

Document:-
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Summary record of the 3028th meeting

Topic:
Expulsion of aliens

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3028th MEETING

Tuesday, 28 July 2009, at 10.05 a.m.

Chairperson: Mr. Ernest PETRIČ

Present: Mr. Al-Marri, Mr. Cafilisch, Mr. Candiotti, Mr. Comissário Afonso, Mr. Dugard, Ms. Escarameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Ms. Jacobsson, Mr. Kolodkin, Mr. Melescanu, Mr. Murase, Mr. Niehaus, Mr. Nolte, Mr. Ojo, Mr. Pellet, Mr. Perera, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vargas Carreño, Mr. Vasciannie, Mr. Vázquez-Bermúdez, Mr. Wako, Mr. Wisnumurti, Sir Michael Wood, Ms. Xue.

Expulsion of aliens (concluded) (A/CN.4/604, A/CN.4/606 and Add.1, sect. E, A/CN.4/611, A/CN.4/617, A/CN.4/618)

[Agenda item 6]

FIFTH REPORT OF THE SPECIAL RAPPORTEUR (concluded)

1. The CHAIRPERSON said that, in response to the wishes expressed by the Commission during the first part of the session, the Special Rapporteur on expulsion of aliens, Mr. Kamto, had submitted both a new version of the draft articles on the protection of the human rights of persons who have been or are being expelled, revised by him in the light of the plenary debate during the first part of the sixty-first session (A/CN.4/617), and a new draft workplan with a view to structuring the draft articles (A/CN.4/618). The Special Rapporteur was unfortunately unable to attend the second part of the session but had informed him that he had no objection to the Commission's taking action on the revised draft articles in his absence. He himself therefore proposed the following courses of action: if the Commission so desired, it could refer the draft articles to the Drafting Committee without a discussion or, if any member wished to make a comment or ask a question on the revised draft articles, it could postpone the consideration of the draft articles to the next session, so that the discussion could take place in the presence of the Special Rapporteur.

2. Sir Michael WOOD, raising a procedural point, asked what was to be gained by referring the draft articles to the Drafting Committee immediately, since presumably the Drafting Committee on the topic would not meet for the rest of the session, owing to the absence of the Special Rapporteur. The normal procedure, after all, was to refer a text to the Committee in the light of a discussion held in plenary with the Special Rapporteur. He himself had a number of substantive questions to ask.

3. Mr. PELLET said he was surprised that the Special Rapporteur, having submitted his revised draft articles, was not present to defend them. To condone such a procedure would be to set an unfortunate precedent.

4. The CHAIRPERSON said that the proposal he had outlined had been suggested by the Special Rapporteur.

In his own view, it was not in line with the Commission's normal procedures.

5. Mr. VASCIANNIE requested the Secretariat's assistance in recalling what had been decided on the subject during the first part of the session. He also wished to know whether the Special Rapporteur had expressed a preference for one of the two options.

6. The CHAIRPERSON said that, as he understood it, the Special Rapporteur's preference would be to refer the draft articles to the Drafting Committee, but he was not pressing for such a course of action.

7. Mr. DUGARD, supported by Ms. ESCARAMEIA, Mr. MELESCANU and Mr. HASSOUNA, said that he did not see the point of referring the draft articles to the Drafting Committee unless there had been a debate beforehand in the presence of the Special Rapporteur. The Special Rapporteur should be informed of the concern that his absence had roused in the Commission.

8. Mr. OJO said that, like Mr. Vasciannie, he would like to be reminded of the decision taken by the Commission on the subject during the first part of the session. He also wondered whether the Special Rapporteur had concurred with that decision. If he had—as he himself thought—and if members of the Commission wished to discuss the draft articles with him, then the discussion should be postponed until the next session. In the two documents under consideration, the Special Rapporteur had explained how he had proceeded. If the Commission was satisfied with those explanations, then the question of his absence or presence should not arise and the draft articles should be referred to the Drafting Committee, even if such a procedure was not fully in line with the usual practice.

9. Ms. XUE said that on the whole, she shared the views of previous speakers. It was indeed difficult to discuss substantive issues in the absence of the Special Rapporteur, since it was his task to sum up the debate in plenary. She did wish to point out, however, that the draft articles contained in document A/CN.4/617 were a marked improvement over the previous text. The Special Rapporteur had thus taken into account the Commission's comments and should be commended for that. In her view, the draft articles could perfectly well be referred as they stood to the Drafting Committee.

