

DRAFTING COMMITTEE

Progress report on the topic “Expulsion of Aliens”

24 July 2009

Mr. Chairman,

I will give you a short progress report on the topic “Expulsion of Aliens”.

It will be recalled that, in 2007, the Commission had referred draft articles 1 and 2 (proposed by the Special Rapporteur in his second report and subsequently revised in the light of the debate) as well as draft articles 3 to 7 (contained in the Special Rapporteur’s third report) to the Drafting Committee.

In 2007, the Drafting Committee had provisionally adopted draft articles 1 and 2 dealing, respectively, with “Scope” and “Use of terms”, while recognizing the need to revisit certain questions at a later stage. Last year, the Drafting Committee had agreed to add a new paragraph 2 to draft article 1 on “Scope”, thereby excluding from the scope of the draft articles those aliens whose departure from the territory of a State may be governed by special rules of international law, namely diplomats or consular or other officials of a foreign State, as well as agents of an international organization. Last year the Drafting Committee was also able to provisionally adopt draft article 3, entitled “Right of expulsion”, which is largely based on the text that had been proposed by the Special Rapporteur.

Mr. Chairman,

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

This year the Drafting Committee held 8 meetings on the topic on 6 to 8 and on 11 to 14 May 2009. Following the practice of the past two years in respect of this topic, the Drafting Committee decided that the draft articles provisionally worked out so far would remain in the Drafting Committee until the Committee completed its work on a few more draft articles. I would like to thank the Special Rapporteur, Mr. Maurice

Kamto, for his cooperation and guidance to the Committee. I also want to thank the members of the Drafting Committee for their active participation and contributions. Furthermore, I wish to thank the Secretariat for its valuable assistance.

At the present session, the Drafting Committee considered four draft articles, namely draft articles 4 to 7.

So far, the Drafting Committee has not been able to reach agreement on a text of draft article 4 on “Non-expulsion by a State of its own nationals”, due to the divergent views among the members on whether certain exceptions to the prohibition of the expulsion of nationals should or could be envisaged.

The Drafting Committee was able to provisionally adopt draft article 5 on “Non-expulsion of refugees”, draft article 6 on “Non-expulsion of stateless persons” and draft article 7 on the “Prohibition of collective expulsions”.

Draft articles 5 and 6, as provisionally adopted by the Drafting Committee, are largely based on the relevant provisions of, respectively, the 1951 Convention relating to the Status of Refugees and the 1954 Convention relating to the Status of Stateless Persons. However, paragraph 2 of draft article 5 purports to extend the relevant protection to any refugee who, although unlawfully present in the territory of the receiving State, has applied for recognition of refugee status, while such application is pending.

Draft article 7, as provisionally adopted by the Drafting Committee, is based on the text originally proposed by the Special Rapporteur. However, paragraph 4, dealing with collective expulsions in times of armed conflict, is partially based on a revised text that was proposed by the Special Rapporteur, in the light of the plenary debate in 2007, in order to narrow the possible exceptions to the prohibition of collective expulsion in times of armed conflict. The Drafting Committee decided to provisionally adopt this paragraph, while indicating in a footnote that it was subject to review as regards its relations to international humanitarian law.

This completes my progress report.

Thank you, Mr. Chairman.