Parliamentary **Assembly**
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Draft Protocol on the avoidance of statelessness in relation to state succession[1]

Report
Committee on Legal Affairs and Human Rights
Rapporteur: Mr Jaume Bartumeu Cassany, Andorra, Socialist Group

Summary

The right of the person to nationality is a fundamental right recognised by the 1948 Universal Declaration of Human Rights and the 1997 European Convention on Nationality. The Committee on Legal Affairs and Human Rights welcomes the draft Protocol on the avoidance of statelessness in relation to state succession which it regards as an essential instrument complementing the existing Conventions. It fully supports the objective of avoiding cases of statelessness by facilitating the acquisition of nationality and it generally subscribes to the provisions laid down therein.

However, the Committee recommends the introduction of several amendments to the draft instrument. On the one hand, it regrets that the draft instrument, limited to cases relating to state succession, does not make it possible to resolve cases of statelessness existing prior to the state succession. On the other hand, it believes that certain provisions of the draft, as currently worded, could be improved so as to take account of the opinions previously expressed by the Parliamentary Assembly and the Venice Commission, as well as of the United Nations General Assembly Resolution 55/153 on nationality of natural persons in relation to the succession of states.

I. Draft opinion

1. The right of the person to nationality is a fundamental right recognised by the 1948 Universal Declaration of Human Rights and the 1997 European Convention on Nationality. The Parliamentary Assembly therefore welcomes the draft Protocol on the avoidance of statelessness in relation to State succession which it regards as an essential instrument complementing the existing Conventions. It fully supports the objective of avoiding cases of statelessness by facilitating the acquisition of nationality and it generally subscribes to the provisions laid down therein.

2. In this context, it draws attention to its Opinion No 200 (1997) on the draft European Convention on Nationality and welcomes the response to its call that "the provisions relating to state succession […] be further developed".

3. The Assembly notes that the draft Protocol applies in respect of any succession of states occurring subsequent to its entry into force. The Assembly regrets that the present draft Protocol, limited to cases relating to state succession, does not make it possible to resolve cases of statelessness existing prior to the state succession. It consequently calls on future States Parties to play an active part in the process desired for years by the Committee of Ministers and the Parliamentary Assembly of tangibly and effectively reducing cases of statelessness in member states. It urges them to take a more proactive approach, basing their legislation on the

principles and provisions in Recommendation No. R(99)18 of the Committee of Ministers on the avoidance and reduction of statelessness.

4. The Assembly recalls its Recommendation 1223 (1993) on reservations made by member states to Council of Europe conventions, in which it expressed the view that it was "advisable and even necessary that the number of reservations made in respect of Council of Europe conventions be considerably reduced ". It notes with regret that the draft Protocol allows states to make reservations on at least two fundamental provisions of the Protocol, to the detriment of both the coherence and effectiveness of the Protocol and the necessary harmonisation of national legislation.

5. Certain provisions of the draft Protocol, as currently worded, could be improved so as to take account of the opinions previously expressed by, inter alia, the Assembly and the Venice Commission. Consequently, the Assembly recommends that the Committee of Ministers introduce the following amendments, which it regards as essential, to the draft Protocol:

5.1. change the title of the draft Protocol to "Convention on the avoidance of statelessness in relation to state succession" and replace the word "Protocol" by "Convention" throughout the text;

5.2. amend **sub-paragraph e of Article 1** (Definitions) to read "'Person concerned' means every individual who, at the time of the State succession:
a) has the nationality of the predecessor State and is or would become stateless as a result of the State succession,
b) is lawfully and habitually resident on the territory subject to succession and is stateless at the time of the succession";

5.3. replace **Article 4** ("Non-discrimination") by the following text: "States concerned shall not discriminate against any person concerned on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.";

5.4. amend **Article 5.1** by replacing "A successor State shall grant its nationality to" by "The nationality of the successor State shall be acquired by…";