10. At the beginning of the next session, the Commission should devote an informal meeting to its workplan, so that special rapporteurs would know the dates on which their topics were to be considered and members themselves could prepare better for the debate. To that end, if possible, special rapporteurs should be informed at the beginning of a session of the provisional date when the Commission expected to consider their report. The fact that some members had substantive issues to raise did not affect the question of whether the draft articles should be referred to the Drafting Committee. A message should be transmitted to the Special Rapporteur to inform him of the direction in which the Commission wished him to take his work on the topic.

11. Mr. CANDIOTI, speaking on a point of order, said that the consideration of the draft articles should be postponed until the next session, as had been suggested, or else the debate should continue in a closed meeting.

12. The CHAIRPERSON said that, if he heard no objection, he would take it that Mr. Candiotti's proposal to continue the debate in a closed meeting was adopted.

It was so decided.

The meeting was suspended at 10.30 a.m. and resumed at 10.55 a.m.

13. The CHAIRPERSON said that, following consultations held during the closed meeting, the Committee had decided to postpone the consideration of the draft articles contained in document A/CN.4/617 and of the workplan contained in document A/CN.4/618 until the next session, so that the discussion could take place in the presence of the Special Rapporteur.

The meeting rose at 11 a.m.

3029th MEETING

Friday, 31 July 2009, at 10.10 a.m.

Chairperson: Mr. Ernest PETRIČ

Present: Mr. Al-Marri, Mr. Cafilisch, Mr. Candiotti, Mr. Comissário Afonso, Mr. Dugard, Ms. Escarameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hasouna, Mr. Hmoud, Ms. Jacobsson, Mr. Kolodkin, Mr. McRae, Mr. Melescanu, Mr. Murase, Mr. Niehaus, Mr. Nolte, Mr. Pellet, Mr. Perera, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vargas Carreño, Mr. Vasciannie, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Sir Michael Wood.

Protection of persons in the event of disasters (*concluded*)* (A/CN.4/606 and Add.1, sect. F, A/CN.4/615, A/CN.4/L.758)

[Agenda item 8]

REPORT OF THE DRAFTING COMMITTEE

1. Mr. VÁZQUEZ-BERMÚDEZ (Chairperson of the Drafting Committee) introduced the titles and texts of draft articles 1 to 5 provisionally adopted by the Drafting Committee from 13 to 17 July 2009, as contained in document A/CN.4/L.758, which read:

“Article 1. Scope

“The present draft articles apply to the protection of persons in the event of disasters.

* Resumed from the 3019th meeting.

“Article 2. Purpose

“The purpose of the present draft articles is to facilitate an adequate and effective response to disasters that meets the essential needs of the persons concerned, with full respect for their rights.

“Article 3. Definition of disaster

“‘Disaster’ means a calamitous event or series of events resulting in widespread loss of life, great human suffering and distress, or large-scale material or environmental damage, thereby seriously disrupting the functioning of society.

“Article 4. Relationship with international humanitarian law

“The present draft articles do not apply to situations to which the rules of international humanitarian law are applicable.

“Article 5.²⁷² Duty to cooperate

“In accordance with the present draft articles, States shall, as appropriate, cooperate among themselves and with the United Nations and other competent intergovernmental organizations, the International Federation of the Red Cross and Red Crescent Societies and the International Committee of the Red Cross, and with relevant non-governmental organizations.”

2. At its 3019th meeting, on 10 July 2009, the Commission had referred to the Drafting Committee draft articles 1 to 3, as proposed by the Special Rapporteur in his second report, on the understanding that if no agreement was reached on draft article 3, it could be referred back to the plenary Commission with a view to establishing a working group to discuss the draft article. In eight meetings, held from 13 to 17 July 2009, the Drafting Committee had successfully completed its consideration of all the draft articles referred to it and had provisionally adopted five draft articles.

3. The Drafting Committee had undertaken its work on the basis of a revised set of proposed draft articles prepared by the Special Rapporteur, taking into account the various drafting and structural suggestions made in the plenary. In keeping with a number of those suggestions, the Special Rapporteur had proposed dividing some of the draft articles in order to produce a total of five.

4. The current wording of draft article 1 (Scope) was based on the first part of the formulation initially proposed by the Special Rapporteur in his second report and reflected the title of the topic. The latter point had had a bearing on the debate in the Drafting Committee. While there had been general agreement that the scope of the draft articles should include the pre-disaster phase, suggestions as to how best to reflect that had ranged from replacing the phrase “in the event of” with “in relation to”

²⁷² Draft article 5 was adopted on the understanding that a provision on the primary responsibility of the affected State would be included in the set of draft articles in the future.