Document:-

A/CN.4/SR.2572

Summary record of the 2572nd meeting

Topic:

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

Extract from the Yearbook of the International Law Commission:-

1999, vol. I

57. Mr. Sreenivasa Rao had said that the abolition of the distinction between obligations of conduct and obligations of result would entail certain consequences for the position of many countries in respect of obligations of means. If that was true, then the distinction must not be abolished. But it was not true. For the purposes of working out how primary rules were applied, a distinction was made between obligations of conduct and obligations of result, but that was all. Absolutely nothing was said about any particular obligation being an obligation of conduct or of result or whether the means available to a State were of relevance to the performance of its obligation. That was a matter for the interpretation and application of primary rules.

58. Mr. KATEKA said that some members of the Commission opposed retaining the three articles in any form, others believed they should be placed in square brackets, others wanted the material in the articles placed in the commentary. Where the Commission stood on the issue had to be worked out. The articles should not be sent to the Sixth Committee in square brackets, as that would only complicate the Committee's work.

59. Mr. Sreenivasa RAO, clarifying the position he had taken earlier on Mr. Simma's statement, said he had agreed with him that the articles were cognitive, not normative. Mr. Rosenstock had asked why an article that served no purpose should be retained. Perhaps because its place in the global construct of State responsibility was not visible. Article 16, for example, had links to articles 3, 21, 22, 23 and 45 (Satisfaction). An abstract notion was being unravelled in differing ways throughout the draft. Accordingly, since the distinction was not entirely wrong, it should be retained.

The meeting rose at 1.10 p.m.

2572nd MEETING

Friday, 14 May 1999, at 10.05 a.m.

Chairman: Mr. Zdzislaw GALICKI

Present: Mr. Addo, Mr. Al-Khasawneh, Mr. Candioti, Mr. Dugard, Mr. Economides, Mr. Goco, Mr. He, Mr. Herdocia Sacasa, Mr. Illueca, Mr. Kateka, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Melescanu, Mr. Pambou-Tchivounda, Mr. Sreenivasa Rao, Mr. Rosenstock, Mr. Simma, Mr. Yamada.

Nationality in relation to the succession of States[1] (*continued*)* (A/CN.4/493 and Corr. 1,[2] A/CN.4/496, sect. E, A/CN.4/497,[3] A/CN.4/L.572, A/CN.4/L.573 and Corr.1)

[Agenda item 6]

REPORT OF THE WORKING GROUP (*concluded*)*

1. The CHAIRMAN, speaking as Chairman of the Working Group on nationality in relation to the succession of States, introduced the report (A/CN.4/L.572).

2. On the basis of the Memorandum by the Secretariat (A/CN.4/497), giving an overview of the comments and observations of Governments, made either orally or in writing, the Working Group had first dealt with the merits of the draft articles and then with the question of the form, structure and order of the future instrument. It had decided to suggest to the Commission the retention of the current wording of articles 1 to 5, 8 to 18 and 20 to 26, as well as a new wording for article 6, an amendment to article 7, paragraph 1, the deletion of article 19, an amendment to article 20, and an amendment to article 27, which would be renumbered as article 2 bis.

3. Going through the Working Group's conclusions article by article, he said that, with regard to article 1 (Right to a nationality), the Working Group, having examined the question of the right to at least one nationality mentioned in paragraph 26 of the Memorandum by the Secretariat, had concluded that the matter had been sufficiently discussed by the Commission in the past and that its position had been clearly stated in the commentary. Concerning article 2 (Use of terms), having considered the observation summarized in paragraphs 28 to 31 of the Memorandum, the Working Group had decided that it was advisable to maintain the definition of the term "Succession of States", which had been taken from the Vienna Convention on Succession of States in Respect of Treaties (hereinafter referred to as the "1978 Vienna Convention") and the Vienna Convention on Succession of States in Respect of State Property, Archives and Debts (hereinafter referred to as the "1983 Vienna Convention"). On the other hand, it had thought it inadvisable to attempt to define the term "habitual residence", since that difficult endeavour might result in the adoption of a definition subject to cultural relativity. Since Governments had not made any substantial comments on article 3 (Prevention of statelessness), the Working Group had not suggested any changes. With regard to article 4 (Presumption of nationality), having considered all the arguments set out in paragraphs 36 to 43 of the Memorandum, the Working Group had decided that the Commission had already extensively debated the issues during first reading and had therefore decided to retain the current text. On article 5 (Legislation concerning nationality and other connected issues), the Working Group had decided not to

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* Resumed from the 2569th meeting.

