United Nations A/C.6/63/SR.11

General Assembly
Sixty-third session

Official Records

Distr.: General
3 November 2008

Original: English

Sixth Committee

Summary record of the 11th meeting
Held at Headquarters, New York, on Tuesday, 21 October 2008, at 10 a.m.

Chairperson: Mr. Al Bayati . . . . . (Iraq)

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08-56180 (E)

The meeting was called to order at 10.10 a.m.

Agenda item 72: Nationality of natural persons in relation to the succession of States (A/59/180 and Add.1 and 2; A/63/113)

1. **Mr. Sethi** (India) recalled that the articles on nationality of natural persons in relation to the succession of States, contained in annex to General Assembly resolution 55/153, emphasized that the legitimate interests of States and those of individuals in nationality were governed by internal law within the limits set by international law. Article 1 established the principle that every person had the right to a nationality, while article 3 limited the scope of the draft articles to cases of succession of States occurring in conformity with international law; accordingly, occupation of territory by the use of force and separation of territories involving the rights of third States without their consent were not covered.

2. The presumption of nationality of the successor State, set out in article 5, played a key role in the scheme of the articles. Although article 11 provided the option to choose between the nationality of the predecessor State and that of the successor State, it was expected that the option would be exercised within a time limit prescribed by the State concerned. Article 10 stated the obvious principle of loss of nationality upon the voluntary acquisition of the nationality of another State. The articles intentionally refrained from either endorsing or denouncing the right of States to grant or recognize dual or multiple nationalities. The provisions of Part II, relating to specific categories of succession of States, were generally satisfactory.

3. While the articles established several important principles, their status was essentially that of guidelines that could be useful to States in drawing up appropriate legislation on nationality. They honoured the primacy of domestic law as long as the principles of non-discrimination, right to nationality and right of option were respected, and his delegation endorsed the recommendation of the International Law Commission that the articles should be adopted by the General Assembly in the form of a declaration in order to give States the necessary flexibility in applying them.

4. **Ms. Orina** (Kenya), speaking on behalf of the Group of African States, said that it was important to avoid statelessness after the dissolution of States or upon State succession. She therefore commended the valuable work of the International Law Commission on the nationality of natural persons in relation to the succession of States.

5. The right to a nationality was one of the most important human rights, since it gave natural persons the juridical status necessary for the legal protection of their human dignity. Any attempts to regulate that fundamental right must be just and in conformity with existing or prospective domestic and international law.

6. In the event of State succession, permanent residents' possibilities of naturalization must not be unduly frustrated. A person who was not a national of the successor State must have the right either to acquire the citizenship of that State, or to maintain their original citizenship, in order to avoid statelessness. Similarly, States must take the requisite steps to prevent interference with family unity in the event of the acquisition or loss of citizenship; avoiding statelessness promoted peace between States and encouraged social interaction and relationships among residents.

7. Successor States must avoid discrimination based on sex, race, language, religion, political or social opinions, national or social origin, association with a national minority, property or place of birth when granting the right to citizenship, and States and international organizations should promote the exchange of information and negotiations on the matter.

8. **Mr. Yola** (Nigeria) said that States should take the articles into account when dealing with relevant matters and should consider the elaboration of legal instruments regulating the issue in order to prevent statelessness as a result of State succession.

9. The principle that every human being had the right to a nationality had been recognized in the Universal Declaration of Human Rights and in many subsequent international instruments. The 1978 Vienna Convention on Succession of States in respect of Treaties and the 1983 Vienna Convention on Succession of States in respect of State Property, Archives and Debts applied only to the effects of State succession occurring in conformity with international law and with the principles embodied in the Charter of the United Nations; they did not entitle an occupying State to change the nationality of the inhabitants of a territory during temporary occupation or annexation in wartime.

10. Statelessness was a grave affront to human rights and the rule of law. In a recent dispute between Nigeria and Cameroon regarding the nationality of natural persons resident in the Bakassi Peninsula, the International Court of Justice had held that the Peninsula belonged to Cameroon even though the majority of its inhabitants were Nigerian. That finding raised the question of the status of those inhabitants and of whether transfer of the territory would automatically transform them into Cameroonians or whether they would retain their Nigerian citizenship while domiciled in Cameroon.

11. The Governments of Nigeria and Cameroon had settled that question amicably by adopting the Greentree Agreement, according to which each inhabitant could either retain Nigerian citizenship with full rights as a foreigner living in Cameroon, or acquire Cameroonian citizenship. By adhering to the Court's ruling, the Governments had underscored their commitment to international peace and security and their belief that in situations of State succession, the status of natural persons and their right to a nationality must be protected in keeping with international law and international humanitarian law.

12. **Mr. Moeletsi** (Lesotho) said that the Commission had done valuable work in producing the articles at a time when many States were faced with problems relating to State succession. The codification and progressive development of the rules of international law on the agenda item was a means of ensuring greater legal certainty for States and individuals and would help prevent statelessness as a result of the succession of States. The human rights and fundamental freedoms of persons whose nationality might be affected by succession must be fully respected, and such succession must conform to international law and the principles embodied in the Charter.

