

Document:-
A/CN.4/3237

Summary record of the 3237th meeting

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

Extract from the Yearbook of the International Law Commission:-
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Commentary to draft article 14 (Prohibition of discrimination)

Paragraph (1)

34. Mr. MURPHY proposed the replacement, in the first sentence, of the phrase “the obligation not to discriminate” with the words “the obligation to respect rights without discrimination”.

Paragraph (1), as amended, was adopted.

Paragraphs (2) and (3)

Paragraphs (2) and (3) were adopted.

Paragraph (4)

35. Mr. NOLTE said that the verbs should be in the present tense in the English version.

36. Mr. VÁZQUEZ-BERMÚDEZ, Mr. SABOIA and Sir Michael WOOD were of the opinion that it was necessary to simplify paragraph (4), as it was too long and complicated.

37. The CHAIRPERSON asked Mr. Vázquez-Bermúdez to draft a proposal for the following meeting.

Paragraph (4) was left in abeyance.

The meeting rose at 6 p.m.

3237th MEETING

Tuesday, 5 August 2014, at 10.05 a.m.

Chairperson: Mr. Kirill GEVORGIAN

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

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

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

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

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

1. The CHAIRPERSON invited the Commission to resume its consideration of chapter IV of the draft report and drew attention to the portion of the chapter contained in document A/CN.4/L.837/Add.1/Rev.1.

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

Paragraphs (5) and (6)

2. Mr. NOLTE said that, in the context of possible exceptions to the obligation not to discriminate based on nationality, reference was made, in the second sentence of paragraph (5), to “associations of States such as the European Union”. That raised the question of the compatibility of the regime of freedom of movement established by the European Union with the principle of non-discrimination. The second sentence of paragraph (6) was clearer in that regard, since it stated that, under the draft article, States retained the possibility to establish special legal regimes based on the principle of freedom of movement of citizens. Therefore, and in order to avoid unnecessary repetition, he proposed that the second sentence of paragraph (5) be deleted and that paragraph (5) be merged with paragraph (6).

3. Mr. FORTEAU supported Mr. Nolte’s proposal. If that proposal were accepted, the words *Dès lors*, in the first sentence of the French text of paragraph (6), should be deleted.

4. Sir Michael WOOD agreed with the suggestions just made. In order to give authority to the proposition, it might be useful to add a footnote referring to the ruling of the European Court of Human Rights in *Moustaquim v. Belgium*.

5. Mr. SABOIA said that, if the first sentence of paragraph (5) were simply merged with paragraph (6), the Commission might appear to be singling out nationality as a permissible basis for discrimination, which would be incompatible with the general prohibition of discrimination on grounds of nationality. It would be helpful if a different formulation could be found.

6. Mr. FORTEAU proposed that paragraph (5) be deleted and that the beginning of the second sentence of paragraph (6) read: “On the other hand, it also preserves the possible exceptions to the obligation not to discriminate based on nationality and, in particular, the possibility for States to establish amongst themselves special regimes ...” [*“D’autre part, elle préserve les possibles exceptions à l’obligation de non-discrimination qui seraient fondées sur la nationalité et, en particulier, la possibilité pour des États d’établir entre eux des régimes juridiques spéciaux ...”*].

7. Sir Michael WOOD suggested replacing the word “nationality” with the expression “national origin”, which was used in all the human rights instruments.

8. Mr. MURPHY agreed with that proposal. He suggested that the sentence proposed by Mr. Forteau be amended accordingly and, for sake of readability, be split in two, so that it would read: “On the other hand, it also preserves the possible exceptions to the obligation not to discriminate based on national origin. In particular, it preserves the possibility for States to establish among themselves special legal regimes based on the principle of freedom of movement for their citizens such as the regime of the European Union.”

9. The CHAIRPERSON said that he took it that the Commission wished to delete paragraph (5) and adopt paragraph (6) as amended by Mr. Forteau and Mr. Murphy.

It was so decided.

Paragraph (6), as amended, was adopted.

Commentary to draft article 15 (Vulnerable persons)

Paragraphs (1) to (4)

Paragraphs (1) to (4) were adopted.

The commentary to draft article 15 was adopted.

