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Summary record of the 2470th meeting

Topic:
Other topics

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94. Mr. TOMUSCHAT proposed that in the first sentence, the word "acts", should be replaced by the words "would act", and that the word "bears", should be replaced by the words "would bear".

It was so agreed.

Paragraph (14), as amended, was adopted.

Paragraph (15)

95. Mr. ARANGIO-RUIZ said that the purpose of his amendment was to make it clear that the proposal he had submitted as Special Rapporteur in his seventh report,¹ in 1995, had also envisaged a two-step procedural mechanism—and a far better one, in his view—for determining whether and by whom a crime had been committed, those two steps being, respectively, a political step before the General Assembly and Security Council and a judicial one before ICJ.

96. Mr. ROSENSTOCK said that Mr. Arangio-Ruiz and Mr. Pellet might perhaps wish to redraft the first sentence of the paragraph to refer to both proposals. He would, however, also propose that, in the second sentence, the words "in the view of those who supported those proposals" should be added after the words "it is therefore necessary", to reflect the fact that certain members did not think that either of the proposals was very helpful. Further, if the reference to *jus cogens* were retained, he would propose that a sentence should be added at the end of the paragraph reading "Others considered the analogy to *jus cogens* misleading and unconvincing".

97. Mr. ARANGIO-RUIZ suggested that, since paragraphs (12), (13) and (14) all dealt with the same subject, they should be combined in a single paragraph. Paragraph (15) could then start by referring to the proposals mentioned in the two preceding paragraphs, namely, the proposal he had submitted as Special Rapporteur and the proposal by Mr. Pellet and Mr. Eiriksson (2457th meeting).

98. Mr. PELLET said that he was somewhat sceptical about the benefits of such a forced marriage between his and Mr. Arangio-Ruiz' proposals. He was willing for them both to be treated on an equal footing, but the idea of a merger between the two struck him as a little strange.

99. The CHAIRMAN invited Mr. Pellet to draft a suitable form of wording, taking account of the views expressed, for the Commission's consideration at the next meeting.

The meeting rose at 1.10 p.m.

2470th MEETING

Wednesday, 24 July 1996, at 3.15 p.m.

Chairman: Mr. Ahmed MAHIOU

Present: Mr. Arangio-Ruiz, Mr. Barboza, Mr. Bennouna, Mr. Bowett, Mr. Calero Rodrigues, Mr. de Saram, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Mikulka, Mr. Pellet, Mr. Robinson, Mr. Rosenstock, Mr. Thiam, Mr. Tomuschat, Mr. Vargas Carreño, Mr. Villagrán Kramer.

Draft report of the Commission on the work of its forty-eighth session (continued)

CHAPTER III. State responsibility (continued) (A/CN.4/L.528 and Corr.1, and Add.1-3 and Add.3/Corr.1)

D. Draft articles on State responsibility (continued) (A/CN.4/L.528/Add.2 and 3 and Add.3/Corr.1)

Commentary to article 51 (Consequences of an international crime) (A/CN.4/L.528/Add.3 and Add.3/Corr.1)

Paragraph (1)

1. The CHAIRMAN pointed out that, at the previous meeting, the Commission had decided to place the 15 paragraphs of the general commentary on international crimes in the commentary to article 51. They would be inserted after the first sentence of paragraph (1) and slight changes in form would be required to make that change easier. The paragraphs would, of course, be renumbered accordingly.

Paragraph (1), as amended, was adopted.

Paragraph (2)

Paragraph (2) was adopted.

The commentary to article 51, as amended, was adopted.

Commentary to article 52 (Specific consequences)

Paragraph (1)

2. The CHAIRMAN and Mr. BOWETT proposed that the word "specific", in the first sentence should be deleted.

It was so agreed.

3. In response to a comment by Mr. CALERO RODRIGUES, who asked for clarification regarding the term "serious consequences", used in the English version, Mr. BOWETT and Mr. ROSENSTOCK explained that the Drafting Committee had wanted to avoid the term "substantial", used in another context. It had, how-

¹ See 2434th meeting, footnote 5.

ever, wanted to highlight the differences between the consequences of a crime and the consequences of an international delict.

Paragraph (1), as amended, was adopted.

Paragraph (2)

Paragraph (2), was adopted.

Paragraph (3)

4. Mr. PELLET said he had reservations about the last phrase in the first sentence, “which the Commission believes ought not to apply in the case of a ‘crime’”, for it implied that the Commission had been unanimous on that point.

