Document:-
A/CN.4/SR.2389

Summary record of the 2389th meeting

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:-
1995, vol. I

54. Like a number of other speakers, he considered that the Commission should deal first with the nationality of natural persons. The Special Rapporteur asked, in his report, whether it was conceivable that an international authority, or at least the rules that were binding on States, could play a role in the allocation of individuals among different States. His own reaction to that question was that it would already be an achievement if just a few principles could be laid down. It would be even better, however, if an authority along the lines of UNHCR could be envisaged.

55. The Special Rapporteur stressed that it was difficult to specify exactly the legal limitations on the freedom of States, also indicating that the record of international law in that regard was, on the whole, somewhat thin. Actually, it did set out the golden rule, the key to all the problems likely to arise, namely the principle of effective nationality. Accordingly, that principle should be laid down formally, its content specified and its use made systematic; it should also be accompanied by effective international monitoring machinery. To that end, it was important to draw on the recent practice of eastern European countries. As to the limitations imposed by international humanitarian law on the freedom of States was concerned, he believed that the few existing treaty provisions did recognize a human right to nationality and also a right of option.

56. With regard to categories of succession, the Special Rapporteur considered that the problem of nationality arising in the context of different types of territorial changes should be dealt with separately. It would be an acceptable approach provided a common denominator could be found in all cases. If not, each case would have to be decided individually, although the form that the Commission's work on the topic took would also influence the matter. As far as newly independent States were concerned, the French-speaking States of Black Africa had a wealth of legal literature and members might wish to consult the *Encyclopédie juridique de l'Afrique*,[18] which provided a synthesis of African practice.

57. The Special Rapporteur further stated that, as the decolonization process had now been completed, the Commission could limit its study to issues of nationality that had arisen during that process only in so far as it was necessary to shed light on nationality issues common to all types of territorial changes. Even if the era of decolonization had gone forever—a question hotly debated during the discussion on the draft Code of Crimes Against the Peace and Security of Mankind—and notwithstanding the terms of article 19 of part one of the draft articles on State responsibility[19] and the view expressed in the report concerning the annexation by force of the territory of a State, he saw no good reason not to study practice in that area.

58. In the matter of the scope of the problem, and specifically the obligation to negotiate and to reach agreement, he agreed with Mr. Bowett (ibid.), particularly about the need to introduce transitional arrangements for the period between the date of the succession of States and the date on which the law on nationality was enacted.

59. The question of the right of option must not be reduced to a mere academic discussion of the relationship between the attribution of the sovereignty of the State and the will of individuals. Rather, it was a question of recognizing and preserving the right of option while providing sufficient guarantees with regard to the principle of effective nationality.

60. The Special Rapporteur averred that neither practice nor doctrine gave a clear answer to the question whether the rule of continuity of nationality applied in the event of involuntary changes brought about by State succession. Further research into that point was perhaps required, especially in the light of recent practice in eastern Europe. In that connection, he shared the view of one writer, according to whom, in the event of State succession, the legal position with regard to nationality, from the standpoint of diplomatic protection, should be evaluated in a far more flexible way.[20] The most practical solution possible must therefore be found. Above all it must be designed to achieve effective protection of the interests of the individual as also of the State. In that regard, it was difficult to see how an involuntary change of nationality could have the effect of suspending proceedings or denying justice in a claim for diplomatic protection. But perhaps he was being a little naive. He was not opposed to the idea of dealing with the matter in the context of a preliminary study, provided the study took the form of, for instance, an annex to any declaration or general principles ultimately adopted on the topic as a whole.

The meeting rose at 1.05 p.m.

[18] S. Melone, "La nationalité des personnes physiques", *Encyclopédie juridique de l'Afrique*, vol. 6, *Droit des personnes et de la famille* (Abidjan, Dakar, Lomé, Les Nouvelles Éditions Africaines, 1982), pp. 83 *et seq.*

[19] See 2379th meeting, footnote 8.

[20] United Nations, *Reports of International Arbitral Awards*, vol. V (Sales No. 1952.V.3), pp. 488 *et seq.*

2389th MEETING

Wednesday, 24 May 1995, at 10.10 a.m.

