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COMMITTEE OF EXPERTS ON NATIONALITY
(CJ-NA)

Statelessness in Relation to State Succession

Feasibility study

**The Necessity of an Additional Instrument
to
the European Convention on Nationality**

**adopted by the Committee of Experts on Nationality on the basis of a draft prepared
by**

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BRIEF FOREWORD

This feasibility study shows that an additional instrument to the European Convention on Nationality on statelessness in relation to State succession is necessary because:

- a) the avoidance of statelessness is one of the main concerns of the international community in the field of nationality
- b) State succession remains a major source of cases of statelessness,
- c) the European Convention on Nationality only contains general principles and not specific rules on nationality in cases of State succession,
- d) other instruments of the Council of Europe, the Venice Commission and the United Nations do not have binding character or do not address important issues relating to statelessness in relation to State succession,
- e) the Council of Europe is the only European body dealing with nationality on a general level

For these reasons, the CJ-NA proposes to the CDCJ:

to prepare principles and rules on the avoidance of statelessness in relation to State succession and to elaborate proposals for the CDCJ for the preparation of one or more international instruments in this field.

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Statelessness in Relation to State Succession

Report on the Necessity of an Additional Instrument to the European Convention on Nationality

Chapter I: Object and Scope of the Study

1. Importance of statelessness in case of State succession in the field of nationality

The right to a nationality is a fundamental right recognised by Article 15 of the Universal Declaration of Human Rights. This right has been the basis of a number of binding international legal instruments, among them, Article 4 of the European Convention on Nationality. Without a nationality, individuals cannot enjoy the fundamental rights based on the possession of the nationality of the State of residence, nor enjoy the protection that States grant their citizens abroad. The consequences for stateless persons include the fact that they have no place where they have a right to stay and no place to which they have a right to return. The elimination of statelessness is thus the main concern of the international community in the field of nationality.

Statelessness has a particular significance in cases of State succession. On the one hand, State succession has a high potential to create – concentrated on short periods – huge numbers of stateless persons, in particular when the predecessor State disappears and no successor State is ready to grant its nationality to former nationals of the State which has disappeared. On the other hand, as State succession often means that new States are created, all persons concerned by State succession should be able to participate in the building up of these States in the crucial period of setting up new State structures.

2. Lack of adequate international regulations concerning State succession and statelessness

Nationality and statelessness in the context of State succession is addressed on the international level by binding and non-binding international instruments.

The binding instruments (in particular the 1961 UN Convention on the Reduction of Statelessness [hereinafter: Convention on the reduction of statelessness] and the European Convention on Nationality contain some large principles. Though they are very important, the lack of comprehensive regulations in these instruments prevents effective action being taken to combat statelessness in case of State succession in a great number of cases and therefore an additional instrument seems necessary.

The non-binding instruments (the Declaration of the Venice Commission on the Consequences of State Succession for the Nationality of Natural Persons [hereinafter: Venice Declaration], the 1999 Council of Europe Recommendation on the Avoidance and the Reduction of Statelessness [hereinafter: Recommendation on statelessness] as well as the 1999 draft Articles on Nationality of Natural Persons in Relation to the Succession of

States, prepared by the United Nations International Law Commission, contained in the Annex to the UN General Assembly Resolution 55/153 of 2001 [hereinafter: ILC draft]) contain principles and specific rules. Nevertheless, independently of their non-binding character, these instruments do not address some important aspects of statelessness in case of State succession (see below Sections 15 and 16).

3. Role of the Council of Europe with regard to statelessness and State succession

The Council of Europe is the only European body dealing with the elaboration of general rules concerning nationality law. In this regard it must be noted that the European Union, in particular, does not consider nationality matters to be in its sphere of competence. Therefore, the Council of Europe has to ask itself whether the upholding of the most important human right in the field of nationality, the right to a nationality through the avoidance of statelessness – in situations where normally the greatest problems occur – in case of State succession – justifies its intervention in an area where no other European institution concerns itself with the formulation of legal rules.

4. Mandate of the CJ-NA

The CJ-NA received the mandate to prepare a feasibility study in 2001 for the attention of the CDCJ on the necessity to prepare an additional instrument to the European Convention on Nationality concerning statelessness in relation to State succession. The present report contains the feasibility study.

