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Summary record of the 2505th meeting

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

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2505th MEETING

Friday, 4 July 1997, at 10.05 a.m.

Chairman: Mr. Alain PELLET

Present: Mr. Addo, Mr. Al-Baharna, Mr. Al-Khasawneh, Mr. Baena Soares, Mr. Bennouna, Mr. Candiotti, Mr. Crawford, Mr. Economides, Mr. Ferrari Bravo, Mr. Galicki, Mr. Goco, Mr. Hafner, Mr. He, Mr. Kabatsi, Mr. Kateka, Mr. Lukashuk, Mr. Melescanu, Mr. Mikulka, Mr. Opertti Badan, Mr. Pambou-Tchivounda, Mr. Sreenivasa Rao, Mr. Rodriguez Cedeño, Mr. Rosenstock, Mr. Simma, Mr. Thiam.

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 COMMITTEE² (*continued*)

PART II (*continued*)

SECTION 2 (Unification of States) (*concluded*)

ARTICLE 21 (Attribution of the nationality of the successor State)

1. The CHAIRMAN invited the Commission to continue its consideration of draft article 21 contained in the second part of the report of the Drafting Committee on the draft articles on nationality of natural persons in relation to the succession of States (A/CN.4/L.535/Add.1).

2. He recalled that, in articles 21, 22 and 23 of the French text, it had been decided that the words *deux États ou davantage* should be replaced by the words *deux ou plusieurs États*. It had also been asked whether the phrase “irrespective of whether the successor State is a new State or whether its personality is identical to that of one of the States which have united” was needed in the text of the article itself. There were only two solutions, either simply to delete that phrase or to place it in the commentary, the second solution being by far the best. The Special Rapporteur had indicated that that phrase did not appear in either the 1978 or the 1983 Vienna Conventions, but had been taken word for word from the commentary to those Conventions.

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

² For the titles and texts of draft articles 1 to 18 as adopted by the Drafting Committee, see 2495th meeting, para. 4; for draft articles 19 to 26 of Part II, text of a preamble and the revised title of Part I of the draft articles see 2504th meeting, para. 28.

3. Mr. HAFNER said the phrase should be retained in order to indicate that article 21 applied to the cases to which it referred. The question had arisen whether the 1978 and 1983 Vienna Conventions applied to such cases, for example, to the case of Germany. It was all the more necessary to retain the phrase because the Commission was working on a draft declaration and the reader of a declaration was less inclined to turn to the commentary than the reader of a convention. He did not see how it could cause a problem in the interpretation of the 1978 and 1983 Vienna Conventions. The second of those Conventions was slightly different from the first and that had not adversely affected the interpretation of the first Convention. In any event, only the 1978 Vienna Convention had entered into force.

4. Mr. CRAWFORD asked whether the words “shall attribute” were peremptory in nature.

5. Mr. Sreenivasa RAO (Chairman of the Drafting Committee) said that those words were not peremptory.

6. The CHAIRMAN recalled that all the “shall”s in Part II (Provisions relating to specific categories of succession of States) were to be understood as “should”s, since article 19 provided that “States shall take into account the provisions of Part II”. The obligation to take something into account was not an obligation to implement it.

7. Mr. CRAWFORD said the rule embodied in article 21 was an obligation under international law.

8. Mr. GOCO asked whether the Commission was formulating a draft declaration or a draft convention.

9. Mr. Sreenivasa RAO (Chairman of the Drafting Committee) explained that the Commission was formulating draft articles in the form of a declaration, but had not yet adopted a final decision on the form the results of its work on the topic would take.

10. The CHAIRMAN pointed out that in paragraph 88 (b) of its report to the General Assembly on the work of its forty-eighth session,³ the Commission had indicated that

for present purposes—and without prejudicing a final decision—the result of the work on the question of the nationality of natural persons should take the form of a declaration of the General Assembly consisting of articles with commentaries.

