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Held at Headquarters, New York, on Monday, 17 October 2011, at 10 a.m.

Chair: Mr. Salinas Burgos . . . . . (Chile)

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11-54826 (E)

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

Agenda item 77: Nationality of natural persons in relation to the succession of States (A/66/178 and Add.1, A/59/180 and Add.1 and 2, A/63/113)

1. **The Chair** recalled that at its fifty-fifth session the General Assembly had considered the draft articles on nationality of natural persons in relation to the succession of States, adopted by the International Law Commission in 1999, and had taken note of the draft articles and annexed them to its resolution 55/153. At its fifty-ninth and sixty-third sessions the General Assembly had again considered the item and had decided to include the item in the provisional agenda of its sixty-sixth session, with the aim of examining the subject, including the question of the form that might be given to the draft articles.

2. **Mr. Murase** (Japan) said that it was regrettable that over the past 11 years the General Assembly had repeatedly deferred a decision on the final form the draft articles should take. That was somewhat irresponsible on the part of an organ charged with establishing and enhancing the rule of law in the international community. If the Sixth Committee continued that unfortunate practice, the international community would take it as an indication that the Committee was not fulfilling its duty. It should therefore take decisive action at the current session by endorsing the principles and rules embodied in the draft articles as a declaration of the General Assembly.

3. The most important achievement of the draft articles was the prevention of statelessness in the event of State succession. Because nationality was an indispensable precondition for the protection of individuals under both national and international law, it was especially significant that the draft articles defined the right to a nationality as a fundamental human right. In that respect, they significantly advanced international law beyond both the 1961 Convention on the Reduction of Statelessness and the 1966 International Covenant on Civil and Political Rights.

4. According to the most recent assessment by the United Nations High Commissioner for Refugees there were an estimated 12 million stateless people, and the number was increasing. Statelessness was a problem in Eastern and Central Europe and was widespread in Africa, the Middle East and Asia. State succession was certainly a major, though not the only, cause of statelessness. The General Assembly was well-placed to help eliminate the problem of statelessness resulting from the separation of States, by endorsing the articles prepared by the International Law Commission.

5. The 1999 draft articles successfully balanced consideration for the human rights of affected individuals with the long-standing prerogative of States to grant nationality. They were also flexible enough to enable each State to adjust its nationality law in conformity with them, whether that law was based on the principle of *jus sanguinis* or that of *jus soli*.

6. As for the final form of the draft articles, the International Law Commission had taken the view from the outset that a declaration by the General Assembly endorsing the principles and rules embodied in the draft articles would be the most appropriate conclusion. Thus endorsed, the draft articles would serve as a useful reference for interpreting a regional convention based on the draft articles, such as the Council of Europe's 2006 Convention on the Avoidance of Statelessness in relation to State Succession. The text would also be an effective tool for concluding bilateral agreements between States in the event of State succession. He hoped, therefore, that the Committee would propose a draft resolution endorsing the draft articles as guidelines.

7. **Ms. Escobar Pacas** (El Salvador) said that the relevance of State succession as a genuine international legal problem was evident from the fact that it had been a priority topic for the International Law Commission since its first session. The Commission had made a valuable contribution to resolving the technical aspects of nationality in the context of State succession. However, nationality should not be treated in isolation or as a mere side issue of the succession of States; it was not simply a legal link between an individual and a particular State, but a human right, identified as such in the Universal Declaration of Human Rights and the law of most States, the right that enabled the individual to exercise his or her other rights.

8. Since any loss of nationality could have grave consequences, leading to real human tragedy, her delegation was in favour of adopting the draft articles as a binding instrument providing for the right of option with regard to a nationality. The adoption of an international convention on the subject would not be tantamount to denying that nationality was governed

primarily by internal law, but would make it possible to achieve a balance between sovereignty and international human rights obligations, which were incompatible with practices resulting in discrimination or statelessness.

9. In that light, El Salvador had proposed an amendment to draft article 17. First, the title "Procedures relating to nationality issues" would be replaced by "Principles governing procedures relating to nationality issues", since the procedures themselves were a matter for each State individually. The amended draft article would also make it mandatory to state the grounds for nationality decisions; the requirement to state reasons would show that the decisions of judges were subject to the rule of law, convince the parties of the reasonableness of the decision, eliminate the impression of arbitrariness and open the decision to public scrutiny and judicial review.