5. Main criteria for the report

The European Convention on Nationality was opened for signature on 6 November 1997 and entered into force on 1st March 2000. It contains a chapter on State succession which focuses on principles and general rules but which does not provide for specific rules, which States should respect in cases of State succession.

The Committee of Ministers adopted on 15 September 1999 a Recommendation on the Avoidance and the Reduction of Statelessness (hereinafter: Recommendation on statelessness). This recommendation was made on the basis of the European Convention on Nationality and was intended to further develop its rules and principles on avoiding and reducing statelessness.

This report is based on the question whether it is appropriate, four years after the adoption of the European Convention on Nationality, to develop its chapter on State succession, to apply to State succession also the ideas which are at the basis of the Recommendation on statelessness and to take into account the practical experience made in recent years with regard to State succession and statelessness in a certain number of States.

6. General avoidance of statelessness also concerns statelessness arising from State succession

The general principles regarding statelessness in international instruments on nationality – e.g. in the European Convention on Nationality or the Convention on the reduction of statelessness – concern all instances of statelessness, i.e. apply also to the avoidance of

statelessness in case of State succession, even if this is not explicitly mentioned. Therefore, even if we distinguish below (para. 11) between provisions mentioning explicitly statelessness in case of State succession and others which make only a general reference to statelessness, we should be aware of the fact that rules on statelessness as such always apply also to statelessness arising from State succession.

7. Limitation to State succession in so far as statelessness is concerned

When the European Convention on Nationality deals with State succession, it does so by taking into account the whole range of nationality problems arising from State succession. In the same way, the Venice Declaration as well as the ILC draft deal with the whole set of nationality problems.

The present report, however, limits itself to consider State succession with regard only to statelessness and does not deal with the wider question as to whether a nationality acquired through State succession is the most adequate one on the basis of predominant effective links of a person with a State. This report also excludes cases of statelessness that are not a consequence of State succession, but which already existed before the State succession occurred. This approach undoubtedly facilitates the study and makes conclusions easier to reach. We should, however, bear in mind that this is only a partial approach which does not take into account all the questions which deserve to be raised in the field of State succession and nationality.

8. Prudent approach to statelessness and State succession

The present report outlines problems and suggests possible solutions with regard to statelessness in cases of State succession on a broad basis. Proposals which are made in this report as to obligations of States concerned by State succession take into account that several States may be called upon in order to fight against statelessness or that some States have different ideas on their obligations in this respect. The consequence is that in order to fight effectively against statelessness various States concerned by State succession must have parallel or complimentary obligations to avoid statelessness in cases of State succession. The suggested solutions have thus at times a redundant character in the sense that they may concern at the same time the predecessor State, the successor State where a person resides as well as another successor State with which a person has an effective connection.

Chapter II: Review of relevant situations and existing international instruments

9. Definition of State succession

The 1978 Vienna Convention on Succession of States in Respect of Treaties defines succession of States as “the replacement of one State by another in the responsibility for international relations of territory”. According to the Convention, it applies only to the effects of State succession occurring in conformity with international law and, in particular, with the principles of international law embodied in the Charter of the United Nations. This definition of State succession is also used in the field of nationality. In

particular, the relevant provisions of the ILC draft (Art. 2 para. a and Art. 3) repeat the wording of the Vienna Convention.

10. Categories of State succession and specific problems connected with them with regard to statelessness

10.1. Transfer of territory from one State to the other

This category relates to the transfer of part of a territory of one State to another State. All the persons concerned in the field of nationality by such a State succession were necessarily citizens of the predecessor State. As the predecessor State continues to exist, there is an easy solution for not creating cases of statelessness: If the predecessor State is obliged not to withdraw its nationality from persons who do not acquire the nationality of the successor State, nobody will become stateless through the succession. But the most appropriate nationality in case of transfer of territory for persons habitually residing in that territory is normally the one of the successor State. There must therefore be a combined responsibility for avoiding statelessness between the successor State – which should have the primary responsibility for granting nationality – and the predecessor State – which has a subsidiary responsibility for not taking away its nationality as long as persons concerned have not acquired, or cannot acquire, the nationality of the successor State.

