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**Summary record of the 2483rd meeting**

Topic:  
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predecessor State and also the third State. Whether the term should also be defined in the list of definitions was another matter, and one that the Drafting Committee could consider if need be.

46. Mr. ECONOMIDES said that articles 5 and 6 dealt with traditional questions of nationality that were regulated by national legislation, rather than with questions of nationality in relation to State succession. The only provision therein that fell within the Commission's mandate was the last sentence of article 5; even that provision, however, did not regulate an issue of major importance. Otherwise, the provisions merely provided what amounted to gratuitous advice to States on what were essentially sovereign matters. His inclination was therefore to delete articles 5 and 6 *in toto*.

47. As to article 4, he would reiterate his view that, if paragraph 1 was to be retained, it should contain the idea that the successor State did not have the right to confer its nationality automatically in the circumstances envisaged, but that the option of naturalization was not ruled out, to allow such persons to acquire voluntarily the nationality of the successor State. In the last analysis, however, he could accept Mr. Rosenstock's opinion that, even if paragraph 1 was deleted, the substance of the article would not be affected. Paragraph 2, on the other hand, was indispensable, but must be redrafted.

48. Mr. LUKASHUK said that he appreciated Mr. Economides' position, but the Commission was preparing a document that was intended to provide guidance to States. A different approach was thus needed from what would be appropriate in the case of a legally binding instrument, and articles 5 and 6 could be extremely useful to States in that regard.

49. Mr. MIKULKA (Special Rapporteur), responding to Mr. Economides' comment regarding the value of the first sentence of article 5, said that a wealth of documentation had been produced by the Council of Europe and UNHCR on the question of temporary statelessness, and that there were also constant discussions between international bodies and successor States on the problem. Several successor States' legislation had even been amended because those States acknowledged the UNHCR argument that statelessness, even temporary statelessness, was unacceptable. The problem was thus one of the utmost topicality and urgency. Nor had he had the slightest intention of "advising" States in articles 5 and 6. Whenever his intention was to advise or invite States to take a certain course of action, he used the expression "should". In articles 5 and 6 he had noted what they "could" do—in other words, that they retained some freedom of action in those areas. If the Commission wished to establish strict rules, and even an obligation for States to grant their nationality to certain individuals, it could not simply ignore their freedom of action in certain areas. To do so would be to risk producing a draft text lacking in balance and thus unacceptable to States.

50. Mr. RODRÍGUEZ CEDEÑO said that article 4 consisted of two important paragraphs containing two necessary negative obligations. Regarding paragraph 1, the argument in favour of imposing a positive obligation on the successor State was misguided. The current wording

gave the successor State the power to decide whether or not to grant its nationality despite the fact that the persons concerned had their habitual residence in another State and also had the nationality of that State. It was important that the State should enjoy such discretion in a matter regulated by national legislation. In order to avoid misinterpretations, both paragraphs should be worded so as to refer in Spanish to "persons concerned".

51. An obligation of the type set forth in article 4, paragraph 2, should indeed be included in the draft, but he had some doubts about the last phrase of the paragraph. In his view, the Commission should try to draft an absolute obligation to the effect that the State could not impose its nationality on the persons concerned. The current wording conferred undue power on the successor State in that regard. It might also conflict with the provisions of article 7. In any case, it had rightly been pointed out that articles 4, 5 and 6 constituted exceptions to Part II. They should thus be considered at a later stage, in conjunction with articles 17, 18, 19 and 22, at which point a decision might also be taken on the most appropriate place for them in the draft.

52. Mr. GOCO, referring to article 4, paragraph 1, said he could see the rationale whereby the successor State might grant its nationality to persons concerned who had their habitual residence in another State but were not nationals of that other State. However, he failed to see why the successor State should reach out to persons who were not resident in the territory of the successor State and were indeed nationals of another State. He thus questioned the need for paragraph 1.

53. Mr. MELESCANU said it seemed that most of the problems aired could be reduced to matters of drafting. He therefore proposed that the Commission should agree to refer articles 4, 5 and 6 to the Drafting Committee.

53. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission agreed to refer articles 4, 5 and 6 to the Drafting Committee.

