

Document:-
A/CN.4/SR.2563

Summary record of the 2563rd meeting

Topic:
Other topics

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100. The CHAIRMAN suggested that the Commission should take note of the report of the Drafting Committee on articles 1, 3, 4, 5, 7, 8, 8 *bis*, 9, 10, 15, 15 *bis* and A and of the deletion of articles 2, 6 and 11 to 14, taking into account the comments made during the discussion.

It was so agreed.

The meeting rose at 6.35 p.m.

2563rd MEETING

Friday, 14 August 1998, at 10.10 a.m.

Chairman: Mr. João BAENA SOARES

Present: Mr. Addo, Mr. Al-Baharna, Mr. Al-Khasawneh, Mr. Bennouna, Mr. Brownlie, Mr. Candioti, Mr. Crawford, Mr. Dugard, Mr. Economides, Mr. Elaraby, Mr. Ferrari Bravo, Mr. Galicki, Mr. Goco, Mr. Hafner, Mr. He, Mr. Illueca, Mr. Kabatsi, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Melescanu, Mr. Mikulka, Mr. Opertti Badan, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Rosenstock, Mr. Simma, Mr. Yamada.

Draft report of the Commission on the work of its fiftieth session (*continued*)

1. The CHAIRMAN invited the Commission to continue its consideration of its draft report on the work of its fiftieth session, with chapter III.

CHAPTER III. Specific issues on which comments would be of particular interest to the Commission (A/CN.4/L.570)

Paragraphs 1 to 6

Paragraphs 1 to 6 were adopted.

Paragraph 7

2. Mr. PELLET said that in the last sentence the term “sanctions” should be replaced by “consequences”.

Paragraph 7, as amended, was adopted.

Paragraph 8

3. Mr. BROWNLIE said that the Commission had decided to sever the link between prevention and State responsibility, thereby ending the need to discuss the topic of liability. Paragraph 8 seemed to imply, however, that it planned to resume its discussion of that topic, a course of action which he strongly opposed.

4. Mr. Sreenivasa RAO (Special Rapporteur) said that he had suggested the question of liability because States would undoubtedly raise it and the Commission would be forced to consider it eventually. However, he proposed that paragraph 8 should be deleted from the draft report.

5. Mr. SIMMA (Chairman of the Drafting Committee) said that, while he supported the proposal to delete the paragraph, the Commission should be clear that it would have to revert to the topic at some point.

6. Mr. PELLET, supported by Messrs CANDIOTI, CRAWFORD, GOCO, HAFNER, ROSENSTOCK and YAMADA, said that paragraph 8 should be deleted, but that the Commission should take note of reactions from States on the topic of liability and prepare to hold a final in-depth discussion on the matter at its next session.

Paragraph 8 was deleted.

Paragraphs 9 to 11

Paragraphs 9 to 11 were adopted.

New paragraph

7. Mr. CRAWFORD (Special Rapporteur) said that he had circulated to members a new paragraph to be inserted after paragraph 11. The list of issues it contained should not be seen as exclusive. He had also felt it important to draw attention to draft article 19 on State responsibility, even though no final conclusions were being presented as yet.

8. Mr. PELLET requested clarification of the phrase “multilateral obligations” in subparagraph (d).

9. Mr. CRAWFORD (Special Rapporteur) said that “obligations owed *erga omnes* or to a large number of States” would express the meaning more clearly.

10. Mr. GOCO asked how the request for comments would be transmitted to States.

11. Mr. CRAWFORD (Special Rapporteur) said that Governments had access to the draft articles and commentaries. The purpose of the new paragraph was simply to identify the six main issues on which a great deal of Government commentary had been received as a way to elicit more reactions from Governments without directly asking for guidance from the Sixth Committee.

The new paragraph, as amended, was adopted.

Paragraphs 12 to 15

Paragraphs 12 to 15 were adopted.

New section G and new paragraph

12. Mr. BROWNLIE suggested that, in the interest of consistency, the heading of section G should be “Protection of the environment”.

13. Mr. HAFNER said that the working group which had been asked to study issues relating to environmental law had come to the conclusion that it might be useful for the Chairman of the Commission to seek the views of

competent international organizations. A request to that effect should be inserted somewhere in the report.

14. Mr. LEE (Secretary to the Commission) said that it could be inserted in chapter X, which dealt with the future work programme of the Commission.

