

Document:-  
**A/CN.4/3090**

**Summary record of the 3090th meeting**

Topic:  
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95. Sir Michael WOOD said that he took the view that nothing in draft article 15 or in the Commission's discussion thereof in any way affected the international law on the use of force and on aggression.

*Draft article 15 was adopted.*

Draft articles 16 to 18

*Draft articles 16 to 18 were adopted.*

ANNEX

*The annex was adopted.*

96. The CHAIRPERSON said he took it that the Commission wished to adopt on second reading the titles and texts of the draft articles on the effects of armed conflicts on treaties as a whole, subject to an editorial amendment to the French text of draft article 10.

*It was so decided.*

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

[Agenda item 1]

97. Ms. JACOBSSON (Chairperson of the Planning Group) announced that the Planning Group would be composed of Mr. Cafilisch, Mr. Candioti, Mr. Comissário Afonso, Mr. Dugard, Ms. Escobar Hernández, Mr. Gaja, Mr. Galicki, Mr. Hassouna, Mr. Kamto, Mr. Kemicha, Mr. McRae, Mr. Melescanu, Mr. Murase, Mr. Niehaus, Mr. Nolte, Mr. Pellet, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vargas Carreño, Mr. Vasciannie, Mr. Vázquez-Bermúdez, Mr. Wisnumurti and Sir Michael Wood, and Mr. Perera (*ex officio*).

*The meeting rose at 11.45 a.m.*

### **3090th MEETING**

*Friday, 20 May 2011, at 10.05 a.m.*

*Chairperson:* Mr. Maurice KAMTO

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

#### **Reservations to treaties (continued)\* (A/CN.4/638, sect. A, A/CN.4/639 and Add.1, A/CN.4/647 and Add.1, A/CN.4/L.779, A/CN.4/L.793, A/CN.4/L.795)**

[Agenda item 2]

#### REPORT OF THE WORKING GROUP ON RESERVATIONS TO TREATIES

1. The CHAIRPERSON invited the Chairperson of the Working Group on reservations to treaties to report on the work of the Working Group.

2. Mr. VÁZQUEZ-BERMÚDEZ (Chairperson of the Working Group on reservations to treaties) said that at its 3080th meeting, held on 26 April 2011, the Commission had decided to establish a Working Group on reservations to treaties in order to finalize the Guide to Practice on Reservations to Treaties at the current session (as envisaged in paragraph 45 of the report of the Commission on the work of its sixty-second session<sup>104</sup>).

3. The Working Group had held 14 meetings, from 26 to 29 April, and on 4, 5, 6, 10, 11, 12, 17 and 18 May 2011, during which it had been able to finalize the whole set of guidelines constituting the Guide to Practice, the text of which was reproduced in document A/CN.4/L.779.

4. He paid tribute to the Special Rapporteur on reservations to treaties, Mr. Alain Pellet, whose mastery of the subject and guidance had greatly facilitated the efforts of the Working Group. He also thanked the members of the Working Group for their active participation and the secretariat for its assistance.

5. In accordance with its mandate, the Working Group had revisited the draft Guide to Practice as provisionally adopted by the Commission at the previous session with a view to finalizing the text by taking into account, where appropriate, the observations made by Governments. The Working Group had also made a number of linguistic and technical changes to the text. Furthermore, in order to facilitate the use of the Guide to Practice, it had been agreed that the structure of some sections should be slightly altered, and that had led to the renumbering of several draft guidelines and sections. In performing its tasks, the Working Group had relied, *inter alia*, on a document prepared by the Special Rapporteur containing his proposals for possible modifications to the text of the draft guidelines in the light of the written comments received from Governments (A/CN.4/639 and Add.1) and of the observations made by Governments during the debate in the Sixth Committee ever since the Commission had begun its consideration of the topic at its forty-seventh session, in 1995.

6. He would present only the main changes made by the Working Group to the text of the draft guidelines as provisionally adopted by the Commission and to the structure of certain sections of the Guide to Practice. However, he would not describe those changes that were of a purely technical or linguistic nature.

\* Resumed from the 3085th meeting.

\* Resumed from the 3080th meeting.

<sup>104</sup> *Yearbook ... 2010*, vol. II (Part Two), p. 19.

