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Summary record of the 2925th meeting

Topic:
Expulsion of aliens

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regimes governing expulsion should probably be considered in greater depth before a decision was taken on the definition of the terms “alien” and “expulsion”. Although he did not have a clear-cut opinion on the matter, he was not at all certain that he agreed with Mr. Pellet that the question of the expulsion of foreign nationals in situations of armed conflict should not be included.

The meeting rose at 1 p.m.

2925th MEETING

Friday, 25 May 2007, at 10.05 a.m.

Chairperson: Mr. Ian BROWNIE

Present: Mr. Caflisch, Mr. Candioti, Mr. Comissário Afonso, Ms. Escarameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Ms. Jacobsson, Mr. Kamto, Mr. Kemicha, Mr. Kolodkin, Mr. McRae, Mr. Niehaus, Mr. Nolte, Mr. Pellet, Mr. Perera, Mr. Petrić, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vargas Carreño, Mr. Vázquez-Bermúdez, Mr. Wako, Mr. Wisnurmurti, Ms. Xue, Mr. Yamada.

Expulsion of aliens (continued) (A/CN.4/577 and Add.1–2, sect. E, A/CN.4/581)

[Agenda item 7]

Second report of the Special Rapporteur (continued)

1. The CHAIRPERSON, responding in his capacity as a member of the Commission to the opinion expressed at the previous meeting by Mr. McRae that it would not necessarily be appropriate to take up the subject of expropriation even in passing, explained that his earlier reference to expropriation had been made within the context of his more general point that, if the Commission were going to discuss the illegality of expulsion in certain circumstances, it would have to identify the causes of action, or the basis of claim, to enable it to discuss State responsibility issues not in the abstract, but in relation to particular categories of illegality.

2. In that connection, he had mentioned violations of friendship, commerce and navigation treaties, other bilateral treaties, and possibly human rights treaties; and, alongside those categories, one would also have to include international crimes including genocide, and the minimum international standard for the treatment of aliens. In fact, the overall point he had wished to convey was that the rubric “expulsion of aliens” was inadequate in that it amounted to no more than a convenient label and, for that reason, the Commission would have to take great care when defining the scope of the topic. He had alluded to expropriation only because, in real life, cases of expulsion were often part of a situation imposed on aliens and their property. Expropriation frequently accompanied expulsion of the individual concerned and, as the case of Loizidou v. Turkey had shown, individuals were sometimes not permitted to repossess property even when there had been no expropriation. He was not, however, proposing that the Commission should take up the subject of expropriation; he had merely been attempting to illustrate the fact that various legal categories and causes of action were relevant to the issue of legality.

3. One of his objections to adhering to a narrow conception of expulsion was that, if it were to be accepted that the Commission was examining control over the presence of aliens in the territory of a State, and that such control was prima facie part of statehood, prima facie part of title to territory and prima facie lawful, premises which seemed to him quite acceptable, the question of controlling the presence of aliens would not be confined to the mechanics of expulsion, but would be further complicated by the wide variety of factors involved: first, illegal presence; secondly, informal migrants, e.g. unlicensed foreign traders; and thirdly, changes in domestic law relating to the licensing of individuals and their activities which meant that lawful visitors were reclassified as unlawful visitors. If the Commission was dealing with the question of the control of presence, it should logically also include refusal of entry among the situations it examined.

4. Mr. GAJA said that the Special Rapporteur’s very useful second report constituted a further step in the right direction. Given that the topic referred, not to expulsion in general, but to expulsion of aliens, it was understandable that the Special Rapporteur should endeavour to provide a definition of “aliens” when determining the scope of the topic; draft articles 1 and 2 were thus plainly linked. A difficulty inherent in that approach, however, was that, if the status of a person were to be considered in terms of that person’s relation with a State other than the expelling State, as was done in draft article 2, paragraph (1), no weight would be given to his or her possible ties with the expelling State. If he or she were a dual national with the nationality of the expelling State, expulsion would not be lawful, if one agreed, as he did, with the opinion expressed in paragraph 47 of the report, to the effect that the expulsion of nationals was prohibited. Since the scope of that prohibition might be uncertain in the case of dual nationals, that question should be addressed in order to ascertain to what extent the rules on expulsion of aliens were intended to apply to those persons, even though, strictly speaking, the prohibition of the expulsion of nationals did not form part of the topic.

5. Although draft article 1, paragraph (1), would seem to exclude dual nationals, draft article 2, paragraph (1), gave the contrary impression. Draft article 2 should mention not only persons with dual nationality, but also stateless persons, since they were definitely not encompassed by the concept of “ressortissants of another State”.

6. In practice, expulsion was closely bound up with the often difficult question of establishing the nationality of the person to be expelled, as the State of nationality was the only State obliged to admit him or her to its territory. While the statement in paragraph 152 of the second report to the effect that it was the responsibility of national

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authorities to provide official documents attesting to such persons’ status was correct, more often than not, any such documents would be withheld by aliens threatened with expulsion, because once their nationality had been established, expulsion became easier as the national State could be requested to admit them.

7. Aside from that difficulty, which probably did not affect the scope of the topic, he was pleased to note that there was no indication that the State of destination was necessarily the State of nationality. There might be other States of destination and it would be necessary to examine whether and, if so, to what extent, the alien to be expelled was entitled to choose the destination when a State other than the State of nationality was willing to admit him or her. It was one thing to compel someone to leave a territory; it was altogether another matter to compel that person to enter a country that he or she might have good reason to wish to avoid entering.

8. He agreed with the Special Rapporteur that the draft articles should not deal with extradition. Draft article 2, paragraph (1), should be amended to make that clear, because, as it stood, it appeared to include extradition, since the latter normally implied compulsion to leave the territory. However, the draft articles should cover disguised extradition, in other words the use of expulsion as a means of handing over a person facing criminal proceedings in a foreign country. That form of expulsion, which was not infrequent, raised the question of whether it was prohibited by international law, given that it might impair the entitlement of the alien to an appropriate procedure when criminal proceedings were pending or envisaged in the State of destination.

9. In his opinion, extraordinary rendition also came within the scope of the topic. The argument for excluding extraordinary rendition, which was put forward in paragraph 177 of the second report, namely that it sometimes concerned nationals, was unpersuasive, because in reality the practice mostly affected aliens and constituted a form of compulsion to leave a territory, and a fairly unpleasant one at that. The definition in draft article 2, paragraph (1), encompassed both disguised extradition and extraordinary rendition and should continue to do so, even if the draft articles also stated that extradition proper was covered by special rules which did not need to be addressed in that context.