15. Mr. ROSENSTOCK said that “would” should be replaced by “might” in the last sentence of the new paragraph under section G.

New section G and the new paragraph, as amended, were adopted.

Chapter III, as a whole, as amended, was adopted.

16. The CHAIRMAN invited the Commission to consider chapter X of its draft report.

CHAPTER X. Other decisions and conclusions of the Commission (A/CN.4/L.567)

17. Mr. SIMMA believed that the first sentence of paragraph 1 should be reworded.

18. Mr. LEE (Secretary to the Commission), in response to a question by the CHAIRMAN relating to paragraph 21, drew attention to General Assembly resolution 44/35, paragraph 5, which authorized the special rapporteurs to attend the session of the Assembly during the discussion of the topics for which they were responsible.

19. The CHAIRMAN suggested that Mr. Pellet, Special Rapporteur, should represent the Commission at the fifty-third session of the General Assembly.

It was so agreed.

20. Mr. SIMMA (Chairman of the Drafting Committee), referring to paragraph 5, wondered whether some action was needed to name the Chairmen of the Commission and the Drafting Committee for the following session.

21. The CHAIRMAN, in reply to a question from Mr. SIMMA concerning paragraph 5, said that more time was needed to complete the nomination process.

22. Mr. Sreenivasa RAO said that in his opinion no action needed to be taken despite the wording of the paragraph.

Chapter X was adopted.

CHAPTER VII. State responsibility (concluded) (A/CN.4/L.561 and Add.1-6)

B. Consideration of the topic at the present session (concluded) (A/CN.4/L.561/Add.1-6)

23. The CHAIRMAN invited the Commission to continue its consideration of chapter VII starting with document A/CN.4/L.561/Add.1.

Document A/CN.4/L.561/Add.1

Document A/CN.4/L.561/Add.1 was adopted.

Document A/CN.4/L.561/Add.3 (concluded)

24. Mr. CRAWFORD (Special Rapporteur) explained that, as the Commission had requested, a new paragraph would be added at the end of the document under the heading “Interim conclusions of the Commission on draft article 19”.

Document A/CN.4/L.561/Add.3 was adopted by the Commission on that understanding.

Document A/CN.4/L.561/Add.5

25. Mr. PELLET said that, in the French text of paragraph 7, “act of State” should not be translated but should remain “act of State”. He also felt that paragraph 24 served no useful purpose and could be deleted.

26. Mr. LUKASHUK agreed that paragraph 24 should be deleted.

27. Mr. CRAWFORD (Special Rapporteur) said that, while he believed that paragraph 24 accurately reflected the discussion on the text, he had no objection to deleting it.

28. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission wished to delete paragraph 24.

It was so agreed.

29. Mr. ECONOMIDES wondered why paragraph 25 referred to the Bantustans but not to the State in the north of Cyprus, which had also been discussed.

30. Mr. CRAWFORD (Special Rapporteur) said that the two cases were not parallel. The Bantustans had had their own internal law, although it had been disregarded by the former apartheid regime in South Africa. The situation in the Turkish entity in the north of Cyprus was quite different.

31. Mr. PELLET said that the words “and convention” at the end of paragraph 25 did not accurately reflect discussions on the term “internal law”.

32. Mr. CRAWFORD (Special Rapporteur) said that the words “and convention” should be deleted.

33. Mr. LUKASHUK said that in the second sentence of paragraph 25, the words “State responsibility” should read “international responsibility”.

34. Mr. PELLET suggested that, in paragraph 27, the word “However,” should be inserted at the beginning of the second sentence. He also suggested deleting or modifying paragraph 40 and adding the following explanatory sentence at the end of paragraph 34: “Conversely, it was pointed out that the replacement of the term ‘functions’ by ‘governmental authority’ could lead readers to believe that the draft articles concerned *acta jure gestionis*, which was not self-evident and should in any case be explained in the commentary.”

35. Mr. ROSENSTOCK agreed that either paragraph 40 should be deleted or something should be added to clarify its meaning.

36. Mr. CRAWFORD (Special Rapporteur) suggested adding a sentence at the end of paragraph 40 which would read: "On the other hand, it was pointed out that article 8, subparagraph (a), at least was concerned with cases of de facto authority and therefore the phrase was useful."

Document A/CN.4/L.561/Add.5, as amended, was adopted.