Chairman: Mr. Pemmaraju Sreenivasa RAO

Present: Mr. Al-Baharna, Mr. Al-Khasawneh, Mr. Arangio-Ruiz, Mr. Bennouna, Mr. Bowett, Mr. de Saram, Mr. Eiriksson, Mr. Fomba, Mr. Güney, Mr. He, Mr. Idris, Mr. Kabatsi, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Mikulka, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Razafindralambo, Mr. Rosenstock, Mr. Thiam, Mr. Tomuschat, Mr. Villagrán Kramer, Mr. Yamada, Mr. Yankov.

State succession and its impact on the nationality of natural and legal persons (*continued*) (A/CN.4/464/Add.2, sect. F, A/CN.4/467,[1] A/CN.4/L.507, A/CN.4/L.514)

[Agenda item 7]

FIRST REPORT OF THE SPECIAL RAPPORTEUR (*continued*)

1. Mr. VILLAGRÁN KRAMER expressed his congratulations to the Special Rapporteur on his clear and stimulating first report (A/CN.4/467), with its wealth of ideas. Quite apart from the information provided, he had appreciated the Special Rapporteur's personal touch, which had revealed the human tragedies that resulted from problems of State succession. There had been many such problems after the First World War, and they had re-emerged after the disintegration of the Soviet Union.

2. As a general comment, he considered that, while it was essential to use the existing texts as a basis with regard to State succession, it was also necessary to take account of the new trends that were emerging with respect to matters of nationality. He would try to approach the questions that arose from the standpoint of international law rather than from that of internal law.

3. Noting that the Special Rapporteur dealt first with the nationality of natural persons and only later with the nationality of legal persons, he acknowledged that it was important to give priority to the human factor and to place the rights of natural persons in the context of human rights. He also noted that, when raising the problem of nationality in the context of State succession, the Special Rapporteur seemed to want to rely, not on the frame of reference of the Vienna Convention on Succession of States in respect of Treaties, but rather on that of the Vienna Convention on Succession of States in respect of State Property, Archives and Debts. He endorsed that approach, for the former was only a normative framework, whereas the latter took account of a de facto and *de jure* situation, such as that which arose in the legal vacuum during transitional periods between the moment of a State's succession, separation or accession to independence and the moment at which a new law on nationality took effect.

4. Furthermore, with regard to changes of nationality that might result from State succession, the Special Rapporteur raised the fundamental question whether, following a change of sovereignty, persons could find themselves deprived of nationality and, in the event that they were obliged to have a nationality, what the links attaching them to a country must be. In that regard, he thought that it would be a good idea for the Commission to base itself on the approach of private international law, using the concept of "rules of attachment" or "criteria of attachment". Some criteria of attachment, such as, for example, *jus soli* and *jus sanguinis*, were well known in the case of nationality of origin. In matters of naturalization, however, there were other criteria of attachment, such as habitual residence.

5. The Commission must decide whether the question of nationality was to be approached from the standpoint of existing internal law or, on the contrary, from that of international law, with a view to elaborating a system that might be accepted at the regional or international levels. In his view, that was the fundamental issue. On the eve of the twenty-first century, the criteria that had been the basis of the 1930 Hague Conference for the Codification of International Law were not enough. Much water had flowed under the bridge since then and there had been too many human tragedies to justify continuing to approach the problem of nationality solely from the standpoint of internal law.

6. In its advisory opinion in the case concerning *Nationality Decrees Issued in Tunis and Morocco*,[2] cited by the Special Rapporteur in his first report, PCIJ had affirmed the principle that it was for each State to determine who were its nationals. But at the same time it had noted that the legislative competence of the State with respect to nationality was not absolute, for it must in fact be exercised within the limits imposed by general international law and international conventions. The Court had thus thrown some light on the role that international law could play in matters of nationality.

7. Between that opinion and the judgment of ICJ in the *Nottebohm* case,[3] relatively little time had elapsed, but the approach to the question of nationality had evolved, with the Court noting in its judgment that, for nationality to be recognized at the international level, the laws of the State which conferred it must be in accordance with the principles of international law. It could thus clearly be seen from that case how international law imposed limits on the competence of States.

