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NATIONALITY IN RELATION TO THE SUCCESSION OF STATES

Report of the Chairman of the Working Group on Nationality
in relation to the Succession of States

1. At its 2566th meeting, on 4 May 1999, the International Law Commission decided to re-establish the Working Group on "Nationality in relation to the Succession of States"*. The Working Group held a total of five meetings from 4 to 11 May 1999. It considered both the written and oral comments made by States regarding the draft articles adopted by the Commission on first reading on the basis of the memorandum prepared by the Secretariat (document A/CN.4/497).
2. At the outset, the Working Group decided that it would first deal with the merits of the draft articles themselves and only at a later stage address the issue of the form, structure and order to be given to the draft articles.

* The Working Group was composed as follows: Mr. Zdzislaw Galicki (Chairman), Mr. Ian Brownlie, Mr. Enrique Candioti, Mr. Constantin Economides, Mr. Gerhard Hafner, Mr. Mauricio Herdocia Sacasa, Mr. Peter Tomka and Mr. Robert Rosenstock (ex officio). The Working Group was open to every member who wished to participate.

3. No changes were deemed warranted for the text of articles 1-5, 8-18 and 21-26. The Working Group decided to propose a new formulation for article 6, an amendment to paragraph 1 of article 7, deletion of article 19, an amendment to article 20, an amendment to article 27 and also its renumbering as article 2 bis.

4. Having considered the argument contained in paragraph 47 of document A/CN.4/497, the Working Group decided to suggest an amendment to article 6 so that the retroactive attribution of nationality is limited to situations in which persons would be temporarily stateless during the period between the date of State succession and the attribution of nationality of the successor State or the acquisition of such nationality upon exercise of the right of option. Article 6 would therefore read as follows:

"Article 6

Effective Date

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

5. As regards article 7, the Working Group considered that the observation, found in paragraph 54 of document A/CN.4/497, calling for a clarification of the linkage between article 7 and article 10 could be addressed by replacing the introductory phrase to paragraph 1 "Subject to the provisions of article 10" with the phrase "Without prejudice to".

6. In view of arguments by States contained in paragraphs 126 and 127 of document A/CN.4/497, the Working Group decided to suggest the deletion of article 19.

7. Concerning article 20 the Working Group considered the arguments contained in paragraphs 129-133 of document A/CN.4/497 and, as a consequence, decided to suggest the addition of a new sentence at the end of the article. This new sentence would be drafted along the lines of the last sentence of paragraph 1 of article 25 and would read as follows:

"The predecessor State shall not, however, withdraw its nationality before such persons acquire the nationality of the successor State."

8. As concerns article 27, the Working Group was convinced by the arguments contained in paragraph 156 of document A/CN.4/497 and therefore suggests the deletion of the opening phrase to this article, namely the words "Without prejudice to the right to a nationality of persons concerned". At the same time, it is of the view that the proper place for this article would be in the first part of the draft articles, after article 2 on "Use of terms". This would correspond to the placement of analogous articles contained in the two Vienna Conventions on the succession of States of 1978 and 1983.

9. Concerning the structure of the draft articles, after the deletion of article 19 and the new placement of article 27 as article 2 bis, the Working Group considered the existing structure to be satisfactory.

10. As to the form to be given to the draft articles, the Working Group was of the view that the form of a declaration, which received wide support by States, would be preferable.