5.5. add a new sub-paragraph after **Article 5.2.c** worded as follows: "descent from or marriage to a person covered by this article";

5.6. add a new paragraph **3** to **Article 5** worded as follows: "The nationality of the successor State shall also be acquired by those persons who, at the time of the State succession, are lawfully and habitually resident on the territory subject to succession and are stateless at the time of the succession";

5.7. add at the beginning of **Article 7** a new sentence worded as follows: "The States concerned shall take account of the will of the persons concerned whenever these persons fulfil the conditions for obtaining the nationality of two or more States";

5.8. add at the end of **Article 7** a new sub-paragraph worded as follows: "The acquisition of the nationality of a successor State or the choice of the nationality of the predecessor State or of one of the successor States according to the will expressed by the person concerned shall not have detrimental consequences for those so opting, particularly in respect of their right to reside on the territory of the successor State or of their movable or immovable property situated there.";

5.9. add a new article after **Article 7** worded as follows: "EFFECTIVE DATE - The acquisition of nationality in relation to the succession of States, as well as the acquisition of nationality following the exercise of an option, shall take effect on the date of such succession, if the person concerned would otherwise be stateless during the period between the date of the succession of States and such acquisition of nationality.";

5.10. amend **Article 8.2** by replacing "before granting its nationality to" by "before attributing the nationality to";

5.11. replace **Article 10** by the following sentence: **"**The nationality of a State concerned shall be acquired *ex lege* by a child born on the territory of a State concerned at birth, if that child would otherwise be stateless.";

5.12. after **Article 10** add a new article worded as follows: "LEGISLATION AND REGULATIONS ON NATIONALITY - States concerned should, without undue delay, enact legislation and regulations on nationality arising as the result of the State succession.";

5.13. replace **Article 11** by the following text: "States concerned should take all appropriate measures to ensure that persons concerned will be apprised, within a reasonable time period, of the effect of their legislation and regulations on their nationality, of any choices they may have thereunder, as well as of the consequences that the exercise of such choices will have on their status.";

5.14. after **Article 11** add a new article worded as follows: "RIGHT TO AN EFFECTIVE REMEDY - The decisions taken by the State concerned in respect of requests relating to the acquisition, retention, deprivation or withdrawal of nationality or refusal to grant it or in respect of the exercise of an option on the occasion of State succession shall be notified in writing; persons concerned have the right to an effective administrative or judicial remedy.";

5.15. replace the whole of Article 19 with the following **"N**o reservations may be made to the present Convention".

6. The Assembly therefore calls on Council of Europe member states to sign and to ratify this instrument as soon as possible and, taking a proactive approach, to recognise through a declaration that the Protocol will have retroactive effect for existing cases of statelessness. It notes that only 14 states have ratified the European Convention on Nationality (CETS 166) and that another 12 have signed it, figures which are disappointing. It encourages states which have not yet done so to sign and ratify the Convention.

II. Explanatory memorandum by Mr Bartumeu Cassany, rapporteur

1. Introduction

1. The right of the person to nationality is a fundamental right recognised by Article 15 of the 1948 Universal Declaration of Human Rights and Article 4 of the European Convention on Nationality. Nationality is the legal bond that guarantees individuals the full enjoyment of all human rights as a member of the political community. Statelessness entails a situation when persons cannot enjoy the rights based on the possession of the nationality, nor enjoy the protection that states provide to their nationals abroad. Statelessness makes impossible the recognition of a juridical personality and the enjoyment of civil and political rights, and produces a condition of extreme vulnerability[2].

2. Therefore, the prevention, avoidance, and elimination of cases of statelessness constitute the main concern of the international community in the field of nationality. In accordance with customary international law States have an obligation, when determining who are their nationals, to avoid cases of statelessness. A number of binding and non-binding international instruments address this problem as well. The former include the 1954 UN Convention relating to the Status of Stateless Persons (which came into force on 6 June 1960 and has 57 States Parties), the 1961 UN Convention on the Reduction of Statelessness (which came into force on 13 December 1975 and has 29 States Parties, including 14 Council of Europe member states), the 1997 European Convention on Nationality (14 ratifications, 12 signatures; came into force on 1 March 2000), the 1973 Convention of the International Commission on Civil Status to reduce the number of the cases of statelessness.

