The Work of the International Law Commission at its 44th Session

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1. Introduction

The International Law Commission held its 44th session in Geneva from 4 May to 24 July 1992. The session was the first in the five-year term of members elected by the United Nations General Assembly on 14 November 1991.

At the session the Commission discussed three of the five substantive topics on its agenda, on the basis of reports and draft articles submitted by the Special Rapporteurs.

Within the framework of the topic “Draft Code of Crimes against the Peace and Security of Mankind” the Commission concluded the task of analysis of the question of the establishment of an international criminal court, setting forth suggestions on what it considered a workable system, and sought a renewed mandate and guidelines from the General Assembly for any future work on the question. No discussion took place on the draft articles adopted on first reading at the last session on the Draft Code itself, pending receipt of comments and observations of Governments.

On the topic “State responsibility” the Drafting Committee of the Commission adopted a set of articles on cessation of and reparation for internationally wrongful acts. The articles were not considered in the Commission pending preparation of draft commentaries to the articles. The Commission held a comprehensive discussion of countermeasures and referred articles on the question to the Drafting Committee.

The Commission adopted a decision on its future approach to the topic “International liability for injurious consequences arising out of acts not prohibited by international law”. Under that decision the Commission would concentrate on activities having a risk of causing harm and not deal, at this stage, with other activities which in fact cause harm.

No discussion took place on the topic “The law of the non-navigational uses of international watercourses” pending the receipt of comments and observations of Governments on the draft articles adopted on first reading at its last session.
The Commission decided not to pursue further, during the present term of its members, consideration of the topic "Relations between States and international organizations (second part of the topic)" unless the General Assembly decided otherwise.

In this paper a general overview of the work of the Commission at its 44th session will be set out.

2. Draft Code of Crimes against the Peace and Security of Mankind

a) General on the question of an international criminal trial mechanism

The Commission, having at its last session adopted a complete set of articles on the Draft Code of Crimes against the Peace and Security of Mankind and referred them to Governments for comments and observations, did not discuss the articles at this session. In the framework of the topic and in response to a request of the General Assembly the Commission, however, held a full debate on the question of the establishment of an international criminal court or other international criminal trial mechanism. The discussion was based on issues raised in the tenth report of the Special Rapporteur. Following the discussion, the Commission established a Working Group to consider the question. The Working Group submitted a comprehensive report, setting forth a number of basic propositions and proposals for future work. On the basis of the report the Commission adopted a decision, to the effect that it had concluded the analysis called for by the General Assembly, that the approach in the Working Group's report could be a workable system, that further work required a renewed mandate from the Assembly and that the Assembly need now decide whether the Commission should undertake the project for an international criminal jurisdiction and on what basis. The decision is contained in Annex I to this paper.

(b) Approach of the Working Group on an international criminal court

Although some members expressed reservations on the feasibility of an international criminal court and others to the effect that the proposals of the Working Group had not gone far enough, it was clear in the Commission that in any future work on a Statute a consensus could be found around the basic approach adopted by the Working Group. It had concluded that its proposed