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Chairman: Mr. Tomka ..... (Slovakia)

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The meeting was called to order at 3.10 p.m.

Agenda item 147: Report of the International Law Commission on the work of its forty-ninth session (continued) (A/52/10)

1. Mr. Pellet (Chairman of the International Law Commission), introducing chapter IV of the report of the International Law Commission (A/52/10), entitled "Nationality in relation to the succession of States", said that the Commission should be congratulated for having completed the first reading of the draft articles on the subject in a single session, a veritable tour de force of which the main architect was the Special Rapporteur, Mr. Mikulka.

2. In accordance with the plan of action adopted in 1996 and approved by the General Assembly, and without prejudice to the ultimate decision on the form which the draft articles should take, the Commission was submitting the draft articles in the form of a draft declaration. The text, which consisted of a preamble and 27 articles divided into two parts, had been the subject of a searching review and careful debate; it had been adopted without a vote, although some members of the Commission had expressed reservations on points of varying importance.

3. The provisions of Part I were general in scope, in the sense that they applied to all categories of succession of States and were, in the view of the Commission, more concerned with codification as such, rather than with progressive development. The provisions of Part II, on the other hand, indicated how the general provisions of Part I might be applied in specific categories of succession and were mainly intended to offer guidance to States concerned, both in their negotiations and in the elaboration of national legislation in the absence of any relevant treaty. Thus, States concerned could agree among themselves to depart from the provisions in Part II if that would be more appropriate given the characteristics of the particular succession of States.

4. The Commission had considered it useful to devote a separate article, article 2, to the definition of the terms used, to facilitate understanding of the various provisions. It had also decided, for the sake of uniformity, not to alter the terms already defined by the two Vienna Conventions on the succession of States, but had had to provide two new definitions for the purposes of the current draft articles, one for the term "State concerned", and the other for the term "person concerned".

5. Article 1, entitled "Right to a nationality", was the key provision of Part I, indeed of the draft articles as a whole. It stated the basic principle from which many of the other draft articles were derived, namely, that every individual who, on the date of the succession of States, had the nationality of the predecessor State, irrespective of the mode of acquisition of that nationality, had the right to the nationality of at least one of the States concerned by the succession. The general principle laid down in article 15 of the Universal Declaration of Human Rights was thus applied in the exclusive context of a succession of States. The right embodied in article 1 in general terms was given more concrete form in subsequent provisions.

6. Article 3 provided the corollary to the right to a nationality laid down in article 1, in the form of the obligation of the States concerned to take all appropriate measures in order to prevent the occurrence of statelessness as a result of a succession of States. The scope of article 3 was limited to persons who were indeed nationals of the predecessor State before the succession, and did not encompass persons resident in the territory of the successor State who had been stateless under the regime of the predecessor State. The provision did not set out an obligation of result, but an obligation of conduct. The elimination of statelessness was the final result to be achieved by means of the application of the entire set of draft articles, in particular through coordinated action of States concerned.

7. The Commission was aware that there was often, in practice, a time lag between the date of the succession of States and the adoption of legislation or the conclusion of a treaty on the question of the nationality of persons concerned, and therefore considered it important to state, as a presumption, the principle that, on the date of the succession of States, the successor State attributed its nationality to the persons concerned who had thus far been habitual residents of the territory affected by such succession, in order to avoid such people being treated as stateless during that transitional period. That problem was addressed in article 4.

8. The draft articles were based on the principle that the legitimate interests of States and individuals should be taken into account in matters of nationality, and the Commission had therefore tried to find a satisfactory balance between the interests of both. In particular, there were situations in which the individual should have a voice in determining his or her nationality as a result of a succession of States. Article 10 was an important provision in that respect, stating in paragraph 1 that the States concerned should give consideration to the will of persons concerned whenever those persons were qualified to acquire the nationality of two or more States concerned. Paragraph 2 obliged each State concerned to grant the right to opt for its nationality to persons concerned who had an appropriate connection with it if those persons would otherwise become stateless as a result of the succession.

9. Moreover, as stated in paragraph 9 of the commentary on article 10, the expression "appropriate connection" should be interpreted in a broader sense than the notion of "genuine link". The Commission believed that in such a case the objective of preventing statelessness should take precedence over the strict requirement of an effective nationality. Paragraphs 3 and 4 of article 10 obliged States concerned to respect the decision of any person who had exercised the right of option to which they were entitled by attributing its nationality to them or, if need be, withdrawing it from them. Lastly, under paragraph 5, States concerned should provide a reasonable time limit for the exercise of the rights set forth in paragraphs 1 and 2.