10.2. Unification of States

This example of State succession should not create problems with regard to statelessness. All persons possessing the nationality of the predecessor States should acquire through the unification the nationality of the new State (or, if one State unites with another which continues to exist, all persons who possessed the nationality of the disappearing State will acquire the nationality of the State which continues to exist).

10.3. Dissolution of a State

The dissolution of a State creates the greatest problems with regard to statelessness. As the predecessor State ceases to exist, all persons who previously possessed its nationality automatically lose it at the moment of its disappearance. The persons who cannot acquire the nationality of a successor State and who possess no other nationality necessarily remain stateless. Thus, there must be rules for the successor States to grant their nationality to persons who have a decisive link with them and who have lost the previous nationality through the dissolution of the predecessor State.

10.4. Dissolution of a federal State with internal citizenship

In a federal State with internal citizenship, all citizens of the federal State necessarily possess the internal citizenship of a constituent unit of the federal State. Change of the place of residence – to another State or another constituent unit of the federal State - does not affect the internal citizenship. If the federal State disappears through dissolution into its constituent units, only the federal citizenship disappears, whereas the internal citizenship of each former constituent unit remains untouched, independently of the place of residence of the citizens concerned.

Thus, in a federal State with internal citizenship, statelessness in case of dissolution of the federal State can easily be avoided if all persons who possessed the internal citizenship of a former constituent unit acquire the nationality of the corresponding successor State. However, the nationality thus acquired may not be the most relevant one with regard to the closest links of a person with a successor State. Problems may also arise with regard to family unity as it is possible that members of the same family - husband or wife or parents and children - do not have the same internal citizenship. Moreover, it is possible that registration of the former internal citizenship was not thoroughly carried out with the effect that a number of persons cannot prove their former internal citizenship and, after the succession occurred, the acquisition of the citizenship of a successor State. But the problem of *de jure* statelessness is, at least theoretically, resolved if all persons who possessed the internal citizenship of a former constituent unit acquire the nationality of the corresponding successor State.

10.5. Separation of part of the territory

The separation of part or parts of the territory of a predecessor State is similar, as far as concerns statelessness, to the transfer of territory from one State to another. All the persons concerned by the State succession were necessarily citizens of the predecessor State. As the predecessor State continues to exist, there is an easy solution for not creating cases of statelessness, if the predecessor State is obliged not to withdraw its nationality from persons who do not acquire the nationality of the successor State. But the most appropriate nationality in case of separation of territory for persons habitually residing in the separated territory is normally the one of the successor State. There should therefore be a combined responsibility for avoiding statelessness between the successor State – which should have the primary responsibility for granting nationality – and the predecessor State – which has a subsidiary responsibility for not taking away its nationality as long as persons concerned have not acquired, or cannot acquire, the nationality of the successor State.

Chapter III Existing international instruments

11. International instruments on State succession and nationality with specific provisions on statelessness

For the purpose of this report, the three above-mentioned international instruments of the Venice commission, the Council of Europe and the UN are taken into account. Special attention is given to provisions which explicitly refer to statelessness in case of State succession. This approach is based on the idea that if the drafters of these provisions felt the need to mention explicitly statelessness in case of State succession, such provisions must undoubtedly be relevant in the context of this study. This does not exclude the fact that also other provisions may be important. The following provisions of the above-mentioned instruments may be considered to be of particular relevance.

Venice Declaration:

In the Declaration of the Venice Commission, the avoidance of statelessness in case of State succession is explicitly mentioned in particular in the following provisions:

- “The successor State shall grant its nationality:
 - a. to permanent residents of the transferred territory who become stateless as a result of the succession
 - b. to persons originating from the transferred territory, resident outside that territory, who become stateless as a result of the succession (Art. IV.10).”
- “The predecessor State shall not withdraw its nationality from its own nationals who have been unable to acquire the nationality of a successor State (Art. IV. 12)”.

Even if not explicitly referring to State succession, the Venice declaration also contains the fundamental principles that “the States concerned shall respect the principle that everyone has the right to a nationality (Art. II 5) and that they “shall avoid creating cases of statelessness (Art. II 6)”.