[1] For the draft articles with commentaries thereto provisionally adopted by the Commission on first reading, see *Yearbook ... 1997*, vol. II (Part Two), p. 14, chap. IV, sect. C.

[2] Reproduced in *Yearbook ... 1999*, vol. II (Part One).

[3] Ibid.

suggest any changes since the comments of Governments were of a purely drafting nature.

4. Turning to article 6 (Effective date), he said that the Working Group had considered the argument set out in paragraph 47 of the Memorandum by the Secretariat and had decided to suggest an amendment providing for the retroactive attribution of nationality to be limited to situations in which the persons concerned would be temporarily stateless during the period between the date of State succession and the date of attribution of the nationality of the successor State or the acquisition of such nationality by exercise of the right of option. The text of article 6 as amended appeared in paragraph 4 of the report of the Chairman of the Working Group. With regard to article 7 (Attribution of nationality to persons concerned having their habitual residence in another State), the Working Group had considered the question of clarifying the linkage between article 7 and article 10 (Respect for the will of the persons concerned), mentioned in paragraph 54 of the Memorandum, and had felt that the matter could be resolved by replacing the introductory phrase of article 7, paragraph 1, with the phrase "Without prejudice to the provisions of article 10". The Working Group had noted that no substantial changes had been proposed for article 8 (Renunciation of the nationality of another State as a condition for attribution of nationality), article 9 (Loss of nationality upon the voluntary acquisition of the nationality of another State), and article 10 and it had therefore concluded that their current wording should be retained.

5. Concerning article 11 (Unity of a family), having considered the argument, in paragraph 74 of the Memorandum by the Secretariat, that the article went beyond the scope of the topic, the Working Group had decided to retain it because, in relation to the succession of States, the problem of family unity might occur on a large scale. On article 12 (Child born after the succession of States), the Working Group had examined the articles contained in paragraphs 82 to 86 of the Memorandum and had decided that no amendments were necessary since the current wording contained adequate limitations. It had wished to stress once again that the main purpose of article 12 was to avoid statelessness. An important limitation of its application derived from the phrase "person concerned". In other words, the right in question was limited to children who, prior to the date of the succession of States, had been nationals of the predecessor State. In addition, the rule contained in article 12 was the same as the rule found in several other international instruments applicable to children born in the territory of a State, even outside the context of State succession, and therefore the need for its further limitation in time did not arise.

6. On article 13 (Status of habitual residents), the Working Group had considered the argument contained in paragraph 89 of the Memorandum by the Secretariat concerning the right of habitual residents of a territory over which sovereignty was transferred to a successor State to remain in that State even if they had not acquired its nationality. It had noted that the issue had already been the subject of a controversial debate in the Commission at its forty-ninth session, but had felt it necessary to draw the Commission's attention to the matter once again, taking into account, inter alia, article 20 of the European Convention on Nationality. With regard to article 14 (Non-discrimination), the Working Group had considered the arguments in paragraphs 94 and 95 of the Memorandum supporting the inclusion of an illustrative list of criteria on the basis of which discrimination would be prohibited and of a prohibition of discriminatory treatment of its nationals by a State, depending on whether they had already had its nationality prior to the succession of States or had acquired it subsequently. The Commission had already considered those articles during its first reading of the draft articles and the reasons on which it had based its decision to exclude any elaboration of the provision along the lines suggested were still valid.

7. The Working Group had considered the arguments contained in paragraph 100 of the Memorandum by the Secretariat in favour of the incorporation in article 15 (Prohibition of arbitrary decisions concerning nationality issues) of procedural safeguards for respect of the rule of law and an express prohibition of arbitrary decisions on nationality issues. It had felt that, from a technical point of view, it would be difficult to satisfy such requests. On article 16 (Procedures relating to nationality issues), in the light of the opposing views reflected in paragraphs 101 and 102 of the Memorandum, namely, the requests both for a more detailed and for a less detailed provision, the Working Group had decided that it was preferable to retain the existing wording. Furthermore, on the suggestion to include the requirement of "reasonable fees" among the procedural guarantees, the Working Group had been of the view that, since the attribution of nationality in relation to succession of States occurred on a large scale, the case was not analogous to naturalization and that, in principle, the attribution of nationality should not be subject to any fee.