13. **Mr. Ahmad** (Qatar) said that the right to nationality was recognized in numerous international instruments. However, as stated in the second preambular paragraph of the articles, nationality was essentially governed by internal law within the limits set by international law, and his delegation believed that the granting of nationality was one aspect of state sovereignty.

14. His delegation supported the draft articles even though they had created certain problems — including that of dual nationality, which Qatar did not recognize — and considered them a valuable contribution to resolving the problem of the nationality of natural persons in relation to the succession of States. His delegation did not believe it was advisable to elaborate a convention that was binding in respect of nationality; it would be more useful to adopt the proposal, put forward by the Commission at its fifty-first session, that the draft should be approved by means of a declaration adopted by the General Assembly. That solution would be sufficient to codify the relevant provisions of international law and provide guidance in resolving problems arising from the issue, while enabling States to reconsider the question in the light of new developments.

15. **Mr. Maqungo** (South Africa) said that while the succession of States gave rise to the possibility of statelessness, the right to a nationality was an essential human right that gave natural persons the status necessary for their legal protection. Everyone had a right to the nationality of the State in which he or she was born. It was imperative that any attempts to regulate that fundamental right should be just and in conformity with domestic and international law in order to avoid the unfortunate consequences of statelessness. People should therefore be offered the option of acquiring citizenship in the event of State succession, and anyone without the citizenship of the successor State should be treated as a citizen of the State in respect of which he or she had the right to acquire or maintain citizenship.

16. He commended the efforts of the United Nations to prevent statelessness and to promote peace between States and their residents. States must also play their part in promoting peace by respecting the principle of non-discrimination with regard to the right of citizenship of the successor State; in other words, in accordance with the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, there must be no discrimination based on sex, race, language, religion, political or social opinion, national or social origin, association with a national minority, property, place of birth or social status. His delegation urged States and international organizations to promote the exchange of information and negotiations aimed at upholding every person's right to nationality.

17. **Mr. Rakovec** (Slovenia) said that nationality was one of the most difficult and complex issues arising in

the context of the succession of States, whose international and domestic responsibilities in that regard had been influenced by the stronger protection of human rights and fundamental freedoms secured through the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Although States, as subjects of international law, were sovereign and independent in defining the conditions for acquiring nationality, they must respect international human rights instruments, many of which codified customary international law.

18. When the Socialist Federal Republic of Yugoslavia, the Czechoslovak Socialist Republic and the Union of Soviet Socialist Republics had dissolved, States had been obliged to turn to domestic law to resolve the issue of the nationality of natural persons because there were no international, legally binding standard-setting instruments on the subject. In 1991, when Slovenia had become a sovereign and independent State, its legislation had provided for the legal protection of natural persons who resided in its territory.

19. Although the principle that internal law governed matters of nationality had subsequently been embodied in the 1997 European Convention on Nationality, a more up-to-date analysis of State practice was required. States' comments, the draft articles prepared by the International Law Commission and the conclusions of the current debate would serve as a useful guide to the formulation of clear and authoritative guidelines. An instrument taking that form would be the most appropriate means of enabling States to resolve that issue quickly and efficiently and to give individuals greater protection. At a later stage, if a "soft law" instrument proved to be insufficient, it might be possible to contemplate the drafting of binding rules embodied in an international treaty.

20. **Mr. Lamine** (Algeria) said that the articles were a timely contribution to the development of uniform solutions to the problems resulting from the succession of States. They were intended to provide States with a set of legal principles and recommendations to guide them in preparing their own laws on nationality. He therefore endorsed the Commission's recommendation that the articles should be adopted in the form of a non-binding declaration by the General Assembly, which would contribute to the codification of international law on the question while enabling the States to continue to determine the conditions under which their nationality would be granted, subject to their international obligations, notably in the area of human rights. The attribution of nationality conferred a sense of belonging and represented the ultimate bond of allegiance to a State. It was a profoundly political act which could not easily be regulated through binding international norms, especially in situations involving the succession of States where political concerns predominated. It was therefore important to retain, as far as possible, the discretion of the State concerned to attribute its nationality in light of its own policies and priorities.

21. **Mr. Kuzmin** (Russian Federation) said that legal regulation of the question was of considerable practical significance because of the serious problems connected with State succession which had arisen for a number of States at the end of the twentieth century. The Commission's text was still relevant, notwithstanding the lapse of time since its submission to the General Assembly, because there was still no universal approach, within international law, to the question of nationality in relation to State succession. People were still being rendered stateless as a result of territorial changes, and it was a prime responsibility of the Assembly, in strengthening the primacy of law at the international and national levels, to create a legal regime to protect the rights of those who found themselves in a legal vacuum.