3. The non-binding instruments include in particular the following: the Venice Commission Declaration on the consequences of state succession for the nationality of natural persons, adopted on 14 September 1996; the Council of Europe Committee of Ministers Recommendation No. R(99)18 on the avoidance and reduction of statelessness of 15 September 1999; the articles on nationality of natural persons in relation to the succession of states, presented by the International Law Commission (ILC) in the form of a declaration, the text of which is annexed to the UN General Assembly resolution 55/153 of 12 December 2000.

4. One of the specific issues addressed in the aforementioned instruments is the avoidance of statelessness in relation to state succession (cf. the 1961 UN Convention and the European Convention on Nationality). However, the existing regulations are limited to setting some basic principles and lack comprehensive provisions. Thus Chapter VI of the European Convention on Nationality establishes the fundamental principles to be respected in matters of nationality in cases of state succession; encourages, in cases of state succession, States Parties concerned to regulate matters relating to nationality by agreement; and sets principles concerning non-nationals. The Convention however does not provide for specific rules, which states should respect in cases of State succession. As was stated by the Assembly, "Chapter VI on state succession is singularly lacking (…) in ambition; it contains no precise rules and is far too general."[3]

5. During the elaboration of the European Convention on Nationality an attempt was made to draft an exhaustive list of rules with regard to the consequences of state succession on nationality. As the divergence between states was considerable, ambitions had to be lowered and limited to establishing *principles* applicable in case of state succession[4]. As a result, the Committee of Experts on Nationality (CJ-NA) received the mandate to prepare a feasibility study in 2001 for the attention of the European Committee on Legal Co-operation (CDCJ) on the necessity to prepare an additional instrument to the European Convention on Nationality concerning statelessness in relation to state succession.

6. On the basis of the feasibility study adopted in 2001[5], the CJ-NA was instructed by the CDCJ to elaborate an additional protocol to the European Convention on Nationality concerning the avoidance of statelessness in relation to state succession which has regard to the principles and rules in this field prepared by the CJ-NA in 2002 and 2003. The draft Protocol on the avoidance of statelessness in relation to state succession was finalised in December 2004 and at their 930th meeting on 15 June 2005 the Ministers' Deputies decided to invite the Parliamentary Assembly to give an opinion on the draft Protocol.

7. The preparation of the additional instrument on the avoidance of statelessness should be welcomed, in particular as it is in line with the Assembly's position that the provisions of the European Convention on Nationality relating to state succession (chapter VI) should be further developed drawing on the work of the Venice Commission, and that it is essential to broaden the scope of guarantees and rights of nationals of predecessor states who should enjoy political and social rights and an "effective remedy" against deprivation, or withdrawal of, or refusal to grant nationality[6].

2. Character of the instrument

8. Although the terms of reference of the CJ-NA referred to elaboration of an additional protocol to the European Convention on Nationality, the Committee decided to give the Protocol an independent character so as to enable states to accede to it regardless of whether they were also parties to the Convention. This approach should be welcomed. However, taking account of the importance of the matter regulated by the new binding instrument and its already independent character, the rapporteur feels that the question of changing the denomination to "Convention" should be considered. This would draw additional attention to the issue of statelessness, in particular in the context of state succession, and also be consistent with the Council of Europe practice to refer to independent instruments as 'conventions' or 'agreements'. Even though this denomination does not affect the legal nature (binding character) of the instrument, it is desirable to keep the Council of Europe's *corpus juris* coherent.