10. In its comments on the topic (A/66/178/Add.1) El Salvador had described its own practice in matters of nationality since the ratification of the Convention on Nationality and Acquired Rights in the Areas Delimited by the Judgment of the International Court of Justice of 11 September 1992. That instrument had been adopted in order to resolve the problems arising from the delimitation of the boundary between El Salvador and Honduras in an orderly manner and with respect for acquired rights. Its article 3 enshrined the obligation to "respect the right of individuals in the delimited areas to a choice in the matter of nationality". As a result, hundreds of identity documents had been issued by both States to the affected individuals. That process was ongoing, and would be further strengthened if the draft articles were adopted in the form of a binding instrument.

11. **Ms. Leskovar** (Slovenia) said that settling the issue of the nationality of natural persons in the event of a succession of States had become highly relevant following the dissolution of the former Yugoslavia, the former Czechoslovakia and the former Soviet Union. After the fall of the Berlin Wall, faced with an absence of legally binding international instruments, States had had to find solutions under their internal law. Slovenia, independent since 1991, had passed legislation to provide for the legal protection of natural persons residing in Slovenian territory as a result of the dissolution of the former Socialist Federal Republic of Yugoslavia, so preventing them from becoming stateless. The legislation was in keeping with the basic principle underlying the European Convention on Nationality of the Council of Europe, adopted six years later.

12. The right to citizenship was a fundamental human right, recognized as such in many international legal instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child.

13. In the opinion of her delegation, the rules concerning the nationality of natural persons in the event of the succession of States should take in the form of a non-binding document and should reflect modern practice and contemporary international standards. It advocated a progressive approach, beginning with a "soft law" document and perhaps moving towards a legally binding document at a later stage.

14. **Ms. Telalian** (Greece) said the draft articles had provided useful guidance, especially in the Eastern and Central European States following the dissolution of the former Soviet Union and the former Yugoslavia. They had also inspired regional organizations in developing legally binding instruments, such as the Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession of 2006. National practice was also being developed on the basis of the draft articles. Since the draft articles had already proved their usefulness, perhaps the elaboration of a United Nations convention on the subject was not a pressing need. It would be more appropriate to retain the draft articles for the time being as a "soft law" document. Her delegation therefore supported the suggestion that the General Assembly should endorse the draft articles as guidelines in the text of a resolution.

15. **Ms. Escobar Hernández** (Spain) said that the International Law Commission had succeeded in reflecting, in a balanced manner, the various nationality problems encountered in the event of a succession of States, while emphasizing the crucial importance of avoiding statelessness.

16. Her delegation would have no objection in principle to the preparation of an international convention on the basis of the draft articles. However, it was apparent that States took a variety of views on that question. Only six States, for instance, had ratified the 2006 Council of Europe convention based on the

draft articles. It would therefore be premature for the United Nations to prepare an international convention on the subject. Rather, the draft articles should be adopted in the form of a declaration, which could serve as a useful set of guidelines for States.

17. **Mr. Kowalski** (Portugal) said the draft articles had the important objective of avoiding statelessness in cases of State succession, in line with the fundamental principle, enshrined in the Universal Declaration of Human Rights, that every person had the right to a nationality. There must be a proper balance between the practical interests of States in a succession process and the rights and expectations of individuals regarding their nationality. The sovereign prerogative of States to grant nationality must be exercised within the limits imposed by international law, which were correctly identified in the draft articles.

18. With regard to the final form and legal force of the draft articles, his delegation preferred the option of adopting them as a declaration of the General Assembly, which would allow for the immediate and authoritative stabilization of a diffuse set of norms and practices, combining codification with the progressive development of international law. That option should, however, only be pursued with the broad support of States.

19. **Mr. Kalinin** (Russian Federation) said that his delegation had always supported the idea of elaborating an international convention on the basis of the draft articles. The human right to a swift and effective determination of nationality was fundamental. Solutions must be found as soon as possible to situations in which, as a result of administrative and territorial changes, an individual was left in a legal vacuum, unable to obtain basic social rights and protections. The only way to prevent such situations was through international legal regulation, and in that sense the draft articles met a pressing need.

20. In its resolution 55/153 the General Assembly had recommended to States to take due account of the provisions contained in the draft articles in dealing with issues of nationality of natural persons in relation to the succession of States. Since then the draft had been tested in practice to an extent sufficient to form the basis of an international convention, as was evident from the comments and observations submitted by States in accordance with General Assembly resolution 63/118. There was a growing understanding of the need to strengthen the legal status of the draft. However, some States were envisaging the possibility of a gradual approach to the development of a binding instrument. He could therefore support the proposal by the delegation of Slovenia for a “soft law” document as a first stage, to be followed later by a fully-fledged international treaty.

