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Summary record of the 2495th meeting

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had clearly demonstrated the need to keep in mind, when discussing Part II, that the Commission's work was to culminate in the elaboration of recommendations or model provisions, not in the setting forth of customary rules of law.

62. A great many issues had not been raised and he had deliberately refrained from mentioning them, because he believed that they would be best taken up during the consideration of the articles on second reading. The concept of habitual residence, for example, had been taken as one of the most important criteria for the determination of nationality. Yet in recent experiences with State succession in Eastern Europe, that concept had been interpreted in widely varying ways. The time-frame required for establishing habitual residence was far from uniform in the various countries. Some required residence of several years, even decades. The Commission had certainly never intended to condone abusive interpretations of the time element in the concept of habitual residence, and that issue would have to be addressed during the work on the articles on second reading. On first reading, however, the objective should be to resolve general problems and to identify guiding principles.

63. He thanked all members of the Commission for their attentive reading of the articles and analytical efforts, and wished to apologize if, in the heat of the discussion, he had sometimes seemed impatient and discourteous. No incivility towards any member of the Commission had been intended. He had merely been caught up by his desire to move forward with the work on nationality in the best way possible.

64. Mr. THIAM said that, as one of the participants in the sometimes acrimonious discussions on secondary nationality, he, too, apologized for words that might have been somewhat harsh. The Special Rapporteur had in fact done an excellent job on a very difficult subject and was to be commended for it. It was easier to criticize than to make proposals.

65. The CHAIRMAN said the Special Rapporteur's intensity and commitment to his task had served the Commission extremely well.

66. The discussion on articles 22 to 25 having been concluded, he said that, if he heard no objection, he would take it that the Commission wished to refer them to the Drafting Committee, on the understanding that the words "secondary nationality" would be replaced by a new formulation that, while treating the problems posed by secondary nationality, would not highlight that notion, and that the Special Rapporteur would deal with the matter in the commentary.

It was so agreed.

67. The CHAIRMAN announced that, at the next meeting, the Commission would begin its consideration on first reading of the titles and texts of draft articles 1 to 18 on nationality of natural persons in relation to the succession of States as adopted by the Drafting Committee (A/CN.4/L.535). During the discussion, members of the Drafting Committee were requested to exercise restraint, having had the opportunity to express their views in the Drafting Committee, and members of the Commission

were reminded that they were entirely free to propose drafting changes if they so desired. Once the consideration on first reading was completed, the Special Rapporteur would have the task of finalizing the commentary. The entire text would then have to be translated into all working languages with a view to consideration on second reading. The Commission thus had a great deal of work to do before the draft articles could be considered to have been definitively adopted.

68. Mr. Sreenivasa RAO (Chairman of the Drafting Committee) added that, while the draft articles proposed by the Drafting Committee would be discussed singly or in small groups, members of the Commission were urged to bear in mind the entire structure of Part I, to avoid discrepancies or unnecessary repetitions.

The meeting rose at 1 p.m.

2495th MEETING

Wednesday, 18 June 1997, at 10.05 a.m.

Chairman: Mr. Alain PELLET

Present: Mr. Addo, Mr. Al-Baharna, Mr. Baena Soares, Mr. Brownlie, Mr. Candiotti, Mr. Ferrari Bravo, Mr. Galicki, Mr. Goco, Mr. Hafner, Mr. He, Mr. Herdocia Sacasa, Mr. Kabatsi, Mr. Kateka, Mr. Lukashuk, Mr. Mikulka, Mr. Pambou-Tchivounda, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Rosenstock, Mr. Sepúlveda, Mr. Simma, Mr. Thiam, Mr. Yamada.

Cooperation with other bodies (*continued*)

[Agenda item 9]

1. The CHAIRMAN said that, in his opinion, the Commission was somewhat isolated within the United Nations system. It did, of course, have close relations with the Sixth Committee of the General Assembly, but it did not, for instance, have any organizational link with ICJ; it would certainly be of interest to cultivate relations with that body. If the Commission agreed, he proposed to invite the President of ICJ to attend one of the meetings of the Commission and have an exchange of views with its members, which could only be of benefit.

