

Document:-  
**A/CN.4/SR.2580**

**Summary record of the 2580th 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:-  
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*tout comme* and *prend* by *prennent*, and in the English version “including” would be replaced by “as well as”. He said that, if he heard no objection, he would take it that the Commission wished to adopt article 7 with that amendment.

*Article 7, as amended, was adopted.*

ARTICLE 8 [7] (Persons concerned having their habitual residence in another State)

76. Mr. PAMBOU-TCHIVOUNDA proposed that “another State” in the title should be replaced by “third State”.

77. Mr. ECONOMIDES said that the expression “another State” was preferable because it could cover a State concerned, such as the predecessor State. Article 8 [7] also raised a sensitive question of international law: could a successor State automatically attribute its nationality to persons outside both its territorial jurisdiction because they lived abroad and its personal jurisdiction because they already had a nationality? He did not think so, and the article should say as much. Otherwise the Commission would be committing an error of international law.

78. Mr. MELESCANU said that paragraph 2 met Mr. Economides’ concern. The draft article had achieved a balance between respect for the fundamental principle of public international law to which Mr. Economides was referring, and the concern to reduce the number of stateless persons throughout the world, especially in connection with State succession.

79. Mr. ELARABY, supported by Mr. PAMBOU-TCHIVOUNDA, said that there was a contradiction between “unless they would otherwise become stateless” and “against the will of the persons concerned” which could not be resolved in the commentary alone. Perhaps a phrase such as “Notwithstanding the need to ensure that no person remains stateless”, or something similar, might be added at the beginning of paragraph 2; that would leave intact the most important element in the paragraph, namely the fact that no State could attribute its nationality against a person’s will.

80. Mr. SIMMA said that Mr. Elaraby’s proposal did not make the Commission’s preference clear.

81. The CHAIRMAN said that the formula “unless they would otherwise become stateless” in article 8 [7] was a direct reflection of the principle of prevention of statelessness in article 4. In the opinion of the Working Group and Drafting Committee, it created a proper balance between the principles of individual will and prevention of statelessness. Statelessness should be an exception; it was not the Commission’s role to create stateless persons.

82. Mr. PAMBOU-TCHIVOUNDA said that the difficulty arose from the failure to determine the basis for the successor State’s power to attribute nationality. It seemed to him that the Commission was creating, *a contrario*, an obligation for the successor State to confer nationality on persons who had not chosen its nationality and whom it did not recognize.

83. Mr. ELARABY said that Mr. Simma’s point was well taken. Since the question of statelessness was covered in article 4, perhaps the phrase “unless they would otherwise become stateless” could simply be deleted.

84. Mr. ROSENSTOCK said the difference between article 4 and article 8 [7] was that article 4 did not allow States to impose a nationality under certain circumstances. Article 8 [7] provided clear guidance in the event of a clash between an individual’s will and the avoidance of statelessness, in which case the avoidance of statelessness was considered to take precedence. That clear value choice was not provided in article 4.

85. The CHAIRMAN suggested that, if the “unless ...” formula was not acceptable, a phrase such as “Subject to the provisions in article 4” might be placed at the beginning of the article.

*The meeting rose at 1.10 p.m.*

## 2580th MEETING

*Wednesday, 2 June 1999, at 10 a.m.*

*Chairman:* Mr. Zdzislaw GALICKI

*Present:* Mr. Addo, Mr. Baena Soares, Mr. Candioti, Mr. Dugard, Mr. Economides, Mr. Elaraby, Mr. Goco, Mr. Hafner, Mr. He, Mr. Herdocia Sacasa, Mr. Kabatsi, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Melescanu, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Rosenstock, Mr. Simma, Mr. Yamada.

### **Nationality in relation to the succession of States<sup>1</sup> (concluded) (A/CN.4/493 and Corr.1,<sup>2</sup> A/CN.4/496, sect. E, A/CN.4/497,<sup>3</sup> A/CN.4/L.572, A/CN.4/L.573 and Corr.1)**

[Agenda item 6]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE  
ON SECOND READING (*concluded*)

1. The CHAIRMAN invited the members of the Commission to continue consideration of the titles and texts of

<sup>1</sup> 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.