11. Mr. MIKULKA (Special Rapporteur), endorsing the statement made by Mr. Crawford, said he had always considered that article 21 embodied a rule that already formed part of customary international law. The fact that that rule was incorporated in Part II of the draft articles should not be misconstrued. The rules in Part II were intended as guidelines addressed to the States concerned for use in negotiations, but, when two or more States were united into one, there were no negotiations, since a single State emerged from the process. That State did not have the possibility of amending the rule by means of an international agreement. In accordance with Part I, it was a binding legal obligation for States to prevent cases of statelessness. A State resulting from the uniting of two or

³ See 2479th meeting, footnote 6.

more States had no other choice than to grant its nationality to all the persons concerned because, otherwise, it would not be fulfilling that obligation.

12. The CHAIRMAN, speaking as a member of the Commission, said that, since article 19 (Application of Part II) had been adopted, the Commission could not go back to it, but it might have been useful to specify in that article that the provisions of Part II could be applied for other reasons, for example, because they were part of customary law. That would certainly have to be spelled out in the commentary to article 19, perhaps by listing the provisions in Part II, aside from article 19, that were binding on States.

13. Speaking as Chairman of the Commission, he said that, if he heard no objection, he would take it that the Commission agreed to adopt article 21, it being understood that, in the French text, the words *deux États ou davantage* would be replaced by the words *deux ou plusieurs États*.

Article 21 was adopted.

14. Mr. Sreenivasa RAO (Chairman of the Drafting Committee) recalled that, in the third report (A/CN.4/480 and Add.1), the Special Rapporteur had proposed articles 19 and 22, on the scope of sections 3 and 4, respectively.⁴ The Drafting Committee had, however, found it preferable to integrate provisions concerning the scope of those sections into the text of the relevant articles in each section. It had felt that such an insertion would, without diminishing the priority of the articles, have the added advantage of harmonizing the style of sections 3 and 4 with that of sections 1 and 2. That was why it had decided to delete articles 19 and 22.

SECTION 3 (Dissolution of a State)

15. Turning to section 3, he said that the provisions on the scope of that section had been incorporated in the first article of that section, article 22 (Attribution of the nationality of the successor States). That article therefore corresponded to articles 19 and 20 as proposed by the Special Rapporteur. The first part of the opening clause of the article defined the dissolution of a State, while the second part provided that each successor State, subject to the provisions of article 23 (Granting of the right of option by the successor States), must attribute its nationality to certain categories of persons concerned, as stated in subparagraphs (a) and (b) of article 22.

16. He recalled that subparagraph (b) of article 20 as proposed by the Special Rapporteur, had been the subject of a lengthy debate in plenary, following which the Commission had requested the Drafting Committee to redraft that paragraph by merging the two subparagraphs and finding an alternative formulation for the phrase "secondary nationality" used by the Special Rapporteur in his third report. The Drafting Committee, after due consideration of the matter, had concluded that it was preferable, for reasons of clarity, to keep the two subparagraphs separate. One of them applied to persons concerned irrespec-

tive of their place of residence and the other to persons concerned who had their habitual residence in a third State.

17. In article 22 proposed by the Drafting Committee, the Committee had reversed the order of subparagraphs (b) (i) and (b) (ii). That did not in any way indicate that the criterion referred to in subparagraph (i) was per se more important than the criteria listed in subparagraph (ii). The reason was simply that, in view of the redrafting of the former provision, the new order was more logical. Indeed, where subparagraph (a) was applicable, the majority of persons concerned would fall into that category, and subparagraph (ii) would come into play only with respect to persons not already covered by subparagraph (i).

18. A new formulation was currently proposed in subparagraph (b) (i) for the concept of "secondary nationality". The scope of the provision was broader than the concept of "secondary nationality", as it did not specify a particular type of "appropriate connection" with a constituent unit of the predecessor State. In that provision, the "appropriate connection" with a constituent unit meant a legal bond between the person concerned and the constituent unit, established under the internal law of that unit. Such a bond was close to provisional citizenship. The Drafting Committee had considered, indeed, that other possible connections to constituent units of a State, analogous to "secondary nationality", which could exist under the internal law of the State, should also be covered by the provision. It should be noted, moreover, that subparagraph (b) (i) applied not only to constituent units of a federal State, but also to other types of constituent units, such as municipalities within a unitary State.