7. In Part 1 of the Guide to Practice, the Working Group had decided to delete draft guideline 1.1.1, entitled “Object of reservations”, and to move its content into the definition of reservations provided in draft guideline 1.1 by adding a second paragraph to the latter. After duly considering the merits of the comments received from Governments, the Working Group had decided to simplify Part 1 of the Guide by deleting some of the draft guidelines provisionally adopted by the Commission, on the understanding that the relevant elements would be addressed, as appropriate, in the commentary. Thus, the Working Group had deleted draft guideline 1.1.2, dealing with the instances in which reservations could be formulated, since it had been felt that the issue had already been covered in the definition of reservations. Similarly, the Working Group had agreed on the deletion of some of the draft guidelines (1.4.1 (Statements purporting to undertake unilateral commitments), 1.4.2 (Unilateral statements purporting to add further elements to a treaty) and 1.4.4 (General statements of policy)) that provided examples of unilateral declarations which were outside the scope of the Guide to Practice. Those examples would be referred to in the commentary to draft guideline 1.1. Moreover, the Working Group had decided to merge draft guidelines 1.4.6 (Unilateral statements made under an optional clause) and 1.4.7 (Unilateral statements providing for a choice between the provisions of a treaty), as provisionally adopted by the Commission, into a single provision which had become draft guideline 1.5.3, entitled “Unilateral statements made under a clause providing for options”.

8. In line with the conclusion that the Commission had reached with respect to the treatment of conditional interpretative declarations in the Guide to Practice,<sup>105</sup> the Working Group had supplemented the definition of those declarations, now provided in draft guideline 1.4 (Conditional interpretative declarations), by indicating that conditional interpretative declarations were subject to the rules applicable to reservations. Consequently, all other draft guidelines which dealt specifically with conditional interpretative declarations and which appeared in square brackets in the text provisionally adopted by the Commission had been deleted from the Guide to Practice. That applied to all sections of the Guide.

9. As most of the modifications made by the Working Group to the draft guidelines in Part 2 of the Guide to Practice were of a technical or linguistic nature, he would not describe them now. With respect to terminology, the Working Group had, after some discussion, agreed on the use of the term “right” (to formulate a reservation, an objection, an acceptance, etc.) instead of the word “freedom” which appeared in the guidelines provisionally adopted by the Commission. The Working Group had considered that the term “right” was more neutral and more commonly used in the context. The Group had also agreed on the deletion of draft guideline 2.1.8, entitled “Procedure in case of manifestly impermissible reservations”, in view of the negative reactions of various Governments to that provision, which was regarded, *inter alia*, as purporting to confer on the depositary a role that went beyond its functions as described in the 1969 and 1986 Vienna Conventions.

10. With respect to the late formulation of objections to a reservation, addressed in the guidelines in section 2.3, the Working Group had agreed on the inclusion of a new draft guideline, 2.3.2, stating that an objection to a reservation that was formulated late must be made within 12 months of the acceptance, in accordance with draft guideline 2.3.1, of the late formulation of the reservation.

11. As to the withdrawal of reservations, the model clauses that accompanied draft guideline 2.5.8 as provisionally adopted by the Commission, on the effective date of the withdrawal of a reservation, had been deleted on the understanding that reference would be made to relevant examples in the commentary to that guideline.

12. The Working Group had considered it necessary to revise the definition of objections to reservations provided in draft guideline 2.6.1 in order to cover the various possible scenarios with regard to the effects that an objection might purport to produce. The wording finally retained was in line with that of draft guideline 4.3 (Effect of an objection to a valid reservation). The Working Group had also been of the view that draft guideline 2.6.2, which provided a definition of objections to the late formulation or widening of the scope of a reservation, could be deleted while retaining an appropriate explanation in the commentary to draft guideline 2.6.1 (Definition of objections to reservations). Furthermore, the Working Group had agreed on the deletion of draft guideline 2.6.14 on conditional objections, which addressed the case of an objection to a specific potential or future reservation; it had been felt, among other things, that the inclusion of such a provision might be a source of confusion for the reader of the Guide to Practice.

13. Finally, in response to a suggestion made by a number of States, the Working Group had decided to delete paragraph 2 of draft guideline 2.9.9, entitled “Silence with respect to an interpretative declaration”. The commentary would still provide some indications regarding the cases in which silence might be relevant in relation to the approval of an interpretative declaration.

