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Summary record of the 2507th meeting

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

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2507th MEETING

Tuesday, 8 July 1997, at 10.05 a.m.

Chairman: Mr. Alain PELLET

Present: Mr. Addo, Mr. Al-Baharna, Mr. Baena Soares, Mr. Bennouna, Mr. Brownlie, Mr. Candioti, Mr. Economides, Mr. Ferrari Bravo, Mr. Galicki, Mr. Goco, Mr. Hafner, Mr. He, Mr. Kabatsi, Mr. Kateka, Mr. Lukashuk, Mr. Melescanu, Mr. Mikulka, Mr. Sreenivasa Rao, Mr. Rodríguez 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 4 (Separation of part of the territory)

1. The CHAIRMAN invited the Commission to continue its consideration of 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. Mr. Sreenivasa RAO (Chairman of the Drafting Committee), introducing the articles in section 4, said that section as proposed by the Special Rapporteur in his third report (A/CN.4/480 and Add.1)³ had begun with a scope article, which had been article 22. That article was currently inserted in the opening clause of article 24 (Attribution of the nationality of the successor State), for the same reasons as had led to the deletion of article 19, in section 3.

3. Article 24 thus consisted of articles 22 and 23 as proposed by the Special Rapporteur in his third report and the title was slightly amended. In the opening clause, separation of part of the territory was defined as an act whereby part or parts of the territory of a State separated from that

State and formed one or more successor States while the predecessor State continued to exist. That definition therefore drew a distinction between separation and transfer of territory where the separated part of the territory joined another existing State. Under article 24, each successor State, subject to article 26 (Granting of the right of option by the predecessor and the successor States) attributed its nationality to persons concerned who had their habitual residence in its territory. In addition, without prejudice to the provisions of article 7 (Attribution of nationality to persons concerned having their habitual residence in another State), each successor State attributed its nationality to persons covered by subparagraphs (b) (i) and (ii). In view of the parallels between the texts of article 22 proposed by the Special Rapporteur and article 24, the changes in article 22 had to be reflected in article 24. That explained why the Drafting Committee had redrafted subparagraphs (a) and (b) and why changes had to be made in article 24 similar to those decided on in plenary for article 22 as proposed by the Special Rapporteur.

4. Article 25 (Withdrawal of the nationality of the predecessor State) corresponded to article 24 as proposed by the Special Rapporteur in his third report and kept the same title. It attempted to maintain a delicate balance between what a predecessor State, in a case of separation, should and should not do. Under paragraph 1, the predecessor State was obliged to withdraw its nationality from persons concerned who had chosen the nationality of one of the successor States. That category included persons concerned who were qualified to acquire the nationality of one or more of the successor States in accordance with article 24. Paragraph 1 was subject to two qualifications, the first concerning observance of article 26, on the right of options. Secondly, any withdrawal of nationality by the predecessor State could not take place before the persons concerned had acquired the nationality of the successor State, something which upheld one of the basic policies of the draft, namely avoiding statelessness, even if temporarily or for a short period of time. The paragraph sought to prevent situations in which a predecessor State, by continuing the validity of its nationality for a certain category of persons, might prevent them from becoming nationals of one of the successor States, or again the absurd situation in which, theoretically speaking, the successor State would be left with very few nationals on its territory. Article 25, paragraph 2, was aimed at preventing a predecessor State from using the pretext of the separation of part of its territory to deny its nationality to various categories of its population. In that regard, he would emphasize that, while the requirements of paragraph 2 applied to persons concerned, they applied with greater force to nationals of the predecessor State who were not affected by State succession at all. In view of the redrafting of article 24, revisions had also been necessary in original article 25.

5. Section 4 ended with article 26, which corresponded to article 25 as proposed by the Special Rapporteur and was intended to give effect to article 10 (Respect for the will of persons concerned) in a case of separation of a territory of a State. It recognized a right of option for all persons concerned who, by virtue of the application of articles 24 and 25, would be qualified to have the nationality of both the predecessor and the successor States or two or more successor States. The Drafting Committee

* Resumed from the 2505th meeting.