19. Concerning subparagraph (b) (ii), the Drafting Committee had considered that the two criteria originally envisaged therein might not be sufficient to cover all cases that the provision was intended to cover. It had therefore introduced the phrase "or having any other appropriate connection of a similar character with that State" to cover additional categories of persons concerned, if any.

20. Lastly, the Drafting Committee had introduced some minor editorial changes in the *chapeau* of the article and had replaced the term "permanent residence" in subparagraph (a) by the term "habitual residence" for purposes of consistency and correctness.

21. The second article of section 3 was article 23 and corresponded to article 21 proposed by the Special Rapporteur. Paragraph 1 of the article remained as proposed by the Special Rapporteur. It provided for the right of option by persons concerned who were entitled to acquire the nationality of two or more successor States, irrespective of whether they had their habitual residence in one of those States or in a third State. Persons concerned were given the right to choose between the successor States. The verb "to grant" had been used in accordance with the Drafting Committee's decision to use that verb in connection with "a right of option".

22. Article 23, paragraph 2, required successor States to grant a right to opt for their nationality to persons concerned who were not covered by the provisions of article 22. The Drafting Committee had changed the article slightly in view of the changes it had made in

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

article 22. For example, the paragraph currently referred to the whole of article 22 rather than only to subparagraph (b) thereof. Similarly, the qualification that the persons concerned should have “their habitual residence in a third State” had been deleted because that requirement was already covered by the reformulation of article 22. Paragraph 2 was intended to cover whatever else was not covered by article 22. The Drafting Committee had made no change in the title of article 23.

ARTICLE 22 (Attribution of the nationality of the successor States)

23. Mr. AL-KHASAWNEH, referring to the *chapeau* of article 22, asked whether the words “and the various parts of the territory of the predecessor State formed two or more successor States” were really necessary.

24. Mr. Sreenivasa RAO (Chairman of the Drafting Committee) said that the intention was to specify that the dissolution of a State could entail the forming of more than two successor States. However, the phrase could be dropped without much harm being done.

25. Mr. MIKULKA (Special Rapporteur) said that the term came from article 31, paragraph 1, of the 1983 Vienna Convention. He recalled that the Commission had decided to follow the text of that provision.

26. Mr. PAMBOU-TCHIVOUNDA said that the expression “dissolves and ceases to exist” was a tautology. He failed to see how a State might dissolve and not cease to exist. While realizing that the formulation was reproduced from earlier conventions, he thought that the Commission, one of whose functions was the progressive development of international law, sometimes tended to be too conservative.

27. The term “appropriate connection” used in article 22, subparagraph (b), was unfortunate whether it applied to the succession of States or to nationality. It should be spelled out with greater precision or perhaps replaced by a more legal term. Furthermore, the term “constituent unit” used in subparagraph (b) (i) was appropriate only if the predecessor State in question had been a federal State and inappropriate if it had not.

28. The CHAIRMAN noted that the English text of article 22 was taken from article 31 of the 1983 Vienna Convention cited by the Special Rapporteur, but that was not so in the case of the French text, which should be brought into line with the wording of the Convention.

29. Mr. MIKULKA (Special Rapporteur), referring to the expression “dissolves and ceases to exist”, said that what seemed obvious to the Commission today had not necessarily been so 20 years previously. Indeed, the Commission had been criticized, in the observations of Member States on the draft articles on succession of States in respect of treaties,⁵ for dealing with dissolution and separation in the same article. States had taken the view that there was a substantial difference between a situation in which the predecessor State continued to exist, as in cases

of separation of one or more parts of its territory, and one where it ceased to exist. That was why the Commission had used the wording in question. Moreover, as had been the case recently, there could often be some confusion in practice about the distinction between dissolution and separation. Specifying that section 3 dealt with cases where the predecessor State had ceased to exist was therefore justified, for the same reason as 20 years previously. Taking the example of the dismemberment of the Austro-Hungarian Empire, he pointed out that certain States had come into being as the result of a separation of the territories of the double monarchy, which had itself ceased to exist when Austria and Hungary had been established as independent States. Thus, even if the term “dissolves and ceases to exist” seemed in theory to express something that was self-evident, the arguments in favour of retaining it were, in practice, more convincing than those in favour of its deletion.