<sup>2</sup> Reproduced in *Yearbook ... 1999*, vol. II (Part One).

<sup>3</sup> *Ibid.*

the draft articles on nationality of natural persons in relation to the succession of States adopted by the Drafting Committee on second reading (A/CN.4/L.573 and Corr.1). He reminded them that the text took into account the comments made by Governments in the Sixth Committee and that it would not be wise to try to modify it at the current stage. He assured them, however, that any comments which they might make on the draft articles would be duly reflected in the summary record of the meeting.

PART I (General provisions) (*concluded*)

ARTICLE 8 [7] (Persons concerned having their habitual residence in another State) (*concluded*)

2. Mr. ELARABY said he still thought that paragraph 2 was a contradiction in terms: it was not possible to impose upon the successor State the obligation not to attribute its nationality to persons concerned against their will and at the same time for it to attribute its nationality to them if they otherwise became stateless. He would gladly endorse the suggestion made by the Chairman (2579th meeting) and said that the paragraph should be amended to read: "Subject to the provisions in article 4, 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."

3. The CHAIRMAN observed that there had not been a majority in favour of that suggestion and pointed out once again that the provision under consideration had not given rise to any criticism in the Sixth Committee and that neither the Working Group on nationality nor the Drafting Committee had suggested any changes.

*Article 8 was adopted.*

ARTICLE 9 [8] (Renunciation of the nationality of another State as a condition for attribution of nationality)

*Article 9 was adopted.*

ARTICLE 10 [9] (Loss of nationality upon the voluntary acquisition of the nationality of another State)

4. Mr. GOCO said he wondered whether the nationality in question at the very end of paragraph 2 was that of the successor State or that of the persons concerned. In the latter case, it would be necessary to replace the possessive adjective "its" with "their" in the English text and, where necessary, change the other versions accordingly.

5. Mr. CANDIOTI (Chairman of the Drafting Committee) said that it was in fact the nationality of the successor State and that there was therefore no reason to change the possessive adjective, except in the Spanish text, where it might be ambiguous.

*Article 10 was adopted.*

ARTICLE 11 [10] (Respect for the will of persons concerned)

*Article 11 was adopted.*

ARTICLE 12 [11] (Unity of family)

6. Mr. HE said that he had doubts about the appropriateness of including a provision on the unity of the family in the draft articles. The Memorandum by the Secretariat (A/CN.4/497) showed that Governments were also hostile to that provision. First, the interpretation of the term "family" varied from one region to another and even from one country to another within the same region. Secondly, it was not unusual for members of the same family to live together although they had different nationalities.

7. The provision went beyond the scope of the draft articles and its subject matter fell more under private and domestic law.

8. Mr. KABATSI said that he was also opposed to including the provision, which he regarded as vague: what were the appropriate measures in question? If, for example, they were legal or administrative measures, they might be unrelated to the question of nationality. The provision did not relate to the draft articles.

9. The CHAIRMAN acknowledged that doubts had been expressed about the *raison d'être* of the article. However, it had also attracted broad support. Using balanced terms, article 12 [11] was intended to protect the fundamental rights of persons concerned. There was also a trend towards affording protection to the family in the context of nationality, as demonstrated by the European Convention on Nationality, which, contrary to the draft articles, imposed specific obligations designed to simplify and facilitate the procedure to be followed by members of the same family for the acquisition of nationality.

*Article 12 was adopted.*

ARTICLE 13 [12] (Child born after the succession of States)

ARTICLE 14 [13] (Status of habitual residents) and

ARTICLE 15 [14] (Non-discrimination)

*Articles 13, 14 and 15 were adopted.*

ARTICLE 16 [15] (Prohibition of arbitrary decisions concerning nationality issues)

10. Mr. ECONOMIDES said that a reversal of the order of stages would be more logical: first, the successor State should not arbitrarily deny persons concerned the right to its nationality; secondly, the predecessor State should not arbitrarily deprive persons concerned of its nationality before they had acquired the nationality of the successor State; and then came the right of option.