10. Elsewhere, article 13, entitled "Status of habitual residents", deserved special attention. Paragraph 1 of that article set forth the basic general rule according to which the status of habitual residents was not affected by a succession of States as such. On the other hand, paragraph 2 addressed the problem of habitual residents in the specific case where the succession of States was the result of events leading to the displacement of a large part of the population: its purpose was to ensure the effective restoration of their status to habitual residents as protected under paragraph 1. Naturally, the question addressed in article 13 was different from the question of whether or not the persons involved might retain their right of habitual residence in a State concerned if they acquired, following the succession of States, the nationality of another State concerned. While agreeing on the principle that a State concerned had the obligation to preserve the right of habitual residence of persons concerned who, following the succession, had become ex lege nationals of another State concerned, the members of the Commission had expressed widely differing views on the question of whether the same should apply in respect of habitual residents who had voluntarily become nationals of another State concerned. Given the lack of consensus, the Commission had decided not to include any provision on the matter in the draft articles, thus opting for a neutral solution.

11. Article 17, entitled "Exchange of information, consultation and negotiation", imposed certain obligations on States aimed at ensuring the effectiveness of the right to a nationality under article 1. Thus, paragraph 1 required States concerned, as a first step, to exchange information and consult in order to identify any detrimental effects on persons concerned with respect to their nationality and other connected issues regarding their status as a result of the succession of States. Under paragraph 2, States were required, when necessary, to seek a solution to eliminate or mitigate such detrimental effects by negotiation and, where appropriate, through the conclusion of an agreement.

12. He also drew the Committee members' attention to draft articles 11, 14 and 15, which contained general provisions protecting the rights of persons concerned. While those provisions clearly were not debatable, some members of the Commission had wondered whether they really belonged in the draft because of their general nature.

13. Article 18 contained two savings clauses. The first concerned the non-opposability to other States of a nationality acquired or retained in connection with a succession of States in disregard of the requirement of an effective link. The second safeguarded the right of States to treat persons concerned who had become stateless as a result of the succession of States as nationals of the State concerned whose nationality they would be entitled to acquire or retain, if such treatment was beneficial to those persons.

14. Part II of the draft articles was divided into four sections, each dealing with a particular type of succession: section 1 (Transfer of part of the territory), section 2 (Unification of States), section 3 (Dissolution of a State) and section 4 (Separation of part or parts of the territory). Following lengthy discussions, the Commission had decided provisionally not to insist on the inclusion in the draft of provisions concerning nationality where new States were created as a result of decolonization, but several members had felt that there was a gap in that area.

15. The provisions of each section identified in detail the categories of persons to whom a successor State should attribute its nationality and, where appropriate, those from whom the predecessor State should withdraw its nationality and those to whom a right of option should be granted. Since those rules were of a technical nature, they did not require any further clarification; however, Committee members were free to comment on them, either during the forthcoming discussion or in the observations of individual States, which the Commission and its Special Rapporteur awaited with interest.

16. Article 27, which was the last provision of the draft articles, had been included at a late stage and the decision as to its placement in the text had been left for the second reading. As in the case of the two Vienna Conventions on the Succession of States, the scope of the draft articles was limited to the effects of a succession of States occurring in conformity with international law and, in particular, with the principles of international law embodied in the Charter of the United Nations. Since the draft articles embodied certain rights whose scope of application was broader than the topic at hand, the Commission had felt it desirable to reflect that fact in the opening phrase of article 27: "Without prejudice to the right to a nationality of persons concerned".

17. Mr. Rotkirch (Finland), speaking on behalf of the Nordic countries (Denmark, Iceland, Norway, Sweden and Finland), said he was satisfied with the way in which the new members of the Commission had organized their work and established a work programme up to the year 2001. The Nordic countries accepted the general outline proposed by the Commission for its work on the new topics of diplomatic protection and unilateral acts of States, as well as the approach taken to the topic of international liability for injurious consequences arising out of acts not prohibited by international law. Those countries should be able to provide, by 1 January 1998, written comments on the draft articles on State responsibility.

18. With respect to the draft articles on nationality of natural persons in relation to the succession of States, he did not doubt that, once the draft articles were finalized and adopted by the General Assembly, they would constitute a timely contribution to the development of international norms in that notoriously difficult field. In that connection, the Commission had left open the question of the final legal form to be given to the draft, even though the latter was presented in the form of a declaration. The Nordic countries had already stated their preference for a non-binding declaration that could be of immediate assistance to States dealing with problems of nationality in relation to the succession of States. Whereas the entry into force of a convention normally took a long time, a declaration of the General Assembly would provide an early yet authoritative response to the need for clear guidelines on the subject, without precluding the subsequent elaboration of a convention.