*It was so agreed.*

*The meeting rose at 1.05 p.m.*

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## 2483rd MEETING

*Tuesday, 27 May 1997, at 10.05 a.m.*

*Chairman: Mr. Alain PELLET*

*Present: Mr. Addo, Mr. Baena Soares, Mr. Bennouna, Mr. Candioti, Mr. Crawford, Mr. Dugard, Mr. Economides, Mr. Elaraby, Mr. Ferrari Bravo, Mr. Galicki, Mr. Goco, Mr. He, Mr. Kabatsi, Mr. Kateka, Mr. Lukashuk, Mr. Melescanu, Mr. Mikulka, Mr. Pambou-Tchivounda,*

Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Rosenstock, Mr. Simma, Mr. Thiam, Mr. Yamada.

**Nationality in relation to the succession of States (*continued*) (A/CN.4/479, sect. B, A/CN.4/480 and Add.1,<sup>1</sup> A/CN.4/L.535 and Corr.1 and Add.1)**

[Agenda item 5]

THIRD REPORT OF THE SPECIAL RAPporteur  
(*continued*)

PART I (General principles concerning nationality in relation to the succession of States) (*continued*)

ARTICLES 7 AND 8

1. Mr. MELESCANU, noting that article 7 (The right of option) dealt with perhaps one of the most important questions in the draft, said that paragraph 2 referred to a genuine link with the States concerned, which was essential for the practical application of the right of option, but had not been defined in the text. He therefore proposed that the Commission should either prepare a definition and include it in the relevant part at the beginning of the draft articles or that it should request the Special Rapporteur to try to make the concept somewhat clearer in the commentary. The definition, in one form or another, might usefully be based on already existing documents. For example, chapter VI, article 18, of the European Convention on Nationality<sup>2</sup> referred to the existence of a “genuine and effective link of the person concerned with the State”, and that appeared to include habitual residence, the will of the person concerned and the territorial origin of the person concerned. The Venice Declaration<sup>3</sup> also contained a number of useful elements with regard to a definition.

2. Mr. GALICKI said that he endorsed Mr. Melescanu’s proposal. During the drafting of the European Convention on Nationality, it had at first been suggested that the concept of a genuine and effective link should be defined in article 2 on definitions, but it had finally been decided that the concept should be explained in the commentary, drawing on the wording of the *Nottebohm* case.<sup>4</sup>

3. It was probably also inadvisable for the draft declaration being prepared by the Commission to include many definitions and an explanation by the Special Rapporteur in the commentary would probably be enough.

4. Mr. GOCO said that there was a close link between the first two paragraphs of article 7. On reading paragraph 1, it might be asked why the right of option for the nationality of two or several States concerned was applicable; the reason for that was given in paragraph 2,

which referred to the genuine link with States. Hence the need to provide a definition of the concept of “genuine link”, which should be added to the others at the beginning of the text.

5. Mr. CANDIOTI said he agreed that an attempt should be made to produce a definition of “genuine link”.

6. Mr. ECONOMIDES said he also thought that article 7 was perhaps the most important provision in the draft. Paragraph 1 called for three comments, the first was a question to the Special Rapporteur: he wished to know what the conditions were which must be met, either in whole or in part, by a person concerned and where those conditions were set forth in the draft. Secondly, the text should be worded positively, by replacing the word “should” by the word “shall”. Lastly, since the question of multiple nationality must remain outside the framework of the draft articles and the Commission must not give the impression that it intended to favour multiple nationality, he thought that there was no point in retaining the words “Without prejudice to . . . multiple nationality” at the beginning of the paragraph.

7. As to paragraph 2, he supported the proposal that a definition of “genuine link”, should be drafted or at least that its meaning should be explained.

8. Mr. MIKULKA (Special Rapporteur), replying to the question asked by Mr. Economides, said that the criteria allowing a person to acquire the nationality of a State were set forth in Part II (Principles applicable in specific situations of succession of States). They included habitual residence, secondary nationality and place of birth.

9. The CHAIRMAN said that it might therefore be advisable to add the words “set forth in Part II” at the end of paragraph 1.

10. Mr. SIMMA said that he still did not quite understand what was meant by the words “is equally qualified, either in whole or in part”. Those words called for further explanation, perhaps on the basis of what the Chairman suggested.