30. Mr. BENNOUNA said that he was not convinced by Mr. Mikulka’s arguments. Respect for precedent, though no doubt legitimate, was not a legal argument. In his view, the words “ceases to exist” would be sufficient and the word “dissolves” was not a legal term.

31. Mr. THIAM and Mr. AL-KHASAWNEH said that they associated themselves with Mr. Bennouna’s comments.

32. The CHAIRMAN said that he nevertheless understood that a majority of the members of the Commission were in favour of retaining the term “dissolves and ceases to exist”.

It was so decided.

33. Mr. THIAM said that the disagreement on that point should be reflected in the commentary to article 22.

34. Mr. MIKULKA (Special Rapporteur) said that the matter was entirely one of drafting and would be out of place in the commentary to a draft article.

35. Mr. ROSENSTOCK said he also thought that the commentary should be reserved for substantive questions. The inclusion of explanations on drafting problems would make it heavier and the provision in question all the more difficult to interpret, and that was the exact opposite of the desired effect.

36. The CHAIRMAN said he understood that the Commission nevertheless wanted the necessary explanations to be provided in the commentary.

37. Mr. LUKASHUK noted that the words “constituent unit” were used in subparagraph (b) (i), whereas the term “territory” was to be found elsewhere. He requested an explanation of that distinction.

38. Mr. Sreenivasa RAO (Chairman of the Drafting Committee) said that the concept of a constituent unit was useful in the context of secondary nationality, a problem that the Commission had already discussed extensively. It was one of the elements of the legal connection which existed between certain individuals and a certain entity (federal State, province, municipality) and which distinguished those individuals from others belonging to the same State, but having a connection with another entity.

⁵ *Yearbook* . . . 1974, vol. II (Part One), p. 313, document A/9610/Rev.1, annex 1.

The term "territory" was used in the context of the cessation, secession, dissolution or partition of States.

39. Mr. CRAWFORD said that the problems arising from the use of the words "appropriate connection" in subparagraphs (b) (i) and (b) (ii) was further complicated by the qualifying phrase "of a similar character" in subparagraph (b) (ii). In that provision, such "similarity" referred back to the concept of "habitual residence", which, in turn, referred back to article 14 (Non-discrimination), whereby any discrimination in the recognition of the right to a nationality was prohibited.

40. Mr. ECONOMIDES said that, although the concept of "appropriate connection" played a key role in the draft articles, no definition of it was to be found in the text and that, in his view, was a serious weakness. The interpretation of what was "appropriate" was therefore left to the States concerned, with national lawmakers being responsible for giving a meaning to that criterion.

41. The Drafting Committee had been right to add a clause to the text proposed by the Special Rapporteur for subparagraph (b) (ii). It had thus broadened the definition of persons to whom the nationality of the successor States could be attributed, but its reasoning broke down over the concept of "similar character". He asked whether the term meant that the connection in question was limited to considerations of residence. He would be in favour of the deletion of the qualifying clause.

42. Mr. BENNOUNA said that he shared Mr. Economides' view. Some explanation of the term "of a similar character" could perhaps be provided in the commentary. Some definitions at the beginning of the text could also be added on second reading. In any event, he wished to place on record his serious reservations about the term in question.

43. Mr. GOCO asked for an explanation of the meaning of the term "appropriate connection", which gave rise to problems, especially in subparagraph (b) (ii) which was subject to the condition expressed in its *chapeau* ("without prejudice to the provisions of article 7"). Article 7 (Attribution of nationality to persons concerned having their habitual residence in another State), on which he recalled having spoken with some force, provided that a successor State was not required to attribute its nationality to persons concerned who had their habitual residence in another State. Despite that non-obligation, article 22 recognized that the attribution of nationality could apply to persons who were not resident in the State concerned, provided that they had an "appropriate connection" with that State. The question was therefore what type of "appropriate connection" could reverse the non-obligation of the State.

44. The CHAIRMAN, speaking as a member of the Commission, said that he agreed with the comments made by Mr. Economides and Mr. Bennouna. In his view, "appropriate connection" was meaningless in legal terms. As he had already explained, he would personally prefer "effective connection" but the Commission had not fallen in with that suggestion. He therefore proposed "legal connection". He likewise shared Mr. Economides' opinion of the qualifying phrase "of a similar character", which he thought should be deleted.