19. The Nordic countries welcomed the draft articles' consistent focus on human rights and the removal of certain inconsistencies and formulations that begged the question, such as principles (h) and (i), which had appeared in the preceding year's report. They were pleased to note that the Commission had not only reinforced the right to a nationality, but had also given it a precise scope and applicability by declaring, in article 1, that every individual who, on the date of the succession of States, had had the nationality of the predecessor State had the right to the nationality of at least one of the States concerned. The right to a nationality had already been incorporated in article 15 of the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights, in the Convention on the Rights of the Child and in the recently adopted European Convention on Nationality, which embodied the right of everyone to a nationality as one of the principles on which the States parties must base their domestic legislation on nationality. However, the right to a nationality had been viewed mainly as a positive formulation of the duty to avoid statelessness and not as a right to any particular nationality. The Nordic countries supported the Commission's reasoning, which went beyond that approach, building on the fact that, in cases of State succession, the States concerned were easily identified.

20. The words "at least" in article 1 left open the possibility of multiple nationality. As noted by the Commission, the idea was not to encourage a policy of dual or multiple nationality, but rather to recognize that, for the persons concerned, dual nationality was probably less detrimental than statelessness. The Nordic countries were pleased that the draft was neutral on that issue, since the determination of the circumstances in which multiple nationality might be desirable went beyond the scope of a general declaration.

21. The obligation of the States concerned, as laid down in article 17, to exchange information and consult in order to identify any detrimental effects of the succession of States, and to seek a solution to eliminate or mitigate such effects, was necessary to ensure the effectiveness of the right to a nationality, and article 17 should be read together with related articles in the draft. Nonetheless, it seemed advisable to add a sentence to article 17 stating explicitly that the States concerned were also obligated to ensure that the outcome of such negotiations complied with the principles and rules contained in the declaration.

22. The obligation of States concerned to take all appropriate measures to prevent statelessness, laid down in article 3, was another corollary of the right to a nationality. The deletion of the criterion of habitual residence, which had been included in the corresponding principle (b) in the preceding year's report, benefited both the text and the objective of preventing statelessness. Moreover, specific obligations aimed at preventing statelessness were laid down in several other articles, such as article 6 on the effective date of the attribution of nationality and the savings clauses contained in articles 7, 8 and 18.

23. Article 10, entitled "Respect for the will of persons concerned", article 11, entitled "Unity of a family", article 14, entitled "Non-discrimination", and article 15, entitled "Prohibition of arbitrary decisions concerning nationality issues", embodied principles and rules that were intended to protect the human rights of the persons concerned. Too often, treaty provisions or national citizenship laws which were generous on paper were much less so in their practical application. It was therefore important expressly to prohibit arbitrary decisions on nationality issues, as article 15 had done, and to include such procedural safeguards as the requirement that decisions relating to nationality should be issued in writing and be open to effective administrative or

judicial review. In addition, the reasons for such decisions should also be given in writing.

24. The Nordic countries fully endorsed the principle expressed in article 13, paragraph 1, that the status of persons concerned as habitual residents should not be affected by the succession of States. At the same time, they noted that the principle remained rather vague, since the more specific right of residence of habitual residents of the territory over which sovereignty was transferred to a successor State to remain in that State even if they had not acquired its nationality had been left out. While the Nordic countries recognized that the omission had been intentional, and had resulted from differences in opinion between members of the Commission, they would encourage the Commission to reconsider the issue.

25. Article 18, paragraph 1, reinstated a general principle of international law, already found in the Hague Convention of 1930, that laws and decisions of States in the area of nationality did not necessarily have international effect and were recognized by other States only insofar as they were consistent with international conventions and custom as well as the generally recognized principles of law. Paragraph 2, however, seemed to have a wider application in that it gave third States the right to treat stateless persons as nationals of a given State, even where statelessness could not be attributed to an act of the State but where the persons concerned had by their negligence contributed to the situation, provided that such treatment was beneficial to those persons. The Nordic countries were pleased that, in paragraph 8 of the commentary on that article, the Commission had specified that the provision was to be interpreted as meaning only that other States could extend to those persons a favourable treatment which would be granted to nationals of the State in question. Consequently, they could not, for example, deport such persons to that State. While supporting that provision, the Nordic countries wondered whether its content could be further clarified in the actual text of the draft.

26. The second part of the draft articles was intended to provide guidelines for States which were in the process of negotiating treaties or in enacting domestic legislation relating to succession of States. The Nordic countries welcomed the decision of the Commission to simplify the typology of the 1983 Vienna Convention on Succession of States by omitting the category of "newly independent States", while noting that one of the four categories of State succession would be applicable in any remaining case of decolonization in the future. The Commission had rightly found it useful to preserve the distinction between secession and dissolution of a State while ensuring that the provisions in both sections were identical.

27. Finally, the Nordic countries welcomed the inclusion of article 27, which limited the scope of application of the draft articles to succession of States occurring in conformity with international law. They understood that its final placement would be decided later.

28. Mr. Bos (Netherlands) said that because of lack of time, he would not read out the full text of his statement; it would, however, be distributed to members of the Committee.