11. Mr. MIKULKA (Special Rapporteur) said that those words, which had been discussed and recommended by the Working Group on State succession and its impact on the nationality of natural and legal persons, referred by and large to two categories of situations. The first would correspond, for example, to the hypothetical case in which Czech legislation was based exclusively on the criterion of secondary nationality, which would suffice for a person concerned to qualify in full to obtain the nationality of the independent Czech State. Assuming, which was not the case, that Slovakia’s legislation provided only for the criterion of permanent residence, the same Czech might also qualify in full to acquire the nationality of the independent Slovak State. The second category of situation was one in which the internal legislation made the acquisition of nationality conditional on the fulfilment of two or more elements, the person concerned meeting only one.

12. The CHAIRMAN said that he, too, was concerned about the words “in part”.

<sup>1</sup> Reproduced in *Yearbook* . . . 1997, vol. II (Part One).

<sup>2</sup> See 2477th meeting, footnote 7.

<sup>3</sup> See 2475th meeting, footnote 22.

<sup>4</sup> *Ibid.*, footnote 6.

13. Mr. FERRARI BRAVO stressed that the entire article 7 was conceived in a soft and hypothetical manner, illustrated by the use of the word "should", because the right of option was a very delicate matter. Although there were many treaties, they did not all say the same thing. He was therefore opposed to the deletion of the word "should", but also considered the words at the beginning of paragraph 1 to be all the more superfluous in that they introduced an element which had nothing to do with the codification of international law.

14. Mr. HE said he agreed that, although the will of the person concerned had to be taken into account and expressed through the right of option so as to avoid the imposition of nationality against that person's wishes, care should be taken not to create or increase the number of cases of dual or multiple nationality in the event of State succession. The recognition of the right of option and the exercise of that right should be aimed at reducing statelessness and discouraging dual or multiple nationality. He therefore suggested that the wording of article 7, paragraph 1, should be strengthened by the addition, at the end of the paragraph, of the following phrase: "with the aim of acquisition of the nationality of his own choice". The first phrase of that paragraph should also be deleted so as not to give the impression that the Commission was in favour of multiple nationality.

15. For the same reasons and in view of the close relationship between articles 5 (Renunciation of the nationality of another State as a condition for granting nationality), 6 (Loss of nationality upon the voluntary acquisition of the nationality of another State), 7 and 8 (Granting and withdrawal of nationality upon option), he proposed a number of drafting changes to articles 5, 6 and 8, which he would submit in writing to the secretariat.

16. He was of the opinion that article 7 should contain a provision similar to the one in provision 16 of the Venice Declaration stating that the exercise of the right to choose the nationality of one of the States concerned must have no prejudicial consequences for those making the choice, in particular with regard to their right to residence in the successor State and their movable or immovable property located therein.

17. The CHAIRMAN pointed out that, since articles 5 and 6 had been referred to the Drafting Committee, any drafting changes proposed for those articles should be submitted to the Drafting Committee.

18. Mr. LUKASHUK said that, in view of the reactions within the Commission to the words "either in whole or in part" in article 7, paragraph 1, and the likelihood of even stronger reactions in the Sixth Committee, he was in favour of the deletion of those words and the inclusion in the commentary of any appropriate explanations of specific cases.

19. Mr. BENNOUNA, referring to provision 16 of the Venice Declaration, said the idea that the right of option must not serve as a pretext for penalties of any kind was an essential human rights concern that must have its place in the draft articles. The right of option must be left entirely open and any idea of "reprisals" against any person who had made the "wrong" choice must be precluded.

20. Mr. ECONOMIDES said that he basically agreed with Mr. He and Mr. Bennouna, but recalled that, until recently, the practice of States had provided for the application of penalties. All of the treaties concluded after the Second World War had provided for the obligation, for persons choosing a nationality other than that of the successor State, to leave the territory and liquidate the entirety of their movable and immovable property within a certain period of time. The Venice Commission had rightly concluded that that solution, which was legal under international law, was no longer in keeping with the minimum standards of international law relating to the protection of human rights. Hence the idea of changing the rule as part of the progressive development of international law.