2. Mr. ROSENSTOCK said he thought that was an excellent idea and would meet with unanimous approval.

It was so decided.

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

[Agenda item 5]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

3. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce its report on Part I of the draft articles on nationality of natural persons in relation to the succession of States as adopted by the Drafting Committee (A/CN.4/L.535 and Corr. 1).

4. The titles and texts of draft articles 1 to 18 as adopted by the Drafting Committee read as follows:*

PART I

GENERAL PRINCIPLES

Article 1 [1], paragraph 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 [footnote]. 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;

(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 [2]. 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 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 5 [3, paragraph 1]. Legislation concerning nationality and other connected issues

Each State concerned should, without undue delay, enact laws concerning 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 6 [3, paragraph 2]. Effective date

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

Article 7 [4]. Attribution of nationality to persons concerned having their habitual residence in another State

1. Subject to the provisions of article 10, 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 impose its nationality on persons concerned who have their habitual residence in another State against the will of the persons concerned unless they would otherwise become stateless.

Article 8 [5]. 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 9 [6]. Loss of nationality upon the voluntary acquisition of the nationality of another State

1. A predecessor State may provide that persons 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 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 10 [7/8]. 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.

* The number within square brackets indicates the number of the corresponding article proposed by the Special Rapporteur in his third report (A/CN.4/480 and Add.1).

¹ Reproduced in *Yearbook . . . 1997*, vol. II (Part One).

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 rights set forth in paragraphs 1 and 2.

[Article 8]²

[Deleted]

Article 11 [9]. 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 12 [1, paragraph 2]. 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 13 [10]. 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 11]³

[Deleted]

Article 14 [12]. 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 15 [13]. Prohibition of arbitrary decisions concerning nationality issues

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

2. Persons concerned shall not be arbitrarily deprived of their right of option to which they are entitled in accordance with paragraph 1.

² Paragraphs 1 and 2 of article 8 appear as paragraphs 3 and 4 of article 10. Paragraph 3 of article 8 was deleted.

³ The Drafting Committee decided to place the content of draft article 11 in the preamble to read as follows:

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

Article 16 [14]. 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 and relevant decisions shall be issued in writing and shall be open to effective administrative or judicial review.

Article 17 [15]. 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 related 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 18 [16]. Other States

1. Nothing in the present draft articles requires States to treat persons concerned having no genuine and 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, for the purposes of their domestic law, 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.

5. Mr. Sreenivasa RAO (Chairman of the Drafting Committee) said that the Drafting Committee had set itself the target of completing the consideration of the draft on first reading by the end of the current session. The proposed text could probably be further refined, but the Drafting Committee trusted that the Commission would not change the structure of the draft.

6. The Drafting Committee had held 12 meetings from 21 May to 12 June 1997. Its very first decision had been to maintain the structure and philosophy behind the draft articles proposed by the Special Rapporteur in his third report (A/CN.4/480 and Add.1).⁴ The draft articles were therefore divided into two parts, but, at the current stage, the Drafting Committee was reporting only on Part I.

7. The Drafting Committee had decided to amend slightly the title to Part I (General principles) to make it clear that the draft articles applied only to the nationality of natural persons. It had been felt that it would be sufficient to introduce that clarification into the title and that there would be no need to include a separate article on the scope of application of the articles. The title of the topic, of course, remained unchanged, thus leaving open the possibility of considering the question of the nationality of legal persons at a later stage.

PART I

8. Introducing the first three articles, he said that the Drafting Committee had decided to retain only paragraph 1 of article 1 (Right to a nationality) and to set forth in it the right of an individual to a nationality in the

⁴ For the text of the draft articles proposed by the Special Rapporteur, see 2475th meeting, para. 14.

case of State succession. The text of the article was based on the Special Rapporteur's proposal, with some modifications. The words "in accordance with the provisions of the internal law of the predecessor State" had been replaced by the words "in accordance with the present draft articles" in order to make the point, first, that the issues arising in respect of nationality in the case of State succession must be resolved by giving priority to the rules and principles of international law even if national law was predominant in that context; and, secondly, that the right of individuals to a nationality in cases of State succession was confirmed even if it was not expressly treated as a human right. The title of article 1 remained unchanged.