45. Mr. MIKULKA (Special Rapporteur) said he thought that the term "legal connection" proposed by the Chairman, speaking as a member of the Commission, would do very well in subparagraph (b) (i), but not in subparagraph (b) (ii). As there seemed to be problems with the words "of a similar character", he proposed that, in subparagraph (b) (ii), the words "or having any other appropriate connection of a similar character with that successor State" should be deleted. The persons referred to in the deleted phrase would still be covered in any case by article 23, paragraph 2, which referred to "persons concerned who are not covered by the provisions of article 22".

46. The term "appropriate connection" was also used in article 10 (Respect for the will of persons concerned), paragraph 2, but with a slightly different meaning: in that context, it meant that any connection between a person and a State concerned could be invoked where the aim was to avoid statelessness.

47. Mr. ECONOMIDES said that he found the term "legal connection" better than the term "appropriate connection", although what the new term covered was not very clear either. The mere fact of having a bank account in a State could amount to a legal connection. To be more precise, the term "appropriate legal connection" should be used.

48. With regard to the phrase "or having any other appropriate connection of a similar character with that successor State", the deletion of which was proposed by Mr. Mikulka, he held to the view that its inclusion had been an intelligent move on the part of the Drafting Committee. He was therefore against its deletion because, in that case, the only remaining criteria for the attribution of nationality to the persons referred to in subparagraph (b) were birth and habitual residence, whereas the aim should be to broaden the circle of such persons. The words "of a similar character", however, introduced an undesirable element of ambiguity into the wording.

49. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission wished to use the term "appropriate legal connection" in article 22, subparagraph (b) (i).

It was so decided.

50. Mr. BENNOUNA, referring to the phrase, the deletion of which was proposed by Mr. Mikulka, said he agreed with that proposal, since the phrase referred to persons whose situation was already covered by other provisions of the draft articles. Its deletion would also make the sentence less unwieldy.

51. Mr. ECONOMIDES said that he objected to the deletion of the phrase. As he saw it, subparagraph (b) established two criteria: birth in the territory of the State concerned or habitual residence in that territory, both of which came under *jus soli*. But the *jus sanguinis* hypothesis should not be ruled out. He mentioned by way of illustration the case of a son of Greek parents who neither lived nor worked in Greece but who, in the event of a new Greek State being established, would opt for the nationality of that new State. He could lay claim to it by claiming "another appropriate link", that is to say *jus sanguinis*. If

that possibility was ruled out, the person concerned could, of course, invoke article 23, paragraph 2, but, in his view, that paragraph was not a normative provision, but a mere safety valve.

52. Mr. MIKULKA (Special Rapporteur) said that, taking article 22 as currently worded, it was possible, on the basis of each of the criteria for the attribution of nationality set forth in subparagraphs (a) and (b), namely, habitual residence in the territory, an appropriate legal connection with a constituent entity of the predecessor State (that is to say secondary nationality), birth in a territory or previous residence in that territory, to establish exactly which successor State must attribute its nationality to the person concerned. In the case of Czechoslovakia following its dissolution, for example, it would be found that application of each of the above-mentioned criteria would indicate whether it was appropriate to attribute Czech nationality or Slovak nationality to the person concerned. On the other hand, if the *jus sanguinis* connections mentioned by Mr. Economides were invoked, there would be absolutely no way of knowing to which successor State a third-generation emigrant whose parents and grandparents were Czechoslovak should be attached because the *jus sanguinis* connections were actually connections with the predecessor State. It was logical that the third-generation emigrant should be able to choose himself between the successor States, which would automatically place him in the category of persons covered by article 23. He asked Mr. Economides how the criterion he was seeking to establish could be used to attribute the nationality of State A rather than State B to that person and vice versa and why he felt that the case was not sufficiently well covered by article 23, paragraph 2.

