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DRAFT REPORT OF THE INTERNATIONAL LAW COMMISSION
ON THE WORK OF ITS FORTY-EIGHTH SESSION

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CHAPTER II

DRAFT CODE OF CRIMES AGAINST THE PEACE
AND SECURITY OF MANKIND

A. Introduction

1. The General Assembly, in resolution 177 (II) of 21 November 1947, requested the Commission to: (a) formulate the principles of international law recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal; and (b) prepare a draft Code of offences against the peace and security of mankind, indicating clearly the place to be accorded to the principles mentioned in (a) above. The Commission, at its first session in 1949, appointed Mr. Jean Spiropoulos Special Rapporteur.
2. On the basis of the reports of the Special Rapporteur, the Commission: (a) at its second session, in 1950, adopted a formulation of the principles of international law recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal and submitted these principles, with

commentaries, to the General Assembly; and (b) at its sixth session, in 1954, submitted a draft Code of offences against the peace and security of mankind, with commentaries, to the General Assembly. 1/

3. The General Assembly, in resolution 897 (IX) of 4 December 1954, considering that the draft Code of offences against the peace and security of mankind as formulated by the Commission raised problems closely related to those of the definition of aggression, and that the General Assembly had entrusted a Special Committee with the task of preparing a report on a draft definition of aggression, decided to postpone consideration of the draft Code until the Special Committee has submitted its report.

4. On the basis of the recommendations of the Special Committee, the General Assembly, in resolution 3314 (XXIX) of 14 December 1974, adopted the Definition of Aggression by consensus.

5. The General Assembly, however, did not take action on the draft Code, until on 10 December 1981 it invited, in resolution 36/106, the Commission to resume its work with a view to elaborating the draft Code and to examine it with the required priority in order to review it, taking duly into account the results achieved by the process of the progressive development of international law. 2/

6. The Commission, at its thirty-fourth session, in 1982, appointed Mr. Doudou Thiam Special Rapporteur for the topic. 3/ The Commission, from its thirty-fifth session, in 1983, to its forty-third session, in 1991, received nine reports from the Special Rapporteur. 4/

1/ Yearbook ... 1950, vol. II, pp. 374-378, document A/1316. Yearbook ... 1954, vol. II, pp. 150-152, document A/2673. For the text of the principles and the draft Code, see also Yearbook ... 1985, vol. II (Part Two), pp. 12 and 8, document A/40/10, paras. 45 and 18.

2/ In resolution 42/151 of 7 December 1987, the General Assembly agreed with the recommendation of the Commission and amended the title of the topic in English to read "Draft Code of Crimes against the Peace and Security of Mankind". For a detailed discussion of the historical background of this topic, see the Report of the International Law Commission on the work of its thirty-fifth session, Yearbook ... 1983, vol. II, Part Two, pp. 10-13.

3/ See Yearbook ... 1982, vol. II, Part Two, p. 121.

4/ Yearbook ... 1983, vol. II (Part One), p. 137, document A/CN.4/364; Yearbook ... 1984, vol. II (Part One), p. 89, document A/CN.4/377; Yearbook ... 1985, vol. II (Part One), document A/CN.4/387; Yearbook ... 1986,

7. At its forty-third session, in 1991, the Commission, provisionally adopted on first reading the draft articles of the draft Code of Crimes against the Peace and Security of Mankind. 5/ At the same session, the Commission decided, in accordance with articles 16 and 21 of its Statute, to transmit the draft articles, through the Secretary-General, to Governments for their comments and observations, with a request that such comments and observations be submitted to the Secretary-General by 1 January 1993. 6/ The Commission noted that the draft it had completed on first reading constituted the first part of the Commission's work on the topic of the draft Code; and that the Commission would continue at forthcoming sessions to fulfil the mandate the General Assembly had assigned to it in paragraph 3 of resolution 45/41, of 28 November 1990, which invited the Commission, in its work on the draft Code, to consider further and analyse the issues raised in its report concerning the question of an international criminal jurisdiction, including the possibility of establishing an international criminal court or other international criminal trial mechanism. 7/

8. At its forty-sixth session, the General Assembly in its resolution 46/54 of 9 December 1991 invited the Commission, within the framework of the draft Code to consider further and analyse the issues raised in the Commission's report on the work of its forty-third session (1991) 8/ concerning the

vol. II, document A/CN.4/398; Yearbook ... 1987, vol. II (Part One), document A/CN.4/404; Yearbook ... 1988, vol. II (Part One), document A/CN.4/411; Yearbook ... 1989, vol. II (Part One), document A/CN.4/419 and Add.1 and Corr.1 and 2 (Spanish only); Yearbook ... 1990, vol. II (Part One), document A/CN.4/430 and Add.1; Yearbook ... 1991, vol. II (Part One), document A/CN.4/435 and Add.1 and Corr.1.