9. With regard to "Use of terms", the Special Rapporteur had proposed a series of definitions, set out in a footnote to the title of the draft articles. In view of the importance of those definitions, however, the Drafting Committee had felt that they deserved to be the subject of a separate article. It had therefore been decided to include a new article, article 2. The Drafting Committee had given some consideration to its placement and, as it had been decided that the draft articles would take the form of a declaration, had felt it would be appropriate for the new article to come immediately after article 1. For the same reason, it had decided not to include an article on the scope of the draft articles.

10. The definitions in subparagraphs (a), (b), (c), (e) and (g) were identical to those in the 1978 and 1983 Vienna Conventions. The Drafting Committee had decided to leave those definitions unchanged so as to ensure a measure of uniformity between the draft articles and the two Conventions.

11. It had, however, been felt necessary to clarify two points in the commentary. First, with regard to the expression "succession of States", some members had observed that, unlike the Commission's previous work on State succession, the draft articles dealt with the effects of succession on individuals. It had therefore been necessary to explain that transfer of territory generally connoted transfer of its population, which was the subject of the draft. Secondly, with regard to the expression "predecessor State", it had been considered necessary to make it clear that, in some cases of succession, such as transfer of territory, the predecessor State would not be replaced in its entirety by the successor State but, only in respect of the territory affected by the succession.

12. The expression "State concerned" was not defined in the Vienna Conventions. The Special Rapporteur had felt it necessary to propose such a definition having regard to the variety of States it could cover, depending on the context. The Drafting Committee had agreed to keep the definition in subparagraph (d) very simple. It would be noted that it was formulated in the singular and that the plural, which had appeared in brackets in the draft article proposed by the Special Rapporteur, had been deleted. In the body of the draft articles itself, however, that expression sometimes appeared in the plural. The commentary would therefore explain the meaning to be given to the expression according to the type of succession concerned.

13. As to the expression "person concerned", the Drafting Committee had decided that it was preferable to

restrict the definition in subparagraph (f) to the clearly circumscribed category of persons who had in fact the nationality of the predecessor State. If necessary, the Drafting Committee would consider at a later stage whether to deal, in a separate provision, with the situation of persons who, having fulfilled the necessary substantive requirements for acquisition of a nationality, were unable to complete the procedural stages involved because of the occurrence of the succession. One member of the Drafting Committee had expressed reservations on the definition in subparagraph (f).

14. The Drafting Committee had also changed the order in which the definitions were presented. Thus, all the definitions dealing with States had been placed together, in a logical sequence, after the definition of the expression "succession of States". There then followed the definition of the expression "person concerned", which was widely used in the draft articles. Last came the definition of the expression "date of the succession of States". In the light of the views expressed in plenary, the Drafting Committee had decided not to define the term "nationality", to which very different meanings were attributed. In any event, such a definition was not indispensable for the purposes of the draft articles.

15. Article 3 laid down the obligation of States to prevent statelessness. It corresponded essentially to the text proposed as article 2 by the Special Rapporteur in his third report. The Drafting Committee had, however, replaced the words "all reasonable measures" by the words "all appropriate measures" which, in its view, strengthened the obligation of the State. As indicated by the Special Rapporteur in plenary, the obligation incumbent on the State under that article was an obligation of conduct and not of result as currently understood in the context of responsibility of States. That was still the understanding of the Drafting Committee.

16. The Committee had also made some editorial changes. In the first line, it had replaced the words "are under the obligation to" by the word "shall"; in the second line, it had replaced the words "to avoid" by the words "to prevent"; and, at the end of the sentence, it had replaced the words "said succession" by the words "such succession".