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

had made only stylistic changes so that the article was consistent with the use of terms in the previous articles. The article did not contain a provision analogous to paragraph 2 of article 23 for cases of dissolution, since the continued existence of the predecessor State and its duty not to withdraw its nationality from persons concerned until they had acquired the nationality of the successor State was enough to remove any risk of statelessness.

ARTICLE 24 (Attribution of the nationality of the successor State)

6. Mr. GALICKI explained changes that should be made to article 24 further to those decided on by the Commission in connection with article 22 as proposed by the Special Rapporteur, changes which the Chairman of the Drafting Committee had mentioned only very briefly. First, in subparagraph (b) (i), the word "legal" should be inserted between "appropriate" and "connection", and in subparagraph (b) (ii), the words "of a similar character" should be deleted.

7. In response to a query by Mr. ECONOMIDES, the CHAIRMAN said the secretariat would make sure that the text of the introductory paragraph of article 24 would reproduce, word for word, that found in the 1978 and 1983 Vienna Conventions. He said that, if he heard no objection, he would take it that the Commission agreed to adopt article 24 as amended.

Article 24, as amended, was adopted.

ARTICLE 25 (Withdrawal of the nationality of the predecessor State)

8. Mr. ECONOMIDES said he had two comments to make on what he considered to be matters of substance. With reference, first, to paragraph 1, he thought the Commission could do without stating two successive operations, namely a positive act in the first sentence and a negative act in the second. Paragraph 1 should therefore be recast to read:

"1. Subject to the provisions of article 26, the predecessor State shall withdraw its nationality from persons concerned who acquire the nationality of the successor State in accordance with article 24."

The second point concerned paragraph 2, which the Special Rapporteur himself seemed to have considered deleting. He still failed to see its value, since it added nothing to the provisions of paragraph 1 and simply stated the obvious. If the paragraph was justified in article 25, one might ask why a similar provision had not been incorporated in article 20 (Attribution of the nationality of the successor State and withdrawal of the nationality of the predecessor State) for cases of transfer of part of the territory, in which there was also a part of the population that did not change nationality.

9. Mr. ROSENSTOCK, supported by Mr. BROWNLIE, said that, with regard to the proposal to change paragraph 1, whilst he was generally in favour of a certain economy of drafting, he considered in the current instance that the wording of paragraph 1 as submitted to the Commission served a didactic purpose for the casual reader,

and indeed for any non-specialist, and should therefore be retained.

10. Mr. ECONOMIDES withdrew his proposal to amend paragraph 1 of article 25.

11. Mr. MIKULKA (Special Rapporteur), responding to the comment by Mr. Economides about paragraph 2, first emphasized the complementarity between paragraph 2 of article 25, article 26, of which it was the *raison d'être*, and paragraph 1 of article 25, which was expressly subject to article 26. Under article 25, paragraph 1, the predecessor State withdrew its nationality from persons concerned provided they had not opted to keep its nationality. However, to exercise that option, persons concerned should be entitled to choose between the nationality of the successor State and that of the predecessor State, and that entitlement stemmed precisely from article 25, paragraph 2, which indicated the categories of persons who were covered both by the legislation of the successor State and by the legislation of the predecessor State.

12. As to the comparison with transfer of part of the territory, both the Commission and the Drafting Committee had accepted the idea that the persons concerned were in fact those who had their habitual residence in the transferred territory and that, as far as the others were concerned, there was no reason to question the nationality of the predecessor State. That was why he had not deemed it advisable to resort to provisions as complex as those set out in article 25 in the case of separation.

13. Further justification of the difference in treatment for articles 20 and 25 and, therefore, for keeping article 25, paragraph 2, lay in the fact that it was often difficult to distinguish between separation and dissolution. It meant laying down for those two situations rules that were as close as possible for cases in which the process of separation continued and led to complete dissolution. Accordingly, in the case of separation, it was necessary to protect persons born in the affected territory who had their habitual residence outside that territory and might well be deprived of a nationality if the separation led to dissolution. However, such a risk did not exist in the case of transfer in part of the territory, since everyone who did not acquire the nationality of the successor State remained a national of the predecessor State.