11. The CHAIRMAN said that the logic changed according to whether the matter was approached from the

angle of the State or the angle of the person concerned. In any case, the sequence followed in article 16 [15] was no less logical, beginning with the predecessor State and moving on to the successor State.

*Article 16 was adopted.*

ARTICLE 17 [16] (Procedures relating to nationality issues)

12. Mr. CANDIOTI (Chairman of the Drafting Committee), replying to a question by Mr. Melescanu concerning the meaning of the adjective “effective” used to qualify an administrative or judicial review, said the idea was that there should be a real possibility for persons who felt they had been harmed by a decision to have it reviewed by an administrative or judicial body, enjoying the guarantees of due process of law. In response to Mr. Goco, who had asked whether, in the context of such guarantees, the Drafting Committee had considered the matter of “reasonable fees”, he said that the Working Group and the Drafting Committee had in fact taken up that question, which certain Governments had mentioned in their observations. To be “effective”, an appeal should be unimpeded by any obstacle, restriction or unfulfillable condition such as prohibitive costs. The commentary should perhaps be fleshed out to clarify that point.

13. Mr. PELLET said that the commentary should also indicate that, in French, the word *judiciaire* should be understood to mean *juridictionnel*, i.e. that appeals should lie either to administrative courts or to ordinary courts. It was a very important point for Roman law systems.

*Article 17 was adopted.*

ARTICLE 18 [17] (Exchange of information, consultation and negotiation)

*Article 18 was adopted.*

ARTICLE 19 [18] (Other States)

14. Mr. ECONOMIDES said he wished to place on record his “formal” reservation on article 19 [18] for reasons he had previously explained in detail; he continued to believe that the article, of a kind not usually found in international instruments, would create more problems than it would solve.

*Article 19 was adopted.*

*Part I, as amended, was adopted.*

PART II (Provisions relating to specific categories of succession of States)

[FORMER ARTICLE 19]

*Former article 19 was deleted.*

SECTION 1 (Transfer of part of the territory)

ARTICLE 20 (Attribution of the nationality of the successor State and withdrawal of the nationality of the predecessor State)

15. Mr. PAMBOU-TCHIVOUNDA said he thought that, since the right of option had already been established in principle in article 11, it was unnecessary to say at the end of the first sentence of article 20 that the right of option “shall be granted” to such persons. The text should simply read “their” right of option. He requested that his comment should be placed on record.

*Article 20 was adopted.*

SECTION 2 (Unification of States)

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

*Article 21 was adopted.*

SECTION 3 (Dissolution of a State)

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

16. Mr. GOCO suggested that the words “when a State dissolves” in the English text should be replaced by the words “when a State is dissolved”.

17. The CHAIRMAN explained that the terms used in article 22 had been taken from the 1983 Vienna Convention.

*Article 22 was adopted.*

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

*Article 23 was adopted.*

SECTION 4 (Separation of part or parts of the territory)

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

18. Mr. CANDIOTI (Chairman of the Drafting Committee) said that the phrase “subject to the provisions of article 26”, which survived from an earlier version, should be deleted from the English text. The idea conveyed by that phrase had been expressed by the words “unless otherwise indicated by the exercise of a right of option”. As the text of the article in French and Spanish was correct, a corrigendum would be issued referring to the English text only.

*Article 24 was adopted.*

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

ARTICLE 26 (Granting of the right of option by the predecessor and the successor States)

*Articles 25 and 26 were adopted.*

*Part II was adopted.*

19. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission wished to adopt the whole set of draft articles.

