

Document:-
A/CN.4/L.573 [and Corr.1]

Nationality in relation to the succession of States. Titles and texts of draft articles adopted by the Drafting Committee on second reading - reproduced in A/CN.4/SR.2579, para.4

Topic:
Succession of States with respect to nationality/Nationality in relation to the succession of States

Extract from the Yearbook of the International Law Commission:-
1999, vol. I

*Downloaded from the web site of the International Law Commission
(<http://www.un.org/law/ilc/index.htm>)*

2579th MEETING

Tuesday, 1 June 1999, at 10 a.m.

Chairman: Mr. Zdzislaw GALICKI

Present: Mr. Addo, Mr. Baena Soares, Mr. Candiotti, Mr. Dugard, Mr. Economides, Mr. Elaraby, Mr. Goco, Mr. Hafner, Mr. He, Mr. Herdocia Sacasa, Mr. Kabatsi, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Melescanu, Mr. Pambou-Tchivounda, Mr. Sreenivasa Rao, Mr. Rosenstock, Mr. Simma, Mr. Yamada.

Nationality in relation to the succession of States¹ (continued)* (A/CN.4/493 and Corr.1,² A/CN.4/496, sect. E, A/CN.4/497,³ A/CN.4/L.572, A/CN.4/L.573 and Corr.1)

[Agenda item 6]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE ON SECOND READING

1. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce the report of the Drafting Committee (A/CN.4/L.573 and Corr.1) containing the titles and texts of the draft articles on nationality of natural persons in relation to the succession of States adopted by the Drafting Committee on second reading.

2. Mr. CANDIOTTI (Chairman of the Drafting Committee), introducing the report of the Drafting Committee, said that the Committee had held five meetings, from 17 to 20 May 1999. He wished to thank the Chairman of the Commission, the members of the Drafting Committee, the former Special Rapporteur on the topic, Mr. Václav Mikulka, and the Secretariat for their valuable assistance.

3. Under its programme of work for the current quinquennium, the Commission had decided to complete the second reading of the topic at the current session. The Drafting Committee had facilitated the achievement of that goal by rapidly completing the second reading of the draft articles, allowing sufficient time for the revision and updating of the commentaries. In considering the articles, the Drafting Committee had had before it the report of the Chairman of the Working Group on nationality in relation to the succession of States (A/CN.4/L.572) and the Memorandum by the Secretariat (A/CN.4/497) giving an overview of the comments and observations of Governments, made either orally or in writing. Government com-

ments had by and large been favourable to the draft and that had alleviated the task of the Drafting Committee.

4. The titles and texts of the draft articles on nationality of natural persons in relation to the succession of States,** as adopted by the Drafting Committee on second reading, read:

PREAMBLE

The General Assembly,

Considering that problems of nationality arising from succession of States concern the international community,

Emphasizing that nationality is essentially governed by internal law within the limits set by international law,

Recognizing that in matters concerning nationality, due account should be taken both of the legitimate interests of States and those of individuals,

Recalling that the Universal Declaration of Human Rights of 1948 proclaimed the right of every person to a nationality,

Recalling also that the International Covenant on Civil and Political Rights of 1966 and the Convention on the Rights of the Child of 1989 recognize the right of every child to acquire a nationality,

Emphasizing that the human rights and fundamental freedoms of persons whose nationality may be affected by a succession of States must be fully respected,

Bearing in mind the provisions of the Convention on the Reduction of Statelessness of 1961, the Vienna Convention on Succession of States in Respect of Treaties of 1978 and the Vienna Convention on Succession of States in Respect of State Property, Archives and Debts of 1983,

Convinced of the need for the codification and progressive development of the rules of international law concerning nationality in relation to the succession of States as a means for ensuring greater juridical security for States and for individuals,

Declares the following:

PART I. GENERAL PROVISIONS

Article 1. Right to a nationality

Every individual who, on the date of the succession of States, had the nationality of the predecessor State, irrespective of the mode of acquisition of that nationality, has the right to the nationality of at least one of the States concerned, in accordance with the present draft articles.

Article 2. Use of terms

For the purposes of the present draft articles:

(a) "Succession of States" means the replacement of one State by another in the responsibility for the international relations of territory;

(b) "Predecessor State" means the State which has been replaced by another State on the occurrence of a succession of States;

(c) "Successor State" means the State which has replaced another State on the occurrence of a succession of States;

(d) "State concerned" means the predecessor State or the successor State, as the case may be;

(e) "Third State" means any State other than the predecessor State or the successor State;

* Resumed from the 2572nd meeting.

¹ For the draft articles with commentaries thereto provisionally adopted by the Commission on first reading, see *Yearbook ... 1997*, vol. II (Part Two), p. 14, chap. IV, sect. C.

