para. 19).

The representative of Italy suggested

"to wait until clearer ideas and more opinions had been put forward, and then to request a specialized body such as the International Law Commission to prepare a preliminary study on the possibility of resuming and completing the work interrupted in 1954. When that was accomplished, the Committee could decide on a course of action. /Furthermore/ ... it would be wiser

to wait until the International Law Commission had completed its work on State responsibility. The Committee would then have before it all the elements which constituted the necessary basis for drafting a possible code of offences against the peace and security of mankind". (A/C.6/35/SR.13, para. 9).

386. The representative of France seemed to be not favouring the idea of referring the matter to the Sixth Committee when he said:

"If it decided to entrust the matter to the International Law Commission, the Commission would obviously have to set aside the study of other problems on its agenda. Was that worthwhile in light of the possibilities for success? In the view of /France/, it was not. The International Law Commission already had a very heavy agenda and no useful purpose could be served by entrusting to it the study of a subject which had already given rise to so much political controversy." (A/C.6/35/SR.15, para. 10).

387. Some States and the Palestine Liberation Organization took a flexible approach and felt that consideration should be given to the possibility of referring the draft either to the International Law Commission or to a Special Committee of the General Assembly. The representative of Trinidad and Tobago said that "although the International Law Commission seemed to be the best forum in which to resume discussion of the Code, his delegation was flexible on that point and could agree to the establishment of an ad hoc committee or a sessional working group of the Sixth Committee" (A/C.6/35/SR.14, para. 14).

388. The representatives of Madagascar (A/C.6/35/SR.10, para. 17) and Bangladesh (A/C.6/35/SR.14, para. 53) held the views along similar lines. The Observer from the Palestine Liberation Organization hoped that "an exhaustive draft code would be prepared either by the International Law Commission or the Sixth Committee" (A/C.6/35/SR.13, para. 23).

389. The representative of Mexico objected to both alternatives (A/C.6/35/SR.12, para. 30). Therefore Mexico in its comments suggested a third one, namely

"that the task should be entrusted to an intergovernmental committee with a small membership, constituted in accordance with the principle of equitable geographical representation, which, in order to avoid extra expense, could meet during regular sessions of the General Assembly". It added that

"it would not appear desirable to refer the matter back to the International Law Commission, in view of the political nature of the instrument to be elaborated and taking into account the heavy agenda which the Commission should dispose of before taking up a new topic." (see A/36/416, para. 4).

390. Among the States which were opposed to the resumption of the work towards the elaboration of the proposed Code some held the view that, in the words of the representative of Japan

> "its consideration should be postponed so that the Sixth Committee or the International Law Commission could focus attention on other issues calling for urgent measures." A/C.6/35/SR.15, para. 22).

391. The representative of the United States also felt that

> "consideration of the draft Code should be deferred and that the Committee should move on to other more urgent matters" (A/C.6/35/SR.12, para. 43).

Canada summarized its position as follows:

> "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." (see A/35/210/Add.2, para. 7).

The Canadian delegation felt that it might be wise "to suspend consideration of the question, at least for the time being, pending the development of more favourable conditions" (A/C.6/35/SR.11, para. 12).

392. Disagreement was expressed with those suggestions. The representative of Mongolia stated that he "could not agree to the suspension of consideration of the item on the draft Code" (A/C.6/35/SR.11, para. 21).
