

INTERNATIONAL LAW COMMISSION
Sixty-third session
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DRAFTING COMMITTEE

**Progress report by the Chairman of the Drafting Committee,
Mr. Teodor V. Melescanu,
on the topic “Expulsion of Aliens”**

11 August 2011

Mr. Chairman,

I will give a progress report on the work of the Drafting Committee concerning the topic “Expulsion of Aliens”.

Background

It will be recalled that, in 2007, the Commission referred draft articles 1 and 2 (proposed by the Special Rapporteur in his second report and subsequently revised in the light of the debate), as well as draft articles 3 to 7 (contained in the Special Rapporteur’s third report), to the Drafting Committee. In 2007 and 2008, the Drafting Committee provisionally adopted draft articles 1 and 2 dealing, respectively, with “Scope” and “Use of terms”, while recognizing the need to revisit certain questions at a later stage. In 2008, the Drafting Committee was also able to provisionally adopt draft article 3, on the “Right to expulsion”, while in 2009 it

provisionally adopted the text of draft articles 5, 6 and 7 dealing, respectively, with refugees, stateless persons and the issue of collective expulsion. In contrast, the Drafting Committee was not able to agree on a text for the proposed draft article 4 on “Non-expulsion by a State of its own nationals”. In 2010, the Drafting Committee provisionally adopted eight additional draft articles relating to the protection of the human rights of persons subject to expulsion, which had been referred to it by the Commission at the sixty-second session in their revised form presented by the Special Rapporteur in document A/CN.4/617.

Work at the present session

Mr. Chairman,

I will now turn briefly to the work accomplished by the Drafting Committee at the present session.

This year, the Drafting Committee held 12 meetings, on 23, 24 and 26 May, and on 4, 5, 6, 7, 28 and 29 July. During these meetings, the Committee considered six draft articles referred to it during the second part of the sixty-second session (2010) following the debate on the Special Rapporteur’s sixth report (A/CN.4/625 and Add.1). Furthermore, the Drafting Committee considered 7 draft articles referred to it during the first part of this session, following the debate on addendum 2 to the Special Rapporteur’s sixth report (A/CN.4/625/Add.2), as well as a draft article on “Expulsion in connection with extradition”, as revised by the Special Rapporteur during the sixty-second session, which was also referred to the Drafting Committee at the current session. I should also mention that the Special Rapporteur presented to the Drafting Committee, in the light of the plenary debate, a number of suggestions with a view to modifying the text

of some of the draft articles referred to the Committee this year; he also proposed an additional draft article on the suspensive effect of an appeal against an expulsion decision. Finally, it should be recalled that, at the present session, the Commission also referred to the Drafting Committee the restructured summary of the draft articles contained in the Special Rapporteur's seventh report (A/CN.4/642).

The work undertaken by the Drafting Committee on these various draft articles was very productive. In this connection, I should like to thank the Special Rapporteur, Mr. Maurice Kamto, for his cooperation and efficient guidance to the Committee. I also wish to thank the members of the Drafting Committee for their active participation and useful contributions, and the Secretariat for its valuable assistance.

At the present session, the Drafting Committee was able to provisionally adopt the following 15 draft articles, namely:

- A draft article on the "Prohibition of disguised expulsion";
- A draft article on "Grounds for expulsion";
- A draft article on "Detention conditions of an alien subject to expulsion";
- A draft article on the "Requirement for conformity with law";
- A draft article on the "Procedural rights of aliens subject to expulsion", which provides a single list of procedural rights applicable both to aliens lawfully present and to aliens unlawfully present in the territory of the expelling State;
- A draft article on "Expulsion in connection with extradition";

- A draft article on “Return to the receiving State of an alien being expelled”;
- A draft article on the “State of destination of expelled aliens”;
- A draft article on “Protecting the human rights of aliens subject to expulsion in a transit State”;
- A draft article on “Protecting the property of aliens subject to expulsion”;
- A draft article on the “Right to the return to the expelling State”;
- A draft article on “Responsibility of States in cases of unlawful expulsion”;
- A draft article on “Diplomatic protection”;
- A draft article on “Procedures for individual recourse”; and, finally,
- An additional draft article on the “Suspensive effect of an appeal against an expulsion decision”.

Mr. Chairman,

The Drafting Committee also considered the restructuring and renumbering of the draft articles on the basis of the general framework provided in the Special Rapporteur’s seventh report, which was referred to the Drafting Committee at the present session. However, due to lack of time, the Committee could not finalize that work. Moreover, and for the same reason, the Drafting Committee was not able to make a final determination on certain issues that are still pending concerning some of the draft articles provisionally worked out so far.

I am confident, however, that next year the Drafting Committee will be in a position to complete the remaining work and finalize the text of the whole set of draft articles on this topic. In this regard, it is anticipated that the draft articles on expulsion of aliens may be presented to the Commission for adoption on first reading at the next session. A detailed introduction of all the draft articles will be provided on that occasion.

Mr. Chairman,

This completes my progress report. I thank you for your kind attention.

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