14. A further problem, sometimes, was the difficulty of persuading a State that it was the successor State when it insisted on regarding itself as the predecessor State. Hence the need to formulate the obligations of the predecessor State by drawing very closely on those of the successor State, so as to conclude that, on the legal level, the obligations imposed on both States were ultimately the same, but drafted in different terms. That was exactly the purpose of article 25, paragraph 2, which was warranted by the need to impose on the predecessor State at least the same conditions as those imposed on the successor State by article 24 in regard to keeping certain categories of persons as its own nationals.

15. Mr. BROWNLIE said that the apparent differences in the views of Mr. Economides and the Special Rapporteur lay in the deliberately didactic style of the draft declaration, which should be understandable to non-jurists.

Consequently, even if there were technical grounds for the criticisms, it was preferable to keep the text as it stood.

16. Mr. ECONOMIDES pointed out that, while article 25, paragraph 1, did relate to State succession, that was not true of paragraph 2, which simply described a factual situation, namely the predecessor State continued to exist and kept the population that stayed on the territory left to it. Such a remark had no place in the draft and, if its presence was to be justified for didactic reasons, such reasons also applied to all the other articles.

17. Mr. Sreenivasa RAO (Chairman of the Drafting Committee) said he wished to make three points. First, it was clear that the Drafting Committee had chosen certain stylistic options inherent in a draft declaration which had already been used in the draft articles proposed by the Special Rapporteur. Secondly, the Commission's point of departure was that the case of transfer of part of the territory envisaged in article 20 covered separation of a territory that was justified for various technical reasons and therefore affected only a very small population, of a different magnitude from that covered by article 25. For that reason, it had not been deemed advisable to reproduce in the first case the complex system devised in the context of section 4. Thirdly, paragraph 2 would apply more particularly in a situation in which, after a country was split and a new State was created on a religious basis, the former State would theoretically be tempted to exclude from its population anyone with the religion that acted as the foundation for the new State. The same process might be followed for ethnic or other reasons. The purpose of paragraph 2 was to protect such persons against the risk of being deprived of a nationality they wanted to keep.

18. Mr. SIMMA said that Mr. Economides' argument was not without merit. The question was whether to evoke the situation of the population of the predecessor State, other than to say that it should have a right of option. The Special Rapporteur's explanations concerning the reasons why transfer of a part of the territory was in that respect treated differently from separation of a part of the territory were not convincing, and paragraph 2 did simply state the obvious. As to the Special Rapporteur's second argument for maintaining the paragraph, namely the frequent shift from a situation of separation to one of dissolution, one might well answer that, from the standpoint of law, the shift in such a case was from a situation under article 25 to a situation under article 22 (Attribution of the nationality of the successor States).

19. Mr. KABATSI said it was true that, from one point of view, article 25, paragraph 2, did not deal with actual State succession, but the point was to avoid statelessness or to avoid people having a nationality they did not want. The Chairman of the Drafting Committee had given a relevant example in that regard. Furthermore, with the argument adduced by Mr. Rosenstock about the didactic purpose of paragraph 2, it seemed preferable to keep it.

20. Mr. BENNOUNA said that the problem was one of substance, since it was currently acknowledged that article 25, paragraph 2, did not relate to State succession. Furthermore, in accordance with the rule of useful effect, every provision should have legal consequences, something which was not true in the case of paragraph 2. The

Special Rapporteur's explanations for the difference in treatment of transfer of part of a territory and of separation of part of a territory were not convincing and there seemed to be some inconsistency.

21. Mr. ROSENSTOCK said that problems like the one cited by the Chairman of the Drafting Committee were far more likely to occur in cases of separation than of transfer of a part of territory, and more attention should therefore be paid to the issues of, for example, ethnic cleansing, in the case of a separation. It was also very useful to say in substance to a State, for instance the Federal Republic of Yugoslavia (Serbia and Montenegro), that regardless of whether it described the succession as separation or dissolution, the obligations stayed the same and it must not engage in ethnic cleansing. That was precisely what article 25, paragraph 2, stated.