CHAPTER II. PROTECTION REQUIRED IN THE EXPELLING STATE

Commentary to draft article 16 (Obligation to protect the right to life of an alien subject to expulsion)

10. Mr. FORTEAU suggested that the order of citation of instruments in the last footnote of the commentary to draft article 16 and the first footnote of paragraph (1) of the commentary to draft article 17 should be varied so as to avoid systematically citing the European Convention on Human Rights first, before the human rights instruments of other regions.

11. Mr. TLADI proposed the deletion of the final sentence of the commentary to draft article 16, since there was no connection between the right to life and the provision of health services free of charge.

12. Mr. KAMTO (Special Rapporteur) said that when an issue was mentioned in the commentary, it was often in response to specific points raised by States in their comments. The Commission should keep that in mind when deciding whether to delete a given sentence.

13. After a discussion in which Mr. KITTICHAISAREE, Sir Michael WOOD, Mr. SABOIA, Mr. MURPHY and Mr. HMOUD took part, the CHAIRPERSON said that he took it that the Commission wished to delete the final sentence of the commentary.

It was so decided.

The commentary to article 16 as a whole, as amended, was adopted.

Commentary to draft article 17 (Prohibition of torture or cruel, inhuman or degrading treatment or punishment)

Paragraph (1)

14. Mr. MURPHY proposed that the final sentence of paragraph (1) of the commentary to draft article 24, which cited the *Lori Berenson-Mejía v. Peru* case of the Inter-American Court of Human Rights, be moved to the end of paragraph (1) of the commentary to draft article 17, since the subject matter of the case was more directly relevant to draft article 17 than to draft article 24.

15. Mr. SABOIA said that he agreed with Mr. Murphy's proposal, but that the mention of *Lori Berenson-Mejía v. Peru* in the commentary to draft article 17 should not

preclude a reference to that case in the commentary to draft article 24.

16. Mr. KAMTO (Special Rapporteur) said that he was not entirely in favour of moving the final sentence of paragraph (1) of the commentary to draft article 24 to the paragraph under consideration. The reason for the inclusion of the reference to *Lori Berenson-Mejía v. Peru* in the commentary to draft article 24 was to show that there was a trend in international jurisprudence towards an approach that did not make a distinction between torture, on the one hand, and cruel, inhuman or degrading treatment or punishment, on the other. The absence of any citation of the judgment in that case in the commentary to draft article 24 would undermine the Commission's arguments in favour of broadening the scope of the protection afforded by article 3 of the Convention against torture and other cruel, inhuman or degrading treatment or punishment so as to cover not only torture, but also other cruel, inhuman or degrading treatment or punishment. He proposed that a footnote be inserted in paragraph (1) of the commentary to draft article 17 referring readers to the citation in paragraph (1) of the commentary to draft article 24.

17. Mr. KITTICHAISAREE said that he agreed with Mr. Murphy's proposal, since the inclusion of a citation from the *Lori Berenson-Mejía v. Peru* case would complement the reference in paragraph (1) to the *Ahmadou Sadio Diallo* case, which dealt specifically with the prohibition of inhuman or degrading treatment. However, that did not prevent the Commission from also referring to *Lori Berenson-Mejía v. Peru* in the commentary to draft article 24.

18. Mr. KAMTO (Special Rapporteur) said that he wished to place on record the fact that in draft article 24, the Commission had chosen to adopt a broad approach and to include within the scope of the article situations in which there were substantial grounds for believing that an alien subject to expulsion would be subjected to cruel, inhuman or degrading treatment or punishment. It was therefore important, in the commentary to draft article 24, to demonstrate the basis in international law for that choice, and it was with that in mind that he wished to cite *Lori Berenson-Mejía v. Peru*.

19. The CHAIRPERSON said that he took it that the Commission wished to include a reference in the last footnote to paragraph (1) of the commentary to draft article 17 directing readers to paragraph (1) of the commentary to draft article 24.

It was so decided.

Paragraph (2)

20. Sir Michael WOOD said the wording of the reference to draft article 24 in the second sentence did not reflect the wording of either the title or the text of that article. He therefore proposed that the sentence be amended to read: "On the other hand, the obligation not to expel an alien to a State where he or she may be subjected to such treatment or punishment is set out in draft article 24 below."

Paragraph (2), as amended, was adopted.

