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Summary record of the 3238th meeting

Topic:
Draft report of the Commission on the work of its sixty-sixth session

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67. The CHAIRPERSON said that the draft preamble would be circulated for discussion at another meeting.

The meeting rose at 1 p.m.

3238th MEETING

Tuesday, 5 August 2014, at 3.05 p.m.

Chairperson: Mr. Kirill GEVORGIAN

Present: Mr. Caflisch, Mr. Candioti, Mr. El-Murtadi Suleiman Gouider, Ms. Escobar Hernández, Mr. Forteau, Mr. Hassouna, Mr. Hmoud, Ms. Jacobsson, Mr. Kamto, Mr. Kittichaisaree, Mr. Laraba, Mr. Murase, Mr. Murphy, Mr. Niehaus, Mr. Nolte, Mr. Park, Mr. Peter, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Šturma, Mr. Tladi, Mr. Valencia-Ospina, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Sir Michael Wood.

Draft report of the Commission on the work of its sixty-sixth session (*continued*)

CHAPTER IV. *Expulsion of aliens (concluded)* (A/CN.4/L.837 and Add.1/Rev.1)

E. *Text of the draft articles on the expulsion of aliens (concluded)*

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

1. The CHAIRPERSON invited the members of the Commission to pursue their consideration of document A/CN.4/L.837/Add.1/Rev.1, which contained the text of the draft articles on expulsion of aliens and the commentaries thereto.

Commentary to draft article 14 (Prohibition of discrimination) (concluded)

Paragraph (4)

2. Mr. VÁZQUEZ-BERMÚDEZ proposed that paragraph (4) be reformulated to read:

“With regard to the prohibition of any discrimination on the ground of sexual orientation, differences remain and in certain regions the practice varies. In any case, there is international practice and case law on this matter.^[footnote] It should be noted that the interpretation by the Human Rights Committee of the reference to ‘sex’ in articles 2, paragraph 1, and 26 of the International Covenant on Civil and Political Rights was that the notion includes sexual orientation.”

3. Mr. MURPHY, noting that the third sentence in paragraph (4) was virtually identical to the first sentence in the footnote to the paragraph, proposed that the latter be moved to the end of paragraph (4) and that the footnote should begin with “*Communication No. 488/1992, Nicholas Toonen v. Australia*”.

Paragraph (4), as amended, was adopted.

The commentary to draft article 14, as a whole, as amended, was adopted.

Section E.2, as a whole, as amended, was adopted.

Section E of chapter IV of the report of the Commission, as a whole, as amended, was adopted.

C. *Recommendation of the Commission (concluded)**

Paragraph 8 (*concluded*)

4. The CHAIRPERSON invited the Special Rapporteur to read out his proposal for paragraph 8, contained in document A/CN.4/L.837, which had been left in abeyance.

5. Mr. KAMTO (Special Rapporteur) said that the paragraph would read:

“At its ... meeting, on ... August 2014, the Commission decided, in accordance with article 23 of its statute, to recommend to the General Assembly:

“(a) to take note of the draft articles on the expulsion of aliens in a resolution, to annex the articles to the resolution, and to encourage their widest possible dissemination;

“(b) to consider, at a later stage, the elaboration of a convention on the basis of the draft articles.”

Paragraph 8 was adopted.

Section C of chapter IV of the report of the Commission was adopted.

Chapter IV of the report of the Commission, as a whole, as amended, was adopted.

6. The CHAIRPERSON said that the preamble to the draft articles (document without a symbol, distributed in the meeting room) would be considered at a later meeting so that the members had time to peruse it.

7. Mr. KAMTO (Special Rapporteur) said that he was pleased that, after several years of sustained effort on a subject which had initially appeared unpromising, the Commission had been able to draw up a set of well-balanced draft articles largely based on current law and on cautious, measured, progressive development. Now that the fate of the draft articles was in the hands of States, he wished to express his sincere gratitude to the Secretariat, the successive Secretaries to the Commission and its past and current members, especially Mr. Candioti, Mr. Comissário Afonso, Mr. Valencia-Ospina, Sir Michael Wood and Mr. Alain Pellet.

