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Nationality of natural persons in relation to the succession of States

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Note by the Secretariat: comments and observations received from Governments

Addendum

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A. Qatar

[Original: Arabic]

General comments

1. The question of granting or withdrawing nationality falls within the purview of the full powers and authority of the State. This is one of the facets of sovereignty concerning which a neutral stance is not possible.
2. Although the draft convention will help to reduce the number of persons having no nationality, since that is one of the obligations incumbent on States that create a balance between the authority of the State and individuals with a view to dealing with the phenomenon of statelessness, it will, at the same time, raise questions, including the following:
 - (a) While it is incumbent on the State to prevent the situation of statelessness, the draft convention must not be viewed as codifying a state of double nationality, which many States, including Qatar, do not recognize;
 - (b) Is difficult to sympathize with the principle of individual choice, which would give the individual the right to choose his nationality after the succession takes place, for this would lead to a situation of conflict between States that would entail further problems.
3. Regarding the procedure for the adoption of the convention, the proposal that the draft should be approved by means of a declaration adopted by the General Assembly of the United Nations should be supported.

B. Mexico

[Original: Spanish]

General comments

1. By virtue of article 15 of the Universal Declaration of Human Rights of 1948, and according to leading post-war political and legal opinion, the right to a nationality is considered one of the most important human rights, since it is nationality that gives natural persons the juridical status necessary for legal protection of their integrity and human dignity.
2. It is of the utmost importance that there should be an international instrument that compiles and harmonizes conventional and customary law on the nationality of natural persons in relation to the succession of States.
3. While the Government of Mexico has no particular objection to the General Assembly embarking in the near future on the drafting of a convention on the nationality of natural persons in relation to the succession of States, it considers that a declaration would adequately fulfil the goal of codifying customary law on the subject. A declaration could serve as a practical guide to States in solving problems relating to the nationality of natural persons arising from the succession of States.

Preamble

4. The preamble should refer to other international instruments, which, like those already mentioned, establish the right to keep or acquire a nationality, such as: the Declaration on the Rights of the Child; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; and the Convention on the Nationality of Married Women.

Article 2

5. The list of definitions given in article 2 should include the following terms, which are used in the draft articles but whose meaning is far from clear: “constituent unit”; “effective link”; “appropriate legal connection”; “habitual residence”; and “right of option”. With regard to “effective link”, “appropriate legal connection” and “habitual residence”, it would be useful to establish to what extent these terms coincide and where they differ, and the relationship between them. Although “right of option” is defined in article 23, this should be moved to the beginning of the text. For the notion of “habitual residence” in particular, a standard qualifying period of six months should be set (as applied almost without exception in instruments of private international law), since a large number of States may be involved, with each one applying different criteria.

Article 11

6. In article 11, paragraph 1, in place of the provision that “States concerned shall give consideration to the will of persons concerned” to enable such persons to acquire the nationality of any of those States, States should be required instead to “respect” their will. The text should also state that the will of such persons will be respected provided that they meet the requirements laid down by the States concerned and the present declaration.

Article 15

7. The right to non-discrimination, which is defined in article 15, should be moved to the beginning of the text and made into a basic principle of the declaration itself, given that the very purpose of the declaration is to avoid any cases of statelessness arising from the succession of States, and that statelessness is itself a form of discrimination.

Articles 20 and 25

8. With regard to articles 20 and 25, under which the predecessor State shall withdraw its nationality from the persons concerned, the words “shall withdraw” should be replaced by the words “may withdraw”, given that, while the basic intention of this declaration is to avoid leaving the persons concerned without a nationality, it does not attempt, nor does it intend, to avoid cases of double or multiple nationality.