10. As the Special Rapporteur had noted, the concept of *refoulement* had a variety of meanings. The term appeared to be used mainly in the context of non-admission. Although draft article 2 did not say so much explicitly, in paragraph 172 of his second report the Special Rapporteur apparently took the view that the term “expulsion” did not cover the situation of those who had not left an international zone or centre where candidates for admission were detained, as there would be a phase during which the alien would be physically present in the territory, but somehow separate from it. If one concurred with what seemed to be the view of the Special Rapporteur, although it was not reflected in draft articles 1 and 2, that the rules on the expulsion of aliens should concern aliens irrespective of whether they were or were not regularly resident, it would be difficult to differentiate between residents with irregular status and persons who were in a sort of limbo awaiting admission, as persons in the latter category had often entered the territory irregularly and were being detained pending admission or *refoulement* to another State. Moreover, that detention could be protracted either because it was necessary to determine, first their State of nationality, and then whether that State was willing to admit them; or else because some of them might have claimed refugee status, and that claim would require consideration before *refoulement* or expulsion could be carried out. Even if the draft articles differentiated between *refoulement* and expulsion on the basis that *refoulement*, being related to non-admission, was an issue which should be left aside, it would be necessary to indicate that certain basic principles set forth in the draft articles also applied to persons not covered by the draft articles.

11. Although the distinction drawn between act and conduct in the definition of expulsion of an alien given in draft article 2, paragraph (1), might appear Byzantine, it was useful because it highlighted the fact that the existence of a formal act (usually an administrative act) providing for expulsion might not necessarily be required and that compulsion might take other forms in the absence of such an act. As the result was identical, the same sort of protection should be afforded in both cases. Furthermore, while an administrative act of expulsion was designed to compel the alien to leave the territory, its execution might be left in abeyance for some time. It should therefore be made clear that the draft articles applied not only to actual expulsion, but also to acts designed to bring about expulsion, and that their purpose was to forestall some of those acts and, if possible, to provide for remedies.

12. Mr. NIEHAUS commended the Special Rapporteur’s excellent and highly topical report on a crucial subject which raised a wide range of practical and theoretical legal issues. It was necessary first to determine exactly what was meant by “expulsion” and to define it as clearly and simply as possible. In that respect, the relevant provision of the International Covenant on Civil and Political Rights was pertinent.

13. On the structure of the two draft articles, he noted that it would be logical to define “expulsion” without reference to the term “alien”. A clearer definition than that contained in draft article 2, paragraphs (1) and (2) (b), might be: “Expulsion, whether collective or individual, means the act or omission of a State authority with the intention and effect of ensuring the removal of a person or persons, against their will, from the territory of that State”. The inclusion of the words “against their will” was vital.

14. Article 13 of the International Covenant on Civil and Political Rights established a universally accepted principle whereby aliens lawfully present could be expelled only in accordance with law and, although it did not cover aliens unlawfully present, it had become an international standard or benchmark. The Special Rapporteur was quite correct in saying that a State had the sovereign right to expel an alien from its territory, yet that right obviously had to be exercised in accordance with international law. That meant that a State could not expel an alien arbitrarily, but must comply with the standards of public international law, human rights law and humanitarian law in general.
15. As to the scope of the topic, it should be as wide-ranging as possible. The Commission should—though perhaps at a later stage—also examine situations such as refusal of admission and expulsion in the event of armed conflict, since the treatment of the subject would be incomplete if they were ignored.

16. Although the inclusion of legal persons within the scope of the topic was likewise controversial, since there was a risk that the Commission might be distracted by the issue of expropriation, the important role of expropriation or confiscation in the context of expulsion of aliens suggested that the issue should somehow be included in the study.

17. Since the title of the topic was “expulsion of aliens”, a clear definition was obviously required not only of “expulsion” but also of the term “alien”. That definition should be kept as simple as possible: an alien was someone who was not a national of the expelling State. Hence the starting point for the Commission’s deliberations was plainly the expansion of individuals who were not the nationals of the expelling State and draft article 1, paragraph (1), on scope was therefore correct as currently worded. As a result of that provision, the following paragraph (2), listing the various categories of aliens, was unnecessary and possibly confusing. However, it should somewhere be specified that the draft articles applied to non-nationals present in the host State whether lawfully or with irregular status.

18. The question of nationals of the expelling State who had lost that nationality or been deprived of it should be debated when the Special Rapporteur presented his third report, in which he intended to discuss that issue.

19. Still on the subject of draft article 1, paragraph (1), he supported Mr. McRae’s proposal that the word “physically” should be inserted before “present”. He agreed with earlier speakers’ criticism of the expression “ressortisant”. The difficulty of translating that term into Spanish was further evidence that its use would be totally inappropriate and he was therefore in favour of the deletion of the whole of paragraph (2) (d) of draft article 2.

20. Like Ms. Escaramiea, he believed that a correct definition of “territory” would obviate the need for a definition of “frontier” and would render draft article 2, paragraph (2) (c) obsolete. In general, he agreed with the main thrust of the report, but concurred with Mr. Vargas Carreño that further in-depth discussion of the contents of the draft articles in the plenary was needed before they were referred to the Drafting Committee.

21. Mr. KOLODKIN said that the substantial second report presented by the Special Rapporteur was a logical continuation of his preliminary report. The Secretariat memorandum had been most informative.

22. As to the scope of the topic and the persons to be included within it, he was only partly in agreement with the Special Rapporteur. Obviously the draft articles should cover persons who were not citizens of the expelling State, in other words foreign citizens and stateless persons, but it was important not to forget persons whose status had been altered as a result of a change in status of the territory in which they were residing, in particular persons who had become aliens because a new State had come into being. As the Special Rapporteur had proposed, it was appropriate to examine the situation of persons lawfully present in the expelling State, separately from that of persons with irregular status, including those who had long been resident in the State intending to expel them.

23. On the other hand, he was doubtful whether it was advisable to include refugees within the scope of the topic. It would at least be necessary carefully to consider whether existing international legal norms did not already provide them with sufficient protection, given that refugee law was already well developed. Persons with special status, in particular those possessing privileges and immunities, should certainly not be included in the Commission’s examination of expulsion of aliens.

24. The expulsion of a State’s own nationals lay outside the scope of the subject. The legislation of many States and several international agreements prohibited their expulsion and any reference to it in the commentary would therefore have to be correctly worded. He took issue with the Special Rapporteur’s statement in paragraph 47 of his second report that, in his personal view, international law did not authorize the expulsion of a State’s own citizens. No State was in need of such authorization, since expulsion from its territory was a sovereign prerogative. If international law did not prohibit such acts, a State had a right to perform them. If the Commission was of the opinion that such a prohibition had become, or was in the process of becoming, a norm of general international law, an indication to that effect could be included in the commentary.