5. Mr. TOMUSCHAT said he endorsed those reservations. It was regrettable that the last sentence of the paragraph gave the impression that restitution consisted simply in returning the “fruits of the crime”, as if stolen goods were involved. In actual fact, as defined in article 43, restitution was much broader.

6. The CHAIRMAN, referring to a comment by Mr. LUKASHUK, suggested that the words “a wrongdoing that is criminal”, in the last sentence, should be replaced by “a wrongdoing which is a crime”. Furthermore, the quotation marks around the word “crime” should be deleted from the whole of the commentary.

It was so agreed.

7. Mr. MIKULKA, supported by the CHAIRMAN, suggested with reference to the beginning of the last sentence that the word “legal” should be deleted and that the phrase should speak simply of “restoration of the situation as it existed prior to the unlawful act”.

It was so agreed.

Paragraph (3), as amended, was adopted.

Paragraph (4)

8. Mr. PELLET said that he was completely opposed to that part of the commentary. The Commission started out by saying that it was not eliminating proportionality by removing the limitations set out in subparagraphs (c) and (d) of article 43, and then went on to add that reparation could hardly be said to be disproportionate in the majority of cases. It was an obvious contradiction and the second assertion implied that the Commission was reverting to *lex talionis*.

9. Mr. VILLAGRÁN KRAMER said that he too thought the paragraph did not convey exactly what the Commission had wanted to express, namely that the principle of the proportionality of reparation was maintained even in the case of crimes.

10. Mr. CALERO RODRIGUES pointed out that, by removing the limitations set out in subparagraphs (c) and (d) of article 43, the Commission was not eliminating the principle of proportionality. In fact, those two subparagraphs related to restitution in kind as compared with indemnification, and accordingly they related to very special cases of reparation. Generally speaking, reparation

should be proportionate to the consequences of the wrongful act.

11. Mr. BOWETT said that he endorsed Mr. Calero Rodrigues’ comments: the proportionality rule did not disappear simply because a particular limitation had been removed. Moreover, that was precisely what was said in the first sentence of the paragraph.

12. Mr. PELLET insisted that his strong reservations should be reflected in the summary record.

13. Mr. ARANGIO-RUIZ proposed that the word “legal” should be deleted from the second sentence, which should speak simply of “restoration of the original situation”.

It was so agreed.

Paragraph (4), as amended, was adopted.

Paragraph (5)

14. Mr. TOMUSCHAT proposed that a sentence reading:

“However, it should be remembered that paragraph 3 of article 42 places a limitation on the duty of reparation that applies even in the case of a crime.”

should be added at the end of the paragraph. It was important to point out too that the limitation was a counterpart to the limitation set out in subparagraph (d) of article 43.

15. Mr. PELLET and Mr. CALERO RODRIGUES endorsed that proposal.

16. Mr. ROSENSTOCK said he feared the amendment was not so innocuous as it seemed. It could well lead to confusion and make for an unbalanced text.

17. Mr. LUKASHUK and Mr. VILLAGRÁN KRAMER said that the proposal nearly wiped out the difference between delicts and crimes insofar as the seriousness of their consequences for the wrongdoing State was concerned.

18. The CHAIRMAN said that, in view of the differences of views, it might be better to maintain the text as it stood.

Paragraph (5) was adopted.

Paragraphs (6) and (7)

Paragraphs (6) and (7) were adopted.

Paragraph (8)

19. Mr. PELLET said that he wished to make a general remark about the paragraph, which he disapproved of in its entirety. By wishing to engage at all costs in a general codification of the consequences of internationally wrongful acts without from the beginning drawing any clear distinction between crimes and delicts, the Commission had attributed to delicts consequences that should in fact have been confined to crimes. Such was the case in particular with article 45 (Satisfaction), which tried to cover all possible cases, when it was, in fact,

really acceptable only for crimes. That article had now been adopted and, since it could not be brought up again, the resulting type of situation was the one described in paragraph (8), something that was regrettable in the extreme.

20. Mr. TOMUSCHAT said the expression “punitive damages”, in the first sentence of the paragraph, did not relate to anything in the draft articles and, in addition, might convey the impression that some international crimes were penal in character, something the Commission had precisely sought to avoid. Accordingly, the word “punitive” should be deleted and the variant “exemplary damages” should be retained. As far as he recalled, the Commission had never studied the question of punitive damages, and so the formulation “The Commission believes”, at the beginning of the paragraph, was improperly used.