3. Scope of the instrument

9. The scope of the draft protocol is subject to a twofold restriction:

- on the one hand, to cases of statelessness specifically linked to a succession of states;

- on the other hand, to cases of statelessness resulting from a succession of states, ie which occur or will occur following the succession; this excludes cases previous to the succession, ie persons already stateless when the state succession occurs, as well as persons becoming stateless after (and not as a result of) a succession of states.

This is a partial approach which includes only a limited number of issues in the field of State succession and nationality.

10. In respect of the first restriction, it should be recalled that the European Convention on Nationality, like Committee of Ministers Recommendation No. R(99)18 on the avoidance and reduction of statelessness, which already existed then to supplement it, deal with the general issue of statelessness. However the provisions of the said Recommendation have no binding force, and those of the Convention merely set out fundamental principles.

11. In respect of the second restriction, the possibility of broadening the scope of the text to include stateless persons at the moment of succession merits attention[7]. Very often the inhabitants of the territory subject to state succession include stateless persons residing in that territory at the date of succession.

12. The states should be encouraged, if not obliged, to use the opportunity of State succession in order to reduce or eliminate existing cases of statelessness, which were not a consequence of the succession. State successions are usually followed by adoption of special legislation on nationality of the States concerned. Only in few cases the adoption of such legislation has been used to grant stateless persons an opportunity to apply for the nationality of the successor state[8].

13. Article 14, paragraph 2 of the draft Protocol stipulates that a state concerned may declare on its accession to the instrument that it will also apply the provisions of the Protocol to a state succession occurring before its entry into force. This is a positive element, but of limited scope.

14. The Council of Europe should grasp the opportunity of the drafting of a new instrument to embark on a truly proactive process of reducing the cases of statelessness existing at the time of the succession. To this end the recommendation contained in the Venice Commission Declaration can be adapted and incorporated in the text of the Protocol. According to provision 11 of the Declaration, it is desirable that the successor state grant its nationality: a) to permanent residents of the transferred territory who are stateless at the time of the succession; b) to persons originating from the transferred territory but resident outside that territory who are stateless at the time of succession.

15. Also, as stated in the explanatory report to the draft Protocol (§9), the definition of "statelessness" in terms of the binding legal obligation for the States concerned is limited to "*de iure* stateless persons", although the Final Act of the 1961 United Nations Convention on the Reduction of Statelessness recommends that persons who are "*de facto* stateless" should as far as possible be treated as "*de iure* stateless" to enable them to acquire an effective nationality. A similar provision should be included in the draft Protocol.

4. Non-discrimination *(Article 4)*

16. Article 4 provides that when applying this Protocol, states concerned shall not discriminate against any person concerned on any ground. This principle of non-discrimination is based on Article 14 of the European Convention of Human Rights and Protocol No. 12 thereto. The explanatory report to the draft Protocol stresses the absolute inadmissibility of discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

17. This extended open list of grounds of possible discrimination is a useful reference for any person who lacks legal training and finds him/herself affected by state succession. It is doubtful that the explanatory report will be accessible for all persons concerned. Therefore, the list should be inserted in the body of the draft Protocol. Article 4 should thus read as follows, in parallel to the wording of Article 14 ECHR: "... States concerned shall not discriminate against any person concerned on any ground such as such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status".

5. Responsibility of the successor State *(Article 5)*

18. In Article 5, paragraph 1 ("A successor State shall grant its nationality to persons who, at the time of the State succession had the nationality of the predecessor State, and who have or would become stateless as a result of the State succession…") the verb "grant" could be misconstrued as being limited to situations when an application would have to be submitted and derive from an act of will. Clarification is needed, so it would be appropriate to replace the

beginning of the sentence with the words "**The nationality of the successor State shall be acquired by**" and to make a similar amendment to Articles 8 and 10 of the draft Protocol.