25. During the debate on the preliminary report, he had expressed his opposition to the inclusion of the expulsion of aliens in situations of armed conflict within the scope of the topic, and he was still of the opinion that it was and should remain a matter to be dealt with under humanitarian law. He therefore agreed with Mr. Pellet that the draft articles should contain a specific provision in that regard. It might be wise to include in the draft articles a provision listing the persons to whom they did not apply.

26. The draft articles should focus on persons who were not citizens of the expelling State and who were physically present in its territory. It was impossible to expel someone who was not in the State’s territory; such a person could only be refused entry. Hence, he agreed with the Special Rapporteur that refusal of entry ought not to be examined and that the difference between refusal of entry and expulsion should be explained in the commentary.

27. Expulsion itself should not be defined solely in relation to any given act, whether legal or non-legal. While there were grounds for considering extending the definition to cover a series of acts or a conduct on the part

\footnote{140}{A/CN.4/565 and Corr.1, mimeographed, available on the Commission’s website.}

\footnote{141}{Yearbook ... 2005, vol. II (Part One), document A/CN.4/554.}

\footnote{142}{Yearbook ... 2005, vol. I, 2850th meeting, p. 132, para. 36.}
of a State, he agreed with Mr. Comissário Afonso on the need for caution. The conduct in question had to conform to certain criteria in order to be covered by the concept of expulsion, and those criteria had to be identified and specified.

28. The Commission should focus on considering the regime relating to expulsion, including such issues as the right of States to expel individuals, when and how that right could be restricted, and the rights of persons subject to expulsion. If expulsion involved the commission of an internationally wrongful act, that brought into play relations in the ambit of international responsibility, diplomatic protection and the exercise of other human rights mechanisms established in international agreements to which the expelling State was a party. Since such relations were covered by other rules of international law, they should not fall within the scope of the draft articles.

29. The draft should reflect general considerations regarding the scope. The two draft articles proposed essentially delineated the parameters of the topic. The use of the concept of ressortissant in both articles was problematic, in his view. A Russian equivalent, urozhennets, did not appear in the translation of draft article 1, and the prescience of the translators might have been applauded, but for the fact that the term appeared in draft article 2, suggesting that the translators had simply been careless.

30. He could have understood the use of the term “ressortissant” if, as in the decision of the ICJ in the LaGrand case, it had simply been the translation into French of the word “national”. But as defined in draft article 2, the term was not a synonym of “national”. In fact, the definition of ressortissant was not clear, and the lack of clarity extended to all the provisions in which the term appeared. In the report, it was translated into Russian as urozhennets: an urozhennets of a State was an individual who had been born in that State, the closest English equivalent probably being “native”. But ressortissant could also be translated into Russian as vykhodets, someone who originated from a State. Neither word, to his knowledge, had any specific legal connotations in Russian.

31. The Russian language also had the term sootchestvennik za rubezhom (compatriot abroad), a broad concept covering people originally from the Russian Federation—former citizens of the Russian Federation who lived permanently in other countries and had become foreign citizens or stateless persons. The term was used in a Russian legislative act of 1999 on compatriots. Hungary had a similar piece of legislation dating from 2001, the Hungarian law on Hungarians living in neighbouring countries (“Magyars”). The law had been considered by the Parliamentary Assembly of the Council of Europe, it referred to Hungarian or Magyar nationals who were citizens not of Hungary but of the State in whose territory they resided. The term “citizens” was used in the Council of Europe to describe the national affiliation of such individuals.

32. He had raised those points merely to illustrate the terminological complexity of the topic and to show that by introducing the term “ressortissant” as distinct from “national” or “citizen”, the Commission might only be exacerbating an already complicated situation. Hence, he urged the Special Rapporteur, for the purposes of the draft, to go back to defining the term “alien” on the basis of the concept of nationality.

33. The two draft articles raised other questions as well. Mr. Comissário Afonso might be right in suggesting that draft article 1, paragraph (1), should be formulated in a more straightforward fashion, stating simply that the draft articles applied to the expulsion of aliens. And was paragraph (2) really necessary? As drafted, it contained a non-exhaustive, illustrative list of persons to whom the draft articles applied, although the phrase “nationals ... who have lost their nationality or been deprived of it” was not particularly well worded. Perhaps the draft articles should begin with the definitions, simply doing away with the provision on the scope. In the final analysis, the scope emerged clearly from the title of the draft, and the definitions helped to clarify it.

34. He agreed with many of the earlier comments about draft article 2: for example, on the duplication in paragraphs (1) and (2) (b), on the term “frontier” and on the phrase “territorial or expelling State” in paragraph (2) (a). He would also not rule out the idea of including definitions of other terms.

35. It was possible that all the problems could be resolved by the Drafting Committee, which was a very capable body. It might be better, however, if the Special Rapporteur worked on the draft a little longer in the light of the discussion and, in particular, in light of the problems arising with the term ressortissant, so that the two draft articles could be referred to the Drafting Committee together with additional draft articles to be submitted to the plenary at a later date.

36. Lastly, Mr. Gaja had raised an important question that had practical significance: did an expelled person have the right to choose the receiving State—in other words, was that person’s consent necessary in order for him or her to be repatriated to a State of which he or she was a national? The question was faced by States that concluded readmission agreements. His own country had such agreements, and the question had often been discussed when they were concluded. In practical terms, the expelled person had to be given documents on the basis of which he could enter the State of nationality, which was obliged to admit him. However, the person might deliberately withhold the documents or even refuse to take possession of them. That was a real problem that the Commission must consider.

37. Mr. YAMADA commended the Special Rapporteur’s report, which was full of valuable analysis and reflected his deep understanding of the topic. The Special Rapporteur was making steady progress on the basis of the draft work plan contained in annex I to his preliminary report. The Secretariat was to be thanked for its memorandum, which also provided material indispensable to an understanding of the topic.
38. He still had some conceptual and methodological difficulties with the topic, perhaps because the problem of expulsion of aliens had not yet arisen in his part of the world. The Commission should be addressing systematic phenomena that had grave political, social, economic and human rights implications. The report and the Secretariat memorandum gave examples of numerous categories of expulsion of aliens, but whether rules relating to all those categories could be formulated and applied across the board was open to question. Perhaps the Commission could look at them category by category and through that exercise make an informed decision on which should be chosen for study.