² Reproduced in *Yearbook ... 1999*, vol. II (Part One).

³ *Ibid.*

** The number within square brackets indicates the number of the corresponding article adopted on first reading.

(f) "Person concerned" means every individual who, on the date of the succession of States, had the nationality of the predecessor State and whose nationality may be affected by such succession;

(g) "Date of the succession of States" means the date upon which the successor State replaced the predecessor State in the responsibility for the international relations of the territory to which the succession of States relates.

Article 3 [27]. Cases of succession of States covered by the present draft articles

The present draft articles apply only to the effects of a succession of States occurring in conformity with international law and, in particular, with the principles of international law embodied in the Charter of the United Nations.

Article 4 [3]. Prevention of statelessness

States concerned shall take all appropriate measures to prevent persons who, on the date of the succession of States, had the nationality of the predecessor State from becoming stateless as a result of such succession.

Article 5 [4]. Presumption of nationality

Subject to the provisions of the present draft articles, persons concerned having their habitual residence in the territory affected by the succession of States are presumed to acquire the nationality of the successor State on the date of such succession.

Article 6 [5]. Legislation on nationality and other connected issues

Each State concerned should, without undue delay, enact legislation on nationality and other connected issues arising in relation to the succession of States consistent with the provisions of the present draft articles. It should take all appropriate measures to ensure that persons concerned will be apprised, within a reasonable time period, of the effect of its legislation on their nationality, of any choices they may have thereunder, as well as of the consequences that the exercise of such choices will have on their status.

Article 7 [6]. Effective date

The attribution of nationality in relation to the succession of States, including the acquisition of nationality following the exercise of an option, shall take effect on the date of such succession, if persons concerned would otherwise be stateless during the period between the date of the succession of States and such attribution or acquisition of nationality.

Article 8 [7]. Persons concerned having their habitual residence in another State

1. A successor State does not have the obligation to attribute its nationality to persons concerned if they have their habitual residence in another State and also have the nationality of that or any other State.

2. A successor State shall not attribute its nationality to persons concerned who have their habitual residence in another State against the will of the persons concerned unless they would otherwise become stateless.

Article 9 [8]. Renunciation of the nationality of another State as a condition for attribution of nationality

When a person concerned who is qualified to acquire the nationality of a successor State has the nationality of another State concerned, the former State may make the attribution of its nationality dependent on the renunciation by such person of the nationality of the latter State. However, such requirement shall not be applied in a manner which would result in rendering the person concerned stateless, even if only temporarily.

Article 10 [9]. Loss of nationality upon the voluntary acquisition of the nationality of another State

1. A predecessor State may provide that persons concerned who, in relation to the succession of States, voluntarily acquire the nationality of a successor State shall lose its nationality.

2. A successor State may provide that persons concerned who, in relation to the succession of States, voluntarily acquire the nationality of another successor State or, as the case may be, retain the nationality of the predecessor State shall lose its nationality acquired in relation to such succession.

Article 11 [10]. Respect for the will of persons concerned

1. States concerned shall give consideration to the will of persons concerned whenever those persons are qualified to acquire the nationality of two or more States concerned.

2. Each State concerned shall grant a right to opt for its nationality to persons concerned who have appropriate connection with that State if those persons would otherwise become stateless as a result of the succession of States.

3. When persons entitled to the right of option have exercised such right, the State whose nationality they have opted for shall attribute its nationality to such persons.

4. When persons entitled to the right of option have exercised such right, the State whose nationality they have renounced shall withdraw its nationality from such persons, unless they would thereby become stateless.

5. States concerned should provide a reasonable time limit for the exercise of the right of option.

Article 12 [11]. Unity of a family

Where the acquisition or loss of nationality in relation to the succession of States would impair the unity of a family, States concerned shall take all appropriate measures to allow that family to remain together or to be reunited.

Article 13 [12]. Child born after the succession of States

A child of a person concerned, born after the date of the succession of States, who has not acquired any nationality, has the right to the nationality of the State concerned on whose territory that child was born.

Article 14 [13]. Status of habitual residents

1. The status of persons concerned as habitual residents shall not be affected by the succession of States.

2. A State concerned shall take all necessary measures to allow persons concerned who, because of events connected with the succession of States, were forced to leave their habitual residence on its territory to return thereto.

Article 15 [14]. Non-discrimination

States concerned shall not deny persons concerned the right to retain or acquire a nationality or the right of option upon the succession of States by discriminating on any ground.

Article 16 [15]. Prohibition of arbitrary decisions concerning nationality issues

Persons concerned shall not be arbitrarily deprived of the nationality of the predecessor State, or arbitrarily denied the right to acquire the nationality of the successor State or any right of option, to which they are entitled in relation to the succession of States.

