



**General Assembly**

Distr.  
GENERAL

A/39/439/Add.4  
14 November 1984  
ENGLISH  
ORIGINAL: ENGLISH/SPANISH

Thirty-ninth session  
Agenda item 125

DRAFT CODE OF OFFENCES AGAINST THE PEACE AND SECURITY OF MANKIND

Report of the Secretary-General

Addendum

CONTENTS

Page

REPLIES RECEIVED FROM GOVERNMENTS

Guatemala .....	2
-----------------	---

REPLIES RECEIVED FROM GOVERNMENTS

GUATEMALA

[Original: Spanish]

[25 October 1984]

1. The document concerning which the opinion of the Government of Guatemala is being requested, paragraph 69 of the relevant report, relates to the draft code of offences against the peace and security of mankind, which is being studied by the United Nations.
2. The International Law Commission sums up its conclusions as follows:
  - (a) The draft code of offences against the peace and security of mankind should cover only the most serious international offences;
  - (b) With regard to the subjects of law to which international criminal responsibility can be attributed, the International Law Commission would like to have the views of the United Nations General Assembly, since it believes that the problem is of a political nature;
  - (c) With regard to the implementation of the code the Commission expresses the view that such a code would be ineffective unless it was accompanied by penalties and by the establishment of a competent jurisdiction; accordingly, it asks the General Assembly to indicate whether the Commission's mandate extends to the preparation of the statute of a competent international criminal jurisdiction, and whether such jurisdiction should also be competent with respect to States.
3. From a study of the relevant documentation it can easily be seen that the very proposal of a code of offences against the peace and security of mankind not only makes it necessary to consult the Governments of the States Members of the United Nations, and consequently the respective competent national institutions, such as the Consejo Asesor de Política Criminal y Prevención de la Delincuencia (Advisory Council on Criminal Policy and Prevention of Delinquency), but also involves the possibility of obtaining the support of Governments, in order that the United Nations may continue its work in that field, so as to make an effective contribution in the penal sphere. That is important because the United Nations is empowered to determine the existence of any threat to the peace, breach of the peace or act of aggression and to make recommendations for the maintenance or restoration of international peace and security, a task it carries out through the Security Council, as provided in Article 39 of the Charter of the United Nations.
4. The United Nations also should have the appropriate means to enable a competent organ to impose sanctions when it is found that certain cases constitute an international offence, in so far as they relate specifically to the peace and security of mankind.

5. International penal law arose as a result of the need to define crimes that can be imputed to international criminals in very special cases of the most serious kind, such as war crimes carried out through horrendous deeds that violate all human feeling, as was observed at the conclusion of the Second World War. Its field of competence has included the narcotics trade, smuggling, some remnants of slavery and the counterfeiting of foreign currency.

6. Consequently the code being planned would be an amplification of international penal law. This is considered consistent with the purposes which inspired the creation in 1945 of the United Nations, of which Guatemala is a Member; the essential factors which motivated the establishment of the Organization include the resolve of the peoples of the United Nations:

- To save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind;
- To reaffirm faith in fundamental human rights, in the dignity and the worth of the human person, and in the equal rights of men and women and of nations large and small;
- To establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained;
- To promote social progress and better standards of life in larger freedom;

and for these ends

- To unite our strength to maintain international peace and security; ... and
- To employ international machinery for the promotion of the economic and social advancement of all peoples.

7. The goals which form the basis for the existence of the United Nations reflect the feelings of all peoples and involve a commitment on the part of States Members of the Organization to give their support to any measure tending to promote the peace and security of mankind, and consequently to determine, where necessary, not only the existence of threats to the peace and international crimes to be included in a specific enumeration but also the sanctions to be applied and the establishment of a specific jurisdiction.

8. Within the United Nations there are trends favouring the creation of an international organism, fully established and recognized in the General Assembly by all signatory countries, in order that that organism may be the one that assumes responsibility for the administration of justice, applying international law and imposing upon transgressors the penalties to which they are subject for having committed offences against the peace and security of mankind.

9. I believe that we could also use a system already recognized by the States Members of the United Nations, which is regulated by the Code of Private International Law; that Code provides that the perpetrators of such an offence should be judged in accordance with the criminal laws in force in the country which captures them. Each State which signed the Charter of the United Nations establishes fully the competence of its courts, their organization, the procedures for judgement and the execution of the sentences pronounced by its jurisdictional body.

10. As there are many variants and factors which enter into the commission of offences of this kind, judging them will require conformity with the foregoing in respect of the rules of competence regulating the said code.

\*\*\*\*\*

(a) The International Law Commission believes that the most serious international crimes should be determined in conformity with the conventions and declarations in the matter; such a determination would therefore be feasible in the light of the fact that the Commission has available to it the indicated elements of reference, which have already been approved by the States Members of the United Nations.

(b) With regard to those subjects of international law to which penal responsibility may be attributed, the Commission wishes to know the opinion of the General Assembly, and therefore it will be our country's representative in the International Law Commission who will make a statement on the penal responsibility of subjects of law.

(c) Paragraph 69 (c) (i) expresses the view that a code unaccompanied by sanctions would be ineffective; the Commission also asks the General Assembly to indicate its view on criminal jurisdiction and to indicate whether the elaboration of the statute of an international criminal jurisdiction would be feasible. It is believed that in order to be effective, the proposed code should indeed contain sanctions rather than merely norms of conduct; in connection with international jurisdiction and international criminal statutes, attention must be given to the juridical norms contemplated in the Code of Private International Law which states in its article 296: "Penal laws are binding on all persons residing in the territory, without other exceptions than those established in this chapter". Article 297 states: "The head of each of the contracting States is exempt from the penal laws of the others when he is in the territory of the latter". Similar exemptions apply to the persons referred to in articles 298, 299, 300, 301, 302 and 303. Furthermore, article 304 states: "No contracting State shall apply in its territory the penal laws of the others". Consequently, if we create an organ with international competence and jurisdiction to deal with and punish subjects of law that commit international crimes, it will become necessary to abrogate that part of the Code of Private International Law which deals with the applicability of criminal laws to all those who reside in the territory, with the exceptions cited above, which are regulated in the said code. With regard to paragraph 69 (c) (ii), which refers to jurisdiction and competence, a determination should be made in the

General Assembly by the countries which have sent permanent representatives to the United Nations, since if sanctions are to be applied with due regard to the seriousness of the circumstances associated with offences against the peace and security of mankind, another question which must be discussed is whether the competent organ to be established would also have international jurisdiction to apply the appropriate sanctions or whether those sanctions should be applied in the respective territories of the subjects of law.

-----