European Convention on Nationality :

The Convention, in its chapter on State succession and nationality (Chapter VI), explicitly provides that States have to respect the principles of the rule of law, the principles concerning human rights, the general principles of the Convention (in particular the right to a nationality; the avoidance of statelessness, the prohibition of arbitrary deprivation of nationality, the principle of non-discrimination) and the specific principles applicable to State succession, in particular to avoid statelessness (Art. 18 para.1)

Among the specific principles applicable to State succession are the following (Art. 18 para. 2):

- “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:
- a. the genuine and effective link of the person concerned with the State;
 - b. the habitual residence of the person concerned at the time of State succession;
 - c. the will of the person concerned;
 - d. the territorial origin of the person concerned.”

In the same chapter, the Convention provides that “In cases of State succession, States Parties concerned shall endeavour to regulate matters relating to nationality by agreement amongst themselves and, where applicable, in their relationships with other States concerned. Such agreements shall respect the principles and rules contained or referred to in this chapter (Art. 19)”.

ILC draft:

In the ILC draft, the avoidance of statelessness in cases of State succession is explicitly mentioned in the following provisions:

- “States concerned shall take all appropriate measures to prevent persons who, on the date of the succession of States, had the nationality of the predecessor State from becoming stateless as a result of such succession (Art. 4).”

- “Each State concerned shall grant a right to opt for its nationality to persons concerned who have appropriate connection with that State if those persons would otherwise become stateless as a result of the succession of States (Art. 11, para. 2).”
- “A child of a person concerned, born after the date of the succession of States, who has not acquired any nationality, has the right to the nationality of the State concerned on whose territory that child was born (Art. 13).”
- In case of transfer of territory, “the predecessor State shall not withdraw its nationality before the person concerned has acquired the nationality of the successor State (Art. 20, 2nd sentence).”
- In case of dissolution of States, each successor State shall grant its nationality to persons concerned not entitled to the nationality of any State concerned who have their habitual residence in a third State, on the condition that they were born in, had their last habitual residence in or have any other appropriate connection with the successor State (Art. 22, para. b. subpara. ii).
- In case of dissolution of a federal State, a successor State shall grant its nationality to stateless persons who previously possessed the internal citizenship of the unit which has become the successor State (Art. 22 para. b, subpara. i).
- In case of separation of part(s) of the territory, “the predecessor State shall not... withdraw its nationality before...persons (concerned) acquire the nationality of the successor State (Art. 25, para. 1).
- As concerns other States, nothing in the Resolution “requires States to treat persons concerned having no effective link with a State concerned as nationals of that State, unless this would result in treating those persons as if they were stateless (Art. 19 para. 1)”. Likewise, nothing in the Resolution “precludes States from treating persons concerned, who have 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 is beneficial to those persons (Art. 19 para. 2)”.

The following articles of the ILC draft are particularly relevant in the context of this report even if they do not explicitly refer to statelessness in cases of State succession:

- Persons concerned having their habitual residence in the territory affected by the succession of States are presumed to acquire the nationality of the successor State on the date of such succession. (Article 5)
- In case of transfer of territory, the successor State shall attribute its nationality to the persons concerned who have their habitual residence in the transferred territory (Art. 20, 1st sentence).
- In case of dissolution of States, each successor States shall attribute its nationality to persons concerned having their habitual residence in its territory (Art. 22, para. a).

12. International instruments on statelessness with specific provisions on State succession

For the purpose of this report, the Convention on the reduction of statelessness and the Recommendation on statelessness are taken into account. Special attention is given to provisions mentioning explicitly statelessness in case of State succession (see above, beginning of Section 11).

Convention on the reduction of statelessness

The Convention contains the following explicit provisions concerning State succession and statelessness:

“1. Every treaty between Contracting States providing for the transfer of territory shall include provisions designed to secure that no person shall become stateless as a result of the transfer. A Contracting State shall use its best endeavours to secure that any such treaty made by it with a State which is not a party to this Convention includes such provisions.

2. In the absence of such provisions a Contracting State to which territory is transferred or which otherwise acquires territory shall confer its nationality on such persons as would otherwise become stateless as a result of the transfer or acquisition (Art. 10).”

Even if they do not explicitly mention statelessness with regard to State succession, the following articles of the Convention have also a particular significance in cases of State succession:

A contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless (Art. 1 para. 1). Such a nationality shall be granted either at birth or at a later moment in conformity with the detailed provisions contained in article 1 of the Convention. Article 8 indicates the principle that a contracting State shall not deprive a person of its nationality if such deprivation would render him stateless and Article 9 provides that a contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.