53. Mr. ECONOMIDES said that, while the criteria of place of birth or former habitual residence set forth in subparagraph (b) (ii) were precise, the criterion of an appropriate connection with the successor State was much less precise. It could refer to a connection with the territory of either successor State through family origin, but also to an ethnic, linguistic or simply historical connection. It was for the State to legislate one way or the other and it should not be deprived of that option.

54. The CHAIRMAN said he thought that the words "of a similar character" covered exactly the kinds of cases mentioned by Mr. Economides. He therefore failed to understand why he wanted them to be deleted. As an alternative, he proposed that the last phrase of subparagraph (b) (ii) should be reworded to read ". . . other appropriate connection with that successor State and of a similar character" or else, as Mr. Economides suggested, that the commentary should specify very clearly that a connection with the territory of the successor State was meant.

55. Mr. CRAWFORD said that the main objection to Mr. Economides' argument was that, as Mr. Goco had rightly noted, article 22 imposed an obligation on the successor State. It was perhaps not very appropriate under those circumstances to force that State to grant its nationality to persons who simply had an "appropriate connection" with it, that is to say basically, to a totally indeterminate category of persons. He would personally prefer that the Special Rapporteur's proposal should be

adopted and that the last phrase, following the words "successor State", should be deleted.

56. Mr. GALICKI said that, in view of the problems raised by the last phrase, that seemed to be the most reasonable solution, since cases that were not covered by article 22 would in any case be covered by article 23, paragraph 2.

57. Mr. SIMMA said that, if he had correctly understood Mr. Economides, his point was that the provisions of article 23 did not adequately cover the case of persons who had some kind of special connection with the successor State. That had perhaps also been the Drafting Committee's interpretation and he wondered whether it might be preferable to keep the text as it stood.

58. Mr. Sreenivasa RAO (Chairman of the Drafting Committee) acknowledged that it was not by chance that the Drafting Committee had decided to emphasize such *jus soli* criteria in article 22 as place of birth or place of habitual residence and that it had avoided introducing *jus sanguinis* considerations. In practice, the concept of "person concerned" obviously had *jus sanguinis* connotations, but that had never been explicitly stated. At no stage had the members of the Drafting Committee considered that *jus sanguinis* criteria could be placed on the same level as *jus soli* criteria, primarily for the reasons stated by the Special Rapporteur. The latter had rightly noted that a situation such as that mentioned by Mr. Economides could not be covered by article 22 and that article 23, paragraph 2, was the relevant provision in the case in point. That having been said, by including the highly flexible criterion of an appropriate connection with the successor State in article 22, the members of the Drafting Committee had wished to leave the door open to *jus sanguinis* considerations and that position could perhaps be stated explicitly in the commentary.

59. Mr. MIKULKA (Special Rapporteur) said that, on reflection, he realized that Mr. Economides was not really proposing that *jus sanguinis* should be introduced into the article, but wished instead to have criteria of ethnic connection taken into consideration. That went no way towards solving the problem, however, since inter-ethnic marriages were common in certain cultures and societies, so that it would be as difficult as ever to determine the appropriate successor State to which a third-generation emigrant from a mixed marriage between persons belonging to two different ethnic groups in the predecessor State should be attached.

60. The CHAIRMAN, having summed up the various proposals made during the debate and having taken an indicative vote on the retention of the words "of a similar character", noted that a large majority of members were in favour of deletion.

61. Having taken an indicative vote on the deletion of the last phrase of subparagraph (b) (ii), he noted that the Commission wished to retain that phrase.

62. Mr. CRAWFORD said that, in the context, article 14 of Part I was predominant.

63. Mr. THIAM said that he objected to the term "appropriate connection" because the word "appropriate" was not defined.

64. Mr. Sreenivasa RAO (Chairman of the Drafting Committee) said that he shared Mr. Crawford's view about the dominant nature of non-discrimination, which was a very important criterion for the application of Part II. He nevertheless thought that the principle of non-discrimination was taken into account by the fact that article 19, which was the first article of Part II, expressly referred to the provisions of Part I.

65. The CHAIRMAN said that the various points of view expressed would be duly reflected in the commentary.

66. He suggested that the Commission should adopt article 22 with the following two amendments: in subparagraph (b) (i), the word "legal" should be inserted between the word "appropriate" and the word "connection"; and, in subparagraph (b) (ii), the words "of a similar character" should be deleted.