Paragraph (3)

21. Mr. PARK said that the reference to “relevant monitoring bodies” in the final sentence was imprecise. Since the commentary to draft article 24 mentioned an international body, the Committee against Torture, he suggested that the phrase in question read: “relevant international monitoring bodies” (*organes internationaux compétents de contrôle*).

Paragraph (3), as amended, was adopted.

The commentary to draft article 17 as a whole, as amended, was adopted.

Commentary to draft article 18 (Obligation to respect the right to family life)

Paragraph (1)

22. Sir Michael WOOD, noting that the national legislation mentioned in the footnote had been passed prior to the drafting of the Secretariat memorandum,²⁹² suggested that the list of legislation be replaced with a reference to the relevant paragraphs or pages of the memorandum. The Commission would not then be purporting to provide a comprehensive or up-to-date list of the legislation of many different countries.

23. After a discussion in which Mr. ŠTURMA, Mr. FORTEAU, Ms. ESCOBAR HERNÁNDEZ, Ms. JACOBSON and Mr. NOLTE participated, Mr. KAMTO (Special Rapporteur) said that the references to national legislation should be retained. Although the Secretariat memorandum could be consulted on the Commission’s website, hard copies were not available in bookshops or libraries, which meant that it was not universally accessible. The footnote should therefore provide up-to-date examples of national legislation, supplemented with a reference to the Secretariat memorandum.

Paragraph (1) was adopted, subject to that amendment to the footnote.

Paragraphs (2) and (3)

Paragraphs (2) and (3) were adopted.

Paragraph (4)

24. Sir Michael WOOD said that, in the first sentence, the term “obligation” would be more apposite than the word “need”.

Paragraph (4), as amended, was adopted.

Paragraph (5)

25. Mr. NOLTE proposed that, in the first sentence, the term “case law” be transposed in order to replace the word “rules”, used earlier in the same sentence, as courts did not establish rules, but decided cases.

Paragraph (5), as amended, was adopted.

²⁹² Document A/CN.4/565 and Corr.1, mimeographed; available from the Commission’s website, documents of the fifty-eighth session (2006). The final text will be reproduced in an addendum to *Yearbook ... 2006*, vol. II (Part One).

Paragraph (6)

Paragraph (6) was adopted.

The commentary to draft article 18 as a whole, as amended, was adopted.

Commentary to draft article 19 (Detention of an alien for the purpose of expulsion)

Paragraphs (1) to (8)

Paragraphs (1) to (8) were adopted.

Paragraph (9)

26. Sir Michael WOOD drew attention to the fact that a sentence had been omitted in the English version. The missing sentence, which was the second sentence in the French text, should read: “The implementation of this principle is without prejudice to the right of the expelling State to apply to the alien subject to expulsion its criminal law on offences committed by that person.”

Paragraph (9) was adopted with that correction to the English text.

The commentary to draft article 19 as a whole, as amended, was adopted.

Commentary to draft article 20 (Protection of the property of an alien subject to expulsion)

Paragraphs (1) and (2)

Paragraphs (1) and (2) were adopted.

Paragraph (3)

27. Mr. FORTEAU said that the phrase “before leaving the territory of that State” (*avant de quitter le territoire dudit État*) did not appear in the resolution adopted by the Institute of International Law in 1892.²⁹³ It should therefore be deleted.

28. Mr. KAMTO (Special Rapporteur) said that it was only logical that a person who was subject to expulsion would have to settle his or her affairs before leaving the territory of the expelling State. However, if Mr. Forteau wished to keep closely to the wording of the resolution in question, he would have no objection to the deletion of the phrase.

Paragraph (3), as amended, was adopted.

Paragraphs (4) to (6)

Paragraphs (4) to (6) were adopted.

The commentary to draft article 20 as a whole, as amended, was adopted.

²⁹³ “Règles internationales sur l’admission et l’expulsion des étrangers”, resolution of the Institute of International Law, adopted on 9 September 1892, in H. Wehberg (ed.), *Tableau général des résolutions (1873–1956)*, Basel, Éditions juridiques et sociologiques, 1957, p. 51 *et seq.*

CHAPTER III. *Protection in relation to the State of destination*

Commentary to draft article 21 (Departure to the State of destination)

Paragraph (1)

29. Mr. NOLTE proposed the deletion of the words “in general” in the first sentence.

Paragraph (1), as amended, was adopted.

Paragraphs (2) to (6)

Paragraphs (2) to (6) were adopted.