17. It would be noted that the phrase in article 2, subparagraph (f), reading "who, on the date of the succession of States, had the nationality of the predecessor State" in fact defined the term "persons concerned". For stylistic reasons, the Drafting Committee had decided to keep the definition itself, thus avoiding a juxtaposition of the expressions "States concerned" and "persons concerned". Lastly, the title of the article had been simplified and currently read simply "Prevention of statelessness".

18. The CHAIRMAN invited the members of the Commission to make general comments on the draft before considering the articles one by one.

19. Mr. LUKASHUK said that the Drafting Committee had done excellent work and that the product was quite acceptable as it stood. He had detected, however, what he thought was an error of logical sequence: the provisions establishing principles, namely, article 12 (Child born after the succession of States), article 14 (Non-discrimi-

nation) and even 15 (Prohibition of arbitrary decisions concerning nationality issues), should be combined.

20. Mr. Sreenivasa RAO (Chairman of the Drafting Committee), explaining the logical order followed by the Drafting Committee, said that the case of persons of what might be termed "the first generation" concerned by the succession of States had been dealt with first. The question of the second generation, namely, children, had been left until afterwards.

21. The Committee had considered placing article 12, which dealt specifically with the case of children born after the succession of States, after article 6 (Effective date) or article 7 (Attribution of nationality to persons concerned having their habitual residence in another State), but, wherever it was placed, it looked like an insertion. It had also been proposed that it should be restored to its position as the second paragraph of article 1, but it would then read like a footnote. Such a placement would furthermore minimize its importance, something that was extremely unwise at a time of rapid changes in the law relating to children's rights.

22. With regard to articles 13 (Status of habitual residents), 14 and 15, the Drafting Committee had followed the order proposed by the Special Rapporteur, thus abiding by an early decision not to change the structure of the text. There were many other ways of ordering the provisions, but the Commission doubtless wished to focus on matters of substance.

23. Mr. LUKASHUK said that he would revert to the question of the order of the draft articles when the Commission had completed its substantive consideration of the text.

24. Mr. SIMMA said that he found the order of the draft articles proposed by the Drafting Committee quite logical. After a general affirmation of the right to a nationality, the draft articles dealt in succession with persons concerned, their family and the related problem of residence, and went on to state the two general principles of non-discrimination and the prohibition of arbitrary decisions and to enumerate State obligations and the effects on third States. He was perfectly satisfied with that sequence.

25. Mr. THIAM said that he regretted that, as he had already noted, articles had been placed under the heading "General principles" which in no way corresponded to that definition, for example, articles 12 and 16 (Procedures relating to nationality issues).

26. The CHAIRMAN said that one way of getting round the problem was to refer to "Principles applicable to all cases of State succession" rather than to "General principles". He asked the Special Rapporteur for his opinion of that suggestion.

27. Mr. MIKULKA (Special Rapporteur) said that he had no objection to a change in the title of Part I, but wondered whether it was really necessary.

28. Mr. BROWNLIE said that he found the existing title perfectly adequate and consistent with previous usage.

29. The CHAIRMAN said that, if the Chairman of the Drafting Committee could specify the title chosen for Part II, it would shed further light on the matter.

30. Mr. Sreenivasa RAO (Chairman of the Drafting Committee) said that the title of Part II had not yet been finalized; however, to respond to members' concerns, it would be possible to insert an introductory sentence before the text of Part I stating exactly what was meant by "General principles". The title could then be kept brief.

31. Mr. PAMBOU-TCHIVOUNDA, endorsing Mr. Thiam's comments, expressed regret that the Drafting Committee had not kept the original title of Part I proposed by the Special Rapporteur. He considered that the title "General principles concerning nationality in relation to the succession of States" was in any case more appropriate than the version "Principles applicable to all cases of State succession" suggested by the Chairman.

32. Mr. LUKASHUK, also noting that not all the articles in Part I stated general principles, suggested changing the title to "General provisions".

33. The CHAIRMAN said that the title proposed by Mr. Lukashuk had the advantage of being identical to that of Part I of the 1983 Vienna Convention.