CHAPTER V. *Protection of persons in the event of disasters (A/CN.4/L.838 and Add.1)*

8. The CHAIRPERSON invited the members of the Commission to take up the consideration of document A/CN.4/L.838.

* Resumed from the 3235th meeting.

A. Introduction

Paragraphs 1 and 2

Paragraphs 1 and 2 were adopted.

Section A was adopted.

B. Consideration of the topic at the present session

Paragraphs 3 to 7

Paragraphs 3 to 7 were adopted.

Paragraph 8

9. Mr. FORTEAU pointed out that the first sentence of the French version referred to *organisations internationales concernées* whereas paragraph 3 of document A/CN.4/L.835 spoke of the *organisations internationales compétentes*.

10. Mr. VALENCIA-OSPINA (Special Rapporteur) said that the term “competent” was used in the English version and proposed that *concernées* be replaced with *compétentes*.

Paragraph 8, with that amendment to the French version, was adopted.

Paragraph 9

11. Mr. KITTICHAISAREE said that there was a mistake in the English version: “2009” should read “2014”.

Paragraph 9, with that correction to the English version, was adopted.

Section B, as amended, was adopted.

C. Text of the draft articles on the protection of persons in the event of disasters adopted by the Commission on first reading**1. TEXT OF THE DRAFT ARTICLES**

Paragraph 10

12. Mr. FORTEAU proposed the addition of the phrase “with full respect for their rights” after “disasters” in draft article 1 (Scope) in order to align its wording on that of draft article 2.

Paragraph 10, as amended, was adopted.

Section C.1, as a whole, as amended, was adopted.

13. The CHAIRPERSON invited the members of the Commission to consider document A/CN.4/L.838/Add.1, paragraph by paragraph.

2. TEXT OF THE DRAFT ARTICLES WITH COMMENTARIES THERETO

Commentary to draft article 1 [1] (Scope)

Paragraphs (1) to (5)

Paragraphs (1) to (5) were adopted.

The commentary to draft article 1 [1] was adopted.

Commentary to draft article 2 [2] (Purpose)

Paragraph (1)

14. Mr. CAFLISCH proposed that the second sentence be recast to read: “While it is not always the case that the draft articles prepared by the Commission include a provision outlining the objectives, it is not unprecedented” [“*Si les projets d’articles établis par la Commission ne comprennent pas tous une disposition qui en énonce les objectifs, le cas s’est déjà présenté*”].

Paragraph (1), as amended, was adopted.

Paragraph (2)

15. Mr. TLADI proposed that, in order to avoid any confusion, the word “individuals” in the last sentence of the English version be replaced with “persons”.

Paragraph (2), with that amendment to the English version, was adopted.

Paragraphs (3) to (8)

Paragraphs (3) to (8) were adopted.

Paragraph (9)

16. Mr. NOLTE proposed that the last two sentences be amended to read: “It is understood that there is often an implied degree of latitude in the application of rights, conditioned by the extent of the impact of the disaster, depending on the relevant rules recognizing or establishing the rights in question.”

Paragraph (9), as amended, was adopted.

Paragraph (10)

Paragraph (10) was adopted.

The commentary to draft article 2 [2], as amended, was adopted.

Commentary to draft article 3 [3] (Definition of disaster)

Paragraphs (1) to (4)

Paragraphs (1) to (4) were adopted.

Paragraph (5)

17. Mr. NOLTE said that he was rather dissatisfied with the wording of the second sentence, which seemed like “officialese”.

18. Sir Michael WOOD, supported by Mr. VALENCIA-OSPINA (Special Rapporteur), Mr. TLADI and Mr. SABOIA, proposed the deletion of the word “isolated” between “serves to exclude” and “events”.

Paragraph (5), as amended, was adopted.

Paragraphs (6) to (9)

Paragraphs (6) to (9) were adopted.

The commentary to draft article 3 [3], as amended, was adopted.