21. Mr. BOWETT said that the question of punitive damages had been taken up in the Drafting Committee, which had thought the idea could be reflected in the commentary.

22. Mr. VILLAGRÁN KRAMER said it was very important to distinguish clearly between wrongful acts and crimes in regard to the obligation of reparation and that one way to do so was to introduce the notion of punitive damages in the satisfaction mechanism. Admittedly, in the case of a crime, subparagraphs (a) and (b) of article 52 did broaden the conditions for access by the injured State to restitution in kind or satisfaction, but establishing a scale in the damages to the injured State was another way of recognizing the gravity of the crime in relation to the internationally wrongful act. Small States that were victims of international crimes attached quite special importance to those considerations. After all, sanctions were not prohibited by international law. Nevertheless, the term “exemplary damages”, which had an equivalent in Spanish, was perhaps preferable to “punitive damages” because of the latter expression’s penal connotation, as pointed out by Mr. Tomuschat.

23. Mr. PELLET said that, from a purely drafting standpoint, the problem seemed to relate not so much to the use of the expression “punitive damages” as to the statement that “this possibility”, namely punitive damages, was already allowed for in article 45. Article 45, which dealt with satisfaction, did not at any point introduce that notion and it only spoke of nominal damages or damages reflecting the gravity of the infringement. Accordingly, the beginning of the paragraph should be reformulated to read:

“The Commission wondered whether punitive damages or exemplary damages may be appropriate in the case of a crime. Some members considered that article 45, on satisfaction, already covered this eventuality ‘in cases of gross infringement of the rights of the injured State’ by providing for ‘damages reflecting the gravity of the infringement’.”

24. Mr. de SARAM said he had always been opposed to the idea of including crimes in the draft articles, but the proposal by Mr. Pellet did partly meet Mr. Tomuschat’s concerns.

25. Mr. ROSENSTOCK said he had no objections to Mr. Pellet’s suggestion, but he would like more emphasis on the fact that the members of the Commission were divided on the matter.

26. Mr. VILLAGRÁN KRAMER said that, in his view, it was not necessary to reformulate paragraph (8) and the Commission could keep to Mr. Tomuschat’s proposal.

27. Mr. BENNOUNA said he too was in favour of Mr. Tomuschat’s proposal. It was important to keep the idea of a continuum between delicts and crimes and not to introduce the idea of a punitive or exemplary aspect to the matter. The formulation “The Commission believes”, at the beginning of the paragraph, was too much. It should have read “Some members believe . . .”.

28. Mr. ROBINSON said that Mr. Pellet’s proposal was an acceptable solution. However, it did not entirely meet the concern to highlight the divergence of views between members. Moreover, the interpretations of the concepts of “punitive damages” and “exemplary damages” differed from one legal system to another.

29. Mr. PELLET, responding to the comments by Mr. Rosenstock and Mr. Robinson, reformulated his proposal to read:

“The Commission wondered whether punitive damages or exemplary damages may be appropriate in the case of a crime; according to some members, article 45, on satisfaction, already allowed for this possibility insofar as satisfaction may include ‘in cases of gross infringement of the rights of the injured State, damages reflecting the gravity of the infringement’.”

30. Mr. ROSENSTOCK said it was indeed important to eliminate the introductory phrase “The Commission believes” and to replace it by a query.

31. The CHAIRMAN said that, if he heard no objections, he would take it that the Commission wished to adopt paragraph (8) as amended by Mr. Pellet.

Paragraph (8), as amended, was adopted.

The commentary to article 52, as amended, was adopted.

Commentary to article 53 (Obligations for all States)

Paragraphs (1) and (2)

Paragraphs (1) and (2) were adopted.

Paragraph (3)

32. Mr. ROSENSTOCK said that, in the phrase contained in brackets in the penultimate sentence, the words “if the discussion is maintained” should be replaced by “if the distinction is maintained”—on the understanding that it was the distinction between internationally wrongful acts and crimes.

33. Mr. BOWETT added that the words “the resolution referred to above”, at the end of the fourth sentence, should be replaced by “the resolutions referred to above”.

34. Mr. ARANGIO-RUIZ pointed out in that connection that he did not agree to including a reference to those Security Council resolutions in the case of crimes.

