The Work of the International Law Commission at its 46th Session

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1. Introduction

The International Law Commission held its 46th session in Geneva from 2 May to 22 July 1994.

At the session the Commission made substantial progress on four of the six substantive topics on its agenda, on the basis of reports and draft articles submitted by the Special Rapporteurs. In the context of the work on the topic "Draft Code of Crimes against the Peace and Security of Mankind" the Commission approved a draft Statute for an International Criminal Court and recommended to the General Assembly that it convene a diplomatic conference to conclude a convention on the establishment of an international criminal court. The Commission commenced the second reading of the draft articles on the Draft Code itself adopted on first reading in 1991.

The Commission completed the second reading of the articles on the topic "The law of the non-navigational uses of international watercourses" and

* Member, International Law Commission; Legal Adviser, Ministry for Foreign Affairs of Iceland. This article is not a statement of the views of the International Law Commission or the Government of Iceland. For the writer's summary of the work of the Commission at its 41st to 45th sessions, respectively, see Nordic Journal of International Law, vol. 58, pp. 287 to 320; vol. 59, pp. 204 to 227; vol. 61/62, pp. 319–372 and 373–388; and vol. 63, pp. 245 to 300. The author wishes to acknowledge the invaluable assistance of Ms. Satu Suikkari, Department of Law, Aabo Akademi University, in the preparation of this paper.

1 The topics on the Commission's active agenda and the Special Rapporteurs dealing with them are:

- State responsibility (Mr. Gaetano Arangio-Ruiz);
- Draft Code of Crimes against the Peace and Security of Mankind (Mr. Doudou Thiam);
- The law of the non-navigational uses of international watercourses (Mr. Robert Rosenstock);
- International liability for injurious consequences arising out of acts not prohibited by international law (Mr. Julio Barboza);
- The law and practice relating to reservations to treaties (Mr. Alain Pellet); and
- State succession and its impact on the nationality of natural and legal persons (Mr. Vaclav Mikulka).
recommended the elaboration of a convention on the basis of the draft articles by the General Assembly or a conference of plenipotentiaries.

On the topic “State responsibility” the Commission adopted three articles on countermeasures for inclusion in Part Two of the draft articles but did not submit them formally to the General Assembly pending adoption of an article on “conditions”. The Commission also discussed the question of the consequences of acts characterized as crimes under Article 19 of Part One of the draft articles.

On the topic “International liability for injurious consequences arising out of acts not prohibited by international law” the Commission adopted a complete set of articles on prevention.

The Commission appointed Mr. Alain Pellet Special Rapporteur for the new topic “The law and practice relating to reservations to treaties” and Mr. Vaclav Mikulka Special Rapporteur for the new topic “State succession and its impact on the nationality of natural and legal persons”.

In this paper a general overview of the work of the Commission at its 46th session will be set out.

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

2.1. Draft Statute of an International Criminal Court

The Commission discussed the report prepared at its last session by the Working Group on a draft statute for an international criminal court.2 The report had not been considered by the Commission at its last session but had been referred to the General Assembly and Governments for comments. The Commission had before it the comments and observations of Governments on the report.3

Following the discussion, the Commission reestablished the Working Group. The Working Group, chaired by Mr. James Crawford, adopted a final report containing a draft Statute for an International Criminal Court, comprising 60 articles with commentaries.4 The draft Statute is contained in Annex 1 to this paper. The Commission decided to recommend to the General Assembly 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.