22. Unfortunately, in recent years the Assembly had preferred to put off discussing on their merits the most important of the draft instruments produced by the Commission. The Committee should demonstrate the will to address complex practical issues relating to the primacy of law by developing a text based on the articles and reflecting two core principles: the presumption of nationality from the outset for persons whose habitual residence had been in the territory affected by the succession of States and who held the nationality of the predecessor State, as stipulated in article 5; and the obligation of States undergoing succession to take all necessary steps, including legal steps, to ensure that people living in the affected territory did not suffer as a result of the change. It would be unacceptable if the lack of adequate legal regulation resulted in an increase in the number of stateless people. The principle that everyone had the right to a nationality and that no one should be arbitrarily deprived of one was enshrined in the draft

articles, which ought to become a United Nations convention.

23. **Mr. Moreno Zapata** (Bolivarian Republic of Venezuela) said that the articles struck the right balance between the sovereign right of States to regulate the acquisition or loss of nationality and the human right to a nationality. International law recognized that nationality was governed by domestic law and was to be determined by each State within the limits set by international law, which were designed essentially as safeguards against statelessness. The Constitution and the 2004 Nationality and Citizenship Act of the Bolivarian Republic of Venezuela, together with its mission to protect human rights, ensured that in his country it was practically impossible for statelessness to result from loss of nationality and illegal to revoke a person's nationality on any grounds.

24. His delegation supported the inclusion in the preamble of a reference to other legal instruments dealing with nationality and statelessness; the addition of definitions of such terms as "effective link" (article 19), "appropriate legal connection" (article 22), and "habitual residence" (article 22); the inclusion of jus sanguinis in addition to jus solis in article 13; extension of the concept of non-discrimination in article 15 to include, without being limited to, such grounds of discrimination as race, gender, colour, language, social status, political opinion; and the replacement in article 25 of "[t]he predecessor State shall withdraw its nationality", which limited the possibility of the concerned person having two nationalities, by "[t]he predecessor State may withdraw its nationality". His delegation was in favour of the adoption of a treaty, rather than a declaration, in view of the international instruments already adopted on nationality issues.

25. **Mr. Baghaei Hamaneh** (Islamic Republic of Iran) said that States had a sovereign right to grant or withdraw nationality at their discretion in accordance with the relevant domestic law and regulations, including the international obligations incorporated therein. At the same time, nationality was a human right and States should take every measure to prevent and reduce statelessness, which deprived people of the legal means of protecting their integrity and human dignity. However, in circumstances such as State succession, national laws could not suffice; international rules were needed to regulate the matter. His delegation therefore supported the proposal to elaborate an international legal instrument based on the provisions of the articles annexed to General Assembly resolution 55/153.

26. **Mr. Hafner** (Austria) said that his delegation supported the ultimate goal of elaborating a convention on the topic as it would be the strongest expression of the commitment of States. The need for such an international legal regime was clear from recent developments involving questions of State succession, one of the most important of which was that of nationality. However, the elaboration of a convention soon after submission of the draft articles to the General Assembly could, by provoking unforeseeable amendments, jeopardize the outcome of the entire codification exercise; it might be preferable to allow for an intervening period in order to monitor developments in State practice. His delegation therefore proposed that the topic should be placed on the General Assembly's agenda again at its sixty-fifth session, in 2010, with a view to deferring consideration of the elaboration of a convention until that time.

Agenda item 151: Observer status for the South Centre in the General Assembly (A/63/141; A/C.6/63/L.3)

27. **Mr. Mahiga** (United Republic of Tanzania), introducing draft resolution A/C.6/63/L.3 on observer status for the South Centre in the General Assembly, drew attention to the explanatory memorandum contained in annex I to document A/63/141 and said that the Democratic Republic of the Congo, Kenya, Namibia, Pakistan and Viet Nam had become sponsors. The South Centre was an intergovernmental organization set up in 1994 to support the capacity of the South for addressing major policy issues relating to development, trade, technology and intellectual property. Its headquarters were in Geneva and it had a membership of 51 countries in various regions of the world. He called on the Committee, in keeping with its previous decisions on observer status for intergovernmental organizations, to recommend that the General Assembly should adopt the draft resolution without a vote.

Agenda item 153: Observer status for the University for Peace in the General Assembly (A/63/231; A/C.6/63/L.2)

28. **Mr. Urbina** (Costa Rica), introducing draft resolution A/C.6/63/L.2 on observer status for the

University for Peace in the General Assembly, drew attention to the explanatory memorandum contained in annex I to document A/63/231 and announced that Colombia, Italy and Turkey had become sponsors. The University, which had its headquarters in San José, Costa Rica, had been established pursuant to General Assembly resolution 35/55 as a specialized international institution for post-graduate studies, research and dissemination of knowledge specifically aimed at training for peace. Its purposes were to promote understanding, tolerance and peaceful coexistence, stimulate cooperation among peoples and help lessen obstacles to world peace and progress. As an intergovernmental organization devoted to the aims of the Charter of the United Nations, the University satisfied the requirements for observer status.

The meeting rose at 11.20 a.m.