35. Mr. PELLET, supported by Mr. TOMUSCHAT, said that the expression in brackets which Mr. Rosenstock wanted corrected seemed to be based on the problem of the distinction between crimes and internationally wrongful acts, when that distinction was already established. He therefore proposed that the phrase in question should simply be deleted.

36. Mr. BENNOUNA pointed out a typing error in the last sentence of the French version, where *en répondre* should read *en réponse*. Moreover, he saw no reason for the statement that article 53 was drafted so as to “reinforce” decisions taken through international organizations. Such organizations certainly acted for their own reasons.

37. The CHAIRMAN said he took note of Mr. Bennouna’s comment and said that, if he heard no objections, he would take it the Commission wished to adopt paragraph (3) with the deletion of the phrase contained in brackets in the penultimate sentence.

Paragraph (3), as amended, was adopted.

The commentary to article 53, as amended, was adopted.

General commentary to chapter III (Countermeasures) of part two

38. The CHAIRMAN pointed out that the Commission had left aside the first two paragraphs of the commentary to article 47 and had asked Mr. Eiriksson (2467th meeting) to look over the wording and produce a text to be placed in the general commentary to chapter III.

39. Mr. CALERO RODRIGUES explained in Mr. Eiriksson’s absence that Mr. Eiriksson had sought by consultations with most members to draft a text that would command consensus. The text now before the Commission (XLVIII)/INFORMAL/25)* did in fact form a basis for consensus.

40. Mr. ROSENSTOCK said that, as soon as he had seen the text, he had indeed found it an improvement over the previous one, but he could agree to it only with certain changes. They related to the last sentence of paragraph (1), where the word “Any” should be deleted; moreover, it would be advisable to replace the words “may be” by “is” and “must” by “should”. Lastly, the sentence should end with the word “restrictions”, the last phrase being deleted.

41. The first two sentences of paragraph (2) should also be deleted and inserted, along with the last phrase of paragraph (1) in a separate paragraph that would start with the words: “Other members stressed”.

Paragraph (1)

42. The CHAIRMAN proposed that the Commission should first consider paragraph (1) and the changes proposed by Mr. Rosenstock.

43. Mr. BENNOUNA said it was a consensus text and anything that might have bothered some members had been removed. Consequently, it should be adopted without further discussion.

44. Mr. LUKASHUK said it was regrettable that the text identified countermeasures with self-help, especially in view of the historical record of self-help. As he understood it, countermeasures were a legal response to a breach of the law, as measures limited by law.

45. Mr. PELLET said that the text was acceptable, by and large, although that should not prevent members from discussing it. The first of the proposed changes would not basically alter the meaning of the text and, at a pinch, the last phrase in paragraph (1) could be deleted. However, he could not agree to replacing the word “must”, in the present tense, by the word “should”, in the conditional, as that would mean a change in substance.

46. Mr. CALERO RODRIGUES said that what he regarded as a compromise formulation for the last sentence of paragraph (1) would read:

“Recognition in the draft articles of the possibility of taking countermeasures—warranted as such recognition may be in the light of long-standing practice—ought accordingly to be subjected to conditions and restrictions limiting countermeasures to those where they are necessary in response to any internationally wrongful act.”

47. Mr. ROSENSTOCK explained that, whatever the situation in the other languages, the verb “must” in English, in the context of that sentence, was incorrect. From a language standpoint, according to an authoritative view, the form “should” was somewhat weak and the idea should be rendered by “ought to”.

48. The CHAIRMAN noted that the change in the English version did not necessarily involve a change in the French version, where the word *doit* could be retained.

49. Mr. PELLET said that “ought to” was translated into French by *devrait* and it would therefore be a hybrid solution to keep *doit* in the French yet introduce “ought to” in the English. To settle the difficulty, it would be better to say *est soumise*, in other words, “is subjected”, in the English.

50. Mr. ARANGIO-RUIZ said he endorsed the use of the word “must”, even if it hurt the feelings of purists of the English language, for the form “ought to” translated the idea of the conditional *devrait*. Mr. Pellet’s proposal was not satisfactory for the simple reason that, in the case of countermeasures, the Commission had engaged not only in codification within the strict meaning of the term but also in some progressive development.

* This text was not issued as an official document.