34. Mr. MIKULKA (Special Rapporteur) said that the Drafting Committee had considered that possibility, but concluded that, while the word "provisions" might be appropriate for a convention, it was not suitable for a declaration. At the same time, the notion of "principle" should not be treated as an absolute since it was open to several interpretations.

35. The CHAIRMAN said that it would still be appropriate to specify that general principles were principles applicable in all cases.

36. Mr. Sreenivasa RAO (Chairman of the Drafting Committee) suggested that the question of the title should be re-examined more carefully by the Drafting Committee at the end of the discussion.

37. Mr. AL-BAHARNA, reverting to the comments by Mr. Lukashuk and the explanation by the Chairman of the Drafting Committee concerning the position of article 12, said that article 1 was the only other place in the text where an article on the nationality of the child could be inserted; it could be added as a second paragraph under that article, unless it was decided to insert it as article 2.

38. Mr. HE said that article 12 was in the right place after article 11 (Unity of a family), since article 1 dealt only with the general right of every individual to a nationality. The existing sequence of the draft articles seemed perfectly logical.

39. Mr. GOCO warmly commended the efforts of the Drafting Committee to achieve greater simplicity and concision: it could perhaps have gone further by combining in a single article certain general provisions such as those dealing with non-discrimination, prohibition of arbitrary decisions and exchange of information. He asked whether that possibility had been considered.

40. He wondered, however, whether the effort to simplify had been restrictive in the case of the right to a nationality provided for in article 1, resulting in certain groups of persons being denied that right. The text originally proposed by the Special Rapporteur had recognized the right to a nationality not only of every individual who, on the date of the succession of States, had had the nationality of the predecessor State, but also to every individual who “was entitled to acquire such nationality in accordance with the provisions of the internal law of the predecessor State”. The latter phrase had been omitted from the current version. He wished to know whether the omission was intentional or fortuitous.

41. Mr. Sreenivasa RAO (Chairman of the Drafting Committee) said that the matter had certainly not been overlooked, but discussed at length in the Drafting Committee. However, it had proved very difficult in practical terms to resolve the issue satisfactorily in the context of article 1. To avoid wasting time, therefore, the Drafting Committee had decided to shelve it for the time being on the grounds that the provisions generally applicable to persons already possessing the nationality of the predecessor State could also be made applicable—through appropriate amendments or additions—to persons entitled to claim such nationality. The phrase mentioned by Mr. Goco had not been deleted, but simply left pending so as not to hold up the proceedings.

42. With regard to the possible combination in a single article of the general provisions of articles 14, 15 and 17 (Exchange of information, consultation and negotiation), he said he would prefer the Commission to leave problems of that kind aside until the end of the discussion.

43. Mr. SEPÚLVEDA said that it might have been preferable if the Chairman of the Drafting Committee had begun his introduction by reading out the preamble. He noted, for example, that article 11, proposed by the Special Rapporteur in his third report, on the important subject of human rights and fundamental freedoms had been incorporated in the preamble, which the Chairman of the Drafting Committee had unfortunately omitted to mention.

44. His second comment was on a terminological matter. It would be noted that, in article 1 and in article 2, subparagraph (f), the Drafting Committee had used the word *individuo* in the Spanish version and the word *individu* in the French version, whereas the following articles referred to *personas afectadas* and *personnes concernées*. He wondered why the Committee had not maintained the expression *persona natural (personne physique)* originally used by the Special Rapporteur, probably with the intention of clearly establishing the distinction between natural and legal persons.

45. His third comment related to the decision to place the definitions of terms used in article 2 rather than in article 1, as would be logical. In reply to the objection that that type of presentation was habitual in declarations, he pointed out that it created an unfortunate break between article 1, which dealt with the right to a nationality, and article 3, which dealt with prevention of statelessness.

46. Lastly, he wondered whether the Spanish text should not be brought into line with the English and

French versions, which described both States and persons as being “concerned”, by using the adjective *involucrado* for both States and persons instead of referring to *personas afectadas*.