29. His delegation welcomed the speed with which the Commission had completed the first reading of the draft articles on nationality in relation to the succession of States. That was no doubt due largely to the Special Rapporteur's clear and effective treatment of the subject, as well as to the new working methods adopted by the Commission, particularly the establishment of a working group which the Special Rapporteur could consult while preparing his reports.

30. As had been demonstrated in recent years, changes of sovereignty over territory were phenomena of current interest and the draft articles were therefore very useful. When changes of sovereignty occurred, many questions relating to nationality arose: Was people's nationality affected by the change of sovereignty? What were the rules of international law applicable in those cases and what could be left to the States directly concerned by the change of sovereignty? The effect of change of sovereignty on the nationality of the inhabitants of the territories concerned was one of the most difficult problems in the law of State succession.

31. Identifying as main objectives in the draft articles the protection of human rights and the need to strike a balance between those rights and the inherent right of a State to determine who were to be its citizens seemed to be the correct approach. The objectives concerning avoidance of cases of statelessness and the need to respect the will of the individual, while also valid, were of a general nature and to a certain extent went beyond the question of nationality in State succession.

32. His delegation noted that the Commission acknowledged the possibility of dual or multiple nationality while providing rules for restricting the number of such cases, reflecting the needs of the times. The principle that no one could possess two nationalities was no longer absolute because, due to common roots or historic ties between nations and the greater mobility of people, it was not always possible to avoid cases of double or multiple nationality without injustice to the persons concerned. In addition, draft article 4 constituted a very useful saving clause: the presumption that acquisition of a new nationality automatically entailed loss of the former nationality was no longer generally respected.

33. With regard to article 11, his delegation stressed the importance of safeguards to ensure that the articles did not interfere with the well-established right to family life. The risk that families could be separated as a result of unintentional attribution of different nationalities to various members of a family should be eliminated.

34. Article 12, which dealt with the case of a child born after the succession of States to parents whose nationality, following the succession, had not been determined, provided that the child had the right to the nationality of the State concerned on whose territory that child was born. The granting of such nationality upon application to the appropriate authority in the manner prescribed by national law — another option besides the granting of nationality at birth by application of the Treaty of New York — seemed also to be covered by the article.

35. With regard to article 13, his delegation observed that in principle, change of nationality of persons habitually resident in the Netherlands would not affect their status as permanent residents, but might well affect their rights and duties. If, for example, such persons acquired the nationality of a State with which the Netherlands was at war, that could result in certain restrictions being imposed. If such persons acquired the nationality of a member State of the European Union, they would enjoy the regime applicable to nationals of member countries of the Union.

36. With regard to the final form which the draft articles should take given that they were meant to be part of the instruments dealing with State succession, his delegation thought it might be appropriate for them to have the same form as the two preceding texts. Although the latter clearly had not acquired the necessary number of ratifications to enter into force, that should not be an obstacle to putting the draft articles into the form of a convention. However, if the majority of Committee members thought that the draft articles should retain their current form as a declaration, his delegation could accept that as well. The existence of the text in itself was already a contribution to the development and codification of the rules of international law on the subject.

37. Mrs. Dascalopoulou-Livada (Greece) said that the draft articles should cover only those questions of nationality directly connected with the succession of States and that a title such as "Effects of the succession of States on the nationality of natural persons" or "Succession of States and nationality of natural persons" would be preferable. There should be no provisions such as those contained in draft articles 8, 9 and 12, which were not directly connected with the succession of States. Such questions were as a rule governed by the domestic legislation of States on nationality and there was no real reason for any intervention in that regard, as was partly recognized by the International Law Commission when it couched some rules — for example, draft articles 8 and 9 — in non-mandatory terms, using such expressions as "the former State may". Furthermore, draft article 18, which gave "other" — in other words, third — States the possibility of control over a question belonging to the exclusive competence of the successor State, was capable of creating problems. It contained elements of subjectivity where objectivity should prevail and should therefore be reconsidered.

38. One of the main deficiencies of the text requiring review was its failure to distinguish between obligations deriving from international law, which were obligatory for the successor State, and various other solutions that the successor State might or might not adopt on the basis of its domestic law. The latter solutions, however, could not but have a purely discretionary character. The draft suffered from confusion in that regard. More specifically, draft articles 20, 21, 22 (a) and 24 (a) followed — as far as the attribution of nationality was concerned — the solutions of international law, which were mandatory and applicable ex officio. Draft articles 22 (b) and 24 (b), on the other hand, had their source in domestic law and were discretionary rather than mandatory in nature. They were therefore always applicable only with the consent of the persons concerned.

39. The draft also provided for very wide rights of option without predetermined criteria. Such was the case of draft article 20, for example, by virtue of which entire populations were given unqualified rights of option by many States simultaneously. Another case was that of draft article 26, where the predecessor State had to give a right of option even to that part of its population that had not been affected by the succession. For that reason the question of the option should be re-examined and a distinction drawn between the right of option in accordance with international law, which was mandatory, and the right of option in accordance with domestic law, which should be left to the discretion of the State.