51. Mr. BARBOZA said he was ready to accept the compromise text proposed by Mr. Calero Rodrigues, but saw no need to replace "must" in the English version by "ought to" or "should". If it was not possible to retain "must", he could agree to Mr. Pellet's proposal.

52. The CHAIRMAN suggested that members should adopt the compromise text submitted by Mr. Calero Rodrigues for the last sentence of paragraph (1), with the amendment proposed by Mr. Pellet.

It was so agreed.

53. Messrs. MIKULKA, BARBOZA and ARANGIO-RUIZ drew attention to an ambiguity in the third sentence of paragraph (1). A brief reading of the text might imply that the use or threat of force could be justified in certain situations.

54. Mr. ROSENSTOCK suggested that the ambiguity could be removed by placing commas before and after the phrase "not involving the use or threat of force".

It was so agreed.

Paragraph (1), as amended, was adopted.

Paragraph (2)

55. The CHAIRMAN pointed out that Mr. Rosenstock had proposed that the first two sentences of the paragraph should be deleted.

56. Mr. BENNOUNA urged Mr. Rosenstock to show some understanding and realism and not to press for such a deletion, which could well jeopardize the balance of the text.

57. Mr. LUKASHUK said he supported Mr. Rosenstock's proposal. Deletion of the first two sentences would make the text a genuine commentary and not simply a reminder of the debate.

58. Mr. PELLET said he was completely opposed to the proposal. If it was adopted, the text would only bring out the viewpoint in favour of the defence of countermeasures. The wording of paragraph (2) and of the passage in question was not entirely free from criticism. The reference to "counter-countermeasures", in brackets, was of no interest and should be deleted. Similarly, the expression "alleged wrongdoer" should be replaced by "State which has committed the internationally wrongful act".

59. Mr. CALERO RODRIGUES said that, like Mr. Bennouna, he thought an attempt should be made to propose a balanced text. Mr. Rosenstock's criticism of the two sentences he wanted to delete was that they did not express a unanimous view within the Commission. Perhaps the difficulty could be solved by inserting the words "According to one view" at the beginning of the paragraph.

60. Mr. ARANGIO-RUIZ said that that would emasculate the text of the paragraph, for the two sentences in question expressed undeniable facts.

61. Mr. BENNOUNA said that, if the two sentences were preceded by the words "According to one view",

the words "According to another view", should be inserted before "Two considerations". As Mr. Arangio-Ruiz had said, the first two sentences were purely objective statements of undeniable facts.

62. Mr. ROSENSTOCK, supported by Mr. PELLET, said he did not think that there were "basic flaws in countermeasures". The world was what it was, and sometimes it was cruel. Exercise of the right to self-defence produced victims, but it was the world in which it was necessary to exercise that right that was basically flawed, not the right to self-defence itself. Again, it was the legal system which necessitated resort to countermeasures that was basically flawed, not the countermeasures themselves. The opinions set out in the first two sentences were not unanimous and that was why it was justifiable to insert the words "According to one view" at the beginning of the paragraph. However, inserting the words "According to another view" before the words "Two considerations", as proposed by Mr. Bennouna, was not warranted, since the Commission had indeed decided, rightly or wrongly, to deal with countermeasures and no member, whatever his hesitations, had been opposed to it.

63. Mr. BARBOZA, supported by Mr. BOWETT, proposed that, in order to settle the difficulty, the words "suffer from a basic flaw, namely", in the first sentence, should be replaced by "involve a".

64. Mr. TOMUSCHAT said he could agree to the proposal by Mr. Barboza and Mr. Bowett. The words "suffer from a basic flaw" could also be replaced by the words "raise a basic problem". Moreover, more correctly and properly, the words "their inclusion" in the third sentence should be replaced by "the inclusion of countermeasures".

65. Mr. ARANGIO-RUIZ said he supported Mr. Tomuschat's proposal and added that, quite often, the expression "self-defence", gave him goose-flesh, for it was a notion that gave rise to abominable abuse. Countermeasures involving the use of military force were often presented under the pretence of self-defence.

66. Mr. PELLET said that he could accept the proposal by Mr. Calero Rodrigues, since the point of view expressed in the two sentences in question was his own, like that of a majority of the members. He could also agree to the proposal by Mr. Barboza and Mr. Bowett.