14. With respect to Part 3 of the Guide to Practice, entitled “Permissibility of reservations and interpretative declarations”, the Working Group, after careful consideration, had agreed to retain the word “permissibility” (in French, “*validité substantielle*”) in the corresponding guidelines, since they referred to the substantive conditions for the validity of reservations, interpretative declarations and reactions thereto. In contrast, the term “validity” (in French, “*validité*”) was used in other guidelines in the Guide to Practice where reference was made to both the substantive and formal conditions of validity. The approach followed by the Working Group was in line with a decision adopted by the Commission at its fifty-eighth session with respect to the meaning that should be given to the terms “permissibility” and “validity” in the Guide to Practice.<sup>106</sup>

15. The Working Group had decided to renumber the guidelines that immediately followed draft guideline 3.1.5,

<sup>105</sup> See *Yearbook ... 2009*, vol. II (Part Two), pp. 82–83, paras. 78–79 and 82.

<sup>106</sup> *Yearbook ... 2006*, vol. II (Part Two), pp. 143–144, paragraphs (2) and (7) of the commentary to Part 3 of the Guide to Practice (Validity of reservations and interpretative declarations).

on the incompatibility of a reservation with the object and purpose of the treaty, in order to convey the idea that they were to be regarded as illustrations of draft guideline 3.1.5. The Working Group had also decided to simplify the wording of draft guideline 3.1.8, concerning reservations to a provision reflecting a customary rule, a provision that had been renumbered 3.1.5.3, by deleting the second paragraph, which indicated that such a reservation did not affect the binding nature of the customary norm. That element would be appropriately addressed in the commentary. Moreover, the Working Group had been of the view that the principle according to which a reservation could not exclude or modify the legal effect of a treaty in a manner contrary to a peremptory norm of general international law could be usefully addressed in the commentary, there being no need for a specific guideline on that point. Thus, the Working Group had agreed to delete draft guideline 3.1.9 (Reservations contrary to a rule of *jus cogens*) as provisionally adopted by the Commission.

16. Draft guideline 3.1.5.6, entitled “Reservations to treaties containing numerous interdependent rights and obligations”, was based on draft guideline 3.1.12, provisionally adopted by the Commission, which addressed the issue of reservations to general human rights treaties. The Working Group had been of the view that the substance of that guideline could be retained while avoiding a reference to the rather ambiguous notion of “general human rights treaties” and while making it clear that the issue addressed in the guideline related, in general terms, to the need to take into consideration the interdependence between the numerous rights and obligations set out in certain treaties in determining the compatibility of a reservation to such treaties with their object and purpose.

17. Draft guideline 3.2.3 (Consideration of the assessments of treaty monitoring bodies), as finalized by the Working Group, was a reformulation of the corresponding guideline that had been provisionally adopted by the Commission. However, the reference to a duty to cooperate with the treaty monitoring bodies had been omitted in the new text, which referred only to the consideration to be given by States and international organizations to an assessment by a monitoring body of the permissibility of a reservation.

18. Taking into consideration the negative views expressed, for various reasons, by many Governments about the soundness of draft guideline 3.3.3 concerning the effect of collective acceptance of an impermissible reservation (A/CN.4/639 and Add.1), as provisionally adopted by the Commission at the previous session, and also considering the concerns raised by the Human Rights Committee in relation to that provision, in view of its potential impact on the Committee’s capacity to make effective assessments of the permissibility of reservations, the Working Group had agreed to delete the draft guideline.

19. Following a suggestion made by the Special Rapporteur in response to the comments of States about the formulation of draft guideline 3.4.1, as provisionally adopted by the Commission, on the permissibility of the acceptance of a reservation,<sup>107</sup> as well as its relations with

other draft guidelines, the Working Group had modified the guideline so as to indicate that the acceptance of a reservation was not subject to any condition of permissibility. Concerning, in particular, the question of the acceptance of an impermissible reservation, it had been felt that the real issue to be addressed was not the permissibility of the acceptance itself, but rather the absence of effect of such acceptance, as clearly stated in draft guideline 4.5.2, paragraph 1.

20. With respect to draft guideline 3.5 on the permissibility of interpretative declarations, the Working Group had opted for the deletion of the reference to the incompatibility of an interpretative declaration with a peremptory norm of general international law. The majority of the members had been of the view that the issue of the effects, or absence of effects, of an interpretative declaration that was contrary to a peremptory norm of general international law could be adequately addressed in the commentary, there being no need to refer to such incompatibility as specific grounds for the impermissibility of the interpretative declaration.