47. The CHAIRMAN, referring to Mr. Sepúlveda’s last comment, said that observations of a strictly linguistic nature could be drawn directly to the attention of the secretariat. With regard to the position of article 2 and notwithstanding the Commission’s decision not to reopen the discussion on the order of the articles, he also noted that article 2, on the “Use of terms”, created a break between articles 1 and 3. As a member of the Commission, he said that he would be in favour of placing that article at the end of the text, a solution that would be acceptable particularly if the draft was to be a declaration.

48. The problem of the harmonization of the terms *individuo* and *persona natural*, to which Mr. Sepúlveda had referred, arose not only in Spanish, but also in French, if not in the other languages.

49. Mr. Sreenivasa RAO (Chairman of the Drafting Committee), replying to Mr. Sepúlveda’s first comment, said that, in view of the wide range of opinions expressed in plenary on the need for and the contents of a preamble, the Drafting Committee had decided not to tackle that issue until it had obtained a clearer overview after completing the consideration of the draft articles.

50. The CHAIRMAN invited the members of the Commission to state their views on Mr. Sepúlveda’s second question about the simultaneous presence in the Spanish and French texts of the expressions *individuo (individu)* and *persona natural (personne physique)*. So far as the French text was concerned, the problem arose mainly in article 2, subparagraph (f).

51. Mr. THIAM, recognizing the need to draw a distinction between the two concepts, said that he would prefer the expression *personne physique*, which had a broader and almost metaphysical meaning, to be retained in the text.

52. Mr. ROSENSTOCK said he doubted whether the coexistence in the text of the expressions “individual” and “natural person” would create any confusion. It was clear from the title that the draft articles related only to natural persons and, if the reader had the slightest doubt about the fact that an individual was a person, he needed only to refer to article 2, subparagraph (f). It was therefore not logical to have to repeat the expression “natural person” throughout the text.

53. The CHAIRMAN said that the Commission had six official languages and, while the expressions “individual” and “natural person” were practically synonymous in English, the same was not true of the corresponding terms in Spanish and French.

54. Mr. KABATSI suggested that the English text should be left unchanged and a separate decision reached for each of the other languages.

55. Mr. LUKASHUK said that the position in Russian was exactly the same as in English and there was therefore no problem.

56. The CHAIRMAN suggested that the word *individu* should be replaced by the words *personne physique* throughout the French text of the draft articles and that the corresponding change should be made in the Spanish text. The Arabic-speaking and Chinese-speaking members would, if necessary, bring the Arabic and Chinese texts into line with those two versions.

It was so decided.

57. The CHAIRMAN invited the Special Rapporteur to comment on the proposals that Mr. Sepúlveda and he, speaking as a member of the Commission, had made on the placement of article 2.

58. Mr. MIKULKA (Special Rapporteur) said that the matter had been exhaustively discussed in the Drafting Committee and the view had prevailed that the definitions should come immediately after article 1. The reason was the rather prosaic one that the last paragraph of the preamble would have to begin with the words: "The General Assembly solemnly declares . . .", and it was hardly conceivable that the General Assembly would solemnly declare a list of definitions.

59. Mr. PAMBOU-TCHIVOUNDA said that he had three comments to make on articles 1 to 3. The first related to the placement of article 2, which ought to appear at the very beginning of the text. Although the Special Rapporteur had recalled that the Commission was working on a draft declaration, he for his part reserved the possibility of stating in other forums that he would prefer the work to take the form of a convention. Secondly, he thought that, for the sake of terminological consistency and intellectual logic, the Commission should use the expression *posséder la nationalité*, which he considered better than the term *avoir la nationalité* in article 3, as well as in article 1 of the French text. His third comment, which related to substance, but also to the question of definitions, had to do with the concept of "having the right" to a nationality used in article 1. Should it be interpreted to mean "having the nationality" or "having the right to claim the nationality"? The terms in question formed a key group within the instrument and their meaning deserved to be clarified, not in the commentaries, but in the article on use of terms. If the plenary or the Drafting Committee agreed to the improvement he was suggesting, he would like it to be incorporated in a new subparagraph (h) of that article.