*It was so agreed.*

*The draft articles on nationality of natural persons in relation to the succession of States were adopted on second reading.*

20. Mr. ECONOMIDES said that, if there had been a vote on the draft articles just adopted in their entirety, he would have abstained, in view of the criticisms he had expressed with regard to a number of draft articles.

21. The CHAIRMAN thanked all members of the Commission for their cooperation in the adoption of the draft articles. With regard to the form they should take, if he heard no objection, he would take it that the Commission wished to recommend that the draft articles should be adopted by the General Assembly in the form of a declaration.

*It was so agreed.*

22. The CHAIRMAN welcomed the adoption of a new set of draft articles. He expressed his thanks to Mr. Mikulka, who had been Special Rapporteur on the draft articles before becoming Secretary to the Commission, and also Mr. Candiotti, the Chairman of the Drafting Committee.

23. Mr. Sreenivasa RAO commended the excellent work done by the Special Rapporteur, thanks to which the Commission had adopted the draft articles on second reading speedily and without difficulty. He proposed that, as was customary, the Commission should adopt a resolution expressing its gratitude to the Special Rapporteur.

24. The CHAIRMAN welcomed that proposal and said that a resolution paying tribute to the former Special Rapporteur, Mr. Mikulka, would be submitted in due course.

25. Mr. PELLET noted with satisfaction that the Commission had adopted the draft articles on nationality of natural persons in relation to the succession of States on second reading, but asked whether it had yet taken a final position on the question of nationality of legal persons or, more broadly, on the question of the rights and obligations of legal persons in relation to a State succession.

26. The CHAIRMAN said that the Commission would first have to consider the commentary to the draft articles on nationality of natural persons in relation to the succession of States which had just been adopted. After the members had had an opportunity to hold informal consultations, it would then decide what action it intended to take concerning the question of nationality of legal persons in relation to the succession of States.

27. Mr. KUSUMA-ATMADJA said he wished to express his personal gratitude to the Chairman of the Drafting Committee, the Chairman of the Commission and the Special Rapporteur. He was satisfied with the draft articles adopted, although he had some reservations on a few terminological and conceptual matters. He pointed out that there were differences even among countries rooted in the Roman law system; thus, some South-East Asian countries had a code based on the Swiss code, while that of others was based on the German code.

28. Mr. ADDO thanked the Chairman, who had proved an effective Chairman of the Working Group on nationality in relation to the succession of States.

29. The CHAIRMAN said that his task as Chairman of the Working Group and of the Commission had been greatly facilitated by the high quality of the draft articles submitted.

*The meeting rose at 11.25 a.m.*

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## 2581st MEETING

*Thursday, 3 June 1999, at 10 a.m.*

*Chairman:* Mr. Zdzislaw GALICKI

*Present:* Mr. Addo, Mr. Baena Soares, Mr. Brownlie, Mr. Candiotti, Mr. Dugard, Mr. Economides, Mr. Elaraby, Mr. Gaja, Mr. Goco, Mr. He, Mr. Herdocia Sacasa, Mr. Kabatsi, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Melescanu, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rosenstock, Mr. Simma, Mr. Yamada.

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**Reservations to treaties<sup>1</sup> (A/CN.4/491 and Add.1-6,<sup>2</sup> A/CN.4/496, sect. F, A/CN.4/499 and A/CN.4/478/Rev.1,<sup>3</sup> A/CN.4/L.575)**

[Agenda item 5]

THIRD AND FOURTH REPORTS OF THE SPECIAL RAPporteur

1. The CHAIRMAN invited the Commission to take up the topic of reservations to treaties. At the fiftieth session, the Special Rapporteur had started to introduce chapter I,

<sup>1</sup> For the text of the draft guidelines provisionally adopted by the Commission on first reading at its fiftieth session, see *Yearbook ... 1998*, vol. II (Part Two), p. 99, chap. IX, sect. C.

<sup>2</sup> See *Yearbook ... 1998*, vol. II (Part One).

<sup>3</sup> Reproduced in *Yearbook ... 1999*, vol. II (Part One).