19. The rapporteur can also not agree that "descent from or marriage to a person covered by this Article [5]" was deleted from the list of appropriate connections which serve under Article 5 § 1.b. as a ground for granting nationality to persons who, at the time of the State succession had the nationality of the predecessor State, who were not habitually resident in any State concerned, and who have or would become stateless as a result of the State succession. This provision which was at first included in the draft text in order to avoid "the risk of splitting up family members and in particular to avoid the risk of children becoming stateless as a result of State succession"[9], was later deleted, "since such an obligation was not essential for the prevention of statelessness"[10].

6. Responsibility of the predecessor State *(Article 6)*

20. The draft Protocol establishes a combined responsibility for avoiding statelessness of the successor state – which should have the primary responsibility for granting nationality – and the predecessor state – which has a subsidiary responsibility for not withdrawing its nationality as long as persons concerned have not acquired, or cannot acquire, the nationality of the successor state. This principle is embodied in Articles 5 and 6 of the draft Protocol.

7. Right of option *(Article 7)*

21. Article 7 of the draft Protocol provides that in the case when a person has an appropriate connection with more than one successor state (Article 5, paragraph 1.b.), the successor state shall not refuse its nationality where such nationality reflects the explicit will of the person concerned, on the grounds that this person can acquire the nationality of another state on the basis of an appropriate connection with that state.

22. This vague formula indirectly indicates that the person concerned who has an appropriate connection with more than one successor states has a right of option, viz. to choose among the nationalities of the successor states. At the same time, it is only one of the variants of the right of option, since in the case when the predecessor state continues to exist the person concerned may wish to opt for the nationality of the predecessor State.

23. The purpose of Article 7 of the draft Protocol is to avoid any person who has the nationality of the predecessor state becoming stateless following a succession of states and finding him or herself legally unable to acquire a nationality, for want of a connection with two or more successor states. In pursuance of Article 6, the predecessor state would not be authorised to withdraw its nationality from its own nationals, unless the latter have acquired the nationality of the successor state or another state.

24. It might be better to re-formulate this provision by envisaging a clear-cut right of option of nationality covering the positive choice of a certain nationality and the refusal of a nationality acquired *ex lege*. States concerned should provide a reasonable time limit for the exercise of the right of option. Such provisions could build on the principles of Article 20 of the European Convention on Nationality[11] and the provision of Article 18 § 2.c. of the Convention (*"In deciding on the granting or the retention of nationality in cases of State succession, each State Party concerned shall take account in particular of: […] the will of the person concerned."*).

25. This article could be supplemented by an additional guarantee that the exercise of the right to choose the nationality of the predecessor state, or of one of the successor states, shall have no detrimental consequences for those making that choice, in particular with regard to their right to residence in the successor state and their moveable or immoveable property located therein *(cf. the Venice Commission Declaration on the consequences of state succession for the nationality of natural persons, paragraph 16)*[12].

8. Effective date

26. The draft Protocol could be supplemented with a provision defining the moment when the conferring of nationality in relation to state succession, as well as the acquisition of nationality following the exercise of an option, shall take effect. Articles on nationality of natural persons in relation to the succession of states by the ILC suggest that this moment be the date

of the succession, if persons concerned would otherwise be stateless during the period between the date of the succession of states and the attribution or acquisition of nationality (Article 7).

9. Avoiding statelessness at birth *(Article 10)*

27. The provision can be reinforced by re-wording it to establish that a state concerned shall provide in its internal law the acquisition of nationality *ex lege* at birth if a child would otherwise be stateless.

10. Legislation on nationality and on the provision of information to the persons concerned

28. Article 11 of the draft Protocol (Information to persons concerned) provides that states concerned shall take all necessary steps to ensure that persons concerned have sufficient information about rules and procedures with regard to the acquisition of their nationality. This regulation is an important guarantee that persons affected by the succession are informed of their rights, of any choices they may have, as well as of the consequences that the exercise of such choices will have on their status.

29. However, this provision seems to be secondary to the principal obligation of each state concerned to enact, without undue delay, rules on nationality and other issues arising in relation to state succession. Therefore, this obligation should be incorporated to the draft Protocol.