22. Mr. GALICKI pointed out that article 25, paragraph 2, contained a "human rights protection" element which should not be overlooked. Paragraph 1 did set out an obligation but it also enunciated a right of the predecessor State to withdraw its nationality. The purpose of paragraph 2 was to protect certain categories of persons and to prevent their nationality being withdrawn from them, for example on the grounds of their religion or ethnic origin, pursuant to paragraph 1.

23. The CHAIRMAN, speaking as a member of the Commission, said that he had not understood the Special Rapporteur's explanations either and, from the standpoint of legal technique, he did not find it satisfactory to treat situations—transfer of a part of territory and separation of a part of a territory—that were close to one another. Moreover, if the provisions concerning separation of part of a territory were being aligned with those on dissolution, it should be done completely and, in that regard article 25, paragraph 2, should contain a clause saying "without prejudice to the provisions of article 7".

24. Nor was he persuaded by the human rights arguments advanced by Mr. Sreenivasa Rao, Mr. Rosenstock, Mr. Galicki and Mr. Kabatsi. To take the case of partition of the kind that had happened in India, should a State refuse its nationality to some of its nationals on religious grounds and want to expel them, he would point out that the State was forbidden to do so under article 13 (Status of habitual residents), and under article 14 (Non-discrimination). Such situations, which article 25, paragraph 2, would implicitly cover, were already dealt with in Part I of the draft, which were binding inasmuch as they fell under codification.

25. Mr. BROWNLIE said he had emphasized from the outset that the differences between transfer and separation of a part of territory were not fundamental in terms of the objective pursued in connection with the topic at hand, and he had also pointed out that a number of historical situations, for example, the break-up of the Austro-Hungarian Empire, were part of political processes which did not coincide with any of the categories used by the Commission for the purposes of the draft. Since he had received no support on that point at that time, it had been his understanding that the Commission had decided not to question the work already done during the previous quin-

quennium. It was therefore surprising that some members were reverting to the matter at so late a stage.

26. Mr. SIMMA said that the underlying basic human rights considerations warranted the existence of paragraph 2, even though the interests it sought to protect were already protected in Part I of the draft. The idea was, in fact, to prevent religion, ethnic origin or political belief, for example, from being taken into account in attributing nationality in relation to a succession of States.

27. Mr. ECONOMIDES said that, from a practical standpoint, it was difficult to see why a predecessor State that had already lost a part, possibly a large part, of its territory and its population would withdraw its nationality from persons who remained on the territory left to it. Such behaviour would be self-destructive.

28. Mr. BENNOUNA said that he endorsed the comments made by the Chairman, speaking as a member of the Commission. As it stood, the text of paragraph 2 was obscure and, if it was referring to the principles of protection of human rights set out in Part I, perhaps it should explicitly say so.

29. Mr. MIKULKA (Special Rapporteur) said that, in the draft article he had initially proposed, the paragraphs had been in the reverse order. The article had first indicated the categories of persons from which the predecessor State must not withdraw its nationality and then, in what had been paragraph 2 at that time, had indicated that it could nonetheless withdraw its nationality from persons in those categories if they acquired the nationality of the successor State. It was the Commission which had decided to reverse that order and it was currently lost in the labyrinth that it had itself created.

30. Mr. Economides had pointed out that paragraph 2 had nothing to do with State succession and that it simply stated the obvious, which was right in some situations, for instance in the case of separation of a part of territory under normal conditions and if the only rule that applied was the rule of habitual residence. But things grew complicated when article 25, paragraph 2, was read in the light of article 24, subparagraphs (b) (i) and (b) (ii). Thus, article 25, paragraph 2 (a), was no longer so obvious if one took into account article 24, subparagraph (b) (i), under the terms of which the successor State attributed its nationality to persons concerned who were not covered by subparagraph (a), in other words, who had their habitual residence either in another successor State or in the predecessor State, and who had an appropriate legal connection with a constituent unit of the predecessor State that had become part of that successor State. Accordingly, there was an obligation on the successor State to grant its nationality to certain categories of persons, although those persons had their habitual residence in the territory of the predecessor State. He asked if there were sufficiently strong reasons to adduce that the law of the successor State should prevail and that the predecessor State was obliged to withdraw its nationality from the category of persons in question even though they had their habitual residence in its own territory. Needless to say, the answer to that question was in the negative. The persons in question should be able to exercise their right of option, and that was exactly what was meant by the opening clause of