5/ See Yearbook ... 1991, vol. II (Part Two), para. 173.

6/ Ibid., para. 174.

7/ Ibid., para. 175. The Commission noted that it had already started to discharge this mandate and its work on this aspect of the topic was reflected in paras. 106 to 165 of its report (ibid.).

8/ Yearbook ... 1990, vol. II (Part Two) (A/45/10), chap. II, sect. C.

question of an international criminal jurisdiction, including proposals for the establishment of an international criminal court or other international criminal trial mechanism, in order to enable the General Assembly to provide guidance on the matter.

9. At its forty-fourth and forty-fifth sessions, in 1992 and 1993, the Commission had before it the Special Rapporteur's tenth and eleventh reports on the topic, 9/ which were entirely devoted to the question of the possible establishment of an international criminal jurisdiction. The work carried out by the Commission at its forty-fourth (1992), forty-fifth (1993) and forty-sixth sessions on that question culminated in the adoption, at the forty-sixth session in 1994, of a draft statute of an international criminal court which the Commission submitted to the General Assembly with the recommendation that it convene an international conference of plenipotentiaries to study the draft statute and to conclude a convention on the establishment of an international criminal court. 10/

10. At its forty-sixth session in 1994, the Commission had before it the Special Rapporteur's twelfth report on the topic, 11/ which was intended for the second reading of the draft Code and focused on the general part of the draft dealing with the definition of crimes against the peace and security of mankind, characterization and general principles. It also had before it the comments and observations of States 12/ as adopted on first reading at that session. 13/ After considering the twelfth report, the Commission decided at its 2350th meeting to refer draft articles 1 to 15, as dealt with in that report, to the Drafting Committee.

11. At its forty-seventh session, the Commission had before it the thirteenth report of the Special Rapporteur. 14/ This report was prepared

9/ A/CN.4/442 and A/CN.4/449 and Corr.1 (English only).

10/ See Official Records of the General Assembly, Forty-ninth Session, Supplement No. 10 (A/49/10), chap. II A.

for the second reading of the draft Code and focused on the crimes against the peace and security of mankind set out in Part II. After consideration of the thirteenth report, the Commission decided at its 2387th meeting to refer to the Drafting Committee articles 15 (Aggression), 19 (Genocide), 21 (Systematic or mass violations of human rights) and 22 (Exceptionally serious war crimes) for consideration as a matter of priority on second reading, in the light of the proposals contained in the Special Rapporteur's thirteenth report and of the comments and proposals made in the course of the debate in plenary. This was done on the understanding that, in formulating those articles, the Drafting Committee would bear in mind and at its discretion deal with all or part of the elements of the following draft articles as adopted on first reading: 17 (Intervention), 18 (Colonial domination and other forms of alien domination), 20 (Apartheid), 23 (Recruitment, use, financing and training of mercenaries) and 24 (International terrorism). The Commission further decided that consultations would continue as regards articles 25 (Illicit traffic in narcotic drugs) and 26 (Wilful and severe damage to the environment).

12. As regards article 26 concerning wilful and severe damage to the environment, the Commission decided at its 2404th meeting to establish a working group that would meet at the beginning of the forty-eighth session to examine the possibility of covering in the draft Code the issue of wilful and severe damage to the environment, while reaffirming the Commission's intention to complete the second reading of the draft Code at that session in any event.

13. The Drafting Committee began its work on the second reading of the draft articles at the forty-seventh session of the Commission and completed its work at the present forty-eighth session.

14. At the forty-eighth session, the working group examining the issue of wilful and severe damage to the environment met and proposed to the Commission that the issue of wilful and severe damage to the environment be considered either as (i) a war crime, or (ii) a crime against humanity, or a separate crime against the peace and security of mankind.

15. The Commission at its 2431st meeting decided by a vote to refer to the Drafting Committee only the text prepared by the Working Group for inclusion of wilful and severe damage to the environment as a war crime.

16. The Commission considered the report of the Drafting Committee 15/ at its 2437th to ... meetings and adopted the final text of a set of [19] draft articles constituting the code of crimes against the peace and security of mankind.

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