40. Lastly, with regard to draft article 27, which established an exception to the rule that the draft articles applied only to a succession of States effected in conformity with international law, her delegation believed that there was no reason to depart in that respect from the relevant provisions of the two United Nations Conventions on the succession of States, which contained no such exception. Greece could not accept the result that might ensue from a situation where, for example, the aggressor State imposed its nationality on the victim population. Her delegation therefore strongly urged a return to the precedent of the United Nations Conventions.

41. Mr. Ahamed (India), after thanking Mr. Pellet, the Chairman of the International Law Commission, for his excellent introduction of the report, noted that for the first time the Commission had accomplished a complete study of a full set of draft articles and finalized them with commentaries in the same session. He therefore congratulated the Special Rapporteur on the topic, Mr. Mikulka, the members of the Drafting Committee and the Committee's Chairman, Mr. Rao.

42. His delegation considered that the draft articles were well structured, in that the preambular part offered the basic concepts on which the general principles in Part I, leading to their application to specific areas of State succession in Part II, had been developed. The Commission's aim had been to provide, on the one hand, for the right to nationality of the predecessor State at the time of succession and, on the other, for a corresponding obligation on the part of States to confer nationality upon natural persons. The idea was to prevent cases of statelessness, inter alia, by taking into consideration the humanitarian problems caused in certain cases of succession, such as the rights of the child where neither parent could be traced. Such conferring of nationality was to be carried out by enacting legislation, exercising the right of option and withdrawing prior nationality.

43. The draft articles also contained a special provision on "presumption" regarding the acquisition of the nationality of the successor State by persons maintaining habitual residence in that State. The draft articles also accorded the right of option to the nationality of the State with which the person concerned had an "appropriate connection", as opposed to the traditional approach of a "genuine" or "effective" link. However, third States had a right not to recognize the grant of nationality by a State to persons who in fact had no "effective" link with that State, particularly when it was beneficial to the persons concerned.

44. That was the orientation applied in Part II, in which four categories — the transfer of a part of a State, unification of States, dissolution of a State and separation of parts of a State — were envisaged. In cases of the dissolution of a State, or when part or parts of the territory of a State separated and formed one or more successor States, the draft articles envisaged the attribution of nationality by the successor State or States on the grounds of habitual residence or an appropriate legal connection with a constituent unit of the predecessor State that had become part of the successor State. The latter concept had been preferred to that of "secondary nationality", since its scope was broader. The draft articles, however, covered the effects only of succession of States occurring in conformity with international law and the Charter of the United Nations.

45. His delegation considered that the draft articles constituted a noteworthy contribution to codifying the law on the succession of States. The concept of habitual residence was a positive feature of the draft and the Commission was to be congratulated on maintaining a balanced approach by treating the presumption of nationality in respect of habitual residence as arising only in the absence of any other prevailing provision or subject to agreement between States. Another positive contribution was the use of the concept of "appropriate connection", in preference to the test of "genuine link". Recognition of nationality of the State in whose territory a child was born — jus soli — redressed the humanitarian problems arising from the non-traceability or death of the parents, so that nationality could not pass to the child under the normal rule of jus sanguinis. The draft articles were realistic in taking account both of the limits that international law could impose on States and of the freedom of action that States exercised in matters of nationality. They were also flexible, in that States were left the freedom to implement Part I in any other manner than that indicated in Part II, so long as they observed the general principles contained in Part I. The Commission had been right not to fix any normative hierarchy between general principles and specific application. States should therefore consider the draft articles from a political perspective and provide comments, so that the Commission could proceed to a meaningful second reading.

46. Mr. Hillgenberg (Germany) said that the fact that the Commission had submitted a comprehensive set of draft articles only four years after the topic of State succession and its impact on the nationality of natural and legal persons was included in its agenda demonstrated both the particular relevance of the topic in contemporary international law and the remarkable accomplishment of Mr. Mikulka, the Special Rapporteur. The first preambular paragraph indicated the raison d'être of the draft declaration; there was no doubt that the collapse of the Soviet Union and the disintegration of the former Yugoslavia had indeed created special problems and that the draft declaration before the Committee had been inspired by those recent events. The unification of Germany in 1990 was a case apart since under the German nationality law there had always been only one German nationality so that the citizens of the former German Democratic Republic had always been Germans.

47. The German Government was in full agreement with the structure and main objectives of the draft articles and shared the two concerns they addressed: concern for human rights and concern to avoid statelessness. Indeed, the German Government had always believed that although nationality was essentially government by internal law it must take

account of the limits and parameters set by international law. That was the very principle enunciated in article 1 of the Hague Convention of 1930 on Certain Questions relating to the Conflict of Nationality Laws, which provided that even though it was for each State to determine under its own law who its nationals were, such law should be recognized by other States only insofar as it was consistent with international conventions, international custom and the principles of law generally recognized with regard to nationality.