39. Concerning draft article 1 on scope, he thought that paragraph (1) was formulated in somewhat sweeping terms and went beyond the scope of the topic, basically stating that the draft articles applied to all foreigners. More than 3 million foreigners were present every day in Japan: treaty merchants and their dependents under friendship, commerce and navigation treaties; students under government scholarship and exchange programmes; trainees under Japanese development assistance programmes; members of the United States armed forces under the Status of Forces Agreement; and also tourists. It was difficult to imagine the draft articles applying to all those foreigners. The Commission was not dealing with foreigners in general, but rather with specific categories of foreigners: those who had been expelled, were being expelled or were at risk of being expelled.

40. Paragraph (2) was an illustrative, non-exhaustive list of the categories of foreigners to be covered by the draft articles. If it was to be retained, it should be incorporated into paragraph (1), but he would prefer to see it relegated to the commentary.

41. If, as was his understanding, the substantive articles were to regulate the rights and duties of expelling States vis-à-vis foreigners who had been or were to be expelled, there should be a subparagraph relating to the expelling State in the draft article on scope. If, in the substantive articles, the rights and duties of the destination State vis-à-vis the person expelled or about to be expelled and vis-à-vis the expelling State were to be regulated, then there should be a subparagraph relating to the State of destination in the expelling State. On the other hand, a simpler approach could be used, as Mr. Comissário Afonso had proposed: there could be a single paragraph on scope saying that the draft articles applied to the expulsion of aliens.

42. On draft article 2, clearly, the terms “alien” and “expulsion” must be defined, and he accordingly had no problem with its paragraphs (2) (a) and (b), although some drafting refinements were called for. He saw no need for paragraph (1), because it merely duplicated paragraphs (2) (a) and (b). It was premature to try to define the terms in paragraphs (2) (c), (d) and (e), because the context in which they were to be used in the substantive articles was not yet known.

43. While he had no intention of opposing the referral of the two draft articles to the Drafting Committee, he thought it would be difficult for the Committee to begin a drafting exercise without clear instructions from the plenary as to what elements should be included in the articles and without having before it several of the substantive draft articles that the Special Rapporteur was proposing to submit in his third report.

44. Mr. HMOUD said that the expulsion of aliens was a fairly complicated issue involving many aspects of international law. The rules, whether arising from treaties, custom or judicial precedents, were limited, and those that existed should accordingly be codified and new ones developed to cover certain loopholes in the legal regime or regimes.

45. The Special Rapporteur’s work plan was satisfactory at the present stage, pending new developments in the Commission’s work on the topic. The Special Rapporteur appeared to consider that the starting point for that work was the contention that expulsion of aliens was a right of the expelling State, subject to limitations under international law—a contention supported by existing State practice. Work on the topic should proceed on the basis of that premise. Although some scholars viewed the subject of States’ rights and obligations in relation to expulsion of aliens from the perspective of the individual and human rights, the Commission should take an approach that did not emphasize advocacy and instead concentrated on strictly legal issues.

46. On the scope of the topic, he said that the draft articles should be the legal regime on expulsion of aliens but should not rewrite or amend existing lex specialis on matters already regulated by treaty law. The issue of refugees came to mind in that connection. The second report proposed a broad definition of the term “refugee” which differed from that found in the 1951 Convention relating to the Status of Refugees in that it included not only war refugees but also refugees who had escaped generalized violence—something that had not yet been settled under international refugee law. While that definition was used for the purpose of the draft articles, the legal regime would necessarily overlap with existing legal regimes on refugees, while having different legal effects. Accordingly, it should be made clear that the draft articles were without prejudice to existing obligations under international law.

47. Draft article 1 on scope indicated that the draft articles applied to stateless persons, yet under draft article 2, paragraph (2) (a), which defined an alien as a ressortissant of a State other than the territorial or expelling State, stateless persons could not be considered aliens, and would thus be excluded from the scope. Draft article 1 should therefore be revised to include in the scope the expulsion of all aliens present in the territory of the expelling State.

48. An alien should be defined as a person who was not a national of the expelling State. That approach avoided the unintended consequence of excluding from the application of the draft those individuals who did not have the nationality of any State. As the Special Rapporteur pointed out in paragraph 134 of his report, the term

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“ressortissant” dated back to colonial times, when States had dominions and colonies whose peoples did not necessarily possess the nationality of the colonial State but might be under that State’s protection. Since the end of the colonial era, international law had evolved and the term now meant merely “nationality”, as was indicated in the report. Accordingly, the term “nationality” was preferable to “ressortissant”, which, as defined in draft article 2, paragraph (2) (d), meant a person under the authority of a State. If that definition was used, permanent residents would be considered ressortissants of the expelling State and as such would be excluded from the scope of the draft articles.

49. In conclusion, he said that draft articles 1 and 2 should be referred to the Drafting Committee.

50. Ms. JACOBSSON said that the report was valuable and thought-provoking. The 664-page memorandum produced by the Secretariat was also an impressive achievement.

51. She welcomed the inclusion of the topic: it was an important one, and even if the same issues were addressed in other spheres of international law, such as international humanitarian and refugee law, there remained grey areas and lacunae that needed to be dealt with in the context of the topic. She agreed that there should be some kind of “without prejudice” clause saying that the Commission was not rewriting international humanitarian or refugee law, but attempting to identify those grey areas and tackle real problems faced by States in their day-to-day management of aliens.

52. It was important to continue to discuss the terms used: for example, there was much uncertainty as to what was meant by “entry” or “presence”. To cite one concrete instance, if a person was on board a vessel in the territorial or archipelagic sea or the internal waters of a coastal State, that State was likely to argue that the person was not present in its territory and hence could not be expelled as he or she had not been admitted to the territory. That then raised the question of denial of entry. Nevertheless, the person concerned would probably argue that he or she had entered the territory and was eligible to seek refugee or asylum status. That had been well illustrated by the case of a Norwegian vessel, the MV Tampa, which had taken on board about 430 refugees, most but not all of whom had been asylum seekers. As was well known, Australia had refused to admit the persons concerned to the territory of Christmas Island and had instead decided to take them on board a Norwegian vessel, the MV Tampa, which had taken on board about 430 refugees, most but not all of whom had been asylum seekers. As was well known, Australia had refused to admit the persons concerned to the territory of Christmas Island and had instead decided to take them on board an Australian vessel and remove them from Australia’s territorial waters. The debate in international law circles concerned the MV Tampa, which had taken on board about 430 refugees, most but not all of whom had been asylum seekers. As was well known, Australia had refused to admit the persons concerned to the territory of Christmas Island and had instead decided to take them on board an Australian vessel and remove them from Australia’s territorial waters. The debate in international law circles concerned the MV Tampa, which had taken on board about 430 refugees, most but not all of whom had been asylum seekers. As was well known, Australia had refused to admit the persons concerned to the territory of Christmas Island and had instead decided to take them on board an Australian vessel and remove them from Australia’s territorial waters.

