



**General Assembly**

Distr.  
LIMITED

A/CN.4/L.619/Add.3  
8 July 2002

Original: ENGLISH

---

**International Law Commission**  
Fifty-fourth session  
Geneva, 29 April – 7 June 2002 and  
22 July – 16 August 2002

**DRAFT REPORT OF THE INTERNATIONAL LAW COMMISSION  
ON THE WORK OF ITS FIFTY-FOURTH SESSION**

**Rapporteur: Mr. Valery Kuznetsov**

**CHAPTER V  
DIPLOMATIC PROTECTION**

Addendum

- C. Texts of draft articles 1 to 7 of the draft articles on diplomatic protection provisionally adopted by the Commission (continued)
2. Text of the draft articles with commentaries thereto (continued)

## 2. Text of the draft articles with commentaries thereto (continued)

### Article 5 [7]

#### Multiple nationality and claim against a third State

1. Any State of which a dual or multiple national is a national may exercise diplomatic protection in respect of that national against a State of which that individual is not a national.
2. Two or more States of nationality may jointly exercise diplomatic protection in respect of a dual or multiple national.

#### Commentary

(1) Although some domestic legal systems prohibit their nationals from acquiring dual or multiple nationality it must be accepted that dual or multiple nationality is a fact of international life. An individual may acquire more than one nationality as a result of the parallel operation of the principles of *jus soli* and *jus sanguinis* or of the conferment of nationality by naturalization, which does not result in the renunciation of a prior nationality. International law does not prohibit dual or multiple nationality: indeed such nationality was given approval by article 3 of the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, which provides:

“... a person having two or more nationalities may be regarded as its national by each of the States whose nationality he possesses.”<sup>1</sup>

It is therefore necessary to address the question of the exercise of diplomatic protection by a State of nationality in respect of a dual or multiple national. Article 5 is limited to the exercise of diplomatic protection by one of the States of which the injured person is a national against a State of which that person is not a national. The exercise of diplomatic protection by one State of nationality against another State of nationality is covered in article 6.

---

<sup>1</sup> 179 L.N.T.S., p. 89.

(2) Paragraph 1 allows a State of nationality to exercise diplomatic protection in respect of its national even where that person is a national of one or more other States. Like article 3 it does not require a genuine or effective link between the national and the State exercising diplomatic protection.

(3) Although there is support for the requirement of a genuine or effective link between the State of nationality and a dual or multiple national in the case of the exercise of diplomatic protection against a State of which the injured person is not a national, in both arbitral decisions<sup>2</sup> and codification endeavours<sup>3</sup>, the weight of authority is against such a requirement. In the *Salem* case an Arbitral Tribunal held that Egypt could not raise the fact that the injured individual had effective Persian nationality against a claim from the United States, another State of nationality. It stated that

“the rule of International Law [is] that in a case of dual nationality a third Power is not entitled to contest the claim of one of the two Powers whose National is interested in the case by referring to the nationality of the other Power.”<sup>4</sup>

This rule has been followed in other cases<sup>5</sup> and has more recently been upheld by the Iran-United States Claim Tribunal<sup>6</sup>. The Commission’s decision not to require a

---

<sup>2</sup> See the decision of the Yugoslav-Hungarian Mixed Arbitral Tribunal in the *de Born* case, *Annual Digest and Reports of Public International Law Cases* 1925-26, case No. 205.

<sup>3</sup> See article 5 of the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, 179 L.N.T.S., p. 89; resolution adopted by the Institute of International Law at its Warsaw Session in 1965: *Resolutions de l'Institut de Droit International*, 1957-1991 (1992) p. 56 (article 4(b)); 1960 Harvard Draft Convention on the International Responsibility of States for Injuries to Aliens, article 23(3), in L.B. Sohn and R.R. Baxter, "Responsibility of States for Injuries to the Economic Interests of Aliens" (1961) 55 *A.J.I.L.* p. 548; Garcia Amador, Third Report on State Responsibility, in *Yearbook ... 1958*, vol. II, p. 61 (article 21(3)), Document A/CN.4/111.

<sup>4</sup> 2 R.I.A.A., p. 1188 (1932).

<sup>5</sup> See the decisions of the Italian-United States Conciliation Commission in the *Mergé* claim 22 I.L.R., p. 456 (p. 155), the *Verano* claim 25 I.L.R. pp. 464-465 (1957), and the *Stankovic* claim 40 I.L.R. p. 155 (1963).

genuine or effective link in such circumstances accords with reason. Unlike the situation in which one State of nationality claims from another State of nationality in respect of a dual national, there is no conflict over nationality where one State of nationality seeks to protect a dual national against a third State.

(4) In principle there is no reason why two States of nationality may not jointly exercise a right that attaches to each State of nationality. Paragraph 2 therefore recognizes that two or more States of nationality may jointly exercise diplomatic protection in respect of a dual or multiple national against a State of which that person is not a national. While the responsible State cannot object to such a claim made by two or more States acting simultaneously and in concert, it may raise objections where the claimant States bring separate claims either before the same forum or different fora or where one State of nationality brings a claim after another State of nationality has already received satisfaction in respect to that claim. Problems may also arise where one State of nationality waives the right to diplomatic protection while another State of nationality continues with its claim. It is impossible to codify rules governing varied situations of this kind. They should be dealt with in accordance with the general principles of law governing the satisfaction of joint claims.

---

<sup>6</sup> See *Dallal v Iran* 3 I.U.S.C.T.R. p. 23 (1983).