48. The obligation to avoid cases of statelessness in the event of the succession of States was set out in article 10 of the 1961 Convention on the Reduction of Statelessness, and also in the recent European Convention on Nationality adopted by the Council of Europe. Article 1 of the Commission's draft declaration did not set out an obligation of result but rather one of conduct. Indeed, in cases of State succession where there was more than one successor State, an obligation of result would lead to situations of dual or multiple nationality on a large scale.

49. The question of whether there was a right to a particular nationality had been much debated. As was well known, article 15 of the Universal Declaration of Human Rights had been the subject of various interpretations in that regard. However, where there was succession of States it was possible to determine more precisely which State or States should grant nationality. Article 1 of the draft declaration, which gave every individual directly affected by a succession of States "the right to the nationality of at least one of the States concerned", thus mirrored that reality. In that connection, the German Government had noted that even though the Commission recognized the possibility of dual or multiple nationality, as the words "at least" showed, nevertheless it was not its intention to encourage it. Like other Governments, the German Government pursued a policy of avoiding cases of dual or multiple nationality in accordance with a number of international obligations.

50. To consider the right to a nationality as a human right was all the more justified in that nationality was often a prerequisite for exercising other rights, in particular the right to participate in the political and public life of a State. Thus, the German Government shared the concern for the rights of the individual enshrined in article 10 of the draft declaration. Article 14, on non-discrimination, was also of the utmost importance: in that connection, he noted that article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination required States to guarantee the civil rights of everyone, and in particular the right to nationality, without distinction as to race, colour, or national or ethnic origin. The German Government agreed that, as the Special Rapporteur had suggested in his report, it was preferable not to include an illustrative list of such criteria. Article 14 did not address the question of whether a State concerned might use certain criteria for enlarging the circle of individuals entitled to acquire its nationality. In such a case, as in all others, the will of the individual concerned must be respected.

51. Draft article 16, on procedures relating to nationality issues, was of particular practical relevance. The Commission might want to include "reasonable fees" among the procedural guarantees, as the European Convention on Nationality did.

52. The German Government found the form proposed by the Commission, namely, a draft declaration consisting of articles with commentaries, to be entirely appropriate.

53. Mr. Manongi (United Republic of Tanzania) commended the Commission on its draft preamble and articles on nationality, which gave operational meaning to the right of every individual to a nationality as prescribed in article 15 of the Universal Declaration of Human Rights. He indicated that he would confine his remarks to draft article 4 and chapter X of the report of the International Law Commission.

54. It was regrettable that draft article 4 provided for a presumption of nationality in the event of total or partial succession of States only for persons resident in the State concerned. He wondered if that was the only way to achieve the desired goal of solving the problem of the lag between the succession of States and the adoption of legislation or the conclusion of a treaty between the States concerned, whatever the case might be, on the question of the nationality of the persons concerned. Although it was rebuttable, the presumption was unwarranted because it was too broad, and if it needed to be kept it would have to be made more precise. As the principal goal was to avoid statelessness, there could be a presumption of continuity of nationality or the acquisition of the nationality of one of the States concerned that would be based not on the sole criterion of habitual residence but on more factual criteria, particularly the universal criteria in international law of jus soli and jus sanguinis. Indeed, it was difficult to see why those two criteria had not been accommodated.

55. Two elements must also be taken into consideration. They were, first of all, the right of every State to a legal relationship with those persons who had a genuine link with it. In that connection, mere residence was not sufficient to guarantee loyalty. Secondly, an individual's right to a nationality must be guaranteed. That could be done by broadening the scope of article 4 to include general and accepted principles of international law or a specific provision prohibiting the States concerned from taking measures that would render stateless any person who had the

nationality of the predecessor State and who, as stated in draft article 10, paragraph 2, had an appropriate connection with the State concerned.

56. Another problem with regard to draft article 4 was that it did not reflect the near-sacred character of nationality. At a time when the mobility of capital and labour was blurring boundaries, residence was no longer a sufficient criterion of loyalty for attribution of a nationality. In certain cases, persons might have enjoyed dual nationality under the legislation of the predecessor State, which should not necessarily be imposed on the successor State. Furthermore, in countries such as the United Republic of Tanzania, whose arbitrarily drawn boundaries had been inherited from the past and where the idea of habitual residence might be subjective and even difficult to determine, the concept might have unexpected ramifications.

57. The premise of the Commission's draft text was that nationality was essentially governed by national law, an attribute of State sovereignty. That principle must be maintained at all costs.

