

Document:-  
**A/CN.4/3068**

**Summary record of the 3068th meeting**

Topic:  
**<multiple topics>**

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respect of which the application of the Treaty of Lisbon might alter their relations and which needed to be explored in greater detail by both bodies. Such exploration might result, for example, in a requirement for consultations between the two bodies to take place at an early stage, even before a decision was made to begin negotiations on the drafting of a treaty. Another issue that was being debated related to the participation of the European Union in the control bodies of existing treaties that provided for those bodies to address issues that fell under the exclusive competence of the European Union.

102. For the time being, however, priority was being placed on the accession of the European Union to the European Convention on Human Rights: a list of issues, resulting from the terms of the Treaty of Lisbon, had already been identified. One such issue concerned the establishment of a “co-defendant mechanism”, allowing for the joint participation of the European Union and the European Union member State concerned as defendants, in cases before the European Court of Human Rights or in those in which a defendant, being both a contracting party to the European Convention on Human Rights and a member State of the European Union, was thus legally required to apply European Union law. Another issue concerned how to handle cases referred to the European Court of Human Rights of a kind which, owing to the distribution of institutional and jurisdictional powers within the European Union, had never before been considered or encountered by the Court; the requirement to exhaust domestic remedies could be a particularly difficult issue. Another challenging issue was that relating to the establishment of a mechanism for the entry into force of the Treaty on European Union that would be less onerous than the one requiring signature and ratification by all 47 States members of the Council of Europe, which could create delays and deprive the whole process of momentum.

103. The European Commission took the view that, until the European Union became a party to the European Convention on Human Rights, any process leading to its accession to other treaties (given that most of the recent Council of Europe treaties contained clauses enabling the European Union’s accession) would be suspended. The opinion of the European Parliament on the issue of European Union accession was that the European Union should accede not only to the European Convention on Human Rights but also to the European Social Charter; however, its accession to the latter was not currently considered a top priority.

104. Concerning the cooperation of the Council of Europe with States outside the European continent, the law-making practice in the Council of Europe had evolved since the early days, when it tended to draft closed treaties to which only member States could become contracting parties: it now drafted open conventions, to which States not members of the Council of Europe could, at the Council’s invitation, accede. Currently, there were even clauses stipulating that non-member States participating in treaty negotiations could accede to a treaty under the same terms as member States. Moreover, proposals had been made to allow non-member States not participating in treaty negotiations also to sign and ratify a treaty under the same terms as member States.

105. Mr. FIFE (CAHDI) said that many of the comments made by members of the Commission had confirmed the importance of regional action in reinforcing the development of and international compliance with international law. He recalled that CAHDI was not a standing committee with an ongoing programme of work, but rather a body that held two-day meetings only twice a year and whose success depended on high-level but short bursts of activity. Members’ comments relating to the role of AALCO and other regional organizations confirmed the view taken by CAHDI that relations with such organizations should be pursued. The main purpose of such action would be to avoid the fragmentation of international law and to promote its concertation with a view to reinforcing global action, not to emphasize regional particularities or exceptions.

*The meeting rose at 1.10 p.m.*

### 3068th MEETING

*Friday, 23 July 2010, at 10.05 a.m.*

*Chairperson:* Mr. Nugroho WISNUMURTI

*Present:* Mr. Caffisch, Mr. Candiotti, Mr. Comisário Afonso, Mr. Dugard, Ms. Escarameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Mr. Huang, Ms. Jacobsson, Mr. Kemicha, Mr. Kolodkin, Mr. McRae, Mr. Melescanu, Mr. Murase, Mr. Niehaus, Mr. Nolte, Mr. Pellet, Mr. Perera, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vargas Carreño, Mr. Vasciannie, Mr. Vázquez-Bermúdez, Sir Michael Wood.

#### **Organization of the work of the session (concluded)\***

[Agenda item 1]

1. The CHAIRPERSON announced that the draft programme of work for the following two weeks had been distributed. If he heard no objections, he would take it that the members of the Commission approved it.

*It was so decided.*

#### **Expulsion of aliens (concluded)\*\* (A/CN.4/620 and Add.1, sect. C, A/CN.4/625 and Add.1–2, A/CN.4/628 and Add.1)**

[Agenda item 6]

#### REPORT OF THE DRAFTING COMMITTEE

2. The CHAIRPERSON invited the Chairperson of the Drafting Committee to present the Drafting Committee’s progress report on the expulsion of aliens.

\* Resumed from the 3062nd meeting.

\*\* Resumed from the 3066th meeting.

3. Mr. McRAE (Chairperson of the Drafting Committee) said that in 2007 the Commission had referred to the Drafting Committee draft articles 1 and 2, as proposed by the Special Rapporteur in his second report<sup>322</sup> and subsequently revised in the light of the debate,<sup>323</sup> as well as draft articles 3 to 7, which had been contained in the Special Rapporteur's third report.<sup>324</sup> In 2007 and 2008, the Drafting Committee had provisionally adopted draft articles 1 and 2, entitled "Scope" and "Use of terms", respectively, although it had recognized the need to revisit certain questions at a later stage. In 2008, it had also provisionally adopted draft article 3, entitled "Right to expulsion"<sup>325</sup> and, in 2009, it had provisionally adopted draft articles 5, 6 and 7 on refugees, stateless persons and the issue of collective expulsion.<sup>326</sup> On the other hand, it had been unable to agree on a text for the proposed draft article 4 concerning non-expulsion by a State of its nationals.