21. Furthermore, concerning the permissibility of reactions to interpretative declarations, the Working Group had agreed to delete draft guidelines 3.6.1 (Permissibility of approvals of interpretative declarations) and 3.6.2 (Permissibility of oppositions to interpretative declarations), provisionally adopted by the Commission, on the understanding that the relevant explanations concerning the scenarios that were addressed therein would be given in the commentary to draft guideline 3.6.

22. Turning to Part 4 of the Guide to Practice, entitled “Legal effects of reservations and interpretative declarations”, he said that the Working Group had made some substantive changes to its provisions.

23. First, draft guideline 4.2.6, entitled “Interpretation of reservations”, was new. Following a suggestion made by the Special Rapporteur, the Working Group had agreed on the usefulness of including in the Guide to Practice a provision addressing that issue in general terms. The guideline read: “A reservation is to be interpreted in good faith, taking into account the intention of its author as reflected primarily in the text of the reservation, as well as the object and purpose of the treaty and the circumstances in which the reservation was formulated.” Those various elements, as well as the need to consider the unilateral character of a reservation for purposes of its interpretation, would be addressed in the commentary.

24. Draft guideline 4.3.2, concerning the effect of an objection to a reservation that was formulated late, also represented an addition to Part 4 of the Guide to Practice. However, the text of the guideline corresponded, with minor changes, to that of draft guideline 2.3.2 (Acceptance of the late formulation of a reservation) as provisionally adopted by the Commission.<sup>108</sup>

25. Draft guideline 4.4.3, concerning the absence of effect of a reservation on a peremptory norm of general

<sup>107</sup> *Yearbook ... 2009*, vol. II (Part Two), p. 83, para. 82.

<sup>108</sup> *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, pp. 189–190.

international law (*jus cogens*), had been supplemented by an additional paragraph that read: “A reservation cannot exclude or modify the legal effect of a treaty in a manner contrary to a peremptory norm of general international law.”

26. The Working Group had devoted special attention to draft guideline 4.5.3. The guideline dealt with the complex and sensitive issue of the status of the author of an invalid reservation in relation to the treaty, an issue addressed in draft guideline 4.5.2 as provisionally adopted by the Commission at its previous session. Based on a proposal made by the Special Rapporteur, the Working Group had decided to restructure and reformulate the provision in an attempt to reconcile, to the extent possible, the divergent views expressed by Governments on the issue (A/CN.4/639 and Add.1).

27. The text of draft guideline 4.5.3 as finalized by the Working Group comprised four paragraphs. Paragraph 1 stated the principle that it was the intention of the reserving State or international organization that determined the status of the author of an invalid reservation in relation to a treaty—in other words, whether the author of the invalid reservation should be considered to be bound by the treaty without the benefit of the reservation, or should not be considered to be bound by the treaty. Paragraph 2 enunciated the positive presumption according to which the author of an invalid reservation was considered a contracting State or a contracting organization without the benefit of the reservation unless it had expressed a contrary intention or such an intention was otherwise established. While paragraph 3 set out the principle that the author of an invalid reservation might express, at any time, its intention not to be bound by the treaty without the benefit of the reservation, paragraph 4—which was of a recommendatory nature—addressed the specific case in which a treaty monitoring body expressed the view that a reservation was invalid; in such a case, if the author of the invalid reservation intended not to be bound by the treaty without the benefit of the reservation, it should express its intention to that effect within a period of 12 months from the date on which the treaty monitoring body made its assessment regarding the invalidity of the reservation. A view had been expressed that, because of its complexity and the sensitivity of the issues that it raised, draft guideline 4.5.3 deserved further consideration by the Commission.

28. Turning to Part 5 of the Guide to Practice, concerning the succession of States, he said that no specific drafting suggestions had been made by Governments on the subject. That said, the English text of the title of Part 5 and, as appropriate, of section titles had been slightly modified by the Working Group so as to refer to reservations, acceptances of reservations, objections to reservations and interpretative declarations “in cases of succession of States” (and no longer “in the case of”). It had been felt that the use of the plural would better reflect the diversity of cases of succession that were covered in Part 5.