article 25, paragraph 2, "Subject to the provisions of article 26", namely, only if the persons concerned decided otherwise in exercise of their right of option. Naturally, not all residents of the predecessor State were entitled to exercise a right of option—only persons who had their habitual residence in the territory of that State and who, at the same time, came under article 24, subparagraph (b) (i). That showed that article 25, paragraph 2, did concern State succession and it acted as a counterbalance to the provisions of article 24, subparagraph (b). Without it, the predecessor State would be obliged to withdraw its nationality from certain categories of persons who should normally keep that nationality, at least if they wanted to. While the successor State had the right to attribute its nationality to certain categories of persons falling under article 25, paragraph 2, subparagraphs (a), (b) and (c), the predecessor State did not withdraw its nationality from those persons before they had expressed their wishes and had accepted such a consequence by exercising their right of option. As far as he was concerned, it was therefore preferable to keep article 25, paragraph 2.

31. Mr. THIAM said he was not opposed to keeping paragraph 2, but it was incomprehensible in the absence of a commentary.

32. Mr. AL-BAHARNA said that he did not have any objection either to keeping paragraph 2, more particularly to protect the categories of persons covered by subparagraphs (b) and (c). He nonetheless wondered whether, in view of the debate, it would not be better for the purposes of clarity to insert the words "and in exceptional cases where paragraph 1 does not apply" after "Subject to the provisions of article 26". In that way, the scope of the provision would be limited and would no longer appear to be inconsistent with paragraph 1.

33. Mr. SIMMA said he seemed to recall that the order of the paragraphs of article 25 as proposed by the Special Rapporteur had been reversed because some members had taken the view that it was strange for an article entitled "Withdrawal of the nationality of the predecessor State" to start with a paragraph stipulating that "The predecessor State shall not withdraw its nationality".

34. In view of the Special Rapporteur's explanations, perhaps it would be better to revert to the initial order, in which case Mr. Al-Baharna's proposal could not be adopted.

35. Mr. HAFNER said that, in any event, Mr. Al-Baharna's proposal could not be adopted, since article 25, paragraph 2, was an exception to paragraph 1 and it entered into play precisely when paragraph 1 was applicable.

36. The CHAIRMAN, recalling the decision taken earlier in connection with article 24, said that, in article 25, paragraph 2, subparagraph (b), the word "legal" should be inserted between "appropriate" and "connection" and, in subparagraph (c), the words "of a similar character" should be deleted.

37. Mr. MIKULKA (Special Rapporteur) proposed that the introductory phrase in paragraph 2 should be amended to specify the particular category of persons, namely the persons who were entitled to the nationality of the prede-

cessor State but who were also qualified to obtain the nationality of the successor State. The paragraph would thus begin: "Subject to the provisions of article 26, the predecessor State shall not withdraw its nationality from persons concerned entitled to acquire the nationality of the successor State . . .".

38. Mr. SIMMA said that he endorsed that proposed amendment, for it specified the persons covered by the paragraph and distinguished them clearly from the rest of the population concerned.

39. Mr. AL-BAHARNA said that the situation created by the opposition between paragraph 1 and paragraph 2 was confusing. Paragraph 1 said that "the predecessor State shall withdraw its nationality", whereas paragraph 2 said that "the predecessor State shall not withdraw its nationality". It was paragraph 2 that was the essence of a provision that was imbued, above all in subparagraphs (b) and (c), with the concern to respect the human rights of the persons concerned. Nevertheless, there was no disadvantage in keeping the text in its current form.