53. A few other concepts needed to be fleshed out more clearly. One was neutrality, which the report seemed to equate with non-participation in a conflict. That was not entirely correct. The treatment of aliens in a situation of armed conflict was addressed in the context of international humanitarian law, but even there some grey areas existed.

54. As to the draft articles themselves, she was very attracted to Mr. McRae’s idea that article 1, paragraph (2) might be unnecessary. If it was to be retained, what was meant by “present in” a State and “enemy State” must be defined or more clearly explained. What was meant by the terms “territory”, “frontier”, “border” and “boundary” needed to be defined, or at least discussed.

55. Ms. XUE expressed her appreciation to the Special Rapporteur for a well-researched report that had been submitted in a timely manner, and to the Secretariat for the rich resources it had provided as a basis for the Commission’s work. In his analysis of the concepts of alien and expulsion, the Special Rapporteur had clearly demonstrated that the Commission must take into account the existing regimes with regard to each of the categories of aliens. He had posed the right questions and identified the areas that the Commission should consider, and she generally endorsed his approach.

56. Concerning the scope of the draft articles, she noted that paragraph 40 of the second report contained a lengthy discussion of the non-admission, or “expulsion”, of illegal immigrants. She agreed with the Special Rapporteur’s position that the question could not be excluded from the scope of the topic without severely limiting it. As the Representative of the Republic of Korea in the Sixth Committee had pointed out, to do so would not only unduly limit the scope of the Commission’s work but would also leave unaddressed the interests and concerns of many illegal residents around the world.145 She would go further and say that the same would be true of the interests and concerns of illegal immigrants in general.

57. She agreed with the Special Rapporteur that removal of an illegal immigrant who was at the border was strictly speaking non-admission, not expulsion. It was by virtue of that judicious distinction that non-admission did not, in the opinion of the Special Rapporteur, fall within the scope of the topic. In principle he was right, but the conclusion was rather too sweeping. The topic, as many members had pointed out, differed from the traditional legal subject of alien expulsion in that it was not related only to non-admission per se and the criteria therefore. The purpose and objective, as the Special Rapporteur had stated in his preliminary report, was to consider the minimum international standard of treatment for a special category of persons, characterized as refugees, displaced persons, asylum seekers, stateless persons and the like, in accordance with international law, and particularly international human rights law. The Commission thus recognized that there were existing international regimes addressing each type of person, but that as a general principle, whether to admit a foreign national or stateless person into its territory or grant the person the right to stay and live in its territory was a sovereign decision of the receiving or host State. The issue was whether admission, or the criteria for admission, but rather, proper treatment of such persons while they were under the control or in the custody of the host country. What must be determined was, not what legal status a person had, but how a non-national who

happened to be in the territory or under the jurisdiction or direct control of the receiving State should be treated before being expelled or allowed to stay in the country.

58. During the discussion on the preliminary report, she herself had raised the MV Tampa case\(^{106}\) to which Ms. Jacobsson had referred. Strictly speaking, the persons on board a ship in the territorial waters of a coastal State were not under the direct control of that State, but were indeed under its jurisdiction. An additional issue was that the jurisdiction of the flag State of the ship and that of the coastal State overlapped. However, the decision as to the final destination of those persons was not a matter for the Commission, but a sovereign decision of the States concerned. The question was how to ensure that such persons were properly treated in accordance with international law. The case cited by Ms. Jacobsson was more complicated than the more frequent situation referred to by Mr. Gaja, where the persons concerned were already physically in the territory, albeit in the international zone delimited by the host country.

59. To exclude illegal immigrants or aliens who were at the border or had just crossed it from the scope of the draft articles would be to exclude a large group of persons. Aliens who were “present in a State” pursuant to draft article 1 were already physically present in the country, regardless of how the term “zone” was defined. Moreover, such persons did not all have the same status. Some might be asylum seekers, others might be applying for refugee status, and yet others would need to be held until their nationality could be ascertained and it was decided to which country they should be returned. As Mr. Gaja had pointed out, and as she knew from her own experience, often such persons were not in possession of proper documents, and some had even destroyed them to avoid being returned. Sometimes they stayed in the international zone for weeks, months or even years. Such vulnerable groups must be included when addressing the question of the treatment of aliens, especially since international law had few rules on their treatment. If international law failed to protect them, their rights would easily be abused.

60. The Special Rapporteur contended that a State’s obligations in the case of expulsion and in the case of non-admission were not identical. That was true in many instances, but in some respects, and particularly in terms of international minimum human rights standards, the proposition was arguable. In cases involving illegal stay, persons might be held for long periods in the detention area. Thus, it was difficult to see what distinction the Special Rapporteur was making.

61. As to the draft articles themselves, she shared the view that draft article 1 was problematic. To begin with, French legal terms did not have the same currency as Latin ones. It would, for instance, be very difficult to find an equivalent Chinese term for the term “ressortissant”. Moreover, it was unclear whether the list in draft article 1, paragraph (2), was exhaustive or illustrative. Doubtless the Special Rapporteur was trying to narrow down the category of persons concerned. The case of foreign troops stationed in a country, such as United States troops in Japan, should not be included, because their presence was based on a special agreement which ensured their rights and privileges. She agreed with the suggestion that the commentary should explain which categories of persons were to be protected. The words “in particular” in paragraph (2) were confusing and even illogical, given that, pursuant to paragraph (1), the draft articles applied to any person present in a State who was not a national of that State. Perhaps it would be best to have only one paragraph.

62. With regard to the discussion on expulsion and related concepts (paras. 153–194 of the second report), she endorsed the Special Rapporteur’s clear analysis, but had a question about draft article 2 itself. A number of members had already pointed to problems with the terms “frontier” and “territory”. The category of persons to which she had referred earlier should also be included, because such persons were physically present in the frontier zone. To dispel confusion between the two terms, their definitions needed to be refined. She had no objection to referring the two draft articles to the Drafting Committee, but shared the view that at the present stage it would be difficult to pursue the drafting exercise, because the Drafting Committee first needed to know which aspects of the protection of aliens during the expulsion process the Special Rapporteur intended to include in his next report. As an example of the types of issue that might need to be considered, she recalled a case of expropriation in which the host country had maintained that the person concerned was not naturalized but a Chinese national, yet at the same time would not allow him consular protection from the Chinese side, had confiscated all the property which he had accumulated in the host country over many years, and had compelled him to leave the country a pauper. That was the kind of problem that arose in practice. At the present stage it was difficult to envisage the final scope of the draft articles merely on the basis of the draft article on definitions.