The Council of Europe Recommendation on statelessness

The Recommendation contains the following explicit provision concerning State succession and statelessness:

“States should endeavour to regulate matters relating to statelessness, where appropriate and in particular in cases of state succession, by international agreement (Art. I. e)”.

Even if they do not explicitly mention statelessness in the context of State succession, the following articles of the Recommendation have also a particular significance in cases of State succession:

“Each State should ensure that its legislation provides for the acquisition of its nationality by children born on its territory who would otherwise be stateless (Art. II A b).

“Each State should facilitate the acquisition of its nationality by stateless persons lawfully and habitually resident on its territory...(Art. II B para. 1)”. In particular, each State should reduce the required period of residence, not require more than an adequate knowledge of one of its official languages, ensure that procedures be easily accessible,

not subject to undue delay and available on payment of reduced fees and ensure that offences do not unreasonably prevent stateless persons from seeking nationality (Art. II B a – d).

Chapter IV Considerations on the basis of existing international instruments

13. Rules of the above-mentioned international instruments with regard to the categories of State succession creating statelessness

13.1. Transfer of and separation of part of the territory

The Venice Declaration as well as the ILC draft refer to the fundamental rule that in case of transfer and separation of part of the territory the predecessor State shall not withdraw its nationality from its own nationals who have been unable to acquire the nationality of a successor State (Art. IV.12 of the Venice Declaration ; Art. 20, 2nd sentence of the ILC draft).

As to the obligations of the successor State with regard to avoiding statelessness in case of transfer and separation of part of the territory, the rules of the Venice Declaration (Art. IV.10 a) as well as the ones of the UN-Declaration (Art. 20, 1st sentence) do not differ from the rules applicable in case of dissolution of a State. They will thus be dealt with in Section 13.2.

The European Convention on Nationality, containing principles and general rules with regard to statelessness in cases of State succession, does not provide for specific rules in this area.

An adequate international instrument on statelessness and State succession must contain the ideas expressed in the above-mentioned rules.

13.2. Dissolution of a State

The Venice Declaration as well as the ILC draft distinguish between persons who have their habitual residence in a successor State at the moment of State succession and persons living in a third State.

Persons having their habitual residence in a successor State

According to the Venice Declaration, the successor State shall grant its nationality to persons concerned having their habitual residence in a successor State who become stateless as a result of the succession (Art. IV.10 a).

The ILC draft provides that in case of dissolution of a State the successor States shall attribute their nationality to persons concerned who have their habitual residence in their territory (Art. 22, para. a).

Persons living in a third State

According to the Venice Declaration, “the successor State shall grant its nationality to persons originating from the transferred territory, resident outside that territory, who become stateless as a result of the succession (Art. IV.10 b).”

According to the ILC draft, in case of dissolution of States, each successor State shall grant its nationality to persons concerned not entitled to the nationality of any State concerned who have their habitual residence in a third State, on the condition that they were born in, had their last habitual residence in or have any other appropriate connection with the successor State (Art. 22, para. b. subpara. ii).

The ILC draft provides that in case of dissolution of a federal State, a successor State shall grant its nationality to stateless persons having their habitual residence in a third State who previously possessed the internal citizenship of the unit which has become the successor State (Art. 22 para. B, subpara. ii).

The European Convention on Nationality, containing principles and general rules with regard to statelessness in cases of State succession, does not provide for specific rules in this area.

An adequate international instrument on statelessness and State succession must contain the ideas expressed in the above-mentioned rules.

14. Combination of the rules of the above-mentioned international instruments with regard to avoiding and reducing statelessness in cases of State succession

If we combine the ideas of the above-mentioned international instruments without distinguishing between categories of State succession and if we limit ourselves – as is the purpose of this paper – to avoiding statelessness, we arrive at the following rules:

- A successor State shall grant its nationality to persons habitually resident in its territory, in particular if they became stateless as a result of the State succession.
- A predecessor State shall not withdraw its nationality from its nationals who have been unable to acquire the nationality of a successor State.
- A successor State shall grant its nationality to persons habitually resident in a third State who become stateless as a result of the succession if they were born in the territory which has become the territory of the successor State, had their last habitual residence in it or have any other appropriate connection with the successor State.
- In case of dissolution of a federal State, a successor State shall grant its nationality to stateless persons who previously possessed its internal citizenship.