The commentary to draft article 21 as a whole, as amended, was adopted.

Commentary to draft article 22 (State of destination of aliens subject to expulsion)

Paragraphs (1) to (5)

Paragraphs (1) to (5) were adopted.

The commentary to draft article 22 was adopted.

Commentary to draft article 23 (Obligation not to expel an alien to a State where his or her life would be threatened)

30. Sir Michael WOOD said that in paragraph 2 of the draft article itself, the English and French texts diverged. The French text spoke of a State that did not *apply* the death penalty (*n’applique pas*), whereas the English text spoke of a State that did not *have* the death penalty.

31. Ms. ESCOBAR HERNÁNDEZ and the CHAIRPERSON, speaking as a member of the Commission, confirmed that the same was true of the Spanish and Russian versions of the text.

32. Mr. TLADI (Rapporteur) asked the Chairperson of the Drafting Committee to recapitulate the lengthy discussion of that draft article.

33. Mr. SABOIA (Chairperson of the Drafting Committee) said that draft paragraph 2 concerned the specific prohibition of expelling an alien to a State of destination where his or her life would be threatened by the imposition or execution of the death penalty, unless an assurance had previously been obtained that the death penalty would not be imposed or, if already imposed, would not be carried out. It covered both States that had never had, or had abolished, the death penalty, and States that non longer applied it. The language of paragraph 2 had been refined in order to make it correspond to the standard set in the case law that had inspired it. The new wording indicated that an expelling State that did not have the death penalty must not expel an alien to a State where he or she had been sentenced to the death penalty, or where there was a real risk that he or she would receive that sentence.

34. The CHAIRPERSON said that he took it that the Commission wished to align the English, Spanish and Russian versions on the French text of draft article 23.

It was so decided.

Paragraphs (1) to (4)

Paragraphs (1) to (4) were adopted.

The commentary to draft article 23 was adopted.

Commentary to draft article 24 (Obligation not to expel an alien to a State where he or she may be subjected to torture or to cruel, inhuman or degrading treatment or punishment)

Paragraph (1)

35. Mr. FORTEAU said that in the second sentence, the term *non-refoulement* should be replaced with “non-expulsion”.

36. Mr. KAMTO (Special Rapporteur) said that the full text of paragraph 100 of the decision of the Inter-American Court of Human Rights in the case of *Lori Berenson-Mejía v. Peru* should be inserted at the end of that paragraph.

37. Sir Michael WOOD, supported by Mr. Forteau, queried the third sentence, which described the Committee against Torture as having “also taken [a] restrictive approach”. The Committee against Torture merely applied article 3 of the Convention against torture and other cruel, inhuman or degrading treatment or punishment, which prohibited expulsion to States where there was a danger of torture. It did not extend that prohibition to cover expulsion to States where there was a danger of cruel, inhuman or degrading treatment or punishment. He therefore suggested the deletion of the third sentence.

Paragraph (1), as amended, was adopted.

Paragraphs (2) and (3)

Paragraphs (2) and (3) were adopted.

Paragraph (4)

38. Mr. NOLTE said that, in the penultimate section of that paragraph, the phrase “the said provision may also cover cases” would be a more accurate reflection of the wording of the decision of the European Court of Human Rights quoted immediately thereafter.

39. Mr. FORTEAU said that the French version would then read *pouvait aussi trouver à s’appliquer*.

Paragraph (4), as amended, was adopted.

The commentary to draft article 24 as a whole, as amended, was adopted.

CHAPTER IV. PROTECTION IN THE TRANSIT STATE

Commentary to draft article 25 (Protection in the transit State of the human rights of an alien subject to expulsion)

The commentary to draft article 25 was adopted.

PART FOUR. SPECIFIC PROCEDURAL RULES

Commentary to draft article 26 (Procedural rights of aliens subject to expulsion)

Paragraphs (1) to (4)

Paragraphs (1) to (4) were adopted.

Paragraph (5)

40. Mr. NOLTE suggested that, in the reference to article 1 of Protocol No. 7 to the “Convention for the Protection of Human Rights and Fundamental Freedoms”, the title be altered to the “European Convention on Human Rights”, in line with the Commission’s usual practice.

Paragraph (5), as amended, was adopted.

Paragraphs (6) to (10)

Paragraphs (6) to (10) were adopted.