Commentary to draft article 4 (Use of terms)

Paragraph (1)

19. Mr. NOLTE proposed the deletion, at the end of the paragraph, of the phrase “both of which are terms of art”. After a discussion in which Sir Michael WOOD, Mr. PETRIČ, Mr. VALENCIA-OSPINA (Special Rapporteur), Mr. FORTEAU and Mr. TLADI took part, it was decided to simply delete the last sentence in the paragraph.

Paragraph (1), as amended, was adopted.

Paragraph (2)

Paragraph (2) was adopted, subject to an editorial amendment to the footnote, which should read “Footnote 3 above ...”.

Paragraph (3)

Paragraph (3) was adopted.

Paragraph (4)

20. Mr. NOLTE proposed that, at the end of the first sentence, the phrase “control over that territory” be replaced with “control regarding the same territory”, in order to clarify its meaning.

Paragraph (4), as amended, was adopted.

Paragraphs (5) and (6)

Paragraphs (5) and (6) were adopted.

Paragraph (7)

21. Mr. MURPHY proposed the deletion of the paragraph, which set out definitions that were unnecessary.

Paragraph (7) was deleted, on the understanding that the numbering of subsequent paragraphs would be amended accordingly.

Paragraph (8)

Paragraph (8) was adopted.

Paragraph (9)

22. Mr. FORTEAU proposed the amendment of the last sentence, the French version of which contained some redundant prepositions, so that it would read: “In other words, a State offering assistance is not an ‘assisting State’, with the various legal consequences that flow from such categorization, as provided for in the draft articles, until such assistance has been consented to by the affected State, in accordance with draft article 14 [11]” [“Autrement dit, un État offrant son assistance ne devient un ‘État prêtant assistance’, avec les diverses conséquences juridiques qui découlent de cette qualification selon le projet d’articles, que lorsque l’État affecté a consenti à cette assistance, conformément au projet d’article 14 [11]”].

Paragraph (9), as amended, was adopted.

Paragraphs (10) and (11)

Paragraphs (10) and (11) were adopted.

Paragraph (12)

23. Sir Michael WOOD proposed that, in the second sentence, the word “person” be replaced with “individual”.

Paragraph (12), as amended, was adopted.

Paragraphs (13) to (24)

Paragraphs (13) to (24) were adopted.

The commentary to draft article 4, as amended, was adopted.

Commentary to draft article 5 [7] (Human dignity)

Paragraphs (1) to (5)

Paragraphs (1) to (5) were adopted.

Paragraph (6)

24. Mr. NOLTE proposed that in the phrase in the third sentence that read “obligation to take action to maintain human dignity”, the verb “maintain” be replaced with the verb “protect”. In the fourth sentence, he proposed replacing the phrase “the duty of protection” with “the duty to protect”.

Paragraph (6), as amended, was adopted.

The commentary to draft article 5 [7], as amended, was adopted.

Commentary to draft article 6 [8] (Human rights)

Paragraph (1)

25. Mr. NOLTE said that perhaps it might be advisable to modify the second sentence in order to make it quite clear that the obligation to protect rights was incumbent not only on States but also on all organizations, including NGOs.

26. Mr. HMOUD commented that it would be simpler just to delete that sentence.

Paragraph (1), as amended, was adopted.

Paragraphs (2) and (3)

Paragraphs (2) and (3) were adopted.

Paragraph (4)

27. Mr. MURPHY proposed the deletion of the phrase “in the context of disasters” at the end of the first sentence of the English version.

Paragraph (4), with that amendment to the English version, was adopted.

Paragraph (5)

Paragraph (5) was adopted.

The commentary to draft article 6 [8], as amended, was adopted.

Commentary to draft article 7 [6] (Humanitarian principles)

Paragraphs (1) to (6)

Paragraphs (1) to (6) were adopted.

Paragraph (7)

28. In response to a comment from Mr. Forteau, Sir Michael WOOD proposed that the third sentence be recast in order to read: “For this reason, the neutral expression ‘vulnerable’ was preferred to either ‘vulnerable groups’ or ‘vulnerable persons’.”