21. Mr. GOCO said he did not think that the first phrase of article 7, paragraph 1, promoted multiple nationality. That paragraph stated the general rule of the right of option in respect of acquisition of the nationality of the two States concerned or more, but paragraph 2 introduced the criterion of a genuine link, which reduced to only one the number of States concerned in respect of which the right of option could be exercised.

22. The CHAIRMAN said that it might nevertheless be possible for more than two States to be concerned.

23. Mr. ROSENSTOCK said that, in the context of the right of option, he was not sure about the need for the words "if the person would otherwise become stateless as a consequence of the succession of States" at the end of article 7, paragraph 2. A person in a position to exercise the right of option was qualified, either in whole or in part, to acquire more than one nationality.

24. Mr. SIMMA pointed out that paragraph 2 limited the right of option solely to situations where the only other alternative was statelessness, whereas it should likewise cover situations involving the following alternatives: to exercise the right of option or to acquire the nationality of the successor State. The introductory phrase "Without prejudice to their policy in the matter of multiple nationality" at the beginning of article 7, paragraph 1, could be deleted, for there was no need to limit in that way the right of option, which was already formulated fairly weakly. If it was a right, perhaps it should be expressed in more forceful terms. The expression "either in whole or in part" was likewise superfluous and seemed to cause confusion as well.

25. Mr. MIKULKA (Special Rapporteur) pointed out that the commentary to articles 7 and 8, contained in his third report (A/CN.4/480 and Add.1), indicated that the Working Group had used the words "right of option" in a broad sense to cover the choice from among the nationalities offered, the possibility of acquiring a nationality with no repercussions on another nationality and the ability to renounce one nationality in favour of another. The whole purpose of article 7, paragraph 1, was to deal with situations of multiple nationality, which covered all possibilities in which the will of the person could be expressed. Persons qualified to acquire or keep multiple nationality must have the right of option, but some States would consider that an individual who chose nationality B would lose nationality A, whereas other States would not object

to multiple nationality. That was the meaning of the opening phrase of paragraph 1. Paragraph 2, on the other hand, referred to a different situation, namely, that of individuals who had the nationality of the predecessor State, but fulfilled none of the criteria that the successor States had established for the automatic acquisition of their nationality. In such instances, numerous State laws incorporated a savings clause permitting the acquisition of nationality by declaration. That had been the case, for example, of individuals who had been born abroad as a result of emigration and had had Czechoslovak nationality, but neither of the two secondary nationalities (Czech and Slovak) of Czechoslovakia, whereas the basic criterion adopted by the two successor States (the Czech Republic and Slovakia) for the acquisition of their nationality had been precisely secondary nationality.

26. The commentary to article 16 (Other States) and the introduction to Part II of the draft provided sufficient information on the question of the genuine link. Perhaps it might be useful to include a reference to those explanations in the commentary to article 7. Regarding the question of penalties, articles 7 and 8 related to the principle of respect for the will of the person concerned and to the fundamental mechanism of the right of option. To introduce elements relating to discrimination might give the impression that, *a contrario*, discrimination was possible in other cases. The problem of penalties should be dealt with during the discussion of article 11 (Guarantees of the human rights of persons concerned).

27. The CHAIRMAN said he was still not convinced that the beginning of article 7, paragraph 1, was necessary, especially if the words “should give” remained unchanged. If the right provided for in that paragraph was a “soft right”, why should pride of place be given to one of the reasons why States might not grant that right? The question of penalties did not necessarily come within the context of article 11, which was in any event too vague. The right of option was exercised by an individual, who acted on his own responsibility, and that was different from the automatic acquisition of nationality. It was therefore precisely in connection with the right of option that a State might be tempted to impose penalties on those who made what it considered to be the “wrong choice”.

28. Mr. LUKASHUK said that the opening phrase of paragraph 1 was important for the future adoption of the draft articles because it confirmed clearly the right of each State to establish its policy in the matter of multiple nationality. That phrase was therefore of fundamental importance and should be retained.