Document A/CN.4/L.561/Add.6

37. Mr. PELLET wondered whether the reservations expressed by some members concerning certain articles should not be reflected in the report of the Commission to the General Assembly.

38. Mr. HAFNER, supported by Mr. SIMMA (Chairman of the Drafting Committee) and Mr. ROSENSTOCK, said that it would not be appropriate to include those remarks in the report of the Commission to the General Assembly.

39. Mr. CRAWFORD (Special Rapporteur) said that the comments and reservations expressed (2562nd meeting) would be taken up at the next session. However, he would add a sentence if the Commission so desired to reflect its discussions.

40. Mr. PELLET suggested that an additional sentence should be inserted in paragraph 37, before the final sentence, reading: "Another opinion expressed was that, since the draft dealt solely with the responsibility of States, the specific exclusion of the responsibility of international organizations was inappropriate."

41. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission wished to adopt document A/CN.4/L.561/Add.6, as amended, with the addition of a sentence by the Special Rapporteur to reflect the previous day's discussions.

Document A/CN.4/L.561/Add.6, as amended, was adopted on that understanding.

Section B, as amended, was adopted.

Chapter VII, as a whole, as amended, was adopted.

The meeting was suspended at 11.30 a.m. and resumed at 12.05 p.m.

CHAPTER VI. International liability for injurious consequences arising out of acts not prohibited by international law (prevention of transboundary damage from hazardous activities) (continued)* (A/CN.4/L.554 and Corr.1 and 2 and Add.1 and Add.1/Corr.1 and 2 and Add.2 and Add.2/Corr.1)

B. Consideration of the topic at the present session (continued)* (A/CN.4/L.554 and Corr.1 and 2)

Document A/CN.4/L.554/Corr.1

42. Mr. Sreenivasa RAO (Special Rapporteur) said that A/CN.4/L.554 was a document giving details of the discussions that had followed the presentation of his report at the Geneva part of the session. The report was being

edited for submission to the General Assembly and, as the Commission had proceeded more rapidly than had originally been anticipated and was ready to adopt a full set of articles, some amendments were required. He drew attention to the pro forma addition to paragraph 5 contained in document A/CN.4/L.554/Corr.1.

Document A/CN.4/L.554/Corr.1 was adopted.

Document A/CN.4/L.554/Corr.2

43. Mr. Sreenivasa RAO (Special Rapporteur) drew the Commission's attention to the revisions in document A/CN.4/L.554/Corr.2 and said that he had doubts about the deletion of paragraphs 6 to 46 of document A/CN.4/L.554, because, if allowed to stand, they would provide useful background information to the General Assembly.

44. Mr. LEE (Secretary to the Commission) said that document A/CN.4/L.554/Corr.2 consisted of four paragraphs. The Special Rapporteur had been referring to paragraph 4, relating to the deletion of paragraphs 6 to 46 of the draft report. He understood that the first three paragraphs would remain.

45. The CHAIRMAN suggested that the Commission should adopt paragraphs 1 to 3 of document A/CN.4/L.554/Corr.2.

It was so agreed.

Document A/CN.4/L.554/Corr.2, as amended, was adopted.

46. The CHAIRMAN invited the Commission to consider the commentaries to the draft articles.

C. Text of the draft articles on international liability for injurious consequences arising out of acts not prohibited by international law (Prevention of transboundary damage from hazardous activities) provisionally adopted by the Commission on first reading (A/CN.4/L.554/Add.1 and Add.1/Corr.1 and 2 and Add.2 and Add.2/Corr.1)

2. TEXT OF THE DRAFT ARTICLES WITH COMMENTARIES THERETO

General commentary (A/CN.4/L.554/Add.1)

47. Mr. Sreenivasa RAO (Special Rapporteur) said that the general commentary was entirely new and took the place of the text at the forty-eighth session.¹ The earlier draft had combined the topics of prevention and liability, while the new text eliminated the topic of liability and emphasized the need to consider the principle of prevention in general and its importance in the current context.

48. Mr. HAFNER suggested that a reference to principle 2 of the Rio Declaration² should be inserted after the reference to principle 21 of the Stockholm Declaration³ in paragraph (4), as the omission could give the reader of the paragraph a wrong impression.

49. Mr. Sreenivasa RAO (Special Rapporteur) referred Mr. Hafner to paragraph (3), which included a mention of principle 2 of the Rio Declaration.