Paragraph (7), as amended, was adopted.

The commentary to draft article 7 [6], as amended, was adopted.

Commentary to draft article (8) [5] (Duty to cooperate)

Paragraphs (1) and (2)

Paragraphs (1) and (2) were adopted.

Paragraph (3)

29. Sir Michael WOOD, pointing out that the phrase “the imperative of”, in the sentence following the quotation from General Assembly resolution 46/182 of 19 December 1991, did not appear in the French version, proposed its deletion.

That proposal was adopted.

30. Sir Michael WOOD further proposed that, in the sentence beginning “Moreover, the cooperation imperative”, the words “the cooperation imperative” should be replaced with “the obligation to cooperate”.

31. Mr. FORTEAU commented that it would be preferable to speak of the “duty to cooperate”, in accordance with the title of the draft article.

Paragraph (3), with that amendment to the English version, was adopted.

Paragraph (4)

32. Sir Michael WOOD proposed that, in the first sentence, the words “the prerogatives” be replaced with the “the primary role”, which was the expression used in paragraph 2 of draft article 12 (Role of the affected State). He also suggested the deletion of the word “primary” before “duty” in the second sentence.

Paragraph (4), as amended, was adopted.

Paragraph (5)

Paragraph (5) was adopted.

Paragraph (6)

33. Mr. TLADI proposed that in the last sentence of the English version, the bracketed phrase “(including those such rules to be added to the draft articles in the future)” be deleted.

Paragraph (6), with that correction to the English version, was adopted.

Paragraph (7)

34. Mr. KITTICHAISAREE proposed the deletion of the second sentence, which suggested that the mandate of ICRC was restricted to situations of armed conflict. That was incorrect, and it failed to take account of the fact that very often, ICRC was denied authorization to take action in the field by the States affected by an armed conflict.

35. After a discussion in which Mr. FORTEAU, Mr. SABOIA, Mr. VALENCIA-OSPINA (Special Rapporteur), Mr. PARK and Mr. KITTICHAISAREE took part, the CHAIRPERSON, noting that apart from Mr. Kittichaisaree, all the members were in favour of retaining the second sentence as it stood, proposed that paragraph (7) be adopted without amendment.

Paragraph (7) was adopted.

The commentary to draft article 8 [5], as amended, was adopted.

Commentary to draft article 9 [5 bis] (Forms of cooperation)

Paragraph (1)

Paragraph (1) was adopted.

Paragraph (2)

36. Mr. CAFLISCH proposed the replacement of the word “loosely” (*plus ou moins*) in the first sentence with “partially” (*partiellement*).

That proposal was adopted.

37. Ms. ESCOBAR HERNÁNDEZ drew attention to a lack of consistency between paragraph (1), which indicated that draft article 9 [5 bis] sought to elaborate further the meaning of draft article 8 [5] “without creating any additional legal obligations”, and the first sentence in paragraph (2), which stated that draft article 9 [5 bis] was based on the second sentence of paragraph 4 of article 17 of the articles on the law of transboundary aquifers,²⁹⁴ “which expands upon the general obligation to cooperate”. She suggested that in the final part of the first sentence of paragraph (2), the verb “expands” be replaced with a different word.

38. Mr. VALENCIA-OSPINA (Special Rapporteur) proposed that it be replaced with the verb “explains”.

That proposal was retained.

Paragraph (2) was adopted, subject to editorial amendments to be made in accordance with the proposals adopted.

Paragraphs (3) to (8)

Paragraphs (3) to (8) were adopted.

The commentary to draft article 9 [5 bis], as amended, was adopted.

²⁹⁴ See the draft articles on the law of transboundary aquifers adopted by the Commission at its sixtieth session and the commentaries thereto in *Yearbook ... 2008*, vol. II (Part Two), pp. 19 *et seq.*, paras. 53–54. See also General Assembly resolution 63/124 of 11 December 2008, annex.

Commentary to draft article 10 [5 ter] (Cooperation for disaster risk reduction)

Paragraphs (1) to (3)

Paragraphs (1) to (3) were adopted.