Article 17 [16]. Procedures relating to nationality issues

Applications relating to the acquisition, retention or renunciation of nationality or to the exercise of the right of option, in relation to the succession of States, shall be processed without undue delay. Relevant decisions shall be issued in writing and shall be open to effective administrative or judicial review.

Article 18 [17]. Exchange of information, consultation and negotiation

1. States concerned shall exchange information and consult in order to identify any detrimental effects on persons concerned with respect to their nationality and other connected issues regarding their status as a result of the succession of States.

2. States concerned shall, when necessary, seek a solution to eliminate or mitigate such detrimental effects by negotiation and, as appropriate, through agreement.

Article 19 [18]. Other States

1. Nothing in the present draft articles requires States to treat persons concerned having no effective link with a State concerned as nationals of that State, unless this would result in treating those persons as if they were stateless.

2. Nothing in the present draft articles precludes States from treating persons concerned, who have become stateless as a result of the succession of States, as nationals of the State concerned whose nationality they would be entitled to acquire or retain, if such treatment is beneficial to those persons.

PART II. PROVISIONS RELATING TO SPECIFIC CATEGORIES OF SUCCESSION OF STATES

Article [19]

[deleted]

SECTION 1

TRANSFER OF PART OF THE TERRITORY

Article 20. Attribution of the nationality of the successor State and withdrawal of the nationality of the predecessor State

When part of the territory of a State is transferred by that State to another State, the successor State shall attribute its nationality to the persons concerned who have their habitual residence in the transferred territory and the predecessor State shall withdraw its nationality from such persons, unless otherwise indicated by the exercise of the right of option which such persons shall be granted. The predecessor State shall not, however, withdraw its nationality before such persons acquire the nationality of the successor State.

SECTION 2

UNIFICATION OF STATES

Article 21. Attribution of the nationality of the successor State

Subject to the provisions of article 8 [7], when two or more States unite and so form one successor State, irrespective of whether the successor State is a new State or whether its personality is identical to that of one of the States which have united, the successor State shall attribute its nationality to all persons who, on the date of the succession of States, had the nationality of a predecessor State.

SECTION 3

DISSOLUTION OF A STATE

Article 22. Attribution of the nationality of the successor States

When a State dissolves and ceases to exist and the various parts of the territory of the predecessor State form two or more successor States, each successor State shall, unless otherwise indicated by the exercise of a right of option, attribute its nationality to:

(a) Persons concerned having their habitual residence in its territory; and

(b) Subject to the provisions of article 8 [7]:

(i) Persons concerned not covered by subparagraph (a) having an appropriate legal connection with a constituent unit of the predecessor State that has become part of that successor State;

(ii) Persons concerned not entitled to a nationality of any State concerned under subparagraphs (a) and (b) (i) having their habitual residence in a third State, who were born in or, before leaving the predecessor State, had their last habitual residence in what has become the territory of that successor State or having any other appropriate connection with that successor State.

Article 23. Granting of the right of option by the successor States

1. Successor States shall grant a right of option to persons concerned covered by the provisions of article 22 who are qualified to acquire the nationality of two or more successor States.

2. Each successor State shall grant a right to opt for its nationality to persons concerned who are not covered by the provisions of article 22.

SECTION 4

SEPARATION OF PART OR PARTS OF THE TERRITORY

Article 24. Attribution of the nationality of the successor State

When part or parts of the territory of a State separate from that State and form one or more successor States while the predecessor State continues to exist, a successor State shall, unless otherwise indicated by the exercise of a right of option, attribute its nationality to:

(a) Persons concerned having their habitual residence in its territory; and

(b) Subject to the provisions of article 8 [7]:

(i) Persons concerned not covered by subparagraph (a) having an appropriate legal connection with a constituent unit of the predecessor State that has become part of that successor State;

(ii) Persons concerned not entitled to a nationality of any State concerned under subparagraphs (a) and (b) (i) having their habitual residence in a third State, who were born in or, before leaving the predecessor State, had their last habitual residence in what has become the territory of that successor State or having any other appropriate connection with that successor State.

Article 25. Withdrawal of the nationality of the predecessor State

1. The predecessor State shall withdraw its nationality from persons concerned qualified to acquire the nationality of the successor State in accordance with article 24. It shall not, however, withdraw its nationality before such persons acquire the nationality of the successor State.

2. Unless otherwise indicated by the exercise of a right of option, the predecessor State shall not, however, withdraw its nationality from persons referred to in paragraph 1 who:

(a) Have their habitual residence in its territory;

(b) Are not covered by subparagraph (a) and have an appropriate legal connection with a constituent unit of the predecessor State that has remained part of the predecessor State;

(c) Have their habitual residence in a third State, and were born in or, before leaving the predecessor State, had their last habitual residence in what has remained part of the territory of the predecessor State or have any other appropriate connection with that State.