¹ See 2527th meeting, footnote 16.

² Ibid., footnote 8.

³ See 2529th meeting, footnote 7.

* Resumed from the 2546th meeting.

50. Mr. HAFNER said that, although he was aware that principle 2 of the Rio Declaration was mentioned in paragraph (3), he believed it should also be included in paragraph (4), the third sentence of which would therefore read: “. . . not only in principle 21 of the Stockholm Declaration and principle 2 of the Rio Declaration, but also in . . .”.

51. Mr. Sreenivasa RAO (Special Rapporteur) said that he had no objection to the addition.

The general commentary, as amended, was adopted.

Commentary to article 1

52. Mr. Sreenivasa RAO (Special Rapporteur) said that the commentary to article 1 had been taken almost verbatim from the draft at the forty-eighth session.

The commentary to article 1 was adopted.

Commentary to article 2

53. Mr. Sreenivasa RAO (Special Rapporteur) said that the commentary followed the text used in the draft at the forty-eighth session except that it defined “harm” as including harm caused to persons, property or the environment.

The commentary to article 2 was adopted.

Commentary to article 3 (A/CN.4/L.554/Add.1 and Add.1/Corr.1 and 2)

54. Mr. Sreenivasa RAO (Special Rapporteur) drew attention to the additional text contained in documents A/CN.4/L.554/Add.1/Corr.1 and 2.

55. Mr. HAFNER, supported by Mr. ROSENSTOCK, suggested that the words “harm, which has a risk of causing” at the end of the second sentence of new paragraph (14) should be deleted. The text would therefore read: “. . . to avoid or prevent serious or irreversible damage”.

56. Mr. Sreenivasa RAO (Special Rapporteur) said that he had no objection to the change.

The commentary to article 3, as amended, was adopted.

Commentary to article 4 (A/CN.4/L.554/Add.1)

57. Mr. Sreenivasa RAO (Special Rapporteur) said that the commentary in the draft at the forty-eighth session which linked the principle of cooperation to the principle of prevention had been retained and recommended its adoption.

The commentary to article 4 was adopted.

Commentary to article 5 (A/CN.4/L.554/Add.1 and Add.1/Corr.2)

58. Mr. Sreenivasa RAO (Special Rapporteur) drew attention to new paragraph (1) *bis* contained in document A/CN.4/L.554/Add.1/Corr.2.

59. Mr. PELLET said he believed that new paragraph (1) *bis* was too general and failed to cite precedents. Moreover, article 5 referred to only one category of meas-

ure that States should take; therefore the words “some measures” should be replaced by “one measure”.

60. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission wished to adopt new paragraph (1) *bis*.

It was so agreed.

The commentary to article 5 was adopted.

Commentary to article 6 (A/CN.4/L.554/Add.1)

61. Mr. Sreenivasa RAO (Special Rapporteur) said that the commentary was substantially the same as that of the draft at the forty-eighth session.

62. Mr. HAFNER requested clarification of the phrase “including any other primary rule operating within the realm of the law of State responsibility” in the second sentence of paragraph (2).

63. Mr. Sreenivasa RAO (Special Rapporteur) said that the phrase meant that State responsibility rules applied whenever what was or was not prohibited was unclear.

64. Mr. HAFNER said that, since the Commission was proceeding on the assumption that State responsibility was only a secondary type of norm, there could be some confusion between what was primary and what was secondary. He therefore suggested that in the second sentence the words “operating within the realm of the law of State responsibility” should be deleted. It followed automatically from the primary rules that a breach of those rules entailed State responsibility.

65. Mr. Sreenivasa RAO (Special Rapporteur) said that he found Mr. Hafner’s thesis logical to a fault, but he accepted it.

The commentary to article 6, as amended, was adopted.

Commentary to article 7 (A/CN.4/L.554/Add.1 and Add.1/Corr.2)

66. Mr. Sreenivasa RAO (Special Rapporteur) said that the text of the commentary at the forty-eighth session had been used, but that he had added a paragraph (6) *bis* to take into account the recent comments of members of the Commission (A/CN.4/L.554/Add.1/Corr.2).

67. Mr. PELLET recalled that the title of the article had changed from “Prior authorization” to “Authorization”, a fact that should be reflected in the commentary. Moreover, he proposed that a paragraph should be added, after either (6) or (6) *bis*, reading: “According to one view, the obligation to retrospective authorization imposed an excessive burden on operators in the context of activities not prohibited by international law.”