58. With regard to chapter X of the Commission's report, his delegation supported the Commission's work programme for the remainder of the quinquennium. Regarding methods of work, however, the desire to avoid reopening the discussion of issues already considered seemed somewhat rigid. That approach was particularly hard to understand because the Commission's work programme for the next quinquennium was not only progressive but also repetitive. On the other hand, his delegation was in favour of the suggestion that the fixed sequence of rotation by geographical region should be adjusted so that every region would have an opportunity to assume the chairmanship during a different year of each quinquennium. It hoped that the Commission would take the necessary steps to that end.

59. His delegation did not see how the proposal regarding the duration of the Commission's session could be accepted without additional information on how the work of the Commission had been constrained by the fact that its forty-ninth session had lasted only 10 weeks. By contrast, his delegation welcomed the Commission's review of the list of organizations which cooperated with it. As a member of the Asian-African Legal Consultative Committee, his delegation was particularly pleased to note that that association and the African Society of International Law had been included in the list of intergovernmental organizations that cooperated with the Commission. In that connection, he noted that, at its forty-eighth session in 1996, the Commission had given thought to revising some aspects of its Statute, which were to be considered at its forty-ninth session with a view to submitting recommendations to the General Assembly for the review of its Statute to coincide with the Commission's fiftieth anniversary. His delegation hoped that that objective remained feasible.

60. Mr. Nick (Croatia) said that he would limit his remarks to the question of nationality in relation to the succession of States, which was of particular interest to his country. While there was certainly no reason to encourage dual nationality or multi-nationality, they were nonetheless a realistic solution in certain cases, and the draft articles could develop the question. As the only member of the Sixth Committee that was also a member of the European Commission for Democracy through Law (Venice Commission), his delegation wished to draw the Sixth Committee's attention to the Venice Declaration on the Consequences of State Succession for the Nationality of Natural Persons, which it could use as a model. That was particularly true in the case of the Commission's draft article 16 on procedures relating to nationality issues. His delegation preferred the text of paragraph 3 of the Venice Declaration, which read: "Any deprivation, withdrawal or refusal to confer nationality shall be subject to an effective remedy".

61. His delegation also wished to stress that the terminology of draft article 18 was not fully consistent with the definitions given in draft article 2. It agreed with the representative of Greece that the slightest ambiguity in draft article 27 could be dangerous.

62. In conclusion, he said that his delegation would support the adoption of a convention rather than a declaration, provided that a sufficient number of States acceded to the instrument.

63. Mr. Hamid (Pakistan) said that his Government would submit its comments on the draft articles on State responsibility by the deadline of 1 January 1998.

64. Injurious consequences arising out of acts not prohibited by international law must entail international liability. However, in view of the multifarious activities carried out by States within their borders, it might be difficult to draw up an exhaustive list of activities involving a transboundary risk. His delegation would therefore not be adverse to the inclusion of an illustrative list. On the other hand, it would find it difficult to accept the qualification of "transboundary harm" as "significant", a term which could be controversial, particularly as there was no provision for a binding dispute settlement mechanism. In the absence of such a mechanism, the adjective should be deleted. In the event of harm, the aggrieved State should be entitled to compensation by the State from which the harm emanated.

65. Reservations to treaties were a useful means of obtaining the accession of hesitant States. While the Vienna regime contained the basic elements in that connection, his delegation was not opposed to effort to eliminate lacunae or any ambiguities. On the contrary, in that regard, it did not distinguish between human rights treaties and other treaties.

66. Regarding nationality in relation to the succession of States, while it was certainly necessary to prevent statelessness, the sovereignty of States must not be undermined; the conferral of nationality should remain the sole prerogative to the State concerned. His delegation was satisfied with the Commission's decisions to give the text the form of a General Assembly declaration and to consider the question of natural persons separately from that of legal persons.

67. Regarding the Commission's methods of work, he welcomed the closer cooperation between the Commission and other bodies, particularly the Asian-African Legal Consultative Committee. The relationship between the Commission and the Sixth Committee must be strengthened, and the Sixth Committee should receive the Commission's documents prior to and not during its session. The duration of the Commission's sessions should be commensurate with its workload.

68. Mr. Caflisch (Observer for Switzerland) said that the draft articles prepared by the Commission on nationality in relation to the succession of States were well thought out, and that he endorsed the five main principles underlying them.

69. The first principle was to prevent new cases of statelessness from being generated by the succession of States. The second principle was that the solutions proposed should be based on the existence of "appropriate links" between the State and the individual. If such links could be found for nearly all the persons concerned, the application of that principle would generate hardly any new cases of statelessness. It could, however, result in a multiplicity of nationalities. That realization led to a third principle, which was highlighted in the commentaries: the neutrality of the draft articles with regard to the phenomenon of multiple nationality. A fourth principle was that the forced attribution of nationality should be avoided as far as possible. The fifth and final principle was that, in regulating the effects of State succession in the field of nationality, as in other fields, distinctions should be drawn among different factual situations.