We may add to these rules the principle that States should endeavour to regulate matters relating to statelessness, where appropriate and in particular in cases of State succession, by international agreement.

These rules are not provided for in the European Convention on Nationality.

15. Is there a need for other rules?

Aside from what emerges from Section 14, is there a need for other rules with regard to statelessness and State succession not referred to above in the context of the Venice Declaration, the European Convention on Nationality, the ILC draft or the Convention on the reduction of statelessness?

This question might be studied on the basis of two different approaches: the practical experience of recent cases of State succession and the Council of Europe Recommendation.

16. Other rules which may be based on practical experience

Practical experience with regard to statelessness and State succession has shown us additional difficulties in the following areas:

Change of place of residence

As has been outlined above, a successor State should grant its nationality to persons habitually resident in its territory who become stateless as a result of the State succession. In case of dissolution of a State, the moment of State succession may not be the same for all successor States because of differing attitudes as to the moment of disappearance of the predecessor State. Successor States may also consider decisive for the acquisition of their nationality not the residence in their territory at the moment of State succession but at another moment, e.g. the day of adoption of their Constitution or the entry into force of their citizenship law. Persons who changed their residence before the decisive date for acquisition of nationality in their former State of residence and after the decisive date for acquisition of nationality in their new State of residence remain stateless if they cannot acquire the nationality of a successor State on the basis of a criterion other than residence.

Thus, there should be an obligation of the new State of residence, after a period of residence in its territory, to grant its nationality through a facilitated procedure to persons who remain stateless in the wake of State succession because of a change of place of residence.

Residence

Often persons who have a long-time factual residence in a State legally are not considered as residents of that State because of a restrictive interpretation of the term of residence. This interpretation is responsible for a huge number of cases of statelessness of persons who cannot acquire the nationality of the successor State in which they live.

In the European Convention on Nationality, a uniform concept of residence has been used (lawful and habitual residence), but it needs further qualifications to which States should conform, so as to permit persons without a nationality who have a stable factual residence in a successor State to acquire its nationality.

Rules of proof

Often requirements of proof that a person has acquired the nationality of a successor State are so strict in regard of all the circumstances that persons who are entitled to such a

nationality are unable to be recognised as citizens and remain in fact stateless. This also applies to successor States of federal States where theoretically no case of statelessness should occur in the wake of State succession, providing all persons who previously possessed the internal citizenship of the newly formed successor State acquire its citizenship.

Successor States should therefore be obliged not to require full proof of conditions for the acquisition of their nationality if this would otherwise lead to de facto statelessness. A high probability - according to the circumstances - that the conditions for acquisition of the nationality of a successor State are fulfilled should be sufficient.

Avoiding multiple nationality

The avoidance of cases of multiple nationality can be an important factor leading to statelessness in cases of State succession. If in order to acquire the nationality of a successor State persons are required to prove that they have not acquired the nationality of another or other successor States and they are unable to do so because the other successor State does not co-operate, such a requirement leads to statelessness. Even if this case of creation of statelessness is partially linked to the above-mentioned case relative to the rules of proof, it has an independent significance.

There should be an obligation on successor States not to require proof of non-acquisition of another nationality from persons habitually resident in their territory at the moment of State succession before they will recognise such persons as citizens. The State may, however, require that the person concerned co-operates with a view to avoid multiple nationality. The provision on non-recognition of another nationality according to the 1930 Hague Convention on certain questions relating to the conflict of nationality laws (Art. 3) and a provision on automatic loss of nationality in case of voluntary acquisition of another nationality, in conformity with the European Convention on Nationality, should normally be sufficient to avoid problems for the States concerned with regard to multiple nationality.

17. Other rules which may be considered on the basis on the Council of Europe Recommendation on the avoidance and reduction of statelessness

The following rules of the Recommendation on statelessness have a particular significance in the field of State succession:

- *International co-operation*

The Recommendation provides that States promote the avoidance of statelessness through international co-operation. This point is of particular importance when persons who reside in one successor State are only able to prove the acquisition - or non-acquisition - of the nationality of another successor State through international co-operation between the two States and if those persons are considered, until such proof is produced, as having no nationality. A similar provision is contained in the ILC draft (Art. 18).

