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

Note by the Secretary-General

1. By its resolution 177 (II), adopted at its second session, on 21 November 1947, the General Assembly decided to entrust to the International Law Commission the formulation of the principles of international law recognized in the charter of the Nürnberg Tribunal and in the judgment of the Tribunal, and directed the Commission to prepare a draft code of offences against the peace and security of mankind, indicating clearly the place to be accorded to the said principles.
2. The International Law Commission at its first session in 1949 accordingly appointed a special rapporteur to prepare a working paper and decided that a questionnaire be circulated to Governments inquiring what offences, apart from those defined in the Charter and judgment of the Nürnberg Tribunal, should, in their view, be included in the draft code.<sup>1/</sup>
3. At its second session in 1950, the Commission, after having considered the working paper submitted by the special rapporteur (A/CN.4/25) and the comments received from certain Governments (A/CN.4/19 and Add.1 and 2), appointed a drafting sub-committee which prepared a provisional draft code; this draft was referred to the special rapporteur.<sup>2/</sup>

<sup>1/</sup> See: Report of the International Law Commission covering its first session, Official Records of the General Assembly, Fourth Session, Supplement No. 10 (A/925).

<sup>2/</sup> See: Report of the Commission covering its second session, ibid., Fifth Session, Supplement No. 12 (A/1316).

4. By its resolution 488 (V) of 12 December 1950, the General Assembly, after having received from the International Law Commission the formulation of the Nürnberg principles, requested the Commission:

"In preparing the draft code of offences against the peace and security of mankind, to take account of the observations made on this formulation by delegations during the fifth session of the General Assembly and of any observations which may be made by Governments."

5. In 1951, at the third session of the Commission, the special rapporteur submitted a second report (A/CN.4/44) containing a new draft code. The Commission also had before it the observations received from certain Governments (A/CN.4/45 and Corr.1, A/CN.4/45/Add.1 and Corr.1 and A/CN.4/45/Add.2) on the formulation of the Nürnberg principles. Taking into account these observations, the Commission adopted a draft Code of Offences against the Peace and Security of Mankind which is reproduced in its report to the General Assembly covering the work of its third session.<sup>3/</sup>

6. The question of the draft code was on the provisional agenda for the sixth session of the General Assembly, but was, by a decision of the Assembly at its 342nd plenary meeting on 13 November 1951, postponed until the seventh session.

7. In consequence of that decision, the Secretary-General, by a circular letter of 17 December 1951, invited the States Members to transmit to him their comments or observations for submission to the Assembly. Fourteen Governments sent their comments.<sup>4/</sup>

8. The Secretary-General also included the question of the draft code in the provisional agenda of the seventh session of the General Assembly. The item was, however, by a decision taken at its 382nd plenary meeting on 17 October 1952, omitted from the final agenda of the seventh session on the understanding that the matter would continue to be considered by the International Law Commission.

<sup>3/</sup> Ibid., Sixth Session, Supplement No. 9 (A/1858).

<sup>4/</sup> Ibid., Seventh Session, Annexes, Agenda item 54, documents A/2162 and Add.1

9. In the circumstances, the International Law Commission decided at its fifth session to request the special rapporteur to undertake a further study of the question and to prepare a new report.
10. In his "Third report relating to a draft Code of Offences against the Peace and Security of Mankind" (A/CN.4/85), the special rapporteur discussed the observations received from Governments,<sup>5/</sup> and proposed certain changes in the text of the draft adopted by the Commission at its third session.
11. The Commission considered the draft code at its sixth session in 1954 and decided to make certain revisions in the previously adopted text. The full text of the draft code, as revised, was included in its report to the Assembly.<sup>6/</sup>
12. The Assembly considered the report at its ninth session but, following the recommendation of the Sixth Committee,<sup>7/</sup> and considering that the draft code raised problems closely related to that of the definition of aggression, decided, by its resolution 897 (IX) of 4 December 1954, to postpone further consideration of the draft Code until the Special Committee on the Question of Defining Aggression, set up by its resolution 895 (IX), had submitted its report to the eleventh session.
13. The question was accordingly included in the agenda of the eleventh session. However, the Secretary-General suggested<sup>8/</sup> that the General Committee of the Assembly should recommend the postponement of the item "Definition of aggression" until the twelfth session. The reason was that the 1956 Special Committee on the Question of Defining Aggression had not met until shortly before the opening of the eleventh session of the Assembly and that, consequently, a discussion at that time would take place before Governments had had sufficient time to study the Committee's report. According to resolution 898 (IX), however, any postponement of the question of defining aggression also involved the postponement of the question of the code of offences against the peace and security of mankind.

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5/ Ibid. and A/2162/Add.2.

6/ Official Records of the General Assembly, Ninth Session, Supplement No. 9 (A/2693, chapter III).

7/ Ibid., Annexes, Agenda item 49.

8/ Ibid., Eleventh Session, Annexes, Agenda item 8, document A/BUR/143, para. 4.

14. The General Committee, at its 107th meeting, approved the suggestion of the Secretary-General<sup>9/</sup> and, on its proposal, the General Assembly, at its 577th plenary meeting on 15 November 1956, decided to postpone the item until the twelfth session.

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<sup>9/</sup> See document A/3350, para. 2.