It was so decided.

Article 22, as amended, was adopted.

ARTICLE 23 (Granting of the right of option by the successor States)

67. Mr. ECONOMIDES proposed that the word "all" before the word "persons" in paragraph 1 should be deleted in order to bring the wording into line with that of articles already adopted. Since the words "who are qualified to acquire" were rather vague, he shared the view expressed by another member that the Commission should make an effort to adopt more precise wording on second reading. As a consequence of the amendment of article 22, subparagraph (b) (ii), he proposed that article 23, paragraph 2, should be redrafted to read: "Each successor State shall grant the right to opt for its nationality to persons concerned who are not covered by the provisions of article 22 and who would otherwise be stateless".

68. The CHAIRMAN, replying to a question by Mr. ROSENSTOCK, said that the proposed amendment to paragraph 1 was simply a drafting change and that the commentary would make it quite clear that the paragraph related to all persons concerned. He suggested that the Commission should adopt the proposed amendment, namely, the deletion of the word "all" before the word "persons".

It was so decided.

69. Mr. MIKULKA (Special Rapporteur) said that he objected to the amendment proposed to article 23, paragraph 2, since the intention was precisely to go a little beyond the prevention of statelessness. Persons not covered by article 22 had to have a right to opt for the nationality of a successor State in order, for example, to carry out projects undertaken in relation to the predecessor State. Moreover, a reference to statelessness would duplicate article 10, paragraph 2.

70. Mr. Sreenivasa RAO (Chairman of the Drafting Committee) confirmed that the purpose of preventing statelessness was only one of the aspects of the paragraph, which related to persons concerned who had the nationality of the predecessor State and who, wherever they might be, were not covered by article 22. It was, in fact, an abundant caution provision, the discussion having shown that, whatever precautions might be taken, some case was nearly always overlooked.

71. Mr. ECONOMIDES said that he withdrew his proposed amendment to paragraph 2.

72. Mr. BENNOUNA said that, for reasons of legal technique, he had doubts about keeping paragraph 2 at all. Having broadly defined certain categories in article 22, the Commission was introducing a third, undefined category of persons concerned in article 23. Trying to make the draft cover everything could make it useless and irrelevant.

73. The CHAIRMAN said that article 2 (Use of terms), subparagraph (f), defined "persons concerned".

74. Mr. SIMMA said that, in the case of the dissolution of a State, the basic idea was that all nationals of the predecessor State should eventually have the nationality of one of the successor States. In that respect, the Commission had gone as far as it could to ensure that no one was overlooked. Having regard to the extremely broad scope of article 22, he wondered what were the categories of persons who were not covered by that article and would therefore come under article 23, paragraph 2.

75. Mr. Sreenivasa RAO (Chairman of the Drafting Committee) explained that, while the deletion of the words "of a similar character" in article 22, subparagraph (b) (ii), had indeed helped to broaden the range of persons concerned covered by that article, article 23, paragraph 2, was specifically concerned with *jus sanguinis* in the case of persons who, having been born and residing abroad, were not covered by that provision of article 22 and should therefore be able to obtain a right of option. That was the only category which came to mind, but the purpose of retaining paragraph 2 had been to avoid any ambiguity or uncertainty.

76. Mr. SIMMA said that the amendment to article 22, subparagraph (b) (ii), amounted to deleting any reference to a territorial element and, consequently, to having *jus sanguinis* covered by that article. He still failed to understand what specific category of persons would come within the scope of article 23, paragraph 2.

77. Mr. MIKULKA (Special Rapporteur) recalled that the last part of article 22 spoke of "any other appropriate connection" with "that successor State", in other words, with either State A or State B. It could happen that a person had no appropriate connection with either of the successor States, but did have a genuine link with the predecessor State by virtue of *jus sanguinis*. If the "appropriate connection" criterion led one of that person's parents to successor State A and the other to successor State B, the result was total confusion. All that could be done in such a case was to formulate an obligation for both successor State A and successor State B to offer a right of option to that person, who had been overlooked

and was therefore in danger of not acquiring the nationality of any successor State.