8. The Working Group had preferred to retain the wording of article 17 (Exchange of information, consultation and negotiation), since it had deemed the suggestion, contained in paragraph 103 of the Memorandum by the Secretariat, to include a sentence concerning compliance with the principles and rules of the draft articles to be superfluous. On article 18 (Other States), having considered the arguments set out in paragraphs 105 to 115 of the Memorandum, the Working Group had decided to retain the article and its current wording because the Commission itself had been in favour of their retention, a position shared by a majority of States. As to the suggestion to replace the phrase "effective link" in paragraph 1, it had noted that the matter had already been discussed in detail in the Drafting Committee during the first reading of the draft articles.

9. In the light of the arguments put forward by States and summarized in paragraphs 126 and 127 of the Memorandum by the Secretariat, the Working Group had decided to suggest the deletion of article 19 (Application of Part II). And in the light of the arguments set out in paragraphs 129 to 133, it had decided to suggest the addition at the end of article 20 (Attribution of the nationality of the successor State and withdrawal of the nationality of the predecessor State) the following sentence modelled on the last sentence of paragraph 1 of article 25 (Withdrawal of the nationality of the predecessor State): "The predecessor State shall not, however, withdraw its nationality before such persons acquire the nationality of the succes-

sor State." The Working Group had been of the view that article 21 (Attribution of the nationality of the successor State) should be retained in its present form since no Government had proposed a change.

10. The Working Group, having considered the arguments contained in paragraphs 135 to 138 of the Memorandum by the Secretariat concerning article 22 (Attribution of the nationality of the successor States), had concluded that the criterion of habitual residence was adequately combined with other criteria, so that no changes to the article were warranted. In the light of the observations by Governments, summarized in paragraphs 139 to 154 of the Memorandum, on article 23 (Granting of the right of option by the successor States), article 24 (Attribution of the nationality of the successor State), article 25 and article 26 (Granting of the right of option by the predecessor and the successor States), the Working Group had decided not to propose any changes to those articles since they constituted, in its view, a balanced approach to addressing the interests of both States concerned and individuals. With regard to article 27 (Cases of succession of States covered by the present draft articles), the Working Group, having considered the arguments presented in paragraph 156 of the Memorandum, had suggested the deletion of the opening phrase "Without prejudice to the right to a nationality of persons concerned". It had also expressed the view, given the position of similar articles in the 1978 and 1983 Vienna Conventions, that the appropriate place for article 27 was in Part I of the draft articles, after article 2 (Use of terms).

11. With regard to Part II of the draft articles, the Working Group, having considered the general observations summarized in paragraphs 117 to 123 of the Memorandum by the Secretariat, had decided not to suggest any changes in the Commission's typology. It had taken the view that the main purpose of the draft articles was to offer solutions to the types of State succession that were likely to occur in the future.

12. The Working Group had suggested that the current structure of the draft articles should be retained, except for the deletion of article 19 and the repositioning of article 27 as article 2 bis. The Working Group had further concurred with the view of a majority of States that the draft articles should preferably take the form of a declaration by the General Assembly. Lastly, it had decided that a more detailed elaboration of some of the commentaries to the draft articles would be appropriate and that the task should be carried out in parallel with the consideration of the articles by the Drafting Committee.

13. Mr. LUKASHUK congratulated the Working Group and its Chairman on the excellent quality of their work. He noted that the definitions of terms in article 2 of the draft articles were identical to those contained in the 1978 and 1983 Vienna Conventions, although the latter definitions did not match the purpose of the draft articles under consideration. For example, the definition of the term "succession of States" should focus not on the responsibility for the international relations of a territory, but on the exercise of sovereignty over that territory. The definitions in article 2 of the draft articles should therefore be reconsidered.