- *Avoiding statelessness at birth*
According to the Recommendation, each State should ensure that its legislation provides for the acquisition of its nationality by children born on its territory who would otherwise be stateless (Art. II.A.b.). This rule is of particular importance for children of parents concerned by State succession who could not acquire the nationality of the successor State where they reside. At least their children born after the date of State succession should acquire the nationality of the successor State where they were born if they have no other nationality. Such an excellent rule is provided in the ILC draft (Art. 13).
- *Facilitating the acquisition of nationality by stateless persons*
The Recommendation provides that each State should facilitate the acquisition of its nationality by stateless persons lawfully and habitually residing on its territory (Art. II. B.). This provision is particularly important in cases of State succession for stateless former citizens of the predecessor State who reside in a successor State whose nationality they could not acquire because they failed to fulfil the relevant conditions.

Chapter V : Conclusions

18. Feasibility of an international instrument on State succession and statelessness

It follows from the above that there is a need for a comprehensive international instrument on State succession and statelessness. It should go beyond what already exists in this field. Such an instrument of the Council of Europe is feasible. It would take into account the primary responsibility of the Council of Europe to be active in the field of nationality on the European level.

This feasibility study shows that an additional instrument to the European Convention on Nationality on statelessness in relation to State succession is necessary because:

- a) the avoidance of statelessness is one of the main concerns of the international community in the field of nationality
- b) State succession remains a major source of cases of statelessness,
- c) the European Convention on Nationality only contains general principles and not specific rules on nationality in cases of State succession,
- d) other instruments of the Council of Europe, the Venice Commission and the United Nations either do not have binding character or do not elaborate issues relating to statelessness in relation to State succession,
- e) the Council of Europe is the only European body dealing with nationality on a general level.

The elaboration of such an instrument, if limited to statelessness, would be less complex than the preparation of a general instrument on State succession and nationality, where one considerable difficulty relates to the right of option for the most appropriate nationality in case of State succession for persons who are not stateless.

19. Conclusions for an international instrument on State succession and statelessness

It appears that the following possible rules amongst others deserve attentive consideration in regard of a new instrument additional to the European Convention on Nationality :

- A successor State should grant its nationality to persons habitually resident in its territory, in particular if they become stateless as a result of the State succession.
- A predecessor State should not withdraw its nationality from its nationals who have been unable to acquire the nationality of a successor State.
- A successor State should grant its nationality to persons habitually resident in a third State who became stateless as a result of the succession if they have appropriate connection with the successor State, for example, by birth or previous habitual residence.
- In case of dissolution of a federal State, a successor State should grant its nationality to stateless persons who previously possessed its internal citizenship.
- There should be an obligation on the new State of residence to grant its nationality, after a period of residence in its territory, through a facilitated procedure to persons who remained stateless in the wake of the succession of States because of a change of their place of residence.
- There should be an obligation on a successor State to conform to an internationally harmonised concept of habitual residence, so as to permit persons without a nationality who have a stable factual residence in a successor State to acquire its nationality.
- Successor States should be obliged not to require full proof of conditions for the acquisition of their nationality if this would otherwise lead to de facto statelessness. A high probability - according to the circumstances - that the conditions for acquisition of the nationality of a successor State are fulfilled should be sufficient.
- There should be an obligation on successor States not to require proof of non-acquisition of another nationality from persons habitually resident in their territory at the moment of State succession before they will recognise such persons as citizens. The State may, however, require that the person concerned co-operates with a view to avoid multiple nationality.
- States should promote the avoidance of statelessness, in particular in case of State succession, through international co-operation.
- States should facilitate the acquisition of their nationality by stateless persons lawfully and habitually residing on their territories, in particular in case of State succession.
- Stateless children born of former citizens of a predecessor State in a successor State after the date of State succession should acquire the nationality of the State where they were born.

In addition to these substantive rules, the following principle should be taken into consideration:

- States should endeavour to regulate matters relating to statelessness, where appropriate and in particular in cases of State succession, by international agreement.

20. Proposal

The CDCJ is invited to instruct the CJ-NA to prepare principles and rules concerning the avoidance of statelessness in relation to State succession and to elaborate proposals for the CDCJ for the preparation of one or more international instruments in this field.