70. He could also endorse the idea of dividing the draft articles into two parts, the first part embodying general rules and the second part containing non-peremptory rules applicable to each of the four specific situations of succession. If draft article 19, which was at the beginning of Part II, was interpreted a contrario, then Part I of the draft would consist of peremptory provisions. That implied that the Commission regarded the provision in Part I as reflecting existing customary law and, moreover, as being peremptory rules (jus cogens). It would probably be desirable to review all the articles in Part I of the draft to determine whether they all actually fell into that category; there was room for doubt on that score. Draft articles 9 (Loss of nationality upon the voluntary acquisition of the nationality of another State) and 8 (Renunciation of the nationality of another State as a condition for attribution of nationality), for instance, were clearly non-peremptory; he wondered, too, whether the rule attributing nationality to a child who had acquired no nationality other than that of the State in whose territory he was born was indeed of a peremptory nature.

71. The distinction between codified customary rules and rules that were merely treaty-bound was particularly important in the context of the succession of States. Insofar as succession created one or more new actors at the international level, they would be bound only by provisions reflecting customary rules, hence those contained in Part I of the draft articles. A different situation occurred with respect to States existing prior to succession; if the draft took the form of a treaty, and those States acceded to it, they would be bound by the text as a whole. In other words, different rules would apply to the different actors involved in the same case of succession. It appeared, therefore, that the Commission had done well to present its draft in the form of a declaration rather than a treaty.

72. With regard to the text of the draft articles, the comments which he was about to make would be supplemented by the written observations of his Government. Under draft article 6, attribution of nationality took effect on the date of succession; in other words, it was generally retroactive. Such retroactivity was also stipulated where a person acquired a nationality by exercising the right of option, but only if, in the absence of retroactivity, the person concerned would be rendered temporarily stateless. He wondered whether that condition should not be extended to all cases of attribution of nationality, in other words, to article 6 as a whole, rather than being limited to situations involving the exercise of the right of option. The proposed change would have the advantage of limiting the effect of retroactivity to what was strictly necessary.

73. Draft article 13 stipulated that the status of persons concerned as habitual residents would not be affected by the succession of States. The Commission's mandate, however, as reflected in the title of the draft, dealt with the nationality of natural persons in relation to the succession of States; it did

not cover their status as residents, however desirable it might be to limit massive, forced population transfers as much as possible.

74. Draft article 14 prohibited States from "discriminating on any ground" in the attribution or maintenance of nationality or in granting the right of option. As explained in the Commission's commentary, that prohibition referred to discrimination on the grounds of sex, religion, race, origin or language; however, in order to dispel the a contrario notion that any form of discrimination not included in such a list would be lawful, the Commission proposed to prohibit discrimination on any ground. He wondered, however, whether such a formulation was not too broad. It might, for example, prohibit any distinction, where the nationality of a successor State was being acquired, between individuals residing in the territory of that State and other persons. To put it in different terms, if the principle of non-discrimination was retained in its current wording, the use of criteria for the attribution of nationality could be characterized as a discriminatory practice and could thus violate article 14 — hence the need for a clearer, or narrower, formulation of that provision.

75. Article 18, paragraph 2 allowed third States to treat persons who had become stateless as the result of the succession of States as nationals of the State whose nationality they would be entitled to acquire or retain. Paragraph (6) of the commentary on draft article 18 stated that paragraph 2 of the article was intended to correct situations resulting from discriminatory legislation or arbitrary decisions, which were prohibited by draft articles 14 and 15. He would have preferred for that clarification to appear in the text itself of article 18, paragraph 2, which would thus refer to articles 14 and 15.

76. Draft article 20 governed cases involving a transfer of only part of the territory of a State. It provided that the successor State should attribute its nationality to persons who had their habitual residence in the transferred territory. At the same time, it guaranteed the right of such persons to choose the nationality of the predecessor State. Granting such a right of option would undoubtedly ensure respect for the will of he persons to whom that right was granted, but it would impose a heavy burden on the predecessor State. Moreover, it could, in the transferred territory, create a large population having the nationality of the predecessor State, which did not appear to be desirable. For that reason, he, like some members of the Commission, believed that the right of option to be granted by the predecessor State should be limited to persons who had retained links with the predecessor State. He wondered, moreover, whether for the sake of symmetry the successor State should not also be required to offer a right of option to nationals of the predecessor State who did not reside in the transferred territory, if they had links with that territory. Lastly, draft article 20 offered nothing to persons concerned who resided in the territory of third States. It would be desirable to enable such persons to acquire the nationality of the successor State if they had links with it.

77. With regard to draft article 22, concerning the dissolution of a State, he wondered, without meaning to affect the substance of the provision, whether it might not be better to merge the situations envisaged in subparagraph (b) (I) and (ii); the same consideration applied to article 24, subparagraph (b), concerning cases of secession.

The meeting rose at 5.30 p.m.