67. Mr. MIKULKA and Mr. de SARAH said they supported the proposal by Mr. Barboza and Mr. Bowett.

68. The CHAIRMAN said that, if he heard no objections, he would take it that the Commission agreed to the proposal by Mr. Barboza and Mr. Bowett to replace the words "suffer from a basic flaw, namely", by "involve a", in the first sentence.

It was so agreed.

69. The CHAIRMAN said that, if he heard no objections, he would take it that the Commission agreed to the proposal by Mr. Pellet to delete the words in brackets in

* Resumed from the 2468th meeting.

the first sentence, and replace the words “alleged wrongdoer” by “State which has committed the internationally wrongful act”.

It was so agreed.

Paragraph (2), as amended, was adopted.

The general commentary to chapter III of part two, as amended, was adopted.

*Commentary to article 48 (Conditions relating to resort to countermeasures) (continued)**

*Paragraph (9) (continued)**

70. The CHAIRMAN reminded members that paragraph (9) of the commentary to article 48 had been left pending.

71. Mr. CALERO RODRIGUES said it had been proposed that the paragraph should be deleted, except for the last two sentences, and that it should be ascertained whether the questions discussed in the sentences proposed for deletion were dealt with in the commentary to part three of the draft. The secretariat had looked into the matter and they were not discussed. Paragraph (9) of the commentary to article 48 should therefore be retained as it stood.

72. Mr. ROSENSTOCK, supported by Mr. TOMUSCHAT, said his objection was simply that the sentences in question had no place in the commentary because they related to details of the dispute settlement mechanism referred to in paragraph 2 of article 58. Hence he was not opposed to retaining them, but thought that they should be transposed to the commentary to part three of the draft.

73. The CHAIRMAN invited Mr. Rosenstock and Mr. Tomuschat to consider the place where they thought the sentences in question should be inserted in the commentary to part three of the draft and to report back to the Commission at the next meeting.

It was so agreed.

The meeting rose at 6.10 p.m.

2471st MEETING

Thursday, 25 July 1996, at 10.10 a.m.

Chairman: Mr. Ahmed MAHIOU

Present: Mr. Al-Baharna, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Bennouna, Mr. Bowett, Mr. Calero Rodrigues, Mr. de Saram, Mr. Fomba, Mr. Güney, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Mikulka, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Razafindralambo,

Mr. Rosenstock, Mr. Szekely, Mr. Thiam, Mr. Tomuschat, Mr. Vargas Carreño, Mr. Villagrán Kramer, Mr. Yankov.

Draft report of the Commission on the work of its forty-eighth session (*continued*)

CHAPTER III. State responsibility (continued) (A/CN.4/L.528 and Corr.1, and Add.1-3 and Add.3/Corr.1)

D. Draft articles on State responsibility (*concluded*) (A/CN.4/L.528/Add.2 and 3 and Add.3/Corr.1)

General commentary to chapter IV (International crimes) of part two (concluded) (A/CN.4/L.528/Add.3 and Corr.1)*

*Paragraph (15) (*concluded*)**

1. The CHAIRMAN said that, as requested by the Commission, Mr. Pellet had drafted a new version of paragraph (15), which read:

“The proposals dealt with in the two preceding paragraphs envisaging a two-step procedural mechanism for determining disputes as to whether a crime has been committed are based on the idea that such disputes are too important to be left to the general procedures of part three. In order to avoid any possible abuse, these proposals provided that disputes to which the application of article 19 might give rise should be submitted to an impartial third party with decision-making power.”

He invited members’ comments on the new text.

2. Mr. BOWETT said that paragraph (15) as originally drafted dealt with the proposal made by Mr. Pellet and Mr. Eriksson¹ and referred to that proposal as innovative since it had received a large measure of support in the Commission. The new version included the proposal made by the former Special Rapporteur in his seventh report² and treated it as equally innovative, although it had not received anything like the same degree of support in the Commission. As long as the Commission appreciated that point, he was prepared to go along with the new text.

3. In reply to a question by Mr. Rosenstock, the CHAIRMAN said that the first sentence of paragraph (11) of the commentary, as amended, read: ‘‘Nevertheless, it should be pointed out that a number of members of the Commission favoured a more innovative proposal’’.

4. Mr. ROSENSTOCK said that the reference to a ‘‘number of members’’ was quite misleading, particularly since the paragraph served as an introduction to all

* Resumed from the 2469th meeting.

¹ See 2457th meeting, footnote 15.

² See 2434th meeting, footnote 5.