21. **Ms. Abdul Rahman** (Malaysia) recalled that the draft articles had been intended to provide a useful guide to practice in dealing with the issue. On the question of the advisability of elaborating a legal instrument on the basis of the draft articles, her delegation’s view was that such an instrument should only be contemplated once the practice of States and of regions pointed towards clearly established custom, resulting in the need to codify the customary rules. At the present juncture, the draft articles annexed to General Assembly resolution 55/153 offered adequate guidance to States. Before they could form a basis for the elaboration of a legal instrument, further clarification was required on several of their provisions concerning the attribution and acquisition of nationality and the right of option in the event of State succession.

22. Her country had specific concerns relating to the issue of dual or multiple nationality, which was not permitted under its laws. States should not ignore the fact that the determination of nationality was one of their exclusive prerogatives. Recognition in the draft articles of even the possibility of acquiring multiple nationalities as a result of a succession of States should not encourage an official trend in that direction or the practice of “forum shopping” for citizenship by individuals. With regard to draft article 14 (Status of habitual residents), her delegation, while welcoming the inclusion of a provision intended to mitigate the adverse consequences of population shifts and displacements as a possible result of a succession of States, took the view that the question of the status of habitual residents who were in fact aliens to the States concerned went beyond the scope of the draft articles.

23. On the question of linkages between the individual and the State as a paramount consideration in the attribution or acquisition of nationality, Malaysia was concerned that the interchangeable use of the terms “effective link”, “appropriate connection” and “appropriate legal connection” in several provisions of the draft created uncertainty. In view of the similarity between the concepts underlying those terms, their use

and scope in their respective contexts should be clarified or a standard term should be adopted which could be generally applied in those provisions.

24. **Mr. Hill** (United States of America) said that statelessness in the context of State succession could affect democratization, economic development and regional stability. His delegation agreed with the basic tenet of the draft articles that individuals affected by a succession of States must possess the nationality of at least one of the successor States and urged Governments to review their nationality laws to avoid any discrimination against women or members of minority or other vulnerable groups and to ensure that stateless individuals present within their borders could obtain documentation, protection from abuse, and access to basic services.

25. It was evident, however, from many of the written observations of States that approaches to statelessness occurring as a result of State succession should take account of certain factors, such as the individual right of expatriation and other legitimate concerns of States in determining their policies on nationality. To balance those important considerations, further examination and discussion were required. His delegation looked forward to reviewing any additional comments by States and to exploring the issues raised in as practical a manner as possible.

26. **Mr. Baghaei Hamaneh** (Islamic Republic of Iran) said that the granting or withdrawal of nationality was in principle a sovereign right of States, to be decided in accordance with the domestic laws and regulations of each State, including its international obligations incorporated in its national law. That principle had been recognized by the International Law Commission and reaffirmed in the decisions of international courts and tribunals. However, since the right of every person to a nationality was among the most important human rights, States should take every measure to prevent and reduce statelessness, in order to avoid depriving anyone of the legal status necessary for the legal protection of his or her integrity and human dignity.

27. In circumstances like State succession the question of nationality could not be decided by national law alone. The development of an international legal instrument codifying treaty and customary law on the nationality of natural persons in relation to the succession of States would contribute to meeting the need for clear international rules on the subject. His delegation supported the idea of elaborating such an international legal instrument on the basis of the draft articles, but had reservations about the issue of dual or multiple nationality, which was not allowed by the law of his country.

28. **Mr.** Eden **Charles** (Trinidad and Tobago) said that State succession had serious consequences, which could affect the ability of the individuals affected to exercise their inalienable human rights. Everyone had the right to a nationality, and no one should be arbitrarily deprived of his or her nationality or denied the right to change it. According to the 1961 Convention on the Reduction of Statelessness, States had the sovereign right to confer their nationality on any person for any reason, and stateless persons should be able to take the nationality of their place of birth or the place where they were found.

29. Trinidad and Tobago favoured recognition of the right to nationality, family unity and non-discrimination and the granting of the right of option by both the predecessor State and the successor State. Although nationality was essentially governed by a country's own laws, States could benefit from international guidelines on the subject. There was a need for some degree of legal certainty, and the draft articles could form the basis of a binding legal instrument setting out recognized norms and practices, to assist successor States in enacting domestic laws consistent with international practice. The failure to achieve consensus on the subject had placed many individuals at a disadvantage, unable to participate in political processes, own property or engage in the economic activities flowing from citizenship, or even to receive equal treatment before the law. He would encourage States to continue working together, in the framework of the Sixth Committee, to reach consensus on the elaboration of a binding legal instrument based on the draft articles.

The meeting rose at 11.15 a.m.