Paragraph (11)

41. Mr. NOLTE suggested that, in the penultimate sentence of the English version of the text, the word “specified”, before the phrase “minimum period of time”, be deleted.

42. Mr. KAMTO (Special Rapporteur) agreed with that suggestion. The French text conveyed the correct sense and other language versions should be aligned with it.

On that understanding, paragraph (11) was adopted.

The commentary to draft article 26 as a whole, as amended, was adopted.

Commentary to draft article 27 (Suspensive effect of an appeal against an expulsion decision)

Paragraphs (1) and (2)

43. Mr. NOLTE, noting that draft article 27 was *lex ferenda*, questioned whether “recognition” was an appropriate term in that context, as it presupposed that something already existed in law. He suggested that, in the first sentence of paragraph (2), it be altered to “formulation”. He also suggested some minor editorial amendments to paragraphs (1) and (2).

44. Mr. KAMTO (Special Rapporteur) expressed support for the suggestion to replace references to “recognition” with another term. In French, it would be best rendered with the verb *énoncer*.

On that understanding, paragraphs (1) and (2) were adopted.

Paragraph (3)

45. Ms. ESCOBAR HERNÁNDEZ requested the inclusion of a sentence at the end of the last footnote to the paragraph to indicate that the arguments referred to in paragraph (3) of the commentary had been restated by the European Court of Human Rights on 22 April 2014 in its judgment in the case of *A. C. and Others v. Spain*.

Paragraph (3), as amended, was adopted, subject to the inclusion of a sentence as proposed by Ms. Escobar Hernández.

Paragraph (4)

Paragraph (4) was adopted.

The commentary to draft article 27 as a whole, as amended, was adopted.

Commentary to draft article 28 (International procedures for individual recourse)

The commentary to draft article 28 was adopted.

PART FIVE. LEGAL CONSEQUENCES OF EXPULSION

Commentary to draft article 29 (Readmission to the expelling State)

Paragraph (1)

46. Mr. NOLTE, reiterating the concern that he had expressed with regard to the commentary to draft article 27, suggested that paragraph (1) be amended to reflect that concern by replacing “recognizes” in the first sentence with a different verb and deleting “recognition of” in the second sentence.

47. Mr. KAMTO (Special Rapporteur) agreed with Mr. Nolte’s first suggested amendment, but not with his second. The second sentence of paragraph (1) did not state the Commission’s views; rather, it referred to domestic legislation. As such, it was appropriate to refer to the fact that a particular right was recognized.

48. Mr. NOLTE pointed out that the sentence in question referred to the treatment of the right not only in domestic legislation, but also at the international level. He doubted whether a simple recommendation by the Inter-American Commission on Human Rights, cited in the last footnote to the paragraph, could be taken as recognizing a general right.

49. Mr. VÁZQUEZ-BERMÚDEZ said that, in accordance with its statute, the Inter-American Commission could make only recommendations. The use of the term “recommend” in the passage cited in that footnote was standard phrasing and said nothing about the relative importance of its content.

50. Mr. NOLTE suggested that the words “recognition of” in the second sentence of paragraph (1) be left unaltered, but that the phrase “and even at the international level” be changed to read “and contemplated even at the international level”.

51. Mr. KAMTO (Special Rapporteur) said that the word “contemplated” (*envisagée*) did not fit the context. Several international human rights bodies, including the Human Rights Council and the African Commission on Human and Peoples’ Rights, issued findings that were termed “recommendations”, but with which States were nonetheless expected to comply. The Commission was at risk of denying the international reality by unduly weakening the paragraph in question. While he agreed with the suggested change to the first sentence, the rest of the paragraph should be left unaltered.

52. Mr. TLADI expressed support for the Special Rapporteur’s view. Paragraph (1) already contained a number of qualifiers and nothing should be added to dilute it further.

53. Mr. SABOIA, echoing Mr. Tladi’s comments, endorsed the point made by Mr. Vázquez-Bermúdez. The Inter-American Commission was entitled to refer cases of non-compliance with its recommendations to the

Inter-American Court of Human Rights, which showed that its competence lay somewhere between that of a purely declaratory body and a judicial body.