29. Mr. PAMBOU-TCHIVOUNDA said that the basis of the qualification “. . . to acquire the nationality of two or several States concerned” raised a question in his mind. If it was State legislation, then not all legislation approached multiple nationality in the same way. Should such legislation be harmonized or should provision be made for a generic act, in the form of an agreement, for instance, that transcended it? Moreover, if the aim was to emphasize the interests of persons who were going to exercise the right of option, the beginning of the paragraph was contrary to that aim, since it tended to favour States. In any event, the paragraph as a whole should be made more explicit and more imperative. Lastly, para-

graph 1 spoke of “policy” in the matter of multiple nationality, whereas paragraph 2 spoke of “legislation”, which seemed more felicitous in that context.

30. Mr. ECONOMIDES said he gathered from the Special Rapporteur’s explanations that article 7 did not reflect the classic concept of the right of option in the context of State succession, but something entirely new which was perhaps specific to the situation of the former Czechoslovakia. In its classic concept, the right of option was always granted to persons who, for ethnic, linguistic or religious reasons (which involved the notion of minority), did not wish to acquire the nationality of the successor State, but wanted to retain the nationality of the predecessor State. That right was generally provided for by treaty and accompanied by penalties in the event of an option in favour of the nationality of the predecessor State. The Venice Commission had adopted the classic solution, according to which the objective was just one nationality, not several. Article 7, paragraph 1, on the other hand, set forth, in the form of a recommendation, the right to acquire several nationalities if the requisite conditions for the acquisition of each of them were fulfilled, which meant that States were required to show a measure of tolerance towards multiple nationality.

31. Paragraph 2 also did not derive from the classic concept of the right of option and dealt with a more or less borderline case: that of persons who did not fulfil the criteria for the acquisition *ex lege* of nationality, but who had links with the States concerned. Such persons were accordingly granted the right to apply for the nationality of one or several of those States, but on one condition, namely, that, if they did not benefit from that right of option, they would become stateless. He made no secret of his perplexity and doubts at that new concept of the right of option in the case of State succession which emerged from article 7 as a whole, a right which was determined by national laws instead of being a requirement of international law.

32. The CHAIRMAN said that he saw no basic difference in approach between the article under consideration and the position of the Venice Commission.

33. Mr. SIMMA, agreeing fully with Mr. Economides’ conclusions, said that, in his view, the right of option was expressed very clearly in the Venice Declaration, but not in article 7. In effect, paragraph 1 of that article seemed to give a plus to the classic right of option and paragraph 2, a minus, by providing for a right of option—which was not a real option—between the nationality of the successor State and statelessness.

34. Mr. MIKULKA (Special Rapporteur) said he really did not see how paragraph 1 conflicted with traditional practice in the matter, as Mr. Economides asserted. The cases he had quoted in the commentary to the paragraph, to which he would refer members, and by which he had been guided—the Treaty of Versailles, the Peace Treaty of Saint-Germain-en-Laye, among others—were all classic examples. The basic principle underlying the right of option was that a person having his permanent residence in a State that was not to his liking and having acquired the nationality of that State by virtue of his right of residence enjoyed that right if he was drawn, on account of

his ethnic origin, to another State. But ethnic origin was not the sole consideration to be taken into account. There were many others, such as secondary nationality in the case of federal States. Similarly, paragraph 2 was hardly an innovation, being based on numerous laws, as for example on that of Burma.<sup>5</sup>

35. Furthermore, the legal literature did not provide a standard definition of the notion of "option". For some writers, it meant a choice from among possible nationalities, while for others it meant the possibility of acquiring a nationality by a unilateral act of will on the part of the person concerned, without any consequences for another nationality. Indeed, the notion was supposed to operate in favour of the acquisition of a nationality.

36. Mr. ROSENSTOCK said that he could accept article 7 on condition that the words "the right of option for the nationality" of the States referred to in paragraph 2, should be understood as the right to acquire that nationality.

37. Mr. Sreenivasa RAO, stressing the importance of the right of option in the particular case, said that it should be laid down at the outset and its content and the conditions for its exercise should be carefully defined. It was a right that played a central role in guaranteeing the continuity of nationality, particularly in the cases of separation or transfer of territory, when it was necessary to provide that the persons concerned who settled in the new State which had been created were deemed to possess its nationality, with the option of keeping the nationality of the predecessor State. That, in fact, was the classic definition of the right of option. If the predecessor State ceased to exist, the right of option had to be considered from the standpoint of human rights. In other words, the persons concerned should have the right to choose their nationality according to their convenience and preference.