11. Reservations *(Article 19)*

30. The European Convention on Nationality allows no reservations to three chapters – Chapter I "General matters", Chapter II "General principles relating to nationality" and Chapter VI "State Succession and Nationality" - which in the Explanatory report to the Convention have been described as "the core chapters of the Convention" (para. 143). At the same time, the draft Protocol allows reservations to three articles of the document (Article 7 on the respect for the expressed will of the person concerned, Article 8 § 2, on states' obligation not to require proof of non-acquisition of another nationality, and Article 13 § 2.b. on co-operation with other states and international organisations).

31. The wording of Article 19 is the result of a compromise reached when the draft Protocol was drawn up between the Committee of experts delegations which were in favour of leaving states broad scope to make reservations, and wished to allow as many countries as possible to become Parties to the Protocol, and those which took the radically different view that this instrument should make a tangible contribution to reducing cases of statelessness. Reservations should not be allowed to provisions if they would create cases of statelessness since this would be against the objective and purpose of the Protocol.

32. The provisions which are allowed to be derogated from by State Parties appear to fail the latter test established by the experts. For example, Article 19 of the draft Protocol allows a reservation to Article 8 § 2, which envisages that a successor state shall not require proof of non-acquisition of another nationality before granting its nationality to persons who were habitually resident on its territory at the time of the state succession and who have or would become stateless as a result of the state succession. However, the requirement of proof of the non-acquisition of another nationality has in practice led to a great number of statelessness cases[13]. It is doubtful whether a person concerned could, in practical terms, collect the necessary evidence, since doing so depends partly on the co-operation of other states' authorities, particularly those of the dissolved state. If it is a state's concern to prevent and reduce cases of multiple nationalities that legitimises the existence of such a possibility of a reservation on this provision, it has to be said that a State Party has at its disposal other instruments for doing this, starting with the European Convention on Nationality. In this context, the possibility of a reservation to Article 8, paragraph 2 is inadmissible.

33. The same would concern Article 7 if transformed into a proper right of option clause (cf. supra). It would present an important guarantee based *inter alia* on Article 18 § 2.c. of the European Convention on Nationality. It is unacceptable to lower the level of protection even in comparison with broadly worded provisions of the Convention.

34. The specially commissioned report on reservations to the European Convention on Nationality concluded that the problem may derive from a general prohibition on making reservations to Chapter VI, dealing with state succession and nationality, especially in connection with the future Additional Protocol on the avoidance of statelessness in relation to state succession. "If the provisions of this Protocol are going to follow articles of Chapter VI of the Convention (which is very probable), and the extent to which they will follow them, it seems that any reservation to such provisions of the future Protocol should also be inadmissible. Maintenance of conformity between the provisions of both international instruments appears inevitable."[14] This conclusion went unheeded by the CJ-NA.

35. In the preparation of the draft Protocol, the question of possible reservations was linked to the question of the time of application of the protocol: "If it was decided that the protocol should have a retroactive effect, states might be interested in the possibility of making reservations."[15] The draft Protocol indeed extends its application to state successions which will have occurred after its entry into force (thus including state successions which might occur in the interval between the entering into force of the protocol and accession to the protocol by the states concerned). However, this is not a valid reason to diminish the significance of the protocol's provisions, which are not numerous and almost all of crucial importance by allowing reservations thereto.

36. In this regard, it should be also recalled that the Assembly in its Recommendation 1223 (1993) on reservations made by member states to Council of Europe conventions stated that it is "advisable and even necessary that the number of reservations made in respect of Council of Europe conventions be considerably reduced." In its Opinion No. 200 (1997) on the draft European convention on nationality, the Assembly noted that there is too much leeway for states in the choice of applicable provisions, to the detriment of the ambition, coherence and effectiveness of the convention and the necessary harmonisation of national legislation.