68. Mr. Sreenivasa RAO (Special Rapporteur) said that Mr. Pellet’s point would be reflected in the commentary.

69. In reply to a question from Mr. BENNOUNA, he said that, although the commentary should reflect the opinions of the Commission as a whole, it was preferable to exercise greater flexibility on first reading and reflect some of the individual opinions.

The commentary to article 7, as amended, was adopted.

Commentary to article 8 (A/CN.4/L.554/Add.1)

70. Mr. Sreenivasa RAO (Special Rapporteur) said that the commentary had been updated since the forty-eighth session to reflect minor changes in the article, but the substance remained the same.

71. Mr. HAFNER said that, according to the first sentence of paragraph (1), States should ensure that environmental impact assessments of hazardous activities were carried out, whereas the article itself expressed not a recommendation but an obligation on States to carry out such assessments. The words "should ensure" should therefore be replaced by some form of words such as "are under an obligation to ensure".

72. Mr. Sreenivasa RAO (Special Rapporteur) said that from his reading on the subject, including a report by UNDP, he knew that many States had adopted or were adopting appropriate legislation. However, many other States were still seeking guidance because of the practical difficulties arising from the complexity of the environmental impact assessments required, and strengthening the obligation on them would not help to surmount their practical difficulties. The wording in question should be left in its form at the forty-eighth session because there had been little change in the situation since then.

73. Mr. HAFNER said that he reserved his position on the use of the words "should ensure".

74. Mr. PELLET said that it was important to reflect individual members' views, if not in commentaries to articles, then at least in the records of discussion. He proposed that the beginning of paragraph (6) should be amended to read: "It was noted with regret that article 8 was very perfunctory and lacked precision concerning environmental impact assessments. However, . . .".

75. Mr. ROSENSTOCK said that while it was true that, on first reading, the commentary often included dissenters' views, members had a duty to show restraint. In any case, the appropriate place for dissenting views or reservations to be reflected was after the expression of the majority view.

76. Mr. Sreenivasa RAO (Special Rapporteur) said that he was quite willing to accommodate the request for dissenting views to be reflected. However, in the specific case of the commentary to article 8, he again stressed the complexity of the issue and drew the Commission's attention to the footnote to paragraph (5), which listed the information to be included in the documentation pursuant to article 4 of the Convention on Environmental Impact Assessment in a Transboundary Context. Systematization work was not only complex but ongoing. Article 8 must provide guidelines for States without straitjacketing them, and he therefore believed that the words "regret", "perfunctory" and "lacked precision" were too strong.

77. Mr. CRAWFORD, supported by Mr. HAFNER, endorsed Mr. Pellet's proposal, as modified by what Mr. Rosenstock had said.

78. Mr. PELLET said that whether or not article 8 had changed since the forty-eighth session did not prevent some members regretting that it was very perfunctory. Nor was it too strong to say that the article lacked precision. He expressed surprise at the negative reaction to his proposal, given that his point of view was not an isolated one.

79. Mr. ECONOMIDES, after expressing support for Mr. Pellet's opinion on the question of dissenting views, pointed out that the practice of including such views in the commentaries had not always been followed at the forty-ninth session.

80. Mr. Sreenivasa RAO (Special Rapporteur) said that, although the Commission could have debated what the elements for an environmental assessment should be, he did not believe that it had. He had therefore been obliged to live with the draft article and commentary as they were. Where Mr. Pellet's proposal was concerned, his main problem was with the notion of "regret". He would willingly say that some members believed that the Commission should have provided States with more elaborate guidance on environmental impact assessments in the hope that some such wording would subsume Mr. Pellet's proposal.

81. Mr. PELLET repeated his view, which was that the article was very perfunctory and he regretted that it was very perfunctory.

82. Mr. Sreenivasa RAO (Special Rapporteur), at the request of the CHAIRMAN, undertook to provide wording that would reflect the views expressed at the meeting.

Commentary to article 9

83. Mr. Sreenivasa RAO (Special Rapporteur) recalled that the new wording of the article extended the provision of relevant information by a State, in which a given project was to take place, to the public likely to be affected by it, including the public beyond the State's borders. The commentary had consequently been amended.

The commentary to article 9 was adopted.