4. At the current session, the Drafting Committee had held eight meetings on 7, 12 and 14 May and on 8, 9, 12 and 13 July. During those meetings, it had considered a set of draft articles on the protection of the human rights of persons who had been or were being expelled, which had been referred to it during the first part of the session<sup>327</sup> and which had been restructured in the light of comments made during the plenary debate at the previous session.<sup>328</sup> The Drafting Committee's work on those draft articles had been very productive. In that connection, he wished to thank the Special Rapporteur for his cooperation and the efficient guidance which he had given to the Committee. He also thanked the members of the Drafting Committee for their active participation and contributions and the secretariat for its valuable assistance.

5. The Drafting Committee had provisionally adopted eight draft articles,<sup>329</sup> namely: draft article 8, entitled "Obligation to respect the human dignity and human rights of persons subject to expulsion", which amalgamated the draft articles 8 and 9 which had been referred to the Committee; draft article 9, entitled "Obligation not to discriminate", in which ethnic origin and other grounds impermissible under international law had been added to the list of prohibited grounds; draft article 10, entitled "Obligation to protect the right to life of persons subject to expulsion"; draft article 11, entitled "Prohibition of torture or cruel, inhuman or degrading treatment or punishment"; draft article 12, entitled "Obligation to respect the right to family life"; draft article 13, entitled "Vulnerable persons", which covered children, older persons, persons with disabilities, pregnant women and other vulnerable persons subject to expulsion; draft article 14, entitled

"Obligation not to expel a person to a State where his or her life or freedom would be threatened", which covered not only threats based on the discriminatory grounds enumerated in draft article 9, but also the threat resulting from the imposition of the death penalty, or the execution of a death sentence which had already been passed in the State of destination, and, lastly, draft article 15, entitled "Obligation not to expel a person to a State where he or she may be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

6. In keeping with the practice followed in 2007, 2008 and 2009 in respect of the topic, the Drafting Committee had decided that the draft articles provisionally adopted in 2010 would remain with the Drafting Committee. In principle, they would be presented to the Commission for adoption at its following session, together with the draft articles adopted at previous sessions and any draft article that would be adopted in 2011. At that point, all the draft articles would be introduced in detail.

*The meeting rose at 10.10 a.m.*

### 3069th MEETING

*Tuesday, 27 July 2010, at 10 a.m.*

*Chairperson:* Mr. Nugroho WISNUMURTI

*Present:* Mr. Cafilisch, Mr. Candioti, Mr. Comisário Afonso, Mr. Dugard, Ms. Escameia, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Ms. Jacobsson, Mr. McRae, Mr. Melescanu, Mr. Murase, Mr. Niehaus, Mr. Nolte, Mr. Perera, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vargas Carreño, Mr. Vasciannie, Mr. Vázquez-Bermúdez, Sir Michael Wood.

### Reservations to treaties (*concluded*)\* (A/CN.4/620 and Add.1, sect. B, A/CN.4/624 and Add.1–2, A/CN.4/626 and Add.1, A/CN.4/L.760 and Add.1–3)

[Agenda item 3]

#### REPORT OF THE DRAFTING COMMITTEE (*concluded*)\*\*

1. Mr. McRAE (Chairperson of the Drafting Committee) introduced the titles and texts of draft guidelines 3.3.3 and 3.3.4, and draft guidelines 4.5 to 4.7.3, provisionally adopted by the Drafting Committee in the course of three meetings held on 20, 21 and 22 July 2010, as contained in document A/CN.4/L.760/Add.3, which read:

#### 3.3.3 *Effect of individual acceptance of an impermissible reservation*

Acceptance of an impermissible reservation by a contracting State or by a contracting organization shall not cure the nullity of the reservation.

\* Resumed from the 3067th meeting.

\*\* Resumed from the 3061st meeting.

<sup>322</sup> *Yearbook ... 2006*, vol. II (Part One), document A/CN.4/573.

<sup>323</sup> *Yearbook ... 2007*, vol. II (Part Two), p. 61, para. 188, and p. 68, para. 258, footnotes 326–327.

<sup>324</sup> See footnote 25 above.

<sup>325</sup> *Yearbook ... 2008*, vol. I, 2989th meeting, p. 252, paras. 22–28.

<sup>326</sup> *Yearbook ... 2009*, vol. I, 3027th meeting, p. 198, paras. 1–6.

<sup>327</sup> Revised version of draft article B in paragraph 276 of the sixth report of the Special Rapporteur (ILC(LXII)/EA/CRP.1) (see footnote 305 above), session distribution limited to the members of the Commission.

<sup>328</sup> *Yearbook ... 2009*, vol. II (Part One), document A/CN.4/617; see also footnote 16 above.

<sup>329</sup> Session document ILC(LXII)/DC/EA/CRP.3, distribution limited to the members of the Commission.