29. In draft guideline 5.1.2 (Uniting or separation of States), paragraph 2, the Working Group had inserted a reference to the widening by the successor State of the scope of a reservation formulated by the predecessor State. It had appeared logical to the Working Group that, in those

cases in which the right of the successor State to formulate a new reservation was to be excluded, the widening by the successor State of a reservation that had been formulated by the predecessor State should likewise be excluded. Furthermore, the Working Group had replaced draft guideline 5.1.4, which had referred to the “Establishment of new reservations formulated by a successor State”, by a new draft guideline 5.4 dealing, in more general terms, with the legal effects of reservations, acceptances of reservations and objections to reservations in cases of succession of States. The draft guidelines in section 5.1 had been renumbered accordingly and the old section 5.4 had become section 5.5 (Interpretative declarations in cases of succession of States). The other modifications introduced by the Working Group to the text of the guidelines of Part 5 were of a purely linguistic or technical nature.

30. He expressed the hope that the Commission would be in a position to take note of the report he had just made.

31. Mr. PELLET (Special Rapporteur) expressed his deep gratitude to the members of the Working Group, most of whom had played along with him on what had been, not a second reading, but the finalization of the draft guidelines. His special thanks went to Ms. Escobar Hernández, Mr. Fomba, Mr. Gaja, Mr. Huang for part of the time, Mr. Kamto, Mr. McRae, Mr. Nolte, Mr. Perera, Mr. Petrič, Mr. Singh and Sir Michael Wood, who had all taken a very active part in the Working Group. He could not fail to thank the secretariat, in particular the ever-helpful Mr. Buzzini, as well as Mr. Mikulka and Mr. Korontzis. He also wished to commend his assistants, past and present, for their continuing hard work on the commentaries.

32. Lastly, he thanked Mr. Vázquez-Bermúdez, who had successfully steered the Working Group through its discussions with an iron hand in a velvet glove, enabling it to accomplish the feat of adopting the text by consensus. The Commission would have the opportunity to consider the 800 pages of commentaries to the guidelines during the second part of the session.

33. Mr. DUGARD said that it was his understanding that the Commission still had to consider some guidelines and asked at what stage of its work that would be done.

34. Mr. VÁZQUEZ-BERMÚDEZ (Chairperson of the Working Group on reservations to treaties) said that the Working Group had fulfilled its mandate, namely to finalize the draft guidelines that were to become a Guide to Practice. The only reference he had made to a draft guideline that might require further consideration (draft guideline 4.5.3 (Status of the author of an invalid reservation in relation to the treaty)) reflected a view expressed in the Working Group that the guideline should be considered in greater depth. It was simply the expression of an opinion, and the draft guideline had actually been adopted by the Working Group.

35. Mr. PELLET (Special Rapporteur), replying to Mr. Dugard, confirmed that the Working Group had fulfilled its mandate. All the texts had been adopted by consensus, with the exception of draft guideline 4.5.3, which had nevertheless been adopted by the Working Group. During the second part of the session, the members

of the Commission would again take up the guidelines, to be accompanied then by the commentaries, and adopt them paragraph by paragraph.

### Organization of the work of the session (*continued*)

[Agenda item 1]

36. Mr. MELESCANU (Chairperson of the Drafting Committee) read out the names of the members of the Commission who were to participate in the Drafting Committee on expulsion of aliens: Mr. Comissário Afonso, Ms. Escobar Hernández, Mr. Fomba, Mr. Galicki, Mr. Hmoud, Mr. McRae, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vargas Carreño, Mr. Vasciannie, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Sir Michael Wood and Mr. Perera, Rapporteur (*ex officio*).

*The meeting rose at 10.45 a.m.*

## 3091st MEETING

*Tuesday, 24 May 2011, at 10.05 a.m.*

*Chairperson:* Ms. Marie G. JACOBSSON

*Present:* Mr. Caffisch, Mr. Candiotti, Mr. Comissário Afonso, Mr. Dugard, Ms. Escobar Hernández, Mr. Fomba, Mr. Gaja, Mr. Galicki, Mr. Hassouna, Mr. Hmoud, Mr. Kamto, Mr. McRae, Mr. Melescanu, Mr. Murase, Mr. Niehaus, Mr. Nolte, Mr. Perera, Mr. Saboia, Mr. Singh, Mr. Valencia-Ospina, Mr. Vargas Carreño, Mr. Vasciannie, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Sir Michael Wood.