8. For several decades now, international law had been strongly influenced by the principles relating to the protection of human rights. In matters of nationality, too, the body of human rights conventions tended to influence the custom and practice of States. The Special Rapporteur had referred to the Universal Declaration of Human Rights,[4] article 15 of which provided that everyone had the right to a nationality. He suggested that the Special Rapporteur should also study the effects and consequences of the provisions of the International Covenant on Civil and Political Rights concerning nationality. Article 12, paragraph 2, of the Covenant stipulated that everyone was free to leave any country, including his own; and paragraph 4 provided that no one was to be arbitrarily deprived of the right to enter his own country. That presupposed that there existed between a person and his own country a relationship resulting from a de facto and *de jure* situation, the criteria for which it would be necessary to determine and whereby a person identified himself with a country or with its population. Article 24, paragraph 3, stipulated that every child had the right to acquire a nationality. From a legal standpoint, that right, which was accorded to children, must also be applicable to adults, given that there could be no discrimination between the situation of persons on the grounds of their status as children or as adults. The

[1] Reproduced in *Yearbook... 1995*, vol. II (Part One).

[2] See 2385th meeting, footnote 16.

[3] Ibid., footnote 15.

[4] General Assembly resolution 217 A (III).

Commission could not but interpret *lato sensu* the principles concerning the right to nationality set forth in the human rights instruments, as, moreover, the European Court of Human Rights had done.

9. Turning to another aspect of the question, he wondered whether, in order to pinpoint the problem of nationality more precisely, it would not be better to study separately nationality of origin, individual and collective naturalization, situations of dual nationality and transitional situations.

10. With regard to nationality of origin, the Commission could not base its analysis on the *Nottebohm* case, in which ICJ had dealt only with naturalization, making no reference to nationality of origin. Yet nationality of origin played a major role in succession of States and the importance of *jus soli* and *jus sanguinis* as criteria of attachment must not be underestimated. Even today, there was a tendency for international law to recognize *jus sanguinis* as a criterion of attachment extending beyond one generation and some European countries reacquired many nationals through the operation of that principle. For instance, children or grandchildren of Germans or Italians who had emigrated to Latin America or elsewhere returned to the country of origin of their father or grandfather whose nationality they had retained.

11. In situations of dual nationality, the *Nottebohm* case was of limited interest, as ICJ had referred to that question only accessorily in its search for effective nationality. In that connection, he noted that a distinction must be drawn between effective nationality and affective nationality, linked to love of one's country. The latter must also be taken into account: everyone was familiar with cases of persons who had enlisted under a foreign flag to defend a country and who had gained access to the nationality of that country as a result.

12. At all events, naturalization and dual nationality had one thing in common: in both cases, the link must be not only de facto, but also *de jure*, for, as the Court had clearly indicated, a de facto situation must be matched by a corresponding *de jure* situation. Consequently, the criteria for determination of nationality must include not only elements such as the habitual place of residence of the person, but also the existence of close links with a given country.

13. With regard to collective naturalizations, he thought that the Commission might usefully turn to the Code of Private International Law (Bustamante Code), contained in the Convention on Private International Law which was widely applied in relations between about 15 countries of Latin America and which established, for cases of loss of nationality and acquisition of nationality, rules governing conflicts that were applicable to collective naturalizations performed by a legal act of a State or on the basis of an agreement. But the question arose of how it was possible to resolve by legal means the situation in which persons to whom a nationality was collectively granted or removed found themselves. It was undeniable that collective naturalization by decree resolved a general problem, but it left many others unresolved and it disregarded the right of option which every person had under the laws. Nevertheless, the fact that the mechanism existed was in itself a virtue and it should be studied in greater depth in order to determine its scope and limitations, on the basis of the elements provided by international law. To the criteria for naturalization mentioned by the Special Rapporteur should be added *jus sanguinis* and *jus soli*.

14. He found interesting the part of the report devoted to the "genuine link" theory with regard to the principle of effective nationality. In that connection, he referred to the problem of the situation of persons who, in exercise of the right of option, had already chosen a nationality and who, following a succession of States, had to change their nationality again.