14. According to article 7, paragraph 2, "[a] successor State shall not attribute its nationality to persons concerned who have their habitual residence in another State against the will of the persons concerned unless they would otherwise become stateless". It could thus be inferred that the successor State had the right to impose its nationality against their will on persons concerned who had their habitual residence in its territory, although such action would be both contrary to human rights and entirely unrealistic. He therefore proposed that the paragraph be deleted.

15. According to article 15, "[i]n the application of the provisions of any law or treaty, persons concerned shall not be arbitrarily deprived of the nationality of the predecessor State, or arbitrarily denied the right to acquire the nationality of the successor State or any right of option ...". Did that mean that arbitrary measures could be taken in areas other than the application of the provisions of internal law or international law? To avoid ambiguity, arbitrary measures in all areas should be proscribed.

16. Mr. PAMBOU-TCHIVOUNDA commended the Working Group and its Chairman on their work and the results achieved. With regard to the form of the draft articles, he said that he did not share the Working Group's view that a declaration was preferable, even if the idea enjoyed wide support among States. If presented in the form of a declaration, the draft articles would not produce the full normative impact or command the full authority they deserved. They merited the same status as other draft articles.

17. He had no objection to placing article 27 at the beginning of the draft articles, provided that it was entitled "Scope (or field of application) of the present articles".

18. The new wording of article 6 proposed by the Working Group was unsatisfactory, at least as far as the French version was concerned. The word "including" in the phrase "[t]he attribution of nationality in relation to the succession of States, including the acquisition of nationality following the exercise of an option" gave the impression that the acquisition of nationality following the exercise of an option was only part of the attribution of nationality in relation to the succession of States. It would be preferable to make a clear-cut distinction between the two cases, introducing the second by a phrase such as "the same rule is applicable" or "the same applies to". The latter wording had been used in article 6 as adopted on first reading.

19. He supported the Working Group's proposal that the following new sentence should be added to article 20: "The predecessor State shall not, however, withdraw its nationality before such persons acquire the nationality of the successor State". It struck a firm note that would advance the cause of reducing the number of stateless persons.

20. On the other hand, he thought that the wording of article 25 should be more flexible in order to make the individual's right to a nationality more compatible with the exercise of one of the basic prerogatives of a sovereign State, namely, the freedom to attribute or withdraw a person's nationality. To that end, he proposed that the

word "shall" should be replaced by the word "may" in the phrase "the predecessor State shall withdraw its nationality" in paragraph 1 and the phrase "the predecessor State shall not, however, withdraw its nationality" in paragraph 2.

21. Mr. HE said that he supported the Working Group's proposal to delete the opening phrase "Without prejudice to the right to a nationality of persons concerned" in article 27, which could be variously interpreted. He also supported Mr. Pambou-Tchivounda's proposal that article 27 should be placed at the very beginning of the draft articles and given the title "Scope of the present articles". In that connection, he noted that article 1 of the 1978 and 1983 Vienna Conventions was entitled "Scope of the present Convention".

22. With regard to article 1, while it was essential to recognize the right to a nationality and the obligation of States to prevent statelessness, it seemed unnecessary to establish the right to the nationality of "at least" one of the States concerned. The use of the words "at least" could be interpreted as encouraging a policy of dual nationality or plurality of nationalities and might cause problems for many States, particularly in South-East Asia, as indicated by the comment of Brunei Darussalam in the comments and observations received from Governments (A/CN.4/493 and Corr.1). The two words should therefore be deleted so that the draft articles as a whole remained absolutely neutral on the issue and could be approved by a larger number of States.

23. With regard to article 11, he pointed out that the notion of "family" was generally interpreted more broadly in some countries, especially Asian and Muslim countries, than in the West. Habitual residence should be treated as the main criterion for the determination of nationality. Furthermore, the article seemed to have more far-reaching implications for the right of residence. It was thus incompatible with the object of the draft articles as a whole and should be deleted.

24. With regard to the question of decolonization, which had been discussed on first reading, an additional article should be inserted in Part II of the draft articles specifying that the regime thus established was applicable, mutatis mutandis, to the situation of decolonization.

25. With regard to the form of the draft articles, he agreed with the Working Group that a declaration would be preferable.

