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

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CHAPTER II

NATIONALITY IN RELATION TO THE SUCCESSION OF STATES

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A. Introduction

1. At its forty-fifth session, in 1993, the Commission decided to include in its agenda the topic entitled "State succession and its impact on the nationality of natural and legal persons". 1/ The General Assembly endorsed the Commission's decision in paragraph 7 of resolution 48/31 of 9 December 1993, on the understanding that the final form to be given to the work on the topic shall be decided after a preliminary study is presented to the Assembly. At its forty-sixth session, in 1994, the Commission appointed Mr. Václav Mikulka Special Rapporteur for the topic. 2/ In paragraph 6 of its resolution 49/51 of 9 December 1994, the General Assembly endorsed the intention of the Commission to undertake work on the topic, on the above-mentioned understanding.

2. At its forty-seventh session, the Commission had before it the Special Rapporteur's first report (A/CN.4/467). Following its consideration of the report, the Commission established a Working Group on the topic entrusted with the mandate to identify issues arising out of the topic, categorize those issues which are closely related thereto, give guidance to the Commission as to which issues could be most profitably pursued given contemporary concerns and present the Commission with a calendar of action. 3/ The Working Group submitted a report to the Commission, containing a number of preliminary conclusions regarding the impact of State succession on the nationality of natural persons. 4/

3. At its forty-eighth session, the Commission considered the Special Rapporteur's second report (A/CN.4/474 and Corr.1 and Corr.2 (Chinese only)).

1/ Official Records of the General Assembly, Forty-eighth session, Supplement No. 10 (A/48/10), para. 440.

2/ Ibid., Forty-ninth session, Supplement No. 10 (A/49/10), para. 383.

3/ Ibid., Fiftieth session, Supplement No. 10 (A/50/10), para. 147.

4/ Ibid., Annex.

It reconvened the Working Group, which completed its task. On the basis of the latter's conclusions, the Commission decided to recommend to the General Assembly that it take note of the completion of the preliminary study of the topic and request the Commission to undertake the substantive study of the topic entitled "Nationality in relation to the succession of States" in accordance with the proposed plan of action. 5/ The General Assembly endorsed the Commission's recommendations in paragraph 8 of resolution 51/160 of 16 December 1996.

B. Consideration of the topic at the present session

4. At the present session, the Commission had before it the Special Rapporteur's third report (A/CN.4/480 and Corr.1 (French only) and Add.1 and Corr.1 and Corr. 2 (French only)), containing a set of 25 draft articles with commentaries on the nationality of natural persons in relation to the succession of States. The draft articles were divided into two Parts, Part I on "General principles concerning nationality in relation to the

5/ The Commission proposed the following plan of action:

(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.

Ibid., Fifty-first session, Supplement No. 10 (A/51/10), para. 88.

succession of States" and Part II on "Principles applicable in specific situations of succession of States." 6/ The Special Rapporteur also proposed a draft preamble and a provision concerning definitions.

5. The Commission considered the third report at its 2475th to 2486th, and 2488th to 2494th meetings, held from 13 to 30 May, and from 5 to 17 June 1997 and referred the draft articles to the Drafting Committee. 7/

6. The Commission considered the report of the Drafting Committee at its 2495th to 2499th and to meetings from 18 to 25 June and ... to ... July 1997 and adopted on first reading a draft preamble and

6/ Part I consisted of the following articles:

article 1 (Right to a nationality), article 2 (Obligation of States concerned to take all reasonable measures to avoid statelessness), article 3 (Legislation concerning nationality and other connected issues), article 4 (Granting of nationality to persons having their habitual residence in another State), article 5 (Renunciation of the nationality of another State as a condition for granting nationality), article 6 (Loss of nationality upon the voluntary acquisition of the nationality of another State), article 7 (The right of option), article 8 (Granting and withdrawal of nationality upon option), article 9 (Unity of families), article 10 (Right of residence), article 11 (Guarantees of the human rights of persons concerned), article 12 (Non-discrimination), article 13 (Prohibition of arbitrary decisions concerning nationality issues), article 14 (Procedures relating to nationality issues), article 15 (Obligation of States concerned to consult and negotiate), article 16 (Other States).

Part II was divided into 4 Sections and contained the following articles:

- Section 1. Transfer of part of the territory: article 17 (Granting of the nationality of the successor State and withdrawal of the nationality of the predecessor State);
- Section 2. Unification of States: article 18 (Granting of the nationality of the successor State);
- Section 3. Dissolution of a State: article 19 (Scope of application); article 20 (Granting of the nationality of the successor States), article 21 (Granting of the right of option by the successor States);
- Section 4. Separation of part of the territory: article 22 (Scope of application), article 23 (Granting of the nationality of the successor State), article 24 (Withdrawal of the nationality of the predecessor State), article 25 (Granting of the right of option by the predecessor and the successor States).

7/ The draft articles were referred to the Drafting Committee as follows: draft preamble and draft provision on definitions at its 2479th meeting, articles 1-3 at its 2481st meeting, articles 4 to 6 at its 2482nd meeting, articles 7 and 8 at its 2484th meeting, articles 9 to 14 at its 2485th meeting, articles 15 and 16 at its 2486th meeting, articles 17 and 18 at its 2489th meeting, articles 19 to 21 at its 2492nd meeting and articles 22 to 25 at its 2494th meeting.

a set of 26 draft articles on Nationality of natural persons in relation to the succession of States.

7. At its ... meeting, the Commission decided, in accordance with articles 16 and 21 of its Statute to transmit the draft articles set out in section C of the present chapter, through the Secretary-General, to Governments for comments and observations, with the request that such comments and observations be submitted to the Secretary-General by [1 January 1999].

C. Text of the draft articles on Nationality of natural persons in relation to the succession of States provisionally adopted by the Commission on first reading

1. Text of the draft articles
[to be completed]
2. Text of the draft articles with commentaries thereto