The commentary to draft article 10 [5 ter] was adopted.

Commentary to draft article 11 [16] (Duty to reduce the risk of disasters)

Paragraphs (1) to (5)

Paragraphs (1) to (5) were adopted.

Paragraph (6)

39. Mr. FORTEAU proposed the deletion of the phrase *de manière uniforme* in the second sentence of the French version.

40. Mr. VALENCIA-OSPINA (Special Rapporteur) said that this phrase was probably a mistranslation of the term “evenly spread” in the English version which referred, not to the uniformity of specific prevention policies, but to their homogeneous distribution among the 64 States or regions which had adopted such policies on all continents throughout the world.

Paragraph (6) was adopted subject to a correction to the French version.

Paragraph (7)

41. Mr. FORTEAU proposed the replacement of “rules of general applicability adopted thus far” with “rules of general applicability in the present draft articles”.

Paragraph (7), as amended, was adopted.

Paragraphs (8) and (9)

Paragraphs (8) and (9) were adopted.

Paragraph (10)

42. Mr. MURPHY said that the Hyogo Declaration²⁹⁵ was not particularly recent, since it had been adopted in 2005, and it would be preferable to replace the words “most recently” with another expression.

43. Mr. VALENCIA-OSPINA (Special Rapporteur) proposed that the phrase be replaced with “notably”.

Paragraph (10), as amended, was adopted.

Paragraph (11)

44. Sir Michael WOOD said that, in the antepenultimate sentence of the paragraph, the reference should be to paragraph (9) of the commentary, and not to paragraph (8).

Paragraph (11), as amended, was adopted.

Paragraphs (12) and (13)

Paragraphs (12) and (13) were adopted.

Paragraph (14)

Paragraph (14) was adopted, with a minor editorial correction to the English version.

Paragraphs (15) to (18)

Paragraphs (15) to (18) were adopted.

Paragraph (19)

Paragraph (19) was adopted with a minor editorial correction to the English version.

45. The CHAIRPERSON said that, in view of the lateness of the hour, the Commission would pursue its consideration of document A/CN.4/L.838/Add.1 at the following meeting.

The meeting rose at 6 p.m.

3239th MEETING

Wednesday, 6 August 2014, at 10.05 a.m.

Chairperson: Mr. Kirill GEVORGIAN

Present: Mr. Al-Marri, Mr. Cafilisch, Mr. Candioti, Mr. El-Murtadi Suleiman Gouider, Ms. Escobar Hernández, Mr. Forteau, Mr. Hassouna, Mr. Hmoud, Ms. Jacobsson, Mr. Kamto, Mr. Kittichaisaree, Mr. Laraba, Mr. Murase, Mr. Murphy, Mr. Niehaus, Mr. Nolte, Mr. Park, Mr. Peter, Mr. Saboia, Mr. Singh, Mr. Šturma, Mr. Tladi, Mr. Valencia-Ospina, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Sir Michael Wood.

Draft report of the Commission on the work of its sixty-sixth session (continued)

CHAPTER V. Protection of persons in the event of disasters (concluded) (A/CN.4/L.838 and Add.1)

1. The CHAIRPERSON invited the Commission to pursue its consideration of chapter V of the draft report and to resume its discussion of the portion contained in document A/CN.4/L.838/Add.1.

C. Text of the draft articles on the protection of persons in the event of disasters adopted by the Commission on first reading (concluded)

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

Commentary to draft article 11 [16] (Duty to reduce the risk of disasters) (concluded)

Paragraphs (20) to (22)

Paragraphs (20) to (22) were adopted.

Paragraph (23)

2. In response to a question by Sir Michael WOOD, Mr. VALENCIA-OSPINA (Special Rapporteur) said that paragraph (11) of the commentary related to paragraph 1 of the draft article. The reference to paragraph 2 should therefore be deleted.

²⁹⁵ Report of the World Conference on Disaster Reduction, held at Kobe, Hyogo (Japan) from 18 to 22 January 2005 (A/CONF.206/6), chap. I, Resolution 1.