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REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS  
THIRTY-NINTH SESSION

Draft articles adopted by the International Law Commission  
on topics considered at its thirty-ninth session

Note by the Secretary-General

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\* A/42/150.

## I. INTRODUCTION

1. The International Law Commission, established in pursuance of General Assembly resolution 174 (II) of 21 November 1947, in accordance with its Statute annexed thereto, as subsequently amended, held its thirty-ninth session at its permanent seat at the United Nations Office at Geneva, from 4 May to 17 July 1987.

2. The Commission's agenda for its thirty-ninth session consisted of the following items:

1. Organization of work of the session.
2. State responsibility.
3. Jurisdictional immunities of States and their property.
4. Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier.
5. Draft Code of Offences against the Peace and Security of Mankind.
6. The law of the non-navigational uses of international watercourses.
7. International liability for injurious consequences arising out of acts not prohibited by international law.
8. Relations between States and international organizations (second part of the topic).
9. Programme, procedures and working methods of the Commission, and its documentation.
10. Co-operation with other bodies.
11. Date and place of the fortieth session.
12. Other business.

3. The Commission, in view of its practice not to hold a substantive debate on draft articles adopted in first reading until the comments and observations of Governments thereon are available, did not consider item 3, "Jurisdictional immunities of States and their property", or item 4, "Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier", pending receipt of the comments and observations which Governments have been invited to submit by 1 January 1988 on the sets of draft articles provisionally adopted by the Commission at its thirty-eighth session on the two topics in question. The Commission did not consider item 2, "State responsibility", as it felt it appropriate that the new Special Rapporteur for the topic, Mr. Gaetano Arangio-Ruiz, appointed on 17 June 1987 in replacement of

Mr. William Riphagen who was no longer a member of the Commission, be given an opportunity to make his views known.

4. The work of the Commission during its thirty-ninth session is described in its report to the General Assembly. 1/ Chapter I of the report is concerned with the organization of the session. Chapter II of the report relates to the topic "Draft Code of Offences against the Peace and Security of Mankind" and sets out the five articles on the topic, with commentaries thereto, provisionally adopted by the Commission at the present session. Chapter III relates to the topic "The law of the non-navigational uses of international watercourses" and sets out the six articles on the topic, with commentaries thereto, provisionally adopted by the Commission at the present session. Chapter IV relates to the topic "International liability for injurious consequences arising out of acts not prohibited by international law". Chapter V of the report concerns the topic "Relations between States and international organizations" (second part of the topic). Chapter VI contains matters relating to the programme, procedures and working methods of the Commission and its documentation, as well as co-operation with other bodies, and also considers certain administrative and other matters.

5. The present document has been prepared by the Secretariat, pursuant to a decision of the International Law Commission. 2/ Section II sets out the texts of the five draft articles on the draft Code of Crimes against the Peace and Security of Mankind provisionally adopted by the Commission at the present session. Section III sets out the texts of the six draft articles on the law of the non-navigational uses of international watercourses provisionally adopted by the Commission at the present session.

II. DRAFT ARTICLES ON THE DRAFT CODE OF CRIMES AGAINST THE  
PEACE AND SECURITY OF MANKIND

CHAPTER I

INTRODUCTION

PART I. Definition and characterization

Article 1

Definition

The crimes [under international law] defined in this draft Code constitute crimes against the peace and security of mankind.

Article 2

Characterization

The characterization of an act or omission as a crime against the peace and security of mankind is independent of internal law. The fact that an act or omission is or is not punishable under internal law does not affect this characterization.

PART II. General principles

Article 3

Responsibility and punishment

1. Any individual who commits a crime against the peace and security of mankind is responsible for such crime irrespective of any motives invoked by the accused that are not covered by the definition of the offence and is liable to punishment therefor.

2. Prosecution of an individual for a crime against the peace and security of mankind does not relieve a State of any responsibility under international law for an act or omission attributable to it.

...

Article 5

Non-applicability of statutory limitations

No statutory limitation shall apply to crimes against the peace and security of mankind.

Article 6

Judicial guarantees

Any individual charged with a crime against the peace and security of mankind shall be entitled without discrimination to the minimum guarantees due to all human beings with regard to the law and the facts. In particular:

1. He shall have the right to be presumed innocent until proved guilty;
2. He shall have the right:

(a) In the determination of any charge against him, to have a fair and public hearing by a competent, independent and impartial tribunal duly established by law or by treaty;

/...