38. He had no difficulty in accepting the Special Rapporteur's proposed wording. In the light of the discussion just initiated, however, he believed strongly that the right of States to decide their policy in the matter of multiple nationality would benefit from being guaranteed in other articles or in a separate article.

39. He wondered whether the principle of a "genuine link", as referred to in paragraph 2, also applied with regard to paragraph 1. Paragraph 2 seemed to state an exception to paragraph 1, which provided for the exercise of a right of option in general under conditions which it defined, rather than under a complementary condition, as others had argued. As for the "reasonable time limit" for exercising the right of option contemplated in paragraph 3, it would be better to specify that any right of option granted by a third State must be "effective", as in fact was the Working Group's interpretation (see para. (41) of the commentary to articles 7 and 8).

40. Lastly, with regard to paragraphs (34) and (35) of the commentary to articles 7 and 8, he was convinced that, in the matter of the right of option, the will of individuals

must, out of respect for the human rights, prevail over the right of States to grant or not grant it.

41. Mr. KABATSI said that article 7 occupied a key place in the draft, as it set forth an essential right. Consequently, paragraph 1, which was currently worded in rather weak terms, should be redrafted to say explicitly that the States concerned should not only take account of the will of the persons concerned, but should also enable them to exercise a right of option. As to the expression "without prejudice to their policy in the matter of multiple nationality", he thought it should be retained, as it simply recognized the right of States to determine their policy on nationality as well as the possibility open to them of rejecting the option chosen if it was incompatible with their internal law.

42. On paragraph 3, he thought, like Mr. Sreenivasa Rao, that the time limit for the exercise of a right of option should be such as to enable the person concerned to exercise that right "effectively".

43. Mr. LUKASHUK said that he found the drafting of article 7 quite precise. It was essential that States should give consideration to the will of individuals and paragraph 1 seemed to strike a balance between the rights of individuals and those of States. It was that balance which was the basis of the provision and which enabled the right of option to be exercised in practice.

44. Mr. THIAM said that the use of the conditional in the text of the article was quite inappropriate, especially in paragraph 3, for it was unthinkable that a reasonable time limit should not be allowed for the exercise of the right of option.

45. Mr. ELARABY said he also thought that the right of option had a critical importance that should be more clearly highlighted in the text of the article and that paragraph 1 should therefore be redrafted. Moreover, as currently worded, paragraph 2 gave the impression that the right of option would not be granted to those persons concerned who were not at risk of becoming stateless. Consequently, it would be better, as other members had suggested, to delete the words "if the person would otherwise become stateless as a consequence of the succession of States" at the end of the paragraph. Lastly, he said he would welcome an explanation of the meaning of the word "any" in the phrase "any right of option" at the end of paragraph 3.

46. Mr. MIKULKA (Special Rapporteur), responding to Mr. Elaraby's last question, said that the expression referred to a potential right of option, for that right of option was not absolute. If a right of option existed in the situation under consideration, a reasonable time limit must be accorded to the persons concerned, to enable them to exercise that right.

47. Mr. GALICKI said he agreed with Mr. Thiam that the conditional was inappropriate in article 7. In the European Convention on Nationality, the word "shall" was used in the English version and he suggested that the Commission should base itself on that model.

48. Mr. SIMMA said that Mr. Elaraby had highlighted the need to redraft article 7. It was true that in paragraph 2,

<sup>5</sup> Burma Independence Act, 1947 (United Nations, Legislative Series, *Materials on Succession of States in respect of Matters other than Treaties* (Sales No. E/F.77.V.9), p. 145).

the words “if the person would otherwise become stateless as a consequence of the succession of States” were unnecessary and that the preceding phrase was sufficient to codify the right of option. However, it was clear that the Special Rapporteur had also wished to stress that the granting of the right of option was one way of eliminating statelessness and that, in his view, the essentials of that right were set forth in paragraph 1. But paragraph 1 also provided for the possibility of the person concerned acquiring the nationality of two or several States concerned, thus going far beyond the right of option as traditionally understood and interpreted. Hence the need to review the text of article 7.