15. In conclusion, he wished to raise what seemed to him a fundamental question: what was the Commission's objective concerning the topic? It would of course attempt to prepare a study, but, in order to do so, it must first ask itself whether it was going to work on the basis of the existing situation or of the desirable situation. As the existing rules did not cover all cases that arose in matters of nationality, the Commission would no doubt have to break new ground. It might adopt a mixed approach, analogous in principle to the one it had applied to the topic of State responsibility, basing itself partly on *lex lata* and partly on *lex ferenda*. It might attempt to elaborate a sort of "Restatement of the Law", following the practice adopted in the United States of America, and, without proposing the text of a draft convention, might state what the law was and what it should be.

16. Mr. PELLET noted that the Special Rapporteur had presented the facts of the topic clearly and skilfully, but without adopting any cut and dried positions, which limited the grounds for possible disagreement. He regarded that approach as both modest and ambitious. It was modest in four respects. First, the Special Rapporteur proposed to be guided by practice, which seemed both a wise and an indispensable approach. Secondly, he considered it important not to alarm successor States, which were currently particularly sensitive on that issue; nor should the Commission set itself up as a tribunal to judge the practices of those States in matters of nationality. That being so, the Special Rapporteur rightly stressed that the problems with which he was dealing had close links with the protection of human rights. Consequently, while it was undeniable that, in principle, the regulation of nationality was essentially a matter for the national jurisdiction of States, that jurisdiction could not be exercised in a manner that violated the rights and dignity of the peoples concerned. Thirdly, the Special Rapporteur did not intend to call into question the fundamental principles of positive law, in particular the law of State succession. That approach was entirely commendable, but he was concerned at the tenor of some statements made in the debate. One member of the Commission, for instance, had proposed taking advantage of the current exercise to review the very definition of succession of States by ceasing to consider it as the replacement of one State by another in the responsibility for the international relations of territory, according to the formulation embodied in the Vienna Convention on Succession of States in respect of Treaties and the Vienna Convention on Succession of States in respect of State Property, Archives and Debts, and instead considering it as the replacement of one State by another in sovereignty

in respect of territory. Like the Special Rapporteur, he was opposed to that suggestion, for at least two fundamental reasons. First, one of the motives that had led the Commission, following lengthy and difficult discussions, to retain the first definition, was the fact that State succession was a general institution of the law of nations that was applied to greatly differing situations, one of which, decolonization, had until only recently been of fundamental importance. Yet, just as the definition contained in the above-mentioned Conventions was appropriate to that situation, the new definition proposed would be entirely inappropriate in that regard, for it was highly disputable that a colonial State exercised "sovereignty" over the territory it administered.

17. Incidentally, with regard to colonization and decolonization, he wished to comment on the critical reactions provoked by the Special Rapporteur's proposal that, now that decolonization had been achieved, the emphasis should be placed on the other forms of State succession. Admittedly, the rules adopted in matters of nationality in the context of decolonization might be of interest to the Commission, at least for purposes of comparison, but the topic did not really lend itself to polemics on the question of colonialism and neocolonialism: disturbing as the latter phenomenon was, it had only a very remote bearing on the topic under consideration.

18. The second reason why he sincerely believed the Commission should stick to the previous definition of State succession was that it had proved its worth and was now in common use in inter-State practice. It had been applied by the International Conference on the Former Yugoslavia, in the case concerning *Arbitral Award of 31 July 1989* (Guinea-Bissau *v.* Senegal),[5] and in the opinions of the Arbitration Commission of the Conference on the Former Yugoslavia.[6] He was particularly opposed to the view expressed by some members of the Commission that the two above-mentioned Conventions in which that definition was set out were, to exaggerate a little, nothing more than scraps of paper. While specific aspects of those Conventions, particularly the Vienna Convention on Succession of States in respect of State Property, Archives and Debts, were open to criticism, on the whole they did not deserve the abuse being heaped upon them. In the first place, the Vienna Convention on Succession of States in respect of Treaties was apparently about to enter into force very soon. Secondly, and primarily, the fundamental principles underlying the Conventions were, as the Arbitration Commission of the Conference on the Former Yugoslavia had pointed out, those that governed the law of State succession as a whole. A case in point was the principle that problems arising in the event of State succession must be solved through an agreement with a view to achieving an equitable result—a principle that could certainly be applied to nationality, in which case equity would mean, at the very least, that a large population group would not remain bereft of nationality.