### Expulsion of aliens<sup>109</sup> (A/CN.4/638, sect. B, A/CN.4/642<sup>110</sup>)

[Agenda item 5]

SIXTH REPORT OF THE SPECIAL RAPPORTEUR<sup>111</sup>

1. The CHAIRPERSON invited the Commission to resume its consideration of the topic “Expulsion of aliens” and drew attention to document A/CN.4/628 and Add.1,<sup>112</sup> containing comments and information received from Governments.

2. Mr. KAMTO (Special Rapporteur), introducing the second addendum to his sixth report on expulsion of aliens, said that it contained the last of the draft articles

<sup>109</sup> For the history of the study of the topic by the Commission, see *Yearbook ... 2011*, vol. II (Part Two), chap. VIII, sect. A, paras. 204–210.

<sup>110</sup> Reproduced in *Yearbook ... 2011*, vol. II (Part One).

<sup>111</sup> At its sixty-second session, the Commission began the study of the sixth report of the Special Rapporteur by chapters I to IV, section C; it continued at the current session with the study of chapters IV, section D, to VIII, reproduced in the second addendum to the sixth report (*Yearbook ... 2010*, vol. II (Part One), document A/CN.4/625 and Add.1–2).

<sup>112</sup> Reproduced in *Yearbook ... 2010*, vol. II (Part One).

that he intended to submit to the Commission. The second addendum was a continuation of the first and comprised chapters IV [chap. III],<sup>113</sup> section D, to VIII [chap. VII]. Some of the issues covered in those chapters had already been touched on during the discussion of the first addendum.<sup>114</sup> At that time, concerns had been expressed about the basis in international law of the rules being proposed and the study of State practice. It was to be hoped that the text now before the Commission would allay those concerns.

3. The first issue discussed in the second addendum was the implementation of an expulsion decision, which could be done voluntarily or forcibly. When forcible implementation took place, the question of the conditions for the return of the expelled person to the State of destination arose. The international conventions on civil aviation provided for a number of auxiliary measures to ensure orderly return, the obligation to respect the fundamental rights of the expellee during the return journey being of paramount importance. In paragraphs 405 [para. 3] to 415 [para. 13] of section D of chapter IV [chap. III] of his sixth report, he had endeavoured to demonstrate that proposition by reference to the Twenty Guidelines on Forced Return adopted by the Committee of Ministers of the Council of Europe in May 2005,<sup>115</sup> Annex 9 to the Convention on International Civil Aviation of 7 December 1944<sup>116</sup> and the 1963 Convention on offences and certain other acts committed on board aircraft. In the light of his analysis of those texts and of a number of legal writings, he was proposing in paragraph 416 [para. 14] of section D of chapter IV [chap. III] of his report draft article D1, entitled “Return to the receiving State of the alien being expelled”, which read:

“1. The expelling State shall encourage the alien being expelled to comply with the expulsion decision voluntarily.

“2. In cases of forcible implementation of an expulsion decision, the expelling State shall take the necessary measures to ensure, as far as possible, the orderly transportation to the receiving State of the alien being expelled, in accordance with the rules of international law, in particular those relating to air travel.

“3. In all cases, the expelling State shall give the alien being expelled appropriate notice to prepare for his/her departure, unless there is reason to believe that the alien in question could abscond during such a period.”

<sup>113</sup> The numbers in brackets refer to the numbering used in the mimeographed version of the second addendum to the sixth report of the Special Rapporteur (A/CN.4/625/Add.2), available from the Commission’s website. The chapters, paragraphs and footnotes were renumbered for publication in *Yearbook ... 2010*, vol. II (Part One).

<sup>114</sup> See *Yearbook ... 2010*, vol. II (Part Two), chap. V, paras. 135–183.

<sup>115</sup> Document CM(2005)40 final, of 9 May 2005. See also the Ad hoc Committee of Experts on Legal Aspects of Territorial Asylum, Refugees and Stateless Persons, Comments on the Twenty Guidelines on Forced Return (925th meeting), document CM(2005)40-Add.

<sup>116</sup> International Civil Aviation Organization, *Annex 9 to the Convention on International Civil Aviation, Facilitation*, 12th ed., July 2005. The twelfth edition of Annex 9 contains important changes, including the reinforcement of travel document security and the fight against illegal migration (available from [www.icao.int/safety/airnavigation/NationalityMarks/annexes\\_booklet\\_en.pdf](http://www.icao.int/safety/airnavigation/NationalityMarks/annexes_booklet_en.pdf)).