49. Mr. ELARABY said that it would be more logical to invert the order of paragraphs 1 and 2. The current paragraph 2, which defined the right of option, should appear at the beginning of the article.

50. Mr. MIKULKA (Special Rapporteur) said that one of the fundamental rules of international law was the sovereign right of States to impose their nationality on the persons concerned residing in their territory; they were not obliged to grant a right of option to those persons. That was why he had opted for the conditional, which was entirely appropriate, in order to avoid any conflict with the existing rules, whose validity was indisputable. It was to reconcile that sovereign right of States with the right of option of individuals that States concerned were required, regardless of their policy in the matter of multiple nationality, to give consideration to the will of persons concerned, failing which they would be entitled to acquire two or several nationalities. States should thus allow them to acquire the nationality they wished. That idea could be formulated differently, but the essential point was to avoid giving the impression that all the persons concerned had a right of option. The rule must be limited to certain situations and must not confer the right of option on all and sundry; and he considered that the Commission could not follow the Venice Declaration on that point.

51. Mr. PAMBOU-TCHIVOUNDA said he unreservedly endorsed Mr. Elaraby's suggestion concerning the order of the three paragraphs of article 7. Furthermore, he remained convinced that it would not be superfluous to specify what precisely was meant by the word “qualified” in paragraph 1, even if the Special Rapporteur had said that the qualifications in question were those mentioned in Part II of the draft. Lastly, in view of the fact that treaties were referred to in paragraph 2, paragraph 3 should indicate whether the obligation to grant a reasonable time limit existed by virtue of the draft articles or by virtue of an agreement or treaty.

52. Mr. CRAWFORD said that, like Mr. Lukashuk, he thought that article 7 was intended to reconcile the interests of individuals and those of several of the States concerned. It was true that the Venice Declaration, provision 13 of which provided that, in cases where the predecessor State continued to exist, the successor State must grant the right of option to the persons concerned, on the basis, *inter alia*, of ethnic links, went far beyond what was provided under general international law. The successor State would in a sense have the right to determine not only its own policy on matters of nationality, but also that of the predecessor State. The European Convention on

Nationality was much less categorical in that regard. This and a number of other problems raised with regard to article 7 could be solved by rewording the text; the article should thus be referred back to the Drafting Committee.

53. Mr. ECONOMIDES said that provision 13 of the Venice Declaration did indeed formulate a proposition that went far beyond anything that was provided for elsewhere in the rules of international law, as it appeared to grant a right of option to any person wishing to exercise it. It should be remembered, however, that provision 14 of the Declaration provided for the exercise of the right of option conditional on the existence of effective links, in particular ethnic, linguistic or religious, with the predecessor State or with the successor State. The Special Rapporteur had referred to the right of the successor State to grant its nationality to the persons residing in the territory that was the subject of the succession, but those persons might be ethnic or other groups which would not necessarily want that nationality. In that case, the successor State must grant a right of option to those groups. Furthermore, there was a wealth of State practice on that question. The proposed article 7, however, dealt with the right of option not of groups, but of individuals. The fundamental problem was thus whether that right of option must be seen from a collective perspective—the one in which it had always been exercised in the context of succession of States—or from an individual perspective.

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

[Agenda item 1]

54. The CHAIRMAN, referring to paragraph 6 of General Assembly resolution 51/160 and to the possibility envisaged by the Enlarged Bureau (2475th meeting) of setting up a working group on international liability for injurious consequences arising out of activities not prohibited by international law, proposed setting up that working group on the understanding that it would be called upon solely to decide on the advisability of retaining the topic on the Commission's agenda and specifying the guidelines to be given to it, or of abandoning it, and to report to the Commission on its decisions.

55. After a discussion in which Mr. BENNOUNA, Mr. THIAM, Mr. SIMMA, Mr. LUKASHUK, Mr. ELARABY, Mr. Sreenivasa RAO and Mr. KATEKA took part, the CHAIRMAN noted that the majority of the members of the Commission favoured the proposal to set up a working group on international liability for injurious consequences arising out of activities not prohibited by international law.

*It was so decided.*

*The meeting rose at 1.05 p.m.*

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\* Resumed from the 2479th meeting.