Commentary to article 10

84. Mr. Sreenivasa RAO (Special Rapporteur) said that the article and the commentary were of long standing, the only change being the replacement in paragraph 1 of the article of the notion of "without delay" by the concept of "timely notification" from the Rio Declaration, as reflected in paragraph (4) of the commentary.

The commentary to article 10 was adopted.

Commentary to article 11 (A/CN.4/L.554/Add.1 and Add.1/Corr.2)

85. Mr. Sreenivasa RAO (Special Rapporteur) recalled that the article had occasioned some discussion. He drew the Commission's attention to new paragraph (12) contained in document A/CN.4/L.554/Add.1/Corr.2, which reflected an important dissent by one member. In addition, the last sentence of paragraph (10) should be deleted.

The commentary to article 11, as amended, was adopted.

Commentary to article 12 (A/CN.4/L.554/Add.1 and Add.1/Corr.1 and 2)

86. Mr. Sreenivasa RAO (Special Rapporteur) recalled that there had been substantial discussion of the article, with a reprioritization and reordering of subparagraphs. He drew attention to the additional text contained in documents A/CN.4/L.554/Add.1/Corr.1 and 2, which reflected the discussions at the 2561st meeting and in the Drafting Committee.

The commentary to article 12, as amended, was adopted.

Tribute to the Secretary to the Commission

87. The CHAIRMAN read out the following draft resolution:

“The International Law Commission,

“Acknowledging the important contribution made by Mr. Roy Lee to the work of the International Law Commission and to the codification and the progress in the development of international law,

“1. Expresses its gratitude to him for the friendly and efficient manner in which he has guided and assisted the International Law Commission;

“2. Extends its very best wishes to him on the occasion of his retirement.”

The draft resolution was adopted.

The meeting rose at 1.10 p.m.

2564th MEETING

Friday, 14 August 1998, at 3.15 p.m.

Chairman: Mr. João BAENA SOARES

Present: Mr. Bennouna, Mr. Candioti, Mr. Crawford, Mr. Dugard, Mr. Galicki, Mr. Goco, Mr. Illueca, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Mikulka, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rosenstock, Mr. Simma, Mr. Yamada.

Draft report of the Commission on the work of its fiftieth session (concluded)

CHAPTER VI. *International liability for injurious consequences arising out of acts not prohibited by international law (prevention of transboundary damage from hazardous activities) (concluded) (A/CN.4/L.554 and Corr.1 and 2 and Add.1 and Add.1/Corr.1 and 2 and Add.2 and Add.2/Corr.1)*

C. *Text of the draft articles on international liability for injurious consequences arising out of acts not prohibited by international law (Prevention of transboundary damage for hazardous activities) provisionally adopted by the Commission on first reading (concluded) (A/CN.4/L.554/Add.1 and Add.1/Corr.1 and 2 and Add.2 and Add.2/Corr.1)*

2. *TEXT OF THE DRAFT ARTICLES WITH COMMENTARIES THERETO (concluded)*

Commentary to article 8 (concluded) (A/CN.4/L.554/Add.1)

1. Mr. Sreenivasa RAO (Special Rapporteur), taking into account the concerns expressed by some members (2563rd meeting), proposed that the following sentence should be inserted after the first sentence of paragraph (6) of the commentary to article 8: “Some members, however, felt that it was desirable and necessary that the draft articles should have elaborated on the elements of the environment impact assessment for the guidance of States.”

The commentary to article 8, as amended, was adopted.

Commentary to article 13 (A/CN.4/L.554/Add.2)

2. Mr. Sreenivasa RAO (Special Rapporteur) explained that article 13 of the draft at the forty-eighth session¹ had been amended. The commentary summarized the discussions that had led to those changes. It should also be specified in the commentary that the phrase “within a reasonable time” had the same connotation in article 13, paragraph 2, as in article 10, paragraph 2.

The commentary to article 13 was adopted.

Commentary to article 14

The commentary to article 14 was adopted.

Commentary to article 15

3. Mr. Sreenivasa RAO (Special Rapporteur) proposed that the last sentence of paragraph (3) of the commentary to article 15 should be reformulated as follows: “Article 15 essentially encourages and relies on the good faith cooperation of the parties.”

The commentary to article 15, as amended, was adopted.

Commentary to article 16

The commentary to article 16 was adopted.

¹ See 2527th meeting, footnote 16.