60. The CHAIRMAN, replying to Mr. Pambou-Tchivounda's second comment, suggested that the word *avaient* in the French text of article 3 should be replaced by the word *possédaient*.

It was so decided.

ARTICLE 1 (Right to a nationality)

61. Mr. Sreenivasa RAO (Chairman of the Drafting Committee) confirmed that the word "had" could be maintained in the English version of article 3. In reply to Mr. Pambou-Tchivounda on the question of the meaning of the expression "to have the right to a nationality", in article 1, he said that the idea was to state as clearly, precisely and categorically as possible, at the very beginning of the part of the draft on general principles, the funda-

mental principle that, in order absolutely to avoid statelessness, every individual who had the nationality of the predecessor State on the date of the succession of States must have the right to a nationality after that date. The elements, modalities of exercise and consequences of that right were spelled out in the articles that followed.

62. Mr. PAMBOU-TCHIVOUNDA said that, if the text were maintained as it stood, at the end of the exercise, the reader would still be wondering what was meant by "having the right to a nationality". Even if his view was a minority one, he repeated that he would have liked the expression to be clarified.

63. The CHAIRMAN said that the modalities of the acquisition or, as the case might be, preservation of the right in question were made clear in the subsequent articles, in accordance with the spirit of article 1. Furthermore, the commentary would explain that the right to nationality was exercised in accordance with the modalities specified in other articles.

64. Mr. GALICKI, supported by Mr. LUKASHUK, said that the Drafting Committee had refrained from defining concepts which were not yet clearly determined, including that of the right to nationality. Although the expression appeared in certain international documents, it had never been defined. To avoid confusion, it should also be borne in mind that the Drafting Committee had, for example, decided to delete a provision of article 1 referring to entitlement to acquire a nationality, retaining only the general expression "right to a nationality". All the precise modalities of the exercise of that right were to be found in the statement of principles which followed. It would therefore be best to abide by that position, especially as the term "nationality" itself was not defined.

65. Mr. GOCO said that Mr. Pambou-Tchivounda had a point. The right to nationality could not be divorced from the modalities or procedures regulating its implementation. Nationality was not conferred automatically and the State or States concerned must adopt legislation or take the necessary steps to give effect to that right. Perhaps the text should read "the right to acquire the nationality".

66. Mr. BROWNLIE said that, in trying to achieve the objective of preventing statelessness, the Special Rapporteur had not wanted to impose unduly detailed obligations on States. He had had to provide for safeguards in very general terms, so that States would accept them. Article 1 had deliberately been drafted in general terms and he thought it would be useless to debate the meaning of the words "the right to the nationality", which had been left vague for a reason and should probably remain so.

67. Mr. HE, supported by Mr. LUKASHUK, said that he wondered whether the words "of at least" should be retained in article 1. They seemed to open the door to multiple nationality, something that was not desirable. Article 1 should set out the right to a nationality, not to several nationalities. Multiple nationality gave rise to difficulties for individuals, as well as for States, and created problems in relations among States. Questions of allegiance frequently arose, particularly when relations among the States concerned were hostile or they were engaged in conflict. The words "of at least" should therefore be deleted in order not to give the impression of encouraging multiple nationality.

68. Mr. MIKULKA (Special Rapporteur) said that Mr. He's interpretation of article 1 was wrong. The entire draft was designed in such a way as to encourage neither multiple nationality nor the prohibition of multiple nationality. States were free to choose their policies in that regard and a rule prohibiting multiple nationality could not be imposed on them. Perhaps Mr. He's concern could be met by indicating in the commentary that article 1 was in no way intended to encourage multiple nationality.

69. Mr. GALICKI said that he endorsed the Special Rapporteur's comments. The right to nationality was a human right and a person could in fact have the right to many nationalities. The right to nationality was not a privilege granted by the State. Article 1 in no way encouraged multiple nationality and the relevant safeguards were set out further on in the draft, specifically in article 8. Article 1 was neutral and took no position either in favour of multiple nationality or against it.