19. The Special Rapporteur found that the two Conventions offered the additional advantage of specifying categories of State succession and he actually preferred the more detailed categories in the Vienna Convention on Succession of States in respect of State Property, Archives and Debts, which placed more emphasis than the Vienna Convention on Succession of States in respect of Treaties did on the concept of dissolution of a State, which was so important for the topic under consideration and so relevant to contemporary events. He had been surprised to hear Mr. Bowett state (2387th meeting) that, in all cases of State succession, there was a predecessor State and a successor State. There was always, of course, a "before" and an "after", but, in the event of dissolution or absorption following State succession, one or several successor States existed (one in the event of absorption, several in the case of dissolution), but there was no longer a predecessor State when problems arose. Therein lay one of the difficulties of the topic.

20. A fourth "modest" element in the approach taken by the Special Rapporteur was his attitude to the problem of legal persons, which he proposed to leave aside, not definitely, but only for the time being, stating in his first report that it was not an urgent matter and that the problem presented itself on very different terms than did that of the nationality of individuals. That was one of the few points on which he disagreed with the Special Rapporteur, for he endorsed neither his diagnosis of the problem nor the therapy he proposed.

21. Concerning the diagnosis, he believed that the problem was both urgent and important: if his information was correct, it was being discussed by the group on succession of States within the International Conference on the Former Yugoslavia. The very complexity of the subject, which derived from the difficult problem of foreign branches and subsidiaries—something not mentioned in the report—was one more reason why the Commission should take up the study of the topic as soon as possible. Moreover, the problem did not differ so greatly from those raised by the nationality of natural persons and the report was perhaps a bit biased, since the Special Rapporteur cited only the opinions of English experts in public law. The private-law doctrine derived from Roman law was perhaps a bit less categorical on that point. The view stated in the report that different tests of nationality are used for different purposes did not seem conclusive. In each of the cases discussed, nationality existed as a legal concept, and the problem was to determine the nature of nationality after State succession.

22. With regard to the therapy, he knew that it was not possible to do everything at once, but he suggested that the Special Rapporteur should revise the position adopted in his report and take up as soon as possible the impact of State succession on the nationality of legal persons or, at the very least, make a more detailed and broader analysis of whether there were common principles applicable to the nationality of legal persons and natural persons.

23. As a final comment on his disagreements with the Special Rapporteur, he referred to the interpretation of Opinion No. 2 of the Arbitration Commission of the Conference on the Former Yugoslavia[7]—also known as the "Badinter Commission", from the name of its chair-

[5] *Order of 1 November 1989, I.C.J. Reports 1989*, p. 126.

[6] *International Legal Materials*, vol. XXXI, No. 6 (November 1992), p. 1494.

[7] Ibid., p. 1497.

man, cited in the report. The Special Rapporteur indicated that the Arbitration Commission recalled that, by virtue of the right to self-determination, every individual might choose to belong to whatever ethnic, religious or language community he or she wished. In actual fact, the Arbitration Commission had said that individuals must be granted the right to make that choice—and that was something rather different.

24. The Special Rapporteur also stated that in the view of the Arbitration Commission of the Conference on the Former Yugoslavia one possible consequence of this principle might be for the members of the Serbian population in Bosnia and Herzegovina and Croatia to be recognized under agreements between the Republics as having the nationality of their choice, with all the rights and obligations which that entailed with respect to the States concerned. It was true that the Arbitration Commission had thereby proclaimed the right of each human being to recognition of his or her objective affinity with the ethnic, religious or language community of his or her choice. That, however, was completely different from the link of nationality as it was used in international law, meaning a "global" link that bound someone to a given State. In that opinion, the Arbitration Commission had simply been referring to the right of individuals belonging to a minority to be treated as such within the territory of a State. It was inappropriate to make light of that solution. The principle cited by the Arbitration Commission, which it had related to the right of peoples to self-determination and minority rights, was a wise one and one which could appease passions and reconcile the contradictory interests and rights of States, groups and individuals. It did not mean giving individuals a right of option on nationality in the sense used in the first report or in international law.