Article 26. Granting of the right of option by the predecessor and the successor States

Predecessor and successor States shall grant a right of option to all persons concerned covered by the provisions of articles 24 and 25, paragraph 2, who are qualified to have the nationality of both the predecessor and successor States or of two or more successor States.

5. No changes had been made in the structure of the text, which consisted of a preamble and 26 draft articles. The articles were divided into two parts, as they had been on first reading, and Part II consisted of four sections. The draft's structure on first reading had been designed to present the articles in the form of a declaration. Since the form was a matter for the Commission to decide, the Drafting Committee was making no recommendation in that regard. One article had been moved from Part II to Part I, altering the numbering of the articles. The numbers in square brackets corresponded to the article numbers as adopted on first reading.

6. As to Part I (General provisions), the Drafting Committee had made no changes to articles 1 (Right to a nationality) and 2 (Use of terms).

7. With regard to article 3 [27] (Cases of succession of States covered by the present draft articles), the Commission, when completing the first reading, had indicated that its placement was provisional and had decided to revert to the matter on second reading.⁴ The Working Group had reconsidered the matter and had recommended that it be placed after article 2, as was the case with an analogous article in the 1983 Vienna Convention. The Commission had agreed with that suggestion, and the Drafting Committee had accordingly positioned article 27 as new article 3.

8. Governments, in their comments, had favoured deleting the opening phrase, "Without prejudice to the right to a nationality of persons concerned". They considered that it made the article ambiguous and that the matter illustrated by that phrase, despite its merits under general international law, did not call for an explicit reference in that article. The Working Group and the Commission had agreed, and the Drafting Committee had therefore deleted the phrase. The Drafting Committee had made a further modification, inserting the word "only" after "apply" in order to bring the article into line with article 3 of the 1983 Vienna Convention, something which would be made clear in the commentary to the article.

⁴ See paragraph (4) of the commentary to article 27, *Yearbook ... 1997*, vol. II (Part Two), p. 43.

9. No changes had been made to articles 4 [3] (Prevention of statelessness) and 5 [4] (Presumption of nationality). A minor editing change—replacing the word "concerning" in the title and in the text of the article by the word "on"—obviously had no effect on the meaning of article 6 [5] (Legislation concerning nationality and other connected issues).

10. Article 7 [6] (Effective date), consisted of a new text proposed by the Working Group to take account of the suggestion by Governments that the article's retroactive effect should be limited to the extent strictly necessary. Under the new formulation, retroactive attribution of nationality was limited to situations in which persons would be temporarily stateless during the period between the date of State succession and the attribution of nationality of the successor State or the acquisition of such nationality upon exercise of the right of option.

11. Governments had requested further clarification of the relationship between article 7 (Attribution of nationality to persons concerned having their habitual residence in another State), and article 10 (Respect for the will of the persons concerned), as adopted on first reading, to which it had referred. In response, the Working Group had suggested replacing the opening phrase "Subject to the provisions of article 10," by "Without prejudice to" in article 8 [7] (Persons concerned having their habitual residence in another State). The Drafting Committee, however, had been of the view that article 8 [7] stated a principle and that it applied independently of article 11 [10] (Respect for the will of the persons concerned). Under article 8 [7], a successor State had no obligation to attribute its nationality to persons concerned if those persons had their habitual residence in another State and also had the nationality of that or any other State. Similarly, a successor State would not attribute its nationality to persons concerned who had their habitual residence in another State against the will of such persons, unless such persons would otherwise become stateless. The only part of article 11 [10] that could have any relationship with article 8 [7] was paragraph 3, under which, when a State concerned granted the right of option to persons concerned, it could not then refuse to grant its nationality if such persons opted for it. The operation of article 8 [7], stating a principle, was accordingly independent of that of article 11 [10], paragraph 3, which dealt with a specific situation, and there was no need to make any direct link between the two, something that only created confusion. The Drafting Committee had therefore deleted the opening phrase in article 8 [7], a change that had no effect on the meaning of the article. The title of article 8 [7] had been simplified.

12. Governments had commented favourably on articles 9 [8] (Renunciation of the nationality of another State as a condition for attribution of nationality), 10 [9] (Loss of nationality upon the voluntary acquisition of the nationality of another State) and 11 [10], and no changes had been suggested by the Working Group. The Drafting Committee had made no changes to article 9 [8] and, with respect to article 10 [9], had only added the word "concerned" after the word "persons" in paragraphs 1 and 2, a reference that had inadvertently been omitted on first reading. As for article 11 [10], the Drafting Committee had simplified paragraph 5 by replacing the words "rights set forth in paragraphs 1 and 2" by "right of option". No