26. Mr. ECONOMIDES said that the Working Group had certainly made a number of useful changes in the draft articles under consideration, but there were still gaps and deficiencies in the text. Article 18 could be criticized from many points of view. First, it applied not only to the States concerned, but to all States and, as such, was hardly in line with the competence of States in matters of nationality, which was closely bound up with sovereignty. Secondly, it enabled States unilaterally to pass judgement on other States that were unable to defend their own causes, thereby taking the law into their own hands. Thirdly and most importantly, it was questionable whether the concept of the effective link could be applied to the succession of States, given that the successor State had the right to attribute its nationality automatically, extensively and without distinction to all persons affected by the succession.

27. With regard to the right of option, the most obvious gap in the draft articles was that they did not take account of the right of option at the international level, which derived from international practice that dated back several centuries and was rich and abundant. According to the proposed text, persons concerned would no longer have the right to choose between two nationalities, but, in certain circumstances, they could opt for a single nationality, that of the State that was unilaterally organizing the exercise of the option in accordance with its domestic legislation. He nevertheless stressed that that option would exist only in certain circumstances because, according to article 10, at the domestic level, the right of option was compulsory only to avoid statelessness. According to article 10, the States concerned were free to establish the qualifications required for acquiring their nationality through the right of option, and that could mean that a person might acquire several nationalities or remain stateless. It was unfortunate that the right of option, which was unquestionably an individual right in the case of a succession of States, had not found its place in the draft as a rule of international law.

28. Part II of the draft articles envisaged extremely complex solutions for the exercise at the domestic level of the right of option. When part of the territory of the State was transferred (art. 20), the right of option had to be granted to all persons concerned both by the successor State, for the acquisition of its nationality, and by the predecessor State, for the withdrawal of its nationality. In addition to the fact that it unduly broadened the right of option to apply to all persons concerned, something that went far beyond current international practice, it was easy to imagine the confusion that would be created by the parallel exercise of two rights of option concerning the same person. If the persons concerned opted for the acquisition of the nationality of the successor State and for the non-withdrawal of the nationality of the predecessor State, would the successor State be required to recognize the dual nationality of its new citizens? By contrast, in the event of the dissolution of the predecessor State or the secession of a part or parts of its territory, successor States would grant the right of option, not to all persons concerned, but only to persons who were "qualified to acquire the nationality" of two or more successor States (arts. 23 and 26). There was nothing to explain that difference in treatment, and there was obviously a weak point in that the qualifications required were not specified in the draft, but would be determined by the internal law of each successor State. In practice, such conditions could vary from one State to the next and that was prejudicial to legal stability.

29. He believed that the right of option should be granted to nationals of the predecessor State who had their habitual residence in the territory of the successor State and on two conditions: first, that they had acquired the nationality of the successor State automatically, *ex lege*, and secondly, that they had effective links with the predecessor State or with another successor State. The persons concerned covered in articles 22, subparagraph (*b*), and 24, subparagraph (*b*), who did not reside in the territory of the successor State and who were therefore outside

the territorial jurisdiction of the successor State should, except in cases of statelessness, be entitled to acquire the nationality of the successor State only on the basis of individual procedures depending entirely on their will. Such procedures would have an effect equivalent to that of the right of option and it would therefore be unnecessary to provide for a right of option for such persons in article 23, paragraph 1, and article 26. He wondered, then, how article 22, subparagraph (*b*), related to article 23, paragraph 1, on the one hand, and on the other, how article 24, subparagraph (*b*), related to article 26. With regard to article 25, paragraph 2, and article 26, he thought it was unusual, if not to say extraordinary, that they should provide for a right of option for nationals of the predecessor State who had not been affected by the succession of States. He hoped that the Drafting Committee would review all the provisions of the draft articles in detail and improve them still further.

30. Mr. YAMADA pointed out that, despite the comments made by Switzerland and France, the Working Group had decided to retain article 13. Without wishing to reopen the debate, mentioned by the Chairman of the Working Group in his introductory statement, that had taken place at the forty-ninth session on that article, he believed that its purpose was to preserve the status of persons concerned as habitual residents of the successor State, even if such persons did not acquire the nationality of the successor State. In the interests of clarity, it might be useful to spell out in article 13 the connection between that question and the topic of nationality in relation to the succession of States. He hoped that the Drafting Committee would take account of that comment. On the whole, he agreed with the report of the Chairman of the Working Group and hoped that the Commission would transmit all the draft articles to the Drafting Committee for consideration on second reading.