63. Mr. WISNUMURTI commended the Special Rapporteur’s in-depth second report on the expulsion of aliens. The presentation and analysis of State practice had provided the Commission with a clear picture of the issues involved and the direction of further work.

64. The expulsion of aliens was an important issue and a matter of urgent national and international concern. The Special Rapporteur had noted that the war on terror had led to a growing tendency to expel aliens suspected of being a threat to the security of the State in the territory of which they were present and to stricter restrictions being imposed by some countries on persons wishing to enter or stay in those countries.

65. Another new phenomenon was the increasing number of expulsions of immigrants or other aliens with an irregular status. As rightly pointed out by the Special Rapporteur in paragraph 30 of his second report, that practice was driven by socio-economic imbalances, aggravated by globalization and the rapid impoverishment of developing countries, and in some cases compounded by the consequences of repeated conflicts and political intolerance. However, it should be recognized that the influx of irregular immigrants had also been generated by the need

for cheaper labour to support rapidly growing economies, including those of developing countries. Thus, the phenomenon of irregular immigration should be addressed in a comprehensive manner, and not only from the vantage point of illegal presence. A State had the right to expel, but it also had the responsibility to exercise restraint, avoid over-hasty, arbitrary or mass expulsions and, above all, ensure the protection of the human rights and security of such persons. The Commission should endorse Mr. Yamada’s suggestion to include an article or provision on the responsibilities and obligations of the expelling State. He welcomed the Special Rapporteur’s expressed intention of according particular attention to respect for the fundamental rights and dignity of the aliens concerned. Territorial States should not rely solely on the unilateral measure of expulsion; they should also elaborate a legal framework with the so-called “illegal immigration countries”.

66. The Special Rapporteur had proposed a list of different categories of persons to be included in or excluded from the scope of the topic. He endorsed the list of categories to be included. It should be noted, however, that legal instruments already existed for dealing with some of those categories, such as refugees, asylum seekers and asylum recipients. The Special Rapporteur should explore categories of persons not already covered by existing legal instruments.

67. With regard to the proposed draft article 1, on scope (para. 122), he shared the view that the term “national” should be used rather than “ressortissant”. The term “national” was commonly employed and easy to understand, whereas “ressortissant” was too abstract and was interpreted as being wider in meaning than “national”. He was also of the view that there was no justification for having two paragraphs: paragraphs (1) and (2) should be merged. That could be discussed in the Drafting Committee. The words “in particular” in paragraph (2) were unclear and should not appear in the merged text of paragraphs (1) and (2).

68. As to definitions, he shared the Special Rapporteur’s doubts about the relevance of extradition, a concept which was different from expulsion. Extradition referred to the surrender of a fugitive to a requesting State and was based on a bilateral agreement, whereas expulsion was a unilateral act of a State in whose territory the alien was present. The same applied to non-admission.

69. Turning to draft article 2 (para. 194), he noted that paragraphs (1) and (2) (b) overlapped; paragraph (1) was redundant, and should be replaced by paragraph (2) (b). He also had difficulty with the term “ressortissant” in paragraph (2) (e) and (d), for the reasons indicated earlier. It would be preferable to define the term “alien” along the lines of the definition which appeared in paragraph 124, i.e. a person who was under the jurisdiction of another State and did not hold the nationality of the forum State. Consideration should also be given to improving the definition of the term “territory” in draft article 2, paragraph (2) (c) by including land territory and the airspace above it as well as the territorial sea, internal waters and archipelagic waters. A clear definition of “territory” was essential in order to avoid situations such as the one referred to by Ms. Jacobsson.

70. He associated himself with the remarks made by the Chairperson at the previous meeting on the structure of the draft articles. The Commission would have a clearer picture of the topic once the Special Rapporteur had covered expulsion regimes and the legal consequences of expulsion in a future report.

71. Mr. KAMTO (Special Rapporteur), on a point of clarification, said that he had referred to a number of concepts not in order to include them in the topic but to show that they were unrelated to it. That was the case with non-admission and extradition.

72. The question raised on draft article 1 needed to be given close consideration in plenary. There had been proposals to delete paragraph (2). If that were to be done, the definition would be very broad and would include all aliens, even those whom he had intended to exclude because they benefited from special regimes, such as diplomats, armed forces on mission and official personnel. Either, as proposed by Mr. Wisnumurti, paragraphs (1) and (2) should be merged to produce a definition of the scope which would still indicate its limits, or else the two paragraphs should be retained, with a paragraph (1) posing the general rule and a paragraph (2) giving precise indications of the scope for the purposes of the draft articles. If no limits were set, the draft articles would be impossible to elaborate, and in any case inapplicable. He would welcome more precise suggestions from members on the question.

73. With regard to draft article 2, he agreed with Mr. Fomba’s remark at the previous meeting that the global definition of the topic in paragraph (1) was redundant; it would be better to launch directly into a definition of the various constituent concepts. As to the terms “national” and “ressortissant”, it would suffice to specify that they were used synonymously, which would be consistent with the jurisprudence of the ICJ.

74. Mr. HASSOUNA said that, despite the complexity of the issue and the fact that it had political as well as legal ramifications, the Commission was clearly right to attempt to codify the legal rules on the subject, since the subject was ripe for codification in the light of customary law, State practice, domestic legislation and case law. That necessary task should not be left to the politicians, who often complied with legal rules only under pressure from the courts and public opinion in their countries.

75. The Special Rapporteur was to be commended for the clear and comprehensive analysis contained in his preliminary and second reports, which he had produced despite his very demanding national responsibilities. Having first introduced the concept and methodology, together with a work plan which the Commission had endorsed, the Special Rapporteur was now ready to embark on a more comprehensive approach. That was the right way to proceed. He also commended the Secretariat’s very useful, lengthy and comprehensive memorandum.