40. Mr. BENNOUNA said he too wondered about the results of the opposition between paragraph 1 and paragraph 2. Since paragraph 1 laid down that the predecessor State must refrain from withdrawing its nationality from persons concerned before they acquired the nationality of the successor State, it was difficult to understand why paragraph 2 should specify the exceptional cases in which precisely "the predecessor State shall not withdraw its nationality". Generally speaking, the article was confusing and badly drafted.

41. Mr. ROSENSTOCK said that it should be made clearer that the persons covered by paragraph 2 formed a subgroup of the population covered by paragraph 1. To make the link between the two paragraphs intelligible, the introductory phrase in paragraph 2 should say: ". . . the predecessor State shall not, however, withdraw its nationality . . .".

42. Mr. BENNOUNA said that article 25 might be construed as affording dual protection for certain persons, in other words, the nationality of the predecessor State, which could not be withdrawn from them, and the nationality of the successor State, to which they could lay claim. It was, therefore, a broad provision, and all the more so in that one of the requirements was simply to have an "appropriate connection"—an extremely vague criterion—with the predecessor State. He called for caution, since the situations created in that way could have major consequences.

43. Mr. MIKULKA (Special Rapporteur) said that the hypothesis of dual nationality was removed by the phrase "Subject to the provisions of article 26", at the beginning of paragraph 2, since article 26, by means of the right of option, settled the problem of duplication of nationalities.

44. Mr. GALICKI noted that paragraph 1 spoke of "persons concerned qualified to acquire the nationality", but under the Special Rapporteur's proposed amendment, they were persons "entitled to acquire the nationality". What was the reason for that change in formulation?

45. Mr. MIKULKA (Special Rapporteur) said that it was not absolutely necessary to base paragraph 2 slavishly on paragraph 1, inasmuch as the two provisions did not relate to the same persons. Paragraph 1 was much broader in that it covered those who could acquire the nationality of the successor State, but did not necessarily do so, whereas paragraph 2, which was much more specific, covered those who were actually entitled to the nationality of the predecessor State.

46. At the request of Mr. BENNOUNA, the CHAIRMAN had the text of paragraph 2, with the amendments proposed so far, circulated in English and French. It read:

"2. Subject to the provisions of article 26, the predecessor State shall not, however, withdraw its nationality from persons concerned entitled to acquire the nationality of the successor State and:

"(a) Having their habitual residence in its territory;

"(b) Not covered by subparagraph (a) having an appropriate legal bond with a constituent unit of the predecessor State that has remained part of the territory of the predecessor State;

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

47. Mr. SIMMA, supported by Mr. HAFNER, noted that there was a difference in subparagraph (b) between the French version, which spoke of persons *qui avaient un lien juridique approprié*, and the English version, which used the present tense, "having an appropriate legal bond". He wondered whether such a difference in tense had substantive consequences.

48. Mr. MIKULKA (Special Rapporteur) pointed to the same anomaly as between the French and English versions of articles 22 and 24. The French version was the correct one, for the persons in question might no longer have "an appropriate link" after the succession of States.

49. The CHAIRMAN, supported by Mr. SIMMA, said that the English version should be brought into line with the French version and articles 22 and 24 should be corrected accordingly.

50. Mr. GALICKI said he wondered why the English spoke of "legal bond" in subparagraph (b) and "appropriate connection" in subparagraph (c), whereas the same term was used in French, namely "lien". In previous articles, the word "connection" had always been used.

51. Mr. Sreenivasa RAO (Chairman of the Drafting Committee) said that he favoured the word "bond".

52. Mr. BROWNLIE supported by Mr. ROSENSTOCK, said that there was nuance between "bond" and "connection". The former was more rigorous than the latter. Since the Commission was seeking to draft as broad a text as possible, he proposed that the term "connection" should be retained.

53. Mr. MIKULKA (Special Rapporteur) proposed that the introductory phrase in paragraph 2 of the text that had just been distributed should read:

“Subject to the provisions of article 26, the predecessor State shall not, however, withdraw its nationality from persons concerned who are covered by paragraph 1 and who:”.