31. Mr. KUSUMA-ATMADJA said that he agreed with the comments made by Mr. He. During the consideration of the draft articles on first reading, he had drawn attention, in connection with the right of option, to a situation when two States, a predecessor State and a successor State, were involved in the process of decolonization. He referred in that connection to the Treaty on Dual Nationality concluded between Indonesia and China.[4] At the current time, since most of the persons concerned by the process of decolonization were dead, the draft articles should rather be viewed in the light of the situation in the Balkans.

32. Mr. ROSENSTOCK, speaking as a member ex officio of the Working Group, said that it had essentially reaffirmed the views on the draft articles that the Commission had already expressed several years earlier and that its recommendations corresponded on the whole to the comments made at the current meeting. The only question that had not been analysed quite so clearly in the past was whether granting an individual a nationality that he or she did not desire to have, but without which he or she would be stateless, was contrary to the right to a nationality. He tended to think that an exception under which nationality was granted over the objections of an individual was not a limitation of the right to a nationality, but rather a recognition of the fact that it was important to avoid the confusion arising from statelessness. He was of the view that the draft articles could now be transmitted to the Drafting Committee.

33. Mr. LUKASHUK, referring to the comment by Mr. Pambou-Tchivounda on the form of the draft articles, said that they could certainly take the form of a convention because they were sufficiently clear and well developed. Account must be taken of certain realities, however, including the fact that it often took a great deal of time before conventions were ratified by States and entered into force. For example, only a few States had so far acceded to the 1983 Vienna Convention and it had not yet entered into force. It was true that declarations did not have legal force, but the provisions in declarations could gradually develop into customary rules of international law. The adoption of the text in the form of a declaration would therefore be a useful procedure at present, especially as the provisions in a declaration had the advantage of being written, and nothing prevented the text of the declaration from subsequently being adopted as a convention. That was why, like the Working Group, he thought it would be preferable to retain the idea of a declaration.

34. The CHAIRMAN, speaking as chairman of the Working Group, thanked those members of the Commission who had commented on the draft articles. After apologizing for the fact that the report of the Chairman of the Working Group did not go as far as some members of the Commission would have wished and had some gaps, he explained that the Working Group had had a relatively restricted mandate: it had been given the task of studying the comments and observations submitted by States and summarized in the Memorandum by the Secretariat and had been unable to take any initiatives not based on those comments or on the views expressed by members of the Commission. In addition, there had been differences of opinion within the Working Group and, when that situation had arisen, it had elected to remain neutral, in other words, to leave the text unchanged. Furthermore, some of the comments submitted by States had concerned purely formal changes, which had not been reflected in its report and would be transmitted directly to the Drafting Committee. All those factors explained why the Working Group had not made more proposals for amendments.

35. With regard to the use of terms (art. 2), the definition of the expression "succession of States" was not disputed and corresponded to the one adopted in many international instruments. On the other hand, to introduce, as some had suggested, the notion of the exercise of sovereign rights—a formulation that was criticized by many States—would have more drawbacks than advantages. Some had feared that article 15 might be interpreted as also referring to administrative measures, but it seemed that, in letter and in spirit, the provision was restricted to the application of laws and treaties. As to the form the draft articles should take, States had differing views on the question, but most favoured the idea of a declaration, at least provisionally. For that reason, and also because of practical considerations connected with the current state of international relations, that seemed to be the wisest solution, on the understanding that it in no way ruled out a subsequent move towards the drafting of a treaty, as had been the case, for example, with the Declaration of Legal

[4] Signed at Beijing, 13 June 1955 (*Indonesian Official Gazette,* 1958, No. 5).