54. Mr. MURPHY agreed with Mr. Nolte. The Inter-American Commission had no judicial function with respect to States that were not parties to the American Convention on Human Rights: “Pact of San José, Costa Rica”, or were not covered by the jurisdiction of the Inter-American Court. While acknowledging Mr. Tladi’s point, he suggested that the text would present a fairer picture of the Inter-American Commission’s recommendation if the word “contemplated” were inserted in paragraph (1), as suggested by Mr. Nolte, and the words “in effect recognized the existence of this right” and “in that it” were deleted from the last footnote to the paragraph.

55. Mr. VÁZQUEZ-BERMÚDEZ, expressing support for the views of the Special Rapporteur, said that, while a few States had not become parties to the American Convention on Human Rights: “Pact of San José, Costa Rica”, many more had. The Inter-American Court, created under the Charter of the Organization of American States, dealt with all OAS States. Although the Inter-American Commission technically issued “recommendations”, many countries recognized them as binding.

56. Sir Michael WOOD suggested that deleting the words “recognition of” from paragraph (1) but leaving the footnote in question unchanged might strike a fair balance among the views expressed. He also suggested a minor editorial amendment to the English version of paragraph (1).

57. Mr. KAMTO (Special Rapporteur) said that it was impossible to reflect all the views expressed during the discussion; the words “may be discerned” in paragraph (1) were sufficient to allay the various concerns expressed.

58. Mr. SABOIA agreed with the Special Rapporteur and expressed support for Sir Michael’s suggestions.

59. The CHAIRPERSON took it that the Commission agreed to amend paragraph (1) as suggested by Sir Michael, but to leave the second footnote to the paragraph unaltered.

On that understanding, paragraph (1), as amended, was adopted.

Paragraphs (2) and (3)

Paragraphs (2) and (3) were adopted.

Paragraph (4)

60. Mr. NOLTE suggested that, in the first sentence, the word “recognized” be altered to reflect the agreement reached on the wording of paragraph (1) of the commentary to draft article 29.

61. Sir Michael WOOD proposed that the phrase “is recognized” be changed to “applies”.

Paragraph (4), as thus amended, was adopted.

Paragraph (5)

62. Mr. NOLTE suggested that the phrase “a previous determination” be changed to “a previous binding determination”, in line with paragraph (4) of the commentary to draft article 29.

Paragraph (5), as amended, was adopted.

Paragraph (6)

63. Mr. FORTEAU said that, in the fourth sentence of the French version of the text, the words *mais qui s’est révélée illicite* should be inserted after *préalablement adoptée*.

Paragraph (6), as amended, was adopted.

Paragraph (7)

Paragraph (7) was adopted.

The commentary to draft article 29 as a whole, as amended, was adopted.

Commentary to draft article 30 (Responsibility of States in cases of unlawful expulsion)

Paragraphs (1) and (2)

Paragraphs (1) and (2) were adopted.

Paragraph (3)

64. Mr. NOLTE reiterated his view that, even if findings of the Inter-American Commission on Human Rights were assumed to be binding, those referred to in paragraph (3) did not purport to formulate any general right; rather, they were recommendations that a particular person be readmitted to a State in particular circumstances. Interpreting them to imply recognition of a right of readmission would be going too far.

Paragraph (3) was adopted.

Paragraphs (4) to (6)

Paragraphs (4) to (6) were adopted.

The commentary to draft article 30 was adopted.

Commentary to draft article 31 (Diplomatic protection)

Paragraphs (1) and (2)

Paragraphs (1) and (2) were adopted.

The commentary to draft article 31 was adopted.

65. Mr. CANDIOTI said that it would be useful to include a preamble to the text of the draft articles, as the Commission had often done previously. It should be user-friendly and resemble the preambles found in treaties, covering the objectives and basic principles of the project. The Special Rapporteur had already drafted a text, which should be circulated for discussion.

66. Mr. KAMTO (Special Rapporteur), echoing the views expressed by Mr. Candiotti, confirmed that a draft preamble had been submitted to the Secretariat at the end of the first part of the Commission’s session.

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

The meeting rose at 1 p.m.

3238th MEETING

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

Chairperson: Mr. Kirill GEVORGIAN

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

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

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

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

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

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

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

Paragraph (4)

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

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

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

Paragraph (4), as amended, was adopted.

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

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

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

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

Paragraph 8 (*concluded*)

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

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

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

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

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

Paragraph 8 was adopted.

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

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

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

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

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

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

* Resumed from the 3235th meeting.