37. The added value of the Protocol would be significantly diminished if the possibility of reservations is preserved. The rapporteur therefore recommends the exclusion of the possibility of any reservations to the Protocol. That said, he still intends to seek the views of members of the Committee to determine whether such an approach would not (seriously) undermine the Protocol's ratification by certain member states.

12. Conclusion

38. The draft Protocol on which the Parliamentary Assembly was invited by the Committee of Ministers to provide an opinion is an important instrument whose elaboration is welcomed by the rapporteur. It contains a number of crucial provisions which are aimed at the avoidance of statelessness in specific situations of state successions. However, the draft Protocol's provisions can be reinforced and streamlined, in particular by clearly stating the right of nationality option in relation to state succession and excluding the possibility of reservations. Moreover, the more general questions of extending the scope of the regulation and changing the instrument's denomination deserve close attention.

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Reporting committee: Committee on Legal Affairs and Human Rights

Reference to committee: Doc 10646, Reference 3135 of 1.09.2005

Draft opinion unanimously adopted by the Committee on 13 December 2005

Members of the Committee : Mr Dick **Marty** (Chairperson), Mr Jerzy Jaskiernia, Mr Erik **Jurgens**, Mr Eduard Lintner (alternate: Mr Klaus-Jürgen **Hedrich**) (Vice-Chairpersons), Mrs Birgitta **Alhqvist**, Mr Athanasios Alevras, Mr Gulamhuseyn Alibeyli, Mr Rafis Aliti, Mr Alexander Arabadjiev, Mr Miguel Arias, Mr Birgir Ármannsson, Mr José Luis Arnaut, Mr Giorgi Arveladzé, Mr Abdülkadir **Ateş**, Mrs Doris Barnett, Mr Jaume **Bartumeu Cassany**, Mrs Meritxell Batet, Mrs Soledad Becerril, Mrs Marie-Louise Bemelmans-Videc, Mr Sali Berisha, Mr Rudolf **Bindig**, Mr Erol Aslan **Cebeci**, Mrs Pia Christmas-Møller, Mr Boriss **Cilevičs**, Mr András Csáky, Mr Marcello Dell'Utri, Mrs Lydie Err, Mr Jan **Ertsborn**, Mr Václav **Exner**, Mr Valeriy **Fedorov**, Mr György **Frunda**, Mr Jean-Charles **Gardetto**, Mr József Gedei, Mr Stef **Goris**, Mr Valery **Grebennikov**, Ms Gultakin Hajiyeva, Mrs Karin Hakl, Mr Nick Harvey, Mr Serhiy Holovaty, Mr Michel **Hunault**, Mrs Fatme **Ilyaz**, Mr Sergei Ivanov, Mr Tomáš Jirsa, Mr Antti Kaikkonen, Mr

Uyriy **Karmazin**, Mr Hans Kaufmann (alternate: Mr Andreas **Gross**), Mr Nikolay Kovalev (alternate: Mr Yuri **Sharandin**), Mr Jean-Pierre Kucheida, Mrs Darja **Lavtižar-Bebler**, Mr Andrzej Lepper, Mrs Sabine Leutheusser-Schnarrenberger, Mr Tony **Lloyd**, Mr Humfrey Malins (alternate: Lord John **Tomlinson**), Mr Andrea Manzella, Mr Tito Masi, Mr Andrew McIntosh, Mr Murat **Mercan**, Mr Philippe Monfils, Mr Philippe Nachbar, Mr Tomislav Nikolić (alternate: Mr Ljubiša **Jovašević**), Ms Ann Ormonde, Ms Agnieszka Pasternak, Mr Piero Pellicini, Mr Rino Piscitello, Mrs Maria Postoico, Mr Christos Pourgourides, Mr Jeffrey Pullicino Orlando, Mr Martin Raguž, Mr François Rochebloine, Mr Armen **Rustamyan**, Mr Adrian Severin, Mr Michael Spindelegger, Mrs Rodica Mihaela Stănoiu (alternate: Mr Adrian **Păunescu)**, Mr Petro Symonenko, Mr Vojtech **Tkáč**, Mr Øyvind **Vaksdal**, Mr Egidijus **Vareikis**, Mr Miltiadis **Varvitsiotis**, Mr José Vera Jardim, Mrs Renate Wohlwend, Mr Vladimir Zhirinovsky (alternate: Mrs Natalia **Narochnitskaya)**, Mr Zoran **Žižić**, Mr Miomir Žužul

N.B.: The names of the members who took part in the meeting are printed in bold

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[1] See Doc 10646.