(b) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(c) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(d) To be tried without undue delay;

(e) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him and without payment by him in any such case if he does not have sufficient means to pay for it;

(f) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(g) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(h) Not to be compelled to testify against himself or to confess guilt.

### III. DRAFT ARTICLES ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES

#### PAKT I

#### INTRODUCTION

#### Article 1

[Use of terms] 3/

#### Article 2

#### Scope of the present articles

1. The present articles apply to uses of international watercourse[s] [systems] and of their waters for purposes other than navigation and to measures of conservation related to the uses of those watercourse[s] [systems] and their waters.

2. The use of international watercourse[s] [systems] for navigation is not within the scope of the present articles except in so far as other uses affect navigation or are affected by navigation.

### Article 3

#### Watercourse States

For the purposes of the present articles, a watercourse State is a State in whose territory part of an international watercourse [system] is situated.

### Article 4

#### [Watercourse] [System] agreements

1. Watercourse States may enter into one or more agreements which apply and adjust the provisions of the present articles to the characteristics and uses of a particular international watercourse [system] or part thereof. Such agreements shall, for the purposes of the present articles, be called [watercourse] [system] agreements.

2. Where a [watercourse] [system] agreement is concluded between two or more watercourse States, it shall define the waters to which it applies. Such an agreement may be entered into with respect to an entire international watercourse [system] or with respect to any part thereof or a particular project, programme or use, provided that the agreement does not adversely affect, to an appreciable extent, the use by one or more other watercourse States of the waters of the international watercourse [system].

3. Where a watercourse State considers that adjustment or application of the provisions of the present articles is required because of the characteristics and uses of a particular international watercourse [system], watercourse States shall consult with a view to negotiating in good faith for the purpose of concluding a [watercourse] [system] agreement or agreements.

### Article 5

#### Parties to [watercourse] [system] agreements

1. Every watercourse State is entitled to participate in the negotiation of and to become a party to any [watercourse] [system] agreement that applies to the entire international watercourse [system], as well as to participate in any relevant consultations.

2. A watercourse State whose use of an international watercourse [system] may be affected to an appreciable extent by the implementation of a proposed [watercourse] [system] agreement that applies only to a part of the watercourse [system] or to a particular project, programme or use is entitled to participate in consultations on, and in the negotiation of, such an agreement, to the extent that its use is thereby affected, and to become a party thereto.

PART II

GENERAL PRINCIPLES

Article 6

Equitable and reasonable utilization and participation

1. Watercourse States shall in their respective territories utilize an international watercourse [system] in an equitable and reasonable manner. In particular, an international watercourse [system] shall be used and developed by watercourse States with a view to attaining optimum utilization thereof and benefits therefrom consistent with adequate protection of the international watercourse [system].

2. Watercourse States shall participate in the use, development and protection of an international watercourse [system] in an equitable and reasonable manner. Such participation includes both the right to utilize the international watercourse [system] as provided in paragraph 1 of this article and the duty to co-operate in the protection and development thereof, as provided in article ... .

Article 7

Factors relevant to equitable and reasonable utilization

1. Utilization of an international watercourse [system] in an equitable and reasonable manner within the meaning of article 6 requires taking into account all relevant factors and circumstances, including:

- (a) geographic, hydrographic, hydrological, climatic and other factors of a natural character;
- (b) the social and economic needs of the watercourse States concerned;
- (c) the effects of the use or uses of an international watercourse [system] in one watercourse State on other watercourse States;
- (d) existing and potential uses of the international watercourse [system];
- (e) conservation, protection, development and economy of use of the water resources of the international watercourse [system] and the costs of measures taken to that effect;
- (f) the availability of alternatives, of corresponding value, to a particular planned or existing use.

2. In the application of article 6 or paragraph 1 of the present article watercourse States concerned shall, when the need arises, enter into consultations in a spirit of co-operation.

Notes

1/ Official Records of the General Assembly, Forty-second Session, Supplement No. 10 (A/42/10).

2/ Yearbook of the International Law Commission, 1977, vol. II (Part Two), p. 133, document A/32/10, para. 130.

3/ The Drafting Committee agreed to leave aside for the time being the question of article 1 (Use of terms) and that of the use of the term "system" and to continue its work on the basis of the provisional working hypothesis accepted by the Commission at its thirty-second (1980) session. Thus, the word "system" appears in square brackets throughout the text.

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