70. Mr. SIMMA said he took the opposite view that the words "of at least" seemed to encourage multiple nationality. The result of deleting them, however, would be even less satisfactory and it was necessary to choose the lesser of two evils. He was therefore in favour of the retention of the words "of at least".

71. The CHAIRMAN, speaking as a member of the Commission, said he agreed with Mr. He that article 1 seemed to encourage multiple nationality. In reply to the Special Rapporteur, he pointed out that the Commission was not obliged to remain neutral because it was responsible for developing the law and he was convinced that there was a very clear tendency within the international community to oppose the practice of dual or multiple nationality. It would therefore be better to discourage multiple nationality than to encourage it. That was why he also was in favour of the deletion of the words "of at least".

72. Mr. ROSENSTOCK said that the right of the individual to choose ran as a leitmotif throughout the draft, with the will of the individual being the primary consideration. The right of option was important in that connection, for it presupposed the right to more than one nationality. It would be inconsistent to take the opposite position in the very first article of the draft. There were various ways in which, elsewhere in the text, dual nationality could be discouraged, if that was what was desired. Without wishing to imply that dual nationality was a good thing, he did not think it was such a bad thing that the individual should be deprived of his right to choose it when it was a legitimate right, as it was throughout the draft. Unless completely neutral wording was found, the text as it stood should be retained, even if it did seem favourable to multiple nationalities, for it was completely in consonance with the rest of the draft.

73. The CHAIRMAN, speaking as a member of the Commission, said he did not believe that the only principle that served as a leitmotif throughout the draft was the right of the person concerned to choose. Although preventing statelessness was essential, the rights of States must likewise be preserved and the draft articles did so quite well. The text would be much more neutral if the words "of at least" were deleted.

74. Mr. Sreenivasa RAO (Chairman of the Drafting Committee) recalled that the draft articles dealt with

nationality in relation to the succession of States. They were in no way intended to encourage multiple nationality. It had been precisely to take account of the opinion of Mr. He and other members that the Drafting Committee had deleted the words "Without prejudice to their policy in the matter of multiple nationality" at the beginning of article 7, which had become article 10. Determining what was State practice in cases other than those of succession of States was not part of the topic under consideration. The problem that arose in connection with article 1 could be solved either by amending the text of that provision or by indicating in the commentary that it was in no way intended to encourage dual or multiple nationality.

75. Mr. GOCO said that he endorsed the comments made by Mr. He; the problems of allegiance to which he had alluded were extremely important in practice. The words "of at least" should therefore be deleted.

76. Mr. HAFNER said that he agreed with the comments made by Mr. Rosenstock and the Special Rapporteur. Deleting the words "of at least" in article 1 might give rise to problems, for example, in the light of provisions that imposed on more than one State the obligation to grant its nationality. A distinction should be drawn between the right to nationality and possession of nationality.

77. Mr. THIAM pointed out that nationality was the purview not only of the individual, but also of States. The wisest course would probably be to retain article 1 as currently drafted.

78. Mr. HERDOCIA SACASA, supported by Mr. KABATSI, said that the Commission should retain the text as it stood. The wording was neutral and encouraged neither dual nationality nor multiple nationality.

79. The CHAIRMAN said that the majority of the members of the Commission seemed to wish to keep the text of article 1 as adopted by the Drafting Committee. He said that, if he heard no objection, he would take it that the Commission wished to adopt article 1.

Article 1 was adopted.

The meeting rose at 1 p.m.

2496th MEETING

Thursday, 19 June 1997, at 10.05 a.m.

Chairman: Mr. Alain PELLET

Present: Mr. Addo, Mr. Al-Baharna, Mr. Al-Khasawneh, Mr. Baena Soares, Mr. Brownlie, Mr. Candioti, Mr. Dugard, Mr. Galicki, Mr. Goco, Mr. Hafner, Mr. He, Mr. Kabatsi, Mr. Kateka, Mr. Lukashuk,