[2] *Dilcia Yean and Violeta Bosico v Dominican Republic*, 7 October 2005 judgment by the Inter-American Court of Human Rights.

[3] Explanatory memorandum to Opinion No 200 (1997) on the draft European convention on nationality (Doc 7718, report by the PACE Committee on Legal Affairs and Human Rights, rapporteur Mr Fogaš).

[4] International law and nationality, in particular in the context of State succession, report by Mr Roland Schärer, Series: "Science and technique of democracy", No 21, 1997; p. 96.

[5] Feasibility study on the basis of a draft report prepared by Mr Roland Schärer, CJ-NA (2001) 1 Rev3, 12 October 2001.

[6] Opinion No 200 (1997), paragraph 12.

[7] "While persons habitually resident in the absorbed territory who are nationals of the predecessor State cannot be invested with the successor's nationality, on the other hand, stateless persons so resident are in the same position as born nationals of the predecessor State. There is an 'inchoate' right on the part of any State to naturalize stateless persons resident upon its territory." D.P.O'Connel, The Law of State Succession (Cambridge, England, Cambridge University Press, 1956), pp. 257-258; cited from the first report on state succession and its impact on the nationality of natural and legal persons by UN Special Rapporteur Mr Václav Mikulka, 1995 (A/CN.4/467).

[8] For example, Article 18 of the 1991 Law on Citizenship of the Russian Federation (abrogated by the Law of 2002) allowed to acquire the nationality of the Russian Federation through a registration procedure to all stateless persons who, at the moment of entering into force of this law, permanently resided on the territory of Russia or other republics which comprised the USSR and applied for the Russian citizenship within a year after the enactment of the law. Article 2 of the 1991 Law on Citizenship of Ukraine (abrogated by the Law of 2001) provided for automatic acquisition of nationality of Ukraine by all persons who at the moment of the enactment of this Law (13 November 1991) resided in Ukraine and were not nationals of other States.

[9] Report of the 24th meeting of the Working Party of the CJ-NA (paragraph 38), 11-13 February 2004, CJ-NA GT (2004) 5.

[10] Report of the 21st meeting of the CJ-NA (paragraph 28), 13-15 October 2004, CJ-NA (2004) 5 rev.

[11] *"Each State Party shall respect the following principles:*
a. nationals of a predecessor State habitually resident in the territory over which sovereignty is transferred to a successor State and who have not acquired its nationality shall have the right to remain in that State;

b. persons referred to in sub-paragraph a shall enjoy equality of treatment with nationals of the successor State in relation to social and economic rights."

[12] *For example, according to the post-First World War peace treaties (Versailles Treaty, the Treaty of Saint-Germain-en-Laye, the Treaty of Neuilly-sur-Seine, the Peace Treaty of Tartu, the Treaty if Lausanne, etc.) the right to opt in favour of the previously held nationality was coupled with an obligation to leave the transferred territory. Today, such an obligation would be incompatible with international human rights standards.*

[13] Report of the 24th meeting of the Working Party of the CJ-NA (paragraph 42), 11-13 February 2004, CJ-NA GT (2004) 5.

[14] Comparative study by Mr Zdzislaw Galicki, CJ-NA GT (2004) 9, June 2004.

[15] Report of the 24th meeting of the Working Party of the CJ-NA, CJ-NA GT (2004) 5, 11-13 February 2004.