54. Mr. AL-BAHARNA said the text that had just been circulated did not seem to mark any advance over the version proposed by the Drafting Committee, which was much clearer. In English, the repetition in paragraph 1 and in the introductory phrase of paragraph 2 of the word “however”, which was translated successively in French as *toutefois cependant*, could only lead the reader astray. If paragraph 2 introduced a further exception to the exception already set out at the end of paragraph 1, it would be better to say so expressly, by inserting at the beginning of the paragraph a formulation such as “in the following exceptional circumstances”.

55. The CHAIRMAN noted that no other member endorsed that proposed amendment, which was not therefore adopted. He invited the Commission to adopt the text that had been circulated, as amended by the Special Rapporteur and subject to replacing the word “bond” by “connection” in the English version.

56. Mr. BENNOUNA said that he wished to enter a general reservation in regard to article 25. If he rightly understood the meaning of the article, in cases of separation of part of a territory, not only were certain categories of persons entitled to acquire the nationality of the successor State established on that part of the territory, but the predecessor State must also keep its nationality for them, subject to the right of option set out in article 26, which by definition, would not necessarily be exercised.

57. Clearly, very considerable account had been taken of the rights of the persons concerned and an effort had been made to protect them from statelessness by every means. No effort had been made, however, with regard to the rights of States. The category of persons covered by paragraph 2 was very broad, and hence there was a risk of situations giving rise to conflict. The prohibition on the successor State’s withdrawing its nationality from persons who had taken the nationality of another State might place it in a very uncomfortable situation.

58. Mr. ECONOMIDES said that, in the version of article 25 proposed by the Drafting Committee, paragraph 2 already seemed superfluous. In the newly circulated text, it made for even greater confusion, as it enunciated an obligation of “non-withdrawal of nationality” that seemed to contradict the obligation of withdrawal formulated in paragraph 1. He shared Mr. Bennouna’s hesitation about the paragraph.

59. Mr. GOCO said that, as a better counterpart to the term “qualified” used in paragraph 1, the Commission could, as the Special Rapporteur himself had suggested, precede the series of conditions set out in subparagraphs (a), (b) and (c) of paragraph 2 with the relative pronoun “who”, which would obviously, in the continuation of the text, replace the present participles by verbs in the indicative.

60. Mr. SIMMA said he wondered whether a change along those lines would really make for a difference in substance. If the Commission did decide to make the change, it might also, for the sake of consistency, harmonize the wording of articles 22 and 24, which had already been adopted.

61. The CHAIRMAN said that such harmonization was not necessarily essential, although he had no firm opinion in that regard. If the Commission agreed to the amendment, paragraph 2 would read:

“2. Subject to the provisions of article 26, the predecessor State shall not, however, withdraw its nationality from persons concerned who are covered by paragraph 1 and who

“(a) Have their habitual residence in its territory;

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

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

62. Mr. ECONOMIDES said he would like further clarification. How could a person covered by paragraph 1, in other words, someone meeting the conditions laid down in article 24, which had “an appropriate legal connection with a constituent unit of the predecessor State that has become part of that successor State” also come under paragraph 2 of article 24, which envisaged the existence of “an appropriate legal connection with a constituent unit of the predecessor State that has remained part of the predecessor State”?

63. Mr. MIKULKA (Special Rapporteur) said that the case of the former Yugoslavia provided yet again a very good example. Before the Arbitration Commission of the Conference on the Former Yugoslavia (the Badinter Commission)⁴ had reached the conclusion that the case had been one of dissolution, it had generally been regarded as a case of the “separation” of Slovenia and Croatia. In the case in point, the “unlikely” person sought by Mr. Economides would be a Serb who had his habitual residence in Slovenia or in Croatia but had an appropriate legal bond with Serbia (in other words, with Yugoslavia, which had at that time been the predecessor State).

64. The CHAIRMAN asked whether, in the light of that clarification, the Commission agreed to adopt paragraph 2 as he had read out.

It was so agreed.

65. He said that, if he heard no objection, he would take it that the Commission agreed to adopt article 25, as amended.

Article 25, as amended, was adopted.

The meeting rose at 1.15 p.m.

⁴ See 2494th meeting, footnote 10.