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### DRAFT REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-EIGHTH SESSION

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#### CHAPTER IV

#### STATE SUCCESSION AND ITS IMPACT ON THE NATIONALITY OF NATURAL AND LEGAL PERSONS

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B. Consideration of the topic at the present session

2. Consideration of the topic by the Working Group

1. At the 2451st and 2459th meetings, on 2 and 12 July 1996, the Chairman of the Working Group on the topic, the Special Rapporteur, presented an oral report to the plenary on the work undertaken by the Group at the present session.

2. The Working Group held five meetings between 4 June and 2 July 1996, focusing on the following issues: the problem of the nationality of legal persons, the form that the work on the topic should take and the calendar of work. It had also embarked on a more in-depth analysis of the question of the nationality of natural persons in situations of State succession.

3. The Working Group recommended to the Commission that consideration of the question of the nationality of natural persons be separated from that of the nationality of legal persons, as they raised issues of a very different order. Whilst the first aspect of the topic involved the basic human right to a nationality, so that obligations for States stemmed from the duty to respect that right, the second aspect involved issues that were largely economic and centred around a right to establishment which may be claimed by a corporation operating in the territory of a State involved in succession. The Working Group felt, moreover, that these two aspects did not need to be addressed with the same degree of urgency.

4. The Working Group considered that the question of the nationality of natural persons should be addressed as a matter of priority, and concluded that the result of the work on the subject should take the form of a non-binding instrument consisting of articles with commentaries. The first reading of such articles could be completed during the forty-ninth, or, at the latest, the fiftieth session of the Commission.

5. Upon completion of the work on the nationality of natural persons, the Commission would take a decision, based on comments requested from States, on the need to consider the question of the impact of State succession on the nationality of legal persons.

6. The Working Group further recommended to the Commission that it undertake the substantive study of the subject under the title "Nationality in relation to the succession of States".

7. With respect to the question of the nationality of natural persons in situations of State succession, the Working Group had focused on the issue of

the structure of a possible future instrument on the matter and the main principles to be included therein and based its discussion on a working paper prepared for this purpose by its Chairman.

8. It was envisaged that the future instrument would be divided into two parts: Part I, dealing with the general principles concerning nationality in all situations of State succession, and Part II, containing rules directed at specific situations of State succession.

9. Part I would include several basic principles to be observed by "States concerned", i.e. the States involved in the State succession - the predecessor and successor States, or the successor States, as the case may be:

(a) the right of every individual who had the nationality of the predecessor State on the date of the succession of States to the nationality of at least one of the States concerned;

(b) the corollary obligation of States concerned to avoid that persons who, on the date of the succession of States, had the nationality of the predecessor State and had their habitual residence on the respective territories of the States concerned, become stateless as a result of such succession;

(c) the obligation to enact promptly national legislation concerning nationality and other connected issues arising in relation with State succession and to ensure that individuals concerned would be apprised, within a reasonable time period, of the effect of such legislation on their nationality and the consequences of a possible exercise of an option on their status;

(d) the principle that, without prejudice to their policy in the matter of multiple nationality, States concerned should give consideration to the will of individuals whenever they equally qualified, either in whole or in part, to acquire the nationality of two or several such States;

(e) the principle of non-discrimination, in accordance with the relevant conclusions reached by the Working Group at the previous session; 1/

(f) the prohibition of arbitrary decisions concerning the acquisition and withdrawal of nationality and the exercise of the right of option;

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1/ Official Records of the General Assembly, Fiftieth Session, Supplement No. 10 (A/50/10), Annex.

(g) the obligation that relevant applications be issued promptly and that decisions be issued in writing and open to administrative or judicial review;

(h) the obligation to take all necessary measures to ensure the protection of the basic human rights and freedoms of persons having their habitual residence on the territory or otherwise under the jurisdiction of such States during the interim period between the date of the succession of States and the date when their nationality would be determined;

(i) the obligation that a reasonable time-limit be granted to comply with a requirement to transfer one's residence out of the territory of a State concerned following the voluntary renunciation of that State's nationality, whenever such requirement is contained in the legislation of that State;

(j) the obligation to adopt all reasonable measures to enable a family to remain together or to be reunited, whenever the application of their internal law or of treaty provisions would infringe on the unity of such family;

(k) the obligation of States concerned to consult and negotiate in order to determine whether the State succession had any negative consequences with respect to the nationality of individuals and other related aspects of their status, and, if so, to seek a solution of these problems through negotiations;

(l) the rights and obligations of States other than the States concerned when confronted with cases of statelessness resulting from non-compliance by the latter with the provisions of the future instrument.

10. In order to facilitate negotiations between States concerned, Part II would contain a set of other principles setting forth more specific rules for the granting or withdrawal of nationality or the granting of the right of option in different cases of State succession. They would be based on the conclusions reached by the Working Group at the previous session.

### 3. Action by the Commission

11. At the 2459th meeting, on 12 July 1996, the Commission decided, on the recommendation of the Working Group, to recommend to the General Assembly that it should take note of the completion of the preliminary study of the topic and that it request the Commission to undertake the substantive study of the topic entitled "Nationality in relation to the succession of States", on the understanding that:

(a) consideration of the question of the nationality of natural persons will be separated from that of the nationality of legal persons and that priority will be given to the former;

(b) for present purposes - and without prejudicing a final decision - the result of the work on the question of the nationality of natural persons should take the form of a declaratory instrument consisting of articles with commentaries;

(c) the first reading of such articles should be completed during the forty-ninth, or, at the latest, the fiftieth session of the Commission;

(d) the decision on how to proceed with respect to the question of the nationality of legal persons will be taken upon completion of the work on the nationality of natural persons and in light of the comments that the General Assembly may invite States to submit to it on the practical problems raised by a succession of States in this field.

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