25. The Special Rapporteur's approach was not only modest, it was also ambitious, and for that he should be commended.

26. He had, for example, been right to try to catalogue all the theories on State succession while avoiding general principles that would certainly be inappropriate in some cases. Nevertheless, Mr. Crawford's idea (2388th meeting) of starting from "presumptions" that would operate like general principles, in order subsequently to see which nuances or derogations should be added, seemed acceptable. The presumptions were not only that each individual had the right to a nationality, but also that each human being actually had a nationality and also that the nationality of a person was that of the "strongest" attachment.

27. The Special Rapporteur was likewise ambitious in having placed the issue at the crossroads of at least three significant branches of international law: nationality law, the law of State succession and international human rights law. It did appear, however, that excessive importance had been given to nationality law and it must not be allowed to take over the entire subject. The Commission must not become involved in a kind of "illicit" codification of nationality law as a whole. That was why the presentation of certain problems relating to diplomatic protection seemed confusing. State succession did have an impact on the continuity of nationality, which in itself gave rise to a problem in connection with diplomatic protection, which in turn seemed closely related to the law of international responsibility. But by focusing too heavily on that issue, the Commission would be in danger of codifying large swatches of international law on the basis of one specific topic that was fairly easy to accommodate. From that point of view, the last paragraph of the report was quite ambiguous; if the Commission managed to confine itself to the problem of the continuity of nationality for the purposes of diplomatic protection in the context of State succession, the inclusion of that problem in the study would be useful and reasonable, but if the Commission embarked on an analysis of the law of diplomatic protection as a whole, that would be entirely unreasonable.

28. In conclusion, he was not sure how to interpret the idea of a "preliminary study" requested by the General Assembly in its resolution 49/51. Both that resolution and the discussion preceding its adoption seemed to reveal the General Assembly's message as being that the outline drafted by Mr. Mikulka in 1993,[8] which was necessarily brief, had not been sufficiently clear for it and that it wished to have a more in-depth study. The first report embodied such a preliminary study remarkably well and, subject to the positions which the Commission would take on it and which would be reflected in its report to the General Assembly, the first report should constitute the preliminary study to be transmitted to the General Assembly in accordance with its request. If the Special Rapporteur felt the need for more "operational" support from a working group, there was no reason not to grant his wish, if the Commission's schedule of work so permitted. But the purpose should be simply to help the Special Rapporteur formulate even more specific guidelines. The Commission could and should endorse the general guidelines proposed by the Special Rapporteur, with the reservations and nuances brought out during the discussion, incorporate them in its own report on the work of the session and transmit them to the General Assembly in the form of a preliminary study.

29. Mr. AL-BAHARNA said that he found the report to be impressive, thorough and stimulating, although rather orthodox and traditional in its approach and interpretations, perhaps because it seemed weighted in favour of classical rules on the subject. For his part, he would have preferred a humanitarian approach because of the need to prevent innocent people from becoming the hapless victims of changes of sovereignty.

30. His first comment was that the topic before the Commission was far from being an easy one, as no less an authority than D. P. O'Connell had indicated.[9] The difficulty derived from the fact that nation-States had always jealously guarded their sovereignty over nationality. As nationality was essentially an institution of the internal laws of States, its international application in any particular case must be based on the nationality law of the State in question. It was for that very reason that, as

[8] "Outlines prepared by members of the Commission on selected topics of international law", *Yearbook... 1993*, vol. II (Part One), document A/CN.4/454.

[9] D. P. O'Connell, *The Law of State Succession* (Cambridge, England, Cambridge University Press, 1956).

pointed out by the Special Rapporteur in his report, the Commission had not been anxious to deal with the problem of nationality in relation to that of State succession. A former Special Rapporteur on the subject, Mr. Bedjaoui, had gone so far as to say that "in all cases of succession, traditional or modern, there is in theory no succession or continuity in respect of nationality".[10]

31. His second comment pertained to the function of international law in the relationship between State succession and nationality. Given the essential character of nationality, international law probably had only a limited role to play, but that role could not be denied. The role of international law properly involved preventing the successor State from enacting legislation that was unfair to or inequitable for individuals affected by a change in sovereignty. By the same token, international law could not acquiesce in the granting of nationality to a person who did not genuinely belong to the successor State. That function of international law, which the Special Rapporteur had aptly described in his report and which was corroborated by the judgment of ICJ in the *Nottebohm* case,[11] meant that there were limits on State action in respect of both the withdrawal and the granting of nationality. The Commission's task must accordingly be to define the limits of such State action under international law.