78. Mr. SIMMA said that he was currently convinced of the advisability of retaining article 23, paragraph 2.

79. Mr. GOCO said that he had no objections to the substance of the text, but wondered whether, generally speaking, the Commission should not consider the possibility of curtailing the practice of cross-references, which often caused confusion. Moreover, since the right of option had been defined as having two aspects, one positive and the other negative, he asked the Chairman of the Drafting Committee to explain how article 23, paragraph 2, tied in with the right to opt out and, in particular, with article 7, paragraph 2.

80. Mr. Sreenivasa RAO (Chairman of the Drafting Committee) explained that, from the technical point of view, cross-referencing was designed to guarantee respect for the basic objectives of the draft. There were too many cross-references, but that was inevitable on first reading. If, when drafting specific provisions such as those in Part II, the Commission refrained from referring to the draft's basic objectives, there was a risk that the provisions it adopted might result in statelessness, multiple nationality or a nationality being imposed on persons against their will. In the particular case of articles 22 and 23, the objective was to ensure that the persons concerned obtained the nationality of one of the successor States. However, if one such person was habitually resident abroad and did not wish to be a national of one of the successor States, the nationality of that State could not be automatically imposed on that person. That had to be spelled out so that one of the basic objectives of the text would not be meaningless. Cross-references were thus a necessity at the current stage, but, on second reading, the Commission could look into better ways of achieving the desired end.

81. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission wished to adopt article 23 with the amendment to paragraph 1.

Article 23, as amended, was adopted.

The meeting rose at 1.05 p.m.

2506th MEETING

Friday, 4 July 1997, at 3.05 p.m.

Chairman: Mr. Alain PELLET

Present: Mr. Addo, Mr. Al-Baharna, Mr. Al-Khasawneh, Mr. Baena Soares, Mr. Bennouna, Mr. Candiotti, Mr. Crawford, Mr. Economides, Mr. Ferrari

Bravo, Mr. Galicki, Mr. Goco, Mr. Hafner, Mr. He, Mr. Kabatsi, Mr. Kateka, Mr. Lukashuk, Mr. Melescanu, Mr. Mikulka, Mr. Operti Badan, Mr. Pambou-Tchivounda, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Rosentock, Mr. Simma, Mr. Thiam.

Closure of the International Law Seminar

1. The CHAIRMAN invited Mr. von Blumenthal, Director of the Seminar, to address the Commission on the occasion of the closing ceremony of the thirty-third session of the International Law Seminar.

2. Mr. von BLUMENTHAL (Director of the International Law Seminar) expressed gratitude to all those who had helped to make the Seminar a meaningful event. He said that special thanks must go to the Governments which had donated the necessary funds without which it would not have been possible to ensure equitable geographical distribution among the participants, and also, of course, to the Chairman and members of the Commission, the experts from international organizations who had given lectures and the many members of the secretariat who had lent their support in various ways.

3. At a time of financial crisis, when the work and mandates of many United Nations bodies were being questioned, the International Law Seminar could not escape scrutiny of its objectives, methods and value. Constructive criticism and suggestions by Commission members as well as by participants in the Seminar were both necessary and welcome. Within tight financial and material limits, the active involvement of members of the Commission remained vital. For 33 years, the Seminar had provided a unique opportunity to successive generations of young lawyers from all regions and legal systems to acquaint themselves with the techniques of codification of vital topics of international law. Many previous participants had since taken up important positions in government and international relations, and some had become members of the Commission. He hoped that the participants in the thirty-third International Law Seminar would also go on to perform important functions and trusted that the three weeks of intensive exposure to the work of the Commission would remain a lasting source of inspiration to them in their commitment to bridging differences and conflicts through the unifying force of law and dialogue. In conclusion, he wished the participants every success in their future endeavours.

4. Ms. DOUKOURE, speaking on behalf of the participants in the International Law Seminar, thanked the Chairman and members of the Commission, the Director of the International Law Seminar and all members of the secretariat who had contributed to the successful holding of the Seminar. Attending the Commission's plenary meetings had given participants a better insight into problems in the codification and progressive development of international law as well as into the Commission's working methods. The lectures given by members of the Com-