76. The topic was of great importance in a world of globalization, interdependence and the free movement of people in free trade areas, but which was also a world of human trafficking, transnational organized crime and
international terrorism. The Commission should not shirk the difficult issues involved. Thus, while terrorism was a scourge affecting all societies, Governments everywhere had, in their concern for security, been responsible for serious violations of civil liberties and human rights, including forcible transfers, extraordinary rendition and profiling of ethnic and religious groups. Such actions often strengthened extremism rather than weakening it. Terrorism must be countered through international cooperation—whether bilateral, multilateral or under the aegis of the United Nations and other forums—and any action must be in full accordance with the rule of law.

77. The Commission must adopt a comprehensive approach to the topic, dealing with the whole legal regime of expulsion, in its broadest sense, since that was the best contribution it could make to the codification of international law. At the same time, its approach should be balanced: it should take into account a State’s right to protect its citizens and its duty to ensure law and order, but also the right of a non-national of a State to be treated in accordance with the minimum standards for the treatment of aliens.

78. The report, while mentioning recent developments relating to the topic in the United Nations, the European Union and the United States of America, omitted any mention of developments in the Arab region. The Arab Charter on Human Rights, originally adopted by the League of Arab States in 1969 and revised and updated at the Sixteenth Summit Conference of the League of Arab States held in Tunisia on 22–23 May 2004, contained a provision very relevant to the topic of expulsion of aliens. Article 26, paragraph 2 of the Charter provided that: “No State party may expel a person who does not hold its nationality but is lawfully in its territory, other than in pursuance of a decision reached in accordance with law and after that person has been allowed to submit a petition to the competent authority, unless compelling reasons of national security preclude it. Collective expulsion of aliens is prohibited under all circumstances”. The main elements of the provision seemed to be, first, that nationality was the criterion; secondly, that due process must be adhered to; and, thirdly, that collective expulsion, which constituted a form of collective punishment, was prohibited in all circumstances.

79. With regard to draft articles 1 and 2, he concurred with the proposal that the physical presence of an alien should be emphasized. Thus the issue of refusal of admission should be excluded, but other categories of alien should be included, as should the very important phenomenon of rendition. Refugees, for example, even though they had their own legal status and their own legal regime—both under conventional law and under customary international law (which he took to include United Nations resolutions)—should be referred to in the Commission’s proposed legal framework, so as to close any existing loopholes. The fact that a given group had its own legal regime was no reason to exclude it from what he hoped would be comprehensive draft articles. For the same reason, the expulsion of aliens in situations of armed conflict also needed consideration and special attention should be paid to the phenomenon of ethnic cleansing.

80. With regard to definitions, the term “alien” could surely be defined more simply as “a non-national in relation to the expelling State”. As for the term “ressortissant”, it was clear that it had caused some confusion, particularly for Spanish speakers. The Special Rapporteur’s proposal to use the phrase “person under the jurisdiction of a State” was an improvement, but some further work would be required.

81. He endorsed in principle the proposal that the two draft articles should be referred to the Drafting Committee. It might, however, be preferable to do so after the presentation of the third report, which would provide more material on which to work.

82. Mr. VÁZQUEZ-BERMÚDEZ commended the second report, which was based on thorough research and good legal analysis with a view to determining the scope and the correct approach to the treatment of the topic. The memorandum by the Secretariat was outstanding, backed up as it was by an exhaustive examination of the legal precedents. The expulsion of aliens was undoubtedly a difficult issue but one of great topicality and importance for all States. Indeed, its importance would grow as international migration continued to increase. It was noteworthy that such migration was not all in one direction: it occurred not only from developing to developed countries, but also to and between developing countries, and could bring many benefits to the receiving States.

83. All States had to face the challenge of balancing their sovereign right to expel aliens, in the interests of maintaining internal law and order, with the formal and procedural restrictions imposed by international law, particularly human rights law. No international instrument governing all aspects of the topic existed, however, so it was appropriate that the Commission had embarked on elaborating a set of draft articles reflecting the state of contemporary international law. The Special Rapporteur rightly sought to make the draft articles as exhaustive as possible, without affecting existing multilateral conventions, lex specialis rules or standards already established in international law, while filling existing gaps and clarifying grey areas. He could support the main thrust of draft article 1, but not the proposed wording, since mention would need to be made of exceptions such as diplomatic staff. Article 1, paragraph (1), should set forth the general provision, along the following lines: “The present draft articles shall apply to the expulsion of aliens”. The various kinds of aliens referred to could then be listed.

84. With regard to draft article 2, although the definitions could be reviewed when the form of the draft articles as a whole became clearer, it would be as well to decide on some definitions at the outset. As other speakers had said, the word “ressortissant” was inappropriate. Mr. McRae had rightly said that an alien should be defined not in relation to the country of origin but in relation to the territorial State in which he or she was present. A possible definition of the word “alien” might thus be: “For the purposes of the draft articles, an alien is a natural person who is not...
a national of the State in whose territory he or she is present”. Such a definition would also support another view that he shared with Mr. McRae, namely that the determining factor in expulsion was the physical presence of an individual in the territory—which did not include the territorial sea—of the expelling State. Accordingly, the term “territory” would need to be defined for the purposes of the draft articles.

85. Paragraph (1) and paragraph (2) (b) of draft article 2 overlapped, since their wording was almost identical, the latter provision being the more accurate. While there might be consensus within the Commission that the “conduct” referred to involved coercion, the text should make it clear that the action concerned gave an alien no option but to leave the territory. Lastly, the terminology used should be consistent throughout: the phrases “territorial State” and “host State” were used interchangeably. The former was preferable, since the concept of “host” seemed incompatible with that of expulsion. He supported the suggestion that the two draft articles could be referred to the Drafting Committee; however, they should be considered along with the next group of draft articles to be proposed by the Special Rapporteur, in order to afford a broader context for analysis.

86. Mr. WAKO congratulated the Special Rapporteur on his comprehensive report and the Secretariat on its excellently researched memorandum on the expulsion of aliens, which had contributed immensely to the quality of the Commission’s work. He said that the importance of the issue of aliens throughout history was reflected in the wealth of national, regional and international legislation, conventions and practice on the matter. A comprehensive codification text was therefore long overdue. Two factors had played a major role in modern times, the first being the increase in the number of international migrants—from 82 million in 1970 to 175 million in 2000 and nearly 200 million in 2005—60 per cent of whom lived in the developed world: a significant proportion in relation to their populations. As a result, the developed countries were, as stated in paragraph 20 of the second report, “transforming themselves into impenetrable fortresses”.