Principles Governing the Activities of States in the Exploration and Use of Outer Space,[5] which four years later had resulted in a fully fledged treaty. With regard to the relocation of article 27, the Working Group had considered that it was more practical to draw on the model of the 1983 Vienna Convention, in which the provision corresponding to article 27 of the draft articles under consideration was article 3. It had also been debated whether article 27 really dealt with the cases of succession of States covered by the draft articles, or with the scope of the draft articles. There again, the Convention could serve as an example, since it contained an article 3 on cases of succession of States and an article 1 on the scope of the instrument. It would thus also be possible to draft a provision on the scope of the draft articles, the substance of which would be: "The present articles apply to the effects of the succession of States in respect of the nationality of individuals". Other shortcomings noted by members of the Commission were attributable to translation problems, caused by the very short time available for processing the Working Group's report. Those problems would be ironed out in the final text to be drawn up by the Drafting Committee.

36. It had been proposed that the wording of article 25 should be toned down by replacing the words "shall withdraw its nationality" by the words "may withdraw its nationality", but that change might upset the overall balance of the draft articles by making article 25 weaker than other provisions. With regard to the very important right to a nationality set forth in article 1, some had feared that the expression "right to the nationality of at least one of the States concerned" might be perceived as encouraging the principle of multiple nationality, but the use of a more limitative wording would pose a real problem with respect to the right of option, which some had proposed strengthening in the draft articles. On the other hand, an unconditional right of option would pose problems for States; hence the need to find wording that reconciled the interests of States and those of the individual. In any case, the right of option needed to be placed in a context of human rights and many States and some members of the Commission had advocated placing the strongest possible emphasis on protection of those rights. The same was true of the right of habitual residence. From the formal standpoint, that right was not actually linked with the right to a nationality, but, from a human rights perspective, there was a very close link between the two. The Drafting Committee would do its best to fill the gaps in the draft articles and would seek to ensure that the substantive comments made during the debate were included.

37. Mr. ECONOMIDES urged the Drafting Committee to make quality its primary concern, even if that meant that it failed to complete its task by the end of the current session.

38. Mr. ROSENSTOCK said he thought that, basing itself on the report of the Working Group and the substantive comments made during the debate, the Drafting Committee would be able to complete its task during the current session without any loss of quality.

[5] General Assembly resolution 1962 (XVIII) of 13 December 1963.

39. The CHAIRMAN said that he was of the same opinion. He thus suggested that the Commission should take note of the report of the Chairman of the Working Group on the topic of nationality in relation to the succession of States and should refer the draft articles adopted on first reading and the amendments proposed by the Working Group to the Drafting Committee.

It was so decided.

40. Mr. CANDIOTI (Chairman of the Drafting Committee) said that, for the topic "Nationality in relation to the succession of States", the Drafting Committee consisted of Messrs Galicki (Chairman of the Working Group), Addo, Brownlie, Hafner, Herdocia Sacasa, Melescanu, Pambou-Tchivounda and Rosenstock (ex officio).

41. The CHAIRMAN announced that the Planning Group had established a working group on the question of the holding of split sessions, which would be chaired by Mr. Rosenstock and would also include Messrs Baena Soares, Economides, Kateka, Pambou-Tchivounda and Yamada.

The meeting rose at 12.45 p.m.

2573rd MEETING

Tuesday, 18 May 1999, at 10.05 a.m.

Chairman: Mr. Zdzislaw GALICKI

Present: Mr. Addo, Mr. Al-Khasawneh, Mr. Baena Soares, Mr. Candioti, Mr. Crawford, Mr. Economides, Mr. Elaraby, Mr. Goco, Mr. Hafner, Mr. He, Mr. Herdocia Sacasa, Mr. Kabatsi, Mr. Kamto, Mr. Kateka, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Pambou-Tchivounda, Mr. Rodríguez Cedeño, Mr. Rosenstock, Mr. Sepúlveda, Mr. Yamada.

State responsibility[1] (*continued*)* (A/CN.4/492,[2] A/CN.4/496, sect. D, A/CN.4/49*8* and Add.1-4,[3] A/CN.4/L.574 and Corr.1 and 3)

[Agenda item 3]

* Resumed from the 2571st meeting.

[1] For the text of the draft articles provisionally adopted by the Commission on first reading, see *Yearbook ... 1996*, vol. II (Part Two), p. 58, document A/51/10, chap. III, sect. D.

[2] Reproduced in *Yearbook ... 1999*, vol. II (Part One).

[3] Ibid.