32. His third comment related to the human rights implications of the subject. Article 15 of the Universal Declaration on Human Rights[12] stated that "Everyone has the right to a nationality" and that "No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality". There seemed to be some controversy as to the real purport and effect of those provisions, but it was indisputable that article 15 had far-reaching consequences for the traditional rules in respect of the obligations of the successor State for the acquisition and termination of nationality. The Special Rapporteur had rightly stated that the development, after the Second World War, of international norms for the protection of human rights gave the rules of international law a greater say in the area of nationality. Accordingly, the negative effects of internal law on nationality that could lead to statelessness or discrimination of any kind should be questionable under contemporary international law. The classical position expounded by Mr. O'Connell that international law imposed no duty on the successor State to grant nationality and the statement by Mr. Crawford (ibid.) that, apart from treaty, a new State was not obliged to extend its nationality to all persons resident on its territory were both free from contention. The effect of article 15 of the Universal Declaration on Human Rights was, on the one hand, to restrict statelessness and, on the other, to give individuals the right to change their nationality as they wished. Those restrictions would be binding on all States, including the successor State. The human rights issue involved was the heart of the topic under consideration and it was the lack of such an angle that gave the impression that the report was tilted in favour of classical norms and principles. The Commission should seek to restore the balance and the Special Rapporteur should explore fully the effects and impact of article 15 on the classical rules of nationality as they related to State succession if the Commission's deliberations were to contribute to the development of rules of international law on the topic.

33. Fourthly, there was the dichotomy between customary international law, which offered only a few guidelines to States for the formulation of their legislation on nationality, and conventional international law, which was more developed. Although that dichotomy was convenient, it did not seem to help much to identify the norms that governed nationality in cases of State succession. An approach that helped to derive the applicable norms from the entire corpus of international law—doctrine, State practice and jurisprudence—would have been greatly preferable. The Commission could not formulate universally applicable principles unless it looked at all the solutions adopted following changes in sovereignty in Asia, Africa and the Caribbean in the post-colonial era and, more recently, in eastern Europe.

34. Fifthly, regarding the framework suggested for the preliminary study, the proposal by the Special Rapporteur that the scope of the problem should be delimited *ratione personae*, *ratione materiae* and *ratione temporis* seemed too doctrinaire. The Special Rapporteur himself pointed out, in his report, that the delimitation of the scope *ratione temporis* would for the most part remain theoretical because of the time it took States to adopt their laws on nationality. It would therefore be preferable to delimit the scope in terms of the practical problems encountered: acquisition of nationality, relevance of birth, residence and domicile, the element of a genuine link, loss of nationality, conflict of nationality, right of option and continuity of nationality. As to whether the study should deal with the regime of diplomatic protection on the grounds of its close association with the problem of continuity of nationality, he believed that an affirmative response would extend the topic beyond the mandate given to the Commission by the General Assembly. Lastly, he endorsed the Special Rapporteur's proposal that the Commission's work on the topic should have the character of a study which would be submitted to the General Assembly in the form of a report and in which priority would be given to the most urgent problems of the nationality of natural persons.

The meeting rose at 11.30 a.m.

2390th MEETING

Friday, 26 May 1995, at 10.05 a.m.

Chairman: Mr. Pemmaraju Sreenivasa RAO

Present: Mr. Al-Baharna, Mr. Al-Khasawneh, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Bowett, Mr. Crawford, Mr. de Saram, Mr. Eiriksson, Mr. Fomba, Mr. Güney,

[10] *Yearbook... 1968*, vol. II, p. 114, document A/CN.4/204, para. 133.

[11] See 2385th meeting, footnote 15.

[12] See footnote 4 above.