87. The second factor was the increasing national security concerns of States in response to the threat of international terrorism. Such genuine concerns must be taken into account when the Commission formulated fundamental principles forming the legal basis for the expulsion of aliens under international law. Clearly, there were categories of aliens whose international legal regime was fairly well developed, such as diplomats, refugees, asylum seekers, stateless persons, migrant workers, nationals of an enemy State and nationals of an expelling State who had lost or been deprived of their nationality. Some speakers had suggested that the scope of the topic should encompass those categories. While he stood ready to be persuaded, he was inclined to the view that the Commission should distil the essential principles enshrined in State practice and international conventions so that the end result would be a convention of general application, while the specific needs of each category of alien could be left to the relevant conventions. What the Commission could supply was a text codifying the general principles.

88. The topic should essentially concern itself with two kinds of alien: those residing lawfully and those residing unlawfully or irregularly in a given territory. There was ample international provision for the former, including, first and foremost, article 13 of the International Covenant on Civil and Political Rights. Article 7 of the General Assembly Declaration on the Human Rights of Individuals Who are not Nationals of the Country in Which They Live, which appeared as an annex to General Assembly resolution 40/144, added an important rider to that provision, to the effect that “[i]ndividual or collective expulsion of such aliens on grounds of race, colour, religion, culture, descent or national or ethnic origin is prohibited”. Article 4 of Protocol 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) stated: “Collective expulsion of aliens is prohibited”. The African Union Convention governing the specific aspects of refugee problems in Africa and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families prohibited collective expulsion and provided for review of individual cases.

89. Slightly different considerations applied to the expulsion of aliens residing irregularly in a given territory. In such cases, mass expulsion was permitted in some circumstances. In that connection, the Commission would need to pay special attention to the issues of international terrorism, drug trafficking and transnational organized crime. It should examine resolutions adopted by the United Nations and regional bodies dealing with the issue. Whereas at the national level, a state of emergency could be declared, derogating from a given human rights commitment, no such power existed at the international level. A middle way would therefore need to be found, allowing States to derogate from certain rights. The clue might lie in Protocol 7 to the European Convention on Human Rights, article 1, paragraph 2, of which stated that: “An alien may be expelled ... when such expulsion is necessary in the interests of public order or is grounded on reasons of national security”. More, however, would be needed, given the information contained in paragraphs 17 to 19 of the second report.

90. The Commission would also need to address the question of whether non-admission should be covered by the draft articles. In that connection, article 5, paragraph 1, of the European Convention on Human Rights would be relevant, as would the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime. Migrants were liable to prosecution under that Protocol. The Commission would therefore need to consider that category of alien, but it might well be that non-admission should fall within the scope of the topic.

91. With regard to the wording of the draft articles, he would favour a simple but comprehensive definition, which was served by draft article 1, paragraph (1), with the possible addition of the words “physically” and “whether lawfully or unlawfully”; draft article 1, paragraph (2), could then be deleted. He agreed, however, with those who believed that it was premature to send the two draft articles to the Drafting Committee, because no consensus had yet been reached on the scope of the exercise.
One possibility would be to await the submission of the Special Rapporteur’s third report; another would be to set up a working group to crystallize some of the principles involved before the draft articles were referred to the Drafting Committee.

The meeting rose at 1.10 p.m.

2926th MEETING

Tuesday, 29 May 2007, at 10.05 a.m.

Chairperson: Mr. Ian BROWNLIE

Later: Mr. Edmundo VARGAS CARREÑO

Present: Mr. Caflisch, Mr. Candioti, Mr. Comisário Afonso, Ms. Escarameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Ms. Jacobsson, Mr. Kamto, Mr. Kernicha, Mr. Kolodicha, Mr. McRae, Mr. Niehaus, Mr. Pellet, Mr. Perera, Mr. Saboia, Mr. Singh, Mr. Vázquez-Bermúdez, Mr. Wako, Mr. Wisnumurthy, Ms. Xue.

Expulsion of aliens (continued) (A/CN.4/577 and Add.1–2, sect. E, A/CN4/581)

[Agenda item 7]

Second report of the Special Rapporteur (concluded)

1. The CHAIRPERSON invited the Special Rapporteur on the expulsion of aliens to reply to Commission members’ comments on his second report148 and to present his conclusions.

2. Mr. KAMTO (Special Rapporteur) thanked Commission members for their contribution to the debate; some of their observations had been most pertinent and he had taken careful note of them. It was, however, regrettable that the debate had not focused exclusively on his second report on the expulsion of aliens; the new members of the Commission had expressed views on his preliminary report149 and in so doing had made general comments on questions on which the Commission had already supplied clear guidance, which had been endorsed by the Sixth Committee of the General Assembly (see paragraphs 10–14 of the second report) and to which there therefore seemed little point in returning.

3. As for the choice of topic, he was convinced that it was both useful and timely and, above all, more amenable to progressive development and codification than some other topics. Although he welcomed Mr. Pellet’s overall support for the report under consideration, he did not quite grasp the distinction he had drawn between subjects which, like the expulsion of aliens, were allegedly

4. Turning to the scope of the topic, he noted that Mr. Yamada had wondered if it would be advisable to formulate rules applicable to all the categories of aliens listed in draft article 1, paragraph 2, or whether it would not be better to consider each category separately. The draft work plan in annex I to the preliminary report indicated very plainly that in Part I, Chapter II, on general principles, he would endeavour to identify the general rules applicable to various categories of aliens before studying the more specific rules making up the particular regime for each category in Part 2, on expulsion regimes. Proceeding in that manner would obviate any risk of repeating either the grounds for expulsion or the legal consequences thereof.

5. He wished to reassure the Chairperson of the Commission, who had insisted that the legal consequences of expulsion, including the possible expropriation of the expellee and the question of the admission of aliens, should be included in the scope of the topic, that he firmly intended to study the various legal consequences of expulsion for aliens, and the means of redress available not only to aliens, but also to the State of which they were nationals. The work of the Institute of International Law150 and the award in the Ben Tillett case had prompted some reflection on that question, which he would certainly examine at a later stage. Contrary to what Mr. McRae held, there was no a priori obstacle to mentioning the issue of expropriation from that angle, which would not interfere with the relevant national legislation. The Commission could simply remind States that they were bound to rigorously apply their law on the subject in good faith, or to adapt the principles embodied in international case law on the expropriation of foreign companies to natural persons. The notion of the responsibility of the expelling State and its corollary, compensation, to which reference was made in the draft work plan in annex I to the preliminary report, met those concerns. Nevertheless, it appeared unnecessary to spell out in draft article 1 that the draft articles would apply also to the legal consequences of expulsion. Otherwise, it would